

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Aug 02 2023

S.C. SUPREME COURT

Certiorari to Charleston County

Honorable R. Ferrell Cothran, Circuit Court Judge

SYLVESTER SCOTT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000624

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DANIELLE E DIXON
Assistant Attorney General
PO Box 11549
Rembert C. Dennis Building
Columbia, SC 29211
(803)734-3970

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MARCH 11-13, 2019.....	1
GUILTY PLEA TRANSCRIPT DATED MARCH 14, 2019	530
APPLICATION FOR POST-CONVICTION RELIEF	543
RETURN.....	550
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED APRIL 8, 2022	556
ORDER OF DISMISSAL.....	596
INDICTMENTS	621

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
 -VS-)
) March 11-13, 2019
SILVESTER D. SCOTT,)
) Charleston, South Carolina
 Defendant.)

VOLUME I - March 11, 2019

B E F O R E:

The Honorable Roger M. Young, Sr., Judge, and a Jury.

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

For the State:
Thomas Richard Waring, II, Assistant Solicitor
David Osborne, Assistant Solicitor

For the Defendant:
John Joseph Kozelski, III, Attorney
Susannah Knox, Attorney

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

I N D E X

PAGE

COURTEXHIBITS

No.

DESCRIPTION

MARKED

RECEIVED

1

Photographic Lineup

108

108

P R O C E E D I N G S

(Monday, March 11, 2019.)

Court in session in the case of State of
South Carolina vs. Silvester D. Smith at 11:30 a.m.)

THE COURT: This is Silvester Desmond Scott?

Is that you?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Well, Mr. Scott,
we're getting ready to draw a jury here in this case.
You got three indictments for armed robbery and three for
possession of a weapon during the commission of a violent
crime. You're facing, on armed robbery, 10 to 30 years,
no parole, and they are -- let me see.

MR. KOZELSKI: Your Honor, if I could correct
you, I think we're only going forward on two of the
indictments, one of the armed robberies and one of the
possessions of a weapon.

THE COURT: I was just thinking, when I read
your pretrial brief, it only sounded like one, but when I
got here, there's three, so which indictment are you
going for?

MR. WARING: Judge, if I may, it's
2015-GS-10-04002 and 4003.

THE COURT: Okay. So the March 4, 2015 armed
robbery?

1 MR. WARING: Yes, Your Honor.

2 MR. KOZELSKI: And, just to clarify, Your
3 Honor, he has been served with LWOP notice.

4 THE COURT: Okay. All right. Well,
5 Mr. Scott, I just want to go over with you something
6 before we begin and bring the jury in. It's 10 to
7 30 years minimum normally on an armed robbery, but
8 apparently you have a sufficient number of strikes in
9 your past that the State is seeking life without parole
10 if you are convicted on this charge of armed robbery. So
11 if you are convicted, your sentence will be life without
12 parole. No possibility of getting out early. The only
13 way you get out is when they carry you out in a pine box,
14 basically.

15 Now, the State has the burden of proving that
16 you are guilty beyond a reasonable doubt on these
17 charges. You don't have to prove that you didn't do it.
18 You only have to show up, and you've done that. You
19 don't have to testify if you don't want to. You don't
20 have to put up a defense if you don't want to; however,
21 that is a right that you have, and only you can exercise
22 it or not exercise it, and you don't have to tell me at
23 this time if you want to put up a defense or if you want
24 to testify and tell the jury your side of the story;
25 however, if we get to the point in the trial where I

1 determine that the State presented enough evidence for
2 the jury to consider the charge, then you will have to
3 make that decision. It will either be tomorrow or
4 Wednesday, probably, but you would have to make that
5 decision, and I wanted to bring that up now so you could
6 be thinking about it.

7 I'm sure your lawyers have talked with you
8 about that, but it is ultimately your decision and your
9 decision alone, so I would urge you to consider thinking
10 about that as to whether or not you want to put up a
11 defense and/or testify or not testify.

12 All right? Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. So are we ready to
15 bring the jury in now?

16 MR. WARING: Yes, Your Honor.

17 MR. KOZELSKI: We are, Your Honor, but if I
18 could just address one pretrial matter that I briefly
19 mentioned on my list of pretrial motions that involves
20 the jury voir dire is that I just ask that the Court or
21 the State not refer to us as public defenders.

22 It's just one of these motions that I've been
23 making recently after going to some seminars and learning
24 that the jury shouldn't know that we're public defenders,
25 basically, because they don't want people to view our

1 clients as indigent and judge them on that basis.

2 THE COURT: I've seen it both ways. Some
3 people request that you do, and they volunteer they're a
4 public defender. Some people don't, so if you don't want
5 them to refer to you as a public defender, then don't
6 refer to him as a public defender.

7 I had down here Mr. Shahid was going to work
8 with you on this case; is that right?

9 MR. KOZELSKI: No, sir. I was sitting with
10 him at jury qualification, but Ms. Knox is actually going
11 to be sitting with me.

12 THE COURT: You're second chair?

13 MS. KNOX: Yes, Your Honor.

14 THE COURT: Tell me your full name for the
15 record.

16 MS. KNOX: Susannah Knox, K-n-o-x.

17 THE COURT: All right. Anything we need to
18 take up before we bring the jury in?

19 MR. WARING: Not from the State, Your Honor.

20 THE COURT: My plan is to draw the jury, let
21 them go to lunch, and we'll then come back and go through
22 your pretrial motions, and then I'll have them come back
23 at some point -- I'm aiming for 1:00, 1:30 for us to come
24 back, and the jury roughly 30, 45 minutes after that, for
25 pretrial stuff.

1 MR. KOZELSKI: We've discussed this, Your
2 Honor, I think we have significant pretrial motions that
3 could take some testimony, and I don't know how long -- I
4 think it would take an hour maybe, maybe more. I've
5 spoken to Mr. Waring about maybe just sending the jury
6 home and starting on Tuesday, starting tomorrow? I think
7 if we start on Tuesday, we're still going to be closing
8 and charging Thursday, Thursday morning.

9 THE COURT: Well, if that makes more sense.
10 It's kind of hard to get a feel for it, but I got your
11 pretrial brief -- well, about 10:30 this morning, I
12 guess. She forwarded it to me, and I was, like, well,
13 he's certainly wrote a lot.

14 All right. We'll figure it out.

15 MR. WARING: I did speak with Mr. Kozelski.
16 I tend to think it won't take as long, but, if possible,
17 I think we could begin to open today, but I guess we can
18 see how it goes, Your Honor.

19 THE COURT: I just don't like to have them
20 sitting around for two hours back there and then you hear
21 an opening and then send them home after 30 minutes. I
22 would rather start in the morning and get everything done
23 and not be pushed.

24 (In open court, jury panel present.)

25 THE COURT: All right.

1 Welcome back, folks. We're going to now draw
2 a jury for the case which we'll begin a little bit later.
3 This is, as I told you, a criminal case, and so the State
4 of South Carolina has alleged that the defendant in this
5 case has committed a crime, and your job is to help us
6 resolve this and determine whether or not the State
7 proves to the 12 of you to your satisfaction that he did
8 beyond a reasonable doubt commit the offenses of which he
9 is charged.

10 Now, in a criminal case like this, you have,
11 in essence, two parties: You have the State of South
12 Carolina as the prosecutor, and the defendant is the
13 person who is alleged to have committed the crime. In
14 South Carolina, we call our prosecutors solicitors.
15 Maybe one day somebody will explain to me why we call our
16 prosecutors solicitors because if you go back to the
17 historical basis for it, we're the only ones in the world
18 that I think call our prosecutors solicitors.

19 Everybody else calls them district attorneys
20 or prosecution or some other derivative of that, but
21 we're South Carolina, so we like to do something
22 different, and the best I can come up with is, well,
23 we've done it this way for 300 years, so we'll continue
24 to do that. Probably 300 years from now we'll still be
25 calling our prosecutors solicitors, but we do it and we

1 don't think twice about it, but for those of you who like
2 a little bit of history, here is your history lesson for
3 the day.

4 We have 16 solicitors in this state because
5 we have 16 judicial circuits. As I told you, we're in
6 the Ninth Judicial Circuit, and our solicitor in this
7 circuit is Ms. Scarlett Wilson, and Ms. Wilson has
8 designated these two gentlemen sitting over here at this
9 table to prosecute this case on behalf of the State of
10 South Carolina, and they are Mr. Richard Waring and Mr.
11 David Osborne.

12 Is there any member of the jury panel who is
13 related by blood or marriage or acquainted in any way
14 with either Ms. Scarlett Wilson or with Mr. Bearing or
15 Mr. Osborne? If so, would you please stand? I find
16 none. You may be seated.

17 Is there any member of the jury panel who
18 has, either you or immediate family members or close
19 friends, ever been employed by the solicitor's office in
20 the Ninth Judicial Circuit? That would either be
21 Charleston or Berkeley County. If so, would you please
22 stand?

23 Any member of the jury panel, either you or
24 an immediate family member or a close personal friend,
25 ever been prosecuted for a crime by the solicitor's

1 office in the Ninth Judicial Circuit? If so, would you
2 please stand. Okay. I find none.

3 Now, the defendant in this case is
4 Mr. Silvester Desmond Scott? Mr. Scott, will you please
5 stand. This is Mr. Scott, the gentleman in the middle.
6 Is there any member of the jury panel who is related by
7 blood or marriage or acquainted in any way by
8 Mr. Silvester Desmond Scott? If so, would you please
9 stand. Okay. I find none.

10 He is represented by Mr. John Kozelski and
11 Ms. Susannah Knox, the people standing on either side.
12 Anybody in the jury panel related by blood or marriage or
13 acquainted in any way with either of his lawyers or
14 perhaps you've been represented by them in the past? If
15 so, would you please stand. Okay. I find none. You can
16 be seated.

17 Mr. Scott has been indicted on two charges
18 that he is standing trial for this week. Indictments are
19 the formal means by which a case is presented to the
20 circuit court. It lets Mr. Scott know what he is charged
21 with and will stand trial for. It also gives this court
22 jurisdiction to hear the case.

23 The fact that the State alleges someone
24 commits a crime is not evidence, and it does not create
25 any presumption of guilt. It is, again, simply, the

1 formal instruments by which he is notified of the charges
2 he is to stand trial for. He has pled not guilty to
3 these three indictments, and therefore it is incumbent
4 upon the State to provide him with a trial and attempt to
5 convince the 12 of you of the guilt of his charges beyond
6 a reasonable doubt. Again, he does not have to prove he
7 is innocent. The State has to prove that he is guilty.

8 Now, I'm going to read the two indictments
9 simply for the purpose of letting you know what they are
10 and when it took place so that you can tell us whether or
11 not you know anything about these cases, okay? There are
12 two indictments. The first indictment is indictment
13 2015-GS-10-4002, and it is an indictment for armed
14 robbery, and it states:

15 On or about March the 4th, 2015 in Charleston
16 County, South Carolina the defendant, Silvester Desmond
17 Scott, by use of force, threats, or intimidation and
18 while armed with a deadly weapon or while alleging,
19 either by action or words, he was armed while using a
20 representation of a deadly weapon or any object which a
21 person present during the commission of the robbery
22 reasonably believed to be a deadly weapon did take and
23 carry away goods and/or moneys, both person or immediate
24 presence, of Jasmine Jenkins, an employee of the First
25 Palmetto Savings Bank, with the intent to permanently

1 deprive the victim of possession thereof in violation of
2 Section 16-11-330(a) of the South Carolina Code of Laws.

3 The second indictment is 2015-GS-10-4003. It
4 is for possession of a weapon during the commission of a
5 violent crime, and it alleges that in Charleston County,
6 South Carolina on about March the 4th, 2015, the
7 defendant, Silvester Desmond Scott, did possess a firearm
8 or did visibly display what appeared to be a firearm and
9 did visibly display a knife during the commission of or
10 attempted commission of a violent crime, to wit, armed
11 robbery in violation of Section 15-23-490, South Carolina
12 Code of Laws.

13 Again, Mr. Scott states that he is not guilty
14 of these charges, and so the State has to provide him
15 with this trial, and I ask you, is there any member of
16 the jury panel who is familiar with this case at all?
17 Okay. I find none.

18 I'm going to call out the names of some
19 people who might be called as witnesses in this case.
20 Not all of these people are going to be called, but out
21 of an abundance of caution, we call out anybody that
22 might possibly be called because if we don't call a name
23 and they change their mind later on and call one of these
24 folks, it my be your best friend, worst enemy, next door
25 neighbor, et cetera. It would be too late to do anything

1 at that point.

2 So I'm going to call out the names of some
3 people who might be called as witnesses, and if you are
4 related by blood or marriage or acquainted in any way
5 with these folks, when I call their names out, will you
6 please stand? All right.

7 First is Officer Melissa Aubrey with the
8 Charleston Police Department. Anyone? I find none.
9 Tonia Mallette with the consolidated dispatch, which is
10 911? I find none. Jasmine Jenkins? I find none.
11 Officer John Laycock, Charleston Police Department? I
12 find none. CSI Mary Phillips with the Charleston Police
13 Department? I find none. Venezaree Simmons, or it might
14 be Simons, here in Charleston? All right. I find none.

15 Alonzo Green? I find none. Agent Kirk Tyner
16 with SLED, South Carolina Law Enforcement? I find none.
17 CSI Sara Senn, S-e-n-n, with the Charleston Police
18 Department? I find none. Detective Cory Broadwater,
19 Charleston Police Department? I find none. Sergeant
20 Eric Tuttle, Charleston Police Department? I find none.
21 Melissa Bryant, South Carolina Department of Motor
22 Vehicles? I find none. Jerry Roberts, Charleston Police
23 Department? I find none. Detective Yolanda Brown,
24 Charleston Police Department? I find none.

25 Agent Clay Simmonds with the Federal Bureau

1 of Investigations? I find none. Harriet Cordero? I
2 find none. Eddie Tudor? I find none. Mitchell Burns?
3 I find none. Nada Kerstein, Charleston Police
4 Department? I find none. Catherine Leisy, L-e-i-s-y,
5 South Carolina Law Enforcement, SLED? I find none.
6 Andrea Simmons, South Carolina Law Enforcement, SLED? I
7 find none. Detective Thomas Bailey, Charleston Police
8 Department? I find none. Verdell Young? I find none.
9 Brenda Winters? I find none. CSI Jeff Miller,
10 Charleston police? I find none. Officer Kevin
11 Schleiben, Charleston police? I find none. Lieutenant
12 Jack Weiss, Charleston police? Lieutenant Chito Walker,
13 Charleston police? I find none. Officer Lawton -- or,
14 excuse me, Matthew Laycock, Charleston police? I find
15 none.

16 Officer Busch, Charleston police? I don't
17 know the first name, whether that's a man or woman;
18 Busch, B-u-s-c-h?

19 MR. WARING: Your Honor, we're not quite
20 sure.

21 THE COURT: Okay. Anyone? Not sure if it's
22 a man or a woman. Officer Jeremy Bailey, Charleston
23 police? I find none. Officer Victoria Rulon, Charleston
24 police? I find none. Officer Mark Smith, Charleston
25 police? I find none. Officer Chris Malinowski,

1 Charleston police? I find none. Detective Brandon
2 Parker, Charleston police? I find none. Detective
3 Richard Holmes, Charleston police? I find none.

4 Sergeant Timothy Dasher, Charleston police?
5 I find none. Detective Mark Mallette, Charleston police?
6 I find none. Jeff Bader, B-a-d-e-r? I find none. Keith
7 Conyers? I find none. I find none. Captain Searson,
8 Charleston police? Captain George Brisbon, Charleston
9 police? I find none. Linda Bloodworth -- excuse me,
10 Lisa Bloodworth? I find none. Lieutenant Karen Craven,
11 Charleston police? I find none. Sergeant Sigmon,
12 S-i-g-m-o-n, Charleston police? I find none.

13 Investigator R. Sanders, Charleston police?
14 I find none. Officer Michael Calden, C-a-l-d-e-n,
15 Charleston police? I find none. Sergeant Tonatte
16 Mitchell, Charleston police? I find none. David Ryan,
17 Charleston police? I find none. Tonya Toomer? I find
18 none. Anthony Holsberg? I find none. Investigator Jen
19 Hall with the Ninth Circuit Solicitor's Office? I find
20 none. Sergeant Matthew Stanley, Charleston police? I
21 find none. Lily Scott? I find none. Eddie Tudor? I
22 find none. Harriet Cordero? I find none.

23 Any member of the jury panel, either you or
24 one of your immediate family members, ever had any
25 criminal charges prosecuted by or currently pending with

1 the Charleston County solicitor's office? I find none.

2 Excuse me. Yes, ma'am, your name and number?

3 A PROSPECTIVE JUROR: Latoya Brown, 32.

4 THE COURT: Your number?

5 A PROSPECTIVE JUROR: 32.

6 THE COURT: Okay. And --

7 A PROSPECTIVE JUROR: My uncle -- well, my
8 cousin's dad, he was charged with a crime last year.

9 THE COURT: Could you speak up?

10 A PROSPECTIVE JUROR: My cousin's father was
11 charged with a crime in this courtroom last year.

12 THE COURT: Do you think that would affect
13 your ability to be fair and impartial in this case,
14 either for or against the State or for or against the
15 defendant?

16 A PROSPECTIVE JUROR: No.

17 THE COURT: Okay. Thank you.

18 Any member of the jury panel know if either
19 you or any of your family members have ever been
20 acquainted with the defendant or any of his family? I
21 find none. Any member of the jury panel or any of your
22 immediate family members ever worked in law enforcement?
23 If so, would you please stand.

24 THE BAILIFF: Stand, please.

25 A PROSPECTIVE JUROR: I did, city of

1 Charleston.

2 THE COURT: Your name and number?

3 A PROSPECTIVE JUROR: Edward Blake, 17.

4 THE COURT: And who was it?

5 A PROSPECTIVE JUROR: The city of Charleston.

6 THE COURT: You or a family member?

7 A PROSPECTIVE JUROR: Me.

8 THE COURT: What did you do with the city
9 police department?

10 A PROSPECTIVE JUROR: Crime scene
11 investigator.

12 THE COURT: And how long ago was that?

13 A PROSPECTIVE JUROR: Eleven years ago.

14 THE COURT: Would that affect your ability to
15 be fair and impartial in this case, for or against the
16 State or for or against the defendant?

17 A PROSPECTIVE JUROR: I don't think so.

18 THE COURT: You don't know anything about
19 this case?

20 A PROSPECTIVE JUROR: No.

21 THE COURT: You can be seated. Yes, sir?

22 A PROSPECTIVE JUROR: I worked for the
23 Federal Bureau of Prisons. That was about 12 years ago.

24 THE COURT: What is your name and number?

25 A PROSPECTIVE JUROR: Vincent Dellinger, 70.

1 THE COURT: You work for them, Federal Bureau
2 of Prisons?

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: Currently?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: How long ago did you work for
7 them?

8 A PROSPECTIVE JUROR: About 12 years ago.

9 THE COURT: Would that affect your ability to
10 be fair and impartial in this case for or against the
11 State or for or against the defendant?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: Thank you. Yes, ma'am, your name
14 and number?

15 A PROSPECTIVE JUROR: Kathleen Clement, 75.
16 I have a cousin that works with the Charleston County
17 Sheriffs Department.

18 THE COURT: You did?

19 A PROSPECTIVE JUROR: No, a cousin of mine.

20 THE COURT: Was your cousin -- what did he or
21 she do?

22 A PROSPECTIVE JUROR: He is still working.
23 He's a sheriff department detective, Julius Mackey.

24 THE COURT: All right. Would that affect
25 your ability to be fair and impartial for or against the

1 State or for or against the defendant?

2 A PROSPECTIVE JUROR: No.

3 THE COURT: Okay. Thank you. Yes, ma'am,
4 name and number again?

5 A PROSPECTIVE JUROR: Latoya Brown, 32. My
6 cousin and my uncle work for the Charleston Police
7 Department.

8 THE COURT: And would that affect your
9 ability to be fair and impartial, either for or against
10 the State or for or against the defendant?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: Thank you. Yes, your name and
13 number?

14 A PROSPECTIVE JUROR: Michael Patterson,
15 juror number 223.

16 THE COURT: Okay. What would you like to
17 tell me?

18 A PROSPECTIVE JUROR: My stepfather works for
19 the Charleston Police Department.

20 THE COURT: Currently?

21 A PROSPECTIVE JUROR: Currently, yes.

22 THE COURT: Would that affect your ability to
23 be fair and impartial for or against the State or for or
24 against the defendant?

25 A PROSPECTIVE JUROR: No, sir.

1 THE COURT: Thank you. Anyone else? Yes,
2 name and number?

3 A PROSPECTIVE JUROR: James Cuthbert, 64. My
4 brother-in-law works with law enforcement with DNR, and
5 my nephew works for law enforcement with DNR.

6 THE COURT: And where do they work at?

7 A PROSPECTIVE JUROR: One works in Beaufort;
8 one works in Charleston.

9 THE COURT: Would that affect your ability to
10 be fair and impartial in this case, for or against the
11 State or for or against the defendant?

12 A PROSPECTIVE JUROR: No, sir.

13 THE COURT: Thank you. Anyone else?

14 Is any member of the jury panel a supporter
15 of a police booster organization, an honorary law
16 enforcement organization or similar group such as South
17 Carolina Troopers Association, South Carolina Law
18 Enforcement Officers Association, County Sheriffs Office
19 Association, Fraternal Order of Police, that sort of
20 thing? Okay. I find none.

21 Any member of the jury panel, either you or
22 any of your immediate family members, a member of a
23 victims rights or law enforcement organization such as
24 CAV, Citizens Against Violent Crime, People Against Rape,
25 Mothers Against Drunk Driving, Persons Empowered to Save

1 Teens, Darkness to Light, or any community watch program
2 or anything like that? If so, would you please stand.
3 All right. I find none.

4 Any member of the jury panel, either you or
5 an immediate family member, involved in any kind of
6 educational organization such as Drug Abuse Resistance
7 Education, DARE, anything like that? Okay. I find none.

8 May I see the lawyers up here for a second?
9 (A bench conference was held on the record
10 but out of the hearing of the jury as
11 detailed below)

12 THE COURT: I got all the questions you all
13 have. I didn't have any strikes for cause. All these
14 folks say they were okay. Anybody have any strikes for
15 cause?

16 MR. WARING: No, Your Honor.

17 MR. KOZELSKI: No. There is a question that
18 I would like to be asked, and I'm not sure at what time,
19 but if any members of the jury or family members have
20 ever dealt with anybody having a drug addiction? This
21 case is going to deal a lot with heroin use and heroin
22 sales, so if somebody is affected by the opioid crisis or
23 something like that.

24 THE COURT: All right.

25 (Back on the record)

1 THE COURT: Any member of the jury panel,
2 either you or an immediate family member, ever had any
3 issues with drug addiction? And, again, as I said out
4 there earlier, I should have repeated it earlier in here,
5 I didn't. If you have any question that you don't want
6 to stand up in front of a bunch of people and talk about,
7 this certainly might fall in that category, you're
8 welcome to come up here and talk with me more privately,
9 but if anybody has ever had any drug addiction issues in
10 their family, would you please stand.

11 Okay. Well, why don't we have y'all just
12 come up here.

13 Juror number 273.

14 (Potential juror approaches the bench.)

15 THE COURT: Yes, ma'am. What would you like
16 to tell me?

17 A PROSPECTIVE JUROR: Multiple family members
18 have drug addiction problems.

19 THE COURT: Okay. Thank you.

20 A PROSPECTIVE JUROR: Anything else?

21 THE COURT: No.

22 (Prospective juror returns to audience.)

23 Juror number 170?

24 (Potential juror approaches the bench.)

25 A PROSPECTIVE JUROR: My sister is a severe

1 functioning alcoholic, bipolar, and suffer -- my sister?
2 Drug user, whatever is available, essentially, yeah.

3 THE COURT: Okay. Thank you.

4 (Prospective juror returns to audience.)

5 Next?

6 THE BAILIFF: Juror number 55.

7 (Potential juror approaches the bench.)

8 THE COURT: Yes, ma'am?

9 A PROSPECTIVE JUROR: My son, Dean Clement.

10 THE COURT: Your son?

11 A PROSPECTIVE JUROR: Uh-huh.

12 THE COURT: Okay. Thank you.

13 (Prospective juror returns to audience.)

14 THE BAILIFF: Juror number 6.

15 (Potential juror approaches the bench.)

16 THE COURT: Yes, ma'am?

17 A PROSPECTIVE JUROR: My stepson.

18 THE COURT: Stepson?

19 A PROSPECTIVE JUROR: Was caught for drugs,
20 selling drugs, but he's deceased now, as of like a month
21 ago.

22 THE COURT: Okay. Thank you.

23 (Prospective juror returns to audience.)

24 THE BAILIFF: Juror number 302.

25 (Potential juror approaches the bench.)

1 THE COURT: Yes, sir?

2 A PROSPECTIVE JUROR: Yeah, I had a nephew
3 that was addicted and went through counselling a number
4 of times.

5 THE COURT: Okay. Thank you.

6 (Prospective juror returns to audience.)

7 THE BAILIFF: Juror number 140.

8 (Potential juror approaches the bench.)

9 THE COURT: Yes, sir.

10 A PROSPECTIVE JUROR: My uncle was on drugs.

11 THE COURT: Okay. Thank you.

12 (Prospective juror returns to audience.)

13 THE BAILIFF: Juror number 124.

14 (Potential juror approaches the bench.)

15 A PROSPECTIVE JUROR: My sister, about seven
16 years ago, was addicted to oxycodone.

17 THE COURT: Okay. Thank you.

18 (Prospective juror returns to audience.)

19 THE BAILIFF: Juror number 32.

20 (Potential juror approaches the bench.)

21 A PROSPECTIVE JUROR: My grandmother and my
22 aunt are both addicted to opioids.

23 THE COURT: Say that again?

24 A PROSPECTIVE JUROR: My grandmother and my
25 aunt.

1 THE COURT: All right. Thank you.

2 (Prospective juror returns to audience.)

3 THE BAILIFF: Number 64.

4 (Potential juror approaches the bench.)

5 THE COURT: Yes, sir?

6 A PROSPECTIVE JUROR: You didn't ask the
7 question, but I didn't know -- I work with Kairos Prison
8 Ministry, so I go to the prisons and work with them.

9 THE COURT: Do you think that would affect
10 your ability to be fair and impartial in this case for or
11 against the State or for or against the defense?

12 A PROSPECTIVE JUROR: I don't think it would.
13 I have a different view than I used to have, but I don't
14 think -- no, I don't think so.

15 THE COURT: Okay. Thank you. Anyone else?

16 Do you have anything else?

17 Any member of the jury panel have any reason
18 why they don't think they could be a fair and impartial
19 juror in this case? Could be anything. I'm going to
20 give you some examples, but it's by no means this is the
21 only thing, but typically, sometimes in the past, you'll
22 get folks who say, well, there are verses in the Bible
23 that they interpret as saying you shouldn't be in
24 judgment of anybody and therefore that would include
25 serving on a jury.

1 Sometimes you get people that belong to
2 organizations that cover the wide range of spectrum that
3 we have here in this country. For instance, there are
4 groups that say, well, no matter what the evidence is,
5 I'm convicting if I ever serve on a jury. On the
6 opposite end of that, there are people that say no matter
7 what the evidence is, I'm not convicting anybody of
8 anything.

9 You see it on civil cases, same thing. It's
10 a wide umbrella that we're talking about here. I've had
11 people that have political beliefs, religious beliefs,
12 philosophical beliefs, and they're genuinely held. I'm
13 not going to try to talk you out of any of your beliefs.
14 As far as I'm concerned, this is the United States of
15 America, and it's a big umbrella. You can believe in
16 just about anything you want as long as you're not
17 advocating the violent overthrow of the United States
18 government. I don't really care.

19 What I do care about is these parties having
20 their day in court. The State of South Carolina is
21 entitled to a fair trial. The defendant in this case,
22 Mr. Scott, is entitled to a fair trial, and a fair trial,
23 from my perspective, means 12 people who can set in that
24 jury box, take an oath that says I promise I will make my
25 decision based on what I hear in this courtroom. I can

1 apply the law that you tell me applies to this kind of
2 case. It might not be the law that I think it is or that
3 I wish it might be, but under the oath that you take, it
4 is the law that you will apply to the facts as you find
5 them and promise that you won't bring in any prejudices
6 or beliefs to the extent that it's humanly possible that
7 it won't affect your decision in this case.

8 That's for or against the State or for or
9 against the defendant. Both parties are entitled to a
10 fair trial. It takes a while to get to court. You see
11 this indictment arises out of 2015, so sometimes it takes
12 a little while to get here, but this is an important case
13 to both sides, and they are entitled to 12 people who
14 promise that whatever beliefs they have, they can put
15 aside, and they base their decision based on the evidence
16 that they hear in this courtroom and the law that the
17 judge tells them applies and nothing else.

18 And if you have some reason -- it might be
19 something that I mentioned; it might be something
20 completely unrelated. I'm telling you, I have heard all
21 kinds of things. Those are just the most common things,
22 but if you have some reason, you think in your head, you
23 say, you know what, I'll let the judge decide, if you
24 think there's some reason you can't be a fair and
25 impartial juror in this case, if so, will you please

1 stand, and we'll have you come down and you can talk to
2 us a little bit. If that applies to someone, will you
3 please come down.

4 Okay. You want to come down?

5 THE BAILIFF: 204.

6 (Potential juror approaches the bench.)

7 THE COURT: Yes, sir. What would you like to
8 tell me?

9 A PROSPECTIVE JUROR: I work with Charleston
10 PD, and a lot of police departments. I work with the
11 Charleston Police Department, firearms department, and
12 all the other facilities, and I would be biased towards
13 the police department.

14 THE COURT: You would be biased in favor of
15 the police?

16 A PROSPECTIVE JUROR: Yes.

17 THE COURT: You don't think you could be fair
18 to the defendant?

19 A PROSPECTIVE JUROR: They do their job.
20 They do their job properly. We wouldn't be here if they
21 didn't.

22 THE COURT: Okay. Well, thank you for
23 telling us. We appreciate it. All right? Anyone else?

24 (Prospective juror returns to audience.)

25 Well, we'll take number 204 out.

1 The State will have the opportunity to go
2 first and say present the juror or seat the juror or
3 dismiss the juror, and once the State makes their
4 decision, then it passes to the defendant who has the
5 same opportunity, and each side gets a certain number of
6 strikes, and once we end up with 12, plus we'll do one
7 alternate, then we will have our jury. It's pretty much
8 that simple, okay?

9 We do it a little bit different in General
10 Sessions court, in criminal court, than we do in civil
11 court. In civil court, we print this list out, give it
12 to them, I'll give them 15, 20 minutes to study that. We
13 don't do that in criminal court. Why? Because we've
14 done it this way for 300 years.

15 THE CLERK: When I call your name and juror
16 number, if you can please gather all your belongings and
17 stand in front of the podium facing the attorneys. Also,
18 the defense will have ten strikes and the State will have
19 five.

20 Juror number 223, Michael Patterson.

21 (The prospective juror, a white male,
22 approaches.)

23 THE CLERK: What say you for the State?

24 MR. WARING: Please present this juror.

25 THE CLERK: What say you for the defendant?

1 MR. KOZELSKI: Please excuse this juror.

2 THE CLERK: Juror number 128, Leigh Hilton?

3 (The prospective juror, a white female,
4 approaches.)

5 What say you for the State?

6 MR. WARING: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MR. KOZELSKI: Please present Ms. Hilton.

9 THE CLERK: If you'll please have a seat in
10 the jury box, you've been selected as a juror.

11 Juror number 117, Edward Blake?

12 (The prospective juror, a black male,
13 approaches.)

14 What say you for the State?

15 MR. WARING: Please present this juror.

16 THE CLERK: What say you for the defendant?

17 MR. KOZELSKI: Beg the Court's indulgence.
18 Please excuse the juror.

19 THE CLERK: Juror number 294, Brian Sledge.

20 (The prospective juror, a white male,
21 approaches.)

22 What say you for the State?

23 MR. WARING: Please present this juror.

24 THE CLERK: What say you for the defendant?

25 MR. KOZELSKI: Please excuse the juror.

1 THE CLERK: Sir, you may have a seat back in
2 the audience.

3 Juror number 327, Joshua Wagaman.

4 (The prospective juror, a white male,
5 approaches.)

6 What say you for the State?

7 MR. WARING: Please present this juror.

8 THE CLERK: What say you for the defendant?

9 MR. KOZELSKI: Please seat Mr. Wagaman.

10 THE CLERK: Sir, have a seat in the jury box.

11 Juror number 350, Roland Ziegler.

12 (The prospective juror, a white male,
13 approaches.)

14 What say you for the State?

15 MR. WARING: Please present this juror.

16 THE CLERK: What say you for the defendant?

17 MR. KOZELSKI: Please excuse the juror.

18 THE CLERK: Sir, you may have a seat back in
19 the audience.

20 Juror number 200, Kevin Mitchell.

21 (The prospective juror, a white male,
22 approaches.)

23 What say you for the State?

24 MR. WARING: Please present this juror.

25 THE CLERK: What say you for the defendant?

1 MR. KOZELSKI: Please excuse the juror.

2 THE CLERK: You may have a seat back in the
3 audience. State has exhausted five of its ten strikes.

4 Juror number 188, Gina McCants.

5 (The prospective juror, a white female,
6 approaches.)

7 What say you for the State?

8 MR. WARING: Please present this juror.

9 THE CLERK: What say you for the defendant?

10 MR. KOZELSKI: Please present Mrs. McCants.

11 THE CLERK: Ma'am, you may have a seat in the
12 jury box.

13 Juror number 330, Simon Walmsley.

14 (The prospective juror, a white male,
15 approaches.)

16 What say you for the State?

17 MR. WARING: Please present this juror.

18 THE CLERK: What say you for the defendant?

19 MR. KOZELSKI: Please seat Mr. Walmsley.

20 THE CLERK: Sir, have a seat in the jury box.

21 Juror number 103, Vertelle Gadsden-Parker?

22 (The prospective juror, a black female,
23 approaches.)

24 THE CLERK: What say you for the State?

25 MR. WARING: Please present this juror.

1 THE CLERK: What say you for the defendant?

2 MR. KOZELSKI: Please present

3 Ms. Gadsden-Parker.

4 THE CLERK: Have a seat in the jury box.

5 Juror number 70, Vincent Dellinger.

6 (The prospective juror, a white male,
7 approaches.)

8 What say you for the State?

9 MR. WARING: Please present this juror.

10 THE CLERK: What say you for the defendant?

11 MR. KOZELSKI: Please excuse the juror.

12 THE CLERK: Sir, you may have a seat back in
13 the audience. Juror number 81, Amanda Duckworth. What
14 say you for the State?

15 MR. WARING: Please present this juror.

16 THE CLERK: What say you for the defendant?

17 MR. KOZELSKI: Please present Ms. Duckworth.

18 THE CLERK: Have a seat in the jury box.

19 Juror number 134, Kimberlee Hranowsky.

20 (The prospective juror, a white female,
21 approaches.)

22 THE CLERK: What say you for the State?

23 MR. WARING: Please present this juror.

24 THE CLERK: What say you for the defendant?

25 MR. KOZELSKI: Please excuse the juror.

1 THE CLERK: You may have a seat back in the
2 audience.

3 Juror number 124, Lindsey Havens.

4 (The prospective juror, a white female,
5 approaches.)

6 What say you for the State?

7 MR. WARING: Please present this juror.

8 THE CLERK: What say you for the defendant?

9 MR. KOZELSKI: Please present Ms. Havens.

10 THE CLERK: Have a seat in the jury box.

11 Juror number 336, Mark Whittard.

12 (The prospective juror, a white male,
13 approaches.)

14 What say you for the State?

15 MR. WARING: Please present this juror.

16 THE CLERK: What say you for the defendant?

17 MR. KOZELSKI: Please present Mr. Whittard.

18 THE CLERK: Mr. Whittard, you can have a seat
19 in the jury box. Juror number 266, Elizabeth Saunders.

20 (The prospective juror, a white female,
21 approaches.)

22 What say you for the State?

23 MR. WARING: Please present this juror.

24 THE CLERK: What say you for the defendant?

25 MR. KOZELSKI: Beg the Court's indulgence.

1 Please present Ms. Saunders.

2 THE CLERK: Have a seat in the jury box.
3 Juror number 235, Ricky Rainey. Juror number 235, Ricky
4 Rainey?

5 THE COURT: We've lost Mr. Rainey? Let's go
6 to the next one, then.

7 THE CLERK: Juror number 18, Cathy
8 Ballentine.

9 (The prospective juror, a white female,
10 approaches.)

11 THE CLERK: What say you for the State?

12 MR. WARING: Please present this juror.

13 THE CLERK: What say you for the defendant?

14 MR. KOZELSKI: Please excuse the juror.

15 THE CLERK: Ma'am, you may have a seat back
16 in the audience.

17 Juror number 247, William Roach.

18 (The prospective juror, a white male,
19 approaches.)

20 What say you for the State?

21 MR. WARING: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MR. KOZELSKI: Please excuse the juror.

24 THE CLERK: Sir, you may have a seat back in
25 the audience.

1 Juror number 95, Darrell Floyd.

2 (The prospective juror, a black male,
3 approaches.)

4 What say you for the State?

5 MR. WARING: Please present this juror.

6 THE CLERK: What say you for the defendant?

7 MR. KOZELSKI: Please present Mr. Floyd.

8 THE CLERK: Sir, you may have a seat in the
9 jury box.

10 Juror number 170, Colleen Lester?

11 (The prospective juror, a white female,
12 approaches.)

13 What say you for the State?

14 MR. WARING: Court's indulgence.

15 Please excuse this juror.

16 THE CLERK: Ma'am, have a seat back in the
17 audience.

18 Juror number 309, Jon Sullivan.

19 (The prospective juror, a white male,
20 approaches.)

21 What say you for the State?

22 MR. WARING: Please present this juror.

23 THE CLERK: What say you for the defendant?

24 MR. KOZELSKI: Beg the Court's indulgence.

25 Please seat Mr. Sullivan.

1 THE CLERK: Mr. Sullivan, you may have a seat
2 in the jury box.

3 Juror number 20, Erica Bogdanowitz?

4 (The prospective juror, a white female,
5 approaches.)

6 THE CLERK: What say you for the State?

7 MR. WARING: Please present this juror.

8 THE CLERK: What say you for the defendant?

9 MR. KOZELSKI: Please seat Ms. Bogdanowitz.

10 THE CLERK: Ma'am, you may have a seat in the
11 jury box.

12 Now selecting for an alternate.

13 THE COURT: One strike and two strikes.

14 THE CLERK: Juror number 31, Ronald Brown.

15 (The prospective juror, a black male,
16 approaches.)

17 What say you for the State?

18 MR. WARING: Please excuse this juror.

19 THE CLERK: Sir, you may have a seat back in
20 the audience.

21 Juror number 299, Richard Smith.

22 (The prospective juror, a white male,
23 approaches.)

24 What say you for the State?

25 MR. WARING: Please present this juror.

1 THE CLERK: What say you for the defendant?

2 MR. KOZELSKI: Please excuse Mr. Smith.

3 THE CLERK: Mr. Smith, you may have a seat.

4 Juror number 76, Tucker Dille, D-i-l-l-e.

5 (The prospective juror, a white male,

6 approaches.)

7 What say you for the State?

8 MR. WARING: Please present this juror.

9 THE CLERK: What say you for the defendant?

10 MR. KOZELSKI: Please seat Mr. Dille.

11 THE COURT: All right. Anything from the

12 State?

13 MR. WARING: No, Your Honor.

14 THE COURT: From the defense?

15 MR. KOZELSKI: No, Your Honor.

16 THE COURT: Okay. Well, folks, you are our
17 jury now, and I'm going to send you back to the jury room
18 with the bailiffs so they can show you where you will
19 report to tomorrow morning.

20 We're going to take a lunch break and come
21 back. We have some pretrial motions we need to work
22 through this afternoon, which will maybe take a couple
23 hours. I don't want to have y'all setting around and we
24 just get in 30 minutes of opening arguments this
25 afternoon, so I'll let you go home, get your affairs in

1 order so you'll know where to come tomorrow, and we will
2 start the trial at 9:30.

3 Now, when I send you home, you don't really
4 know a lot about the case. I've told you a little bit
5 about what it is, but don't try to figure out anything
6 about the case on the Internet or Google or any of those
7 sort of things. You'll take an oath in the morning,
8 remember, that will say I will make my decision based on
9 what I hear in this courtroom and not anywhere else, so I
10 don't want you to talk about the case with anyone because
11 we don't want to have anybody influence you.

12 It's not fair to the parties to have somebody
13 telling you what they think about the case when they're
14 not here to hear any of the witnesses. It's not fair to
15 go out and find anything. I don't know if there is
16 anything in the newspaper or Google or any search engines
17 about the case, but don't try to find out anything about
18 the case or the law. I will tell you what the law is.
19 We will tell you what the facts are, and if there are any
20 disputes, then the 12 of you will discuss it and resolve
21 them.

22 Also, one of the things that we discuss with
23 folks nowadays is don't post anything on social media
24 about being on a jury while you are on a jury. It's
25 really not fair, again, because if you put something on

1 or put your impressions on about things, people want to
2 comment about that, and that may or may not influence
3 you, but it's just not proper.

4 Now, when the case is over with, you can put
5 anything you want on social media. I don't care what you
6 put on about it, but while you're in trial, it's improper
7 to post anything, Facebook, Instagram, SnapChat, whatever
8 these things are; new ones show up every day. Anything
9 that might be described as social media, don't post
10 anything while you're on jury service. Again, when it's
11 over with, put anything you want to, to your heart's
12 content.

13 So go with the bailiff here. He will show
14 you where to report tomorrow morning, how to get in and
15 out of the building, parking, et cetera, things like
16 that, so thank you for your patience, and we will see you
17 all tomorrow morning at 9:30.

18 (The jury left the courtroom at 12:44 p.m.)

19 Now, the rest of you folks, I'm going to have
20 you call the telephone number at 6:00 tonight. They'll
21 tell you whether or not to report tomorrow or whether or
22 not to just call back tomorrow after 6:00. It all
23 depends on the flow of my trial and Judge Dennis's trial.
24 We won't know until later today. Don't call before 6:00,
25 call after 6:00 because, again, sometimes these messages

1 don't get put on until right at 5:59, and if you get a
2 busy signal, keep calling because somebody else is trying
3 to call as well.

4 So thank you for your patience. You don't
5 have to come back today. You're free to go to lunch, go
6 to work. You're welcome to come back and watch a trial
7 if you want to, for that matter, but you're not obligated
8 to, and you're free to go. I'm not sure if I will see
9 you again this week, so I want to thank you again for
10 coming and helping us out and for your patience today.

11 You're free to go. Remember, call back at
12 6:00.

13 (A recess was taken at 12:45 p.m.)

14 A F T E R N O O N S E S S I O N

15 (Court resumed session at 1:54 p.m.)

16 THE COURT: Well, y'all ready?

17 MR. WARING: Yes, Your Honor.

18 THE COURT: What motions do we need to take
19 up?

20 MR. KOZELSKI: Thank you, Your Honor. May it
21 please the Court: So we have a few motions, some of
22 these relatively quick. The motion to sequester
23 witnesses, I don't think the State has any objection to
24 that.

25 MR. WARING: Judge, we just ask that the case

1 agent and victim be allowed to stay in the courtroom.

2 THE COURT: All right. Lead investigator can
3 stay.

4 MR. WARING: And our investigator from the
5 solicitor's office.

6 THE COURT: All right.

7 MR. KOZELSKI: That's fine. I have a primary
8 investigator, Your Honor, Ms. Verdell Young, who worked
9 most of this case. She actually was out for about a
10 four-month period doing chemotherapy, so I had to use
11 another investigator to bring in for one of their
12 witnesses, Alonzo Green, and he spoke to me, so I might
13 have two investigators in here but one is for Alonzo
14 Green in case he changes his story. Those are the only
15 two people that I would have in here, and I think one may
16 be on my witness list.

17 Let's see. The motion in limine about the
18 statements of the defendant, the Denno hearing, I've
19 talked with Mr. Waring about this. I don't think that
20 there's an issue here as far as admissibility. The
21 State, as I understand it, is intending to show three
22 clips of the defendant's statement. I have gotten, I
23 guess you would call them, transcripts of these clips.
24 We do have an objection to the transcripts and them being
25 given to the jury at the time these clips are played, and

1 our objection primarily would be I don't believe that
2 they are relevant to having a jury, but I also have a 403
3 objection to the actual transcripts themselves.

4 They were not professionally transcribed.
5 Transcriptions, while somewhat accurate, are, I think,
6 misleading in the sense that they are -- they make my
7 client sound like a thug; like, he is incapable of
8 pronouncing a gerund, so every word that ends in i-n-g,
9 they just have an i-n apostrophe. Every witness that we
10 have in here that gave a statement to police I got
11 professionally transcribed. I did not get my client's
12 because I don't intend to cross-examine him, but when I
13 look at these transcriptions that I have, they don't have
14 this sort of slang. They write the word out.

15 I think putting that in front of the just
16 sort of prejudices my client because it looks like he
17 doesn't know proper English, and I don't think that's
18 what it appears in the video. Like, you know what I'm
19 saying, is s-a-y-i-n, apostrophe, instead of you know
20 what I'm saying, so I think that's prejudicial, and I
21 would ask they not give that to a jury while they're
22 playing it. I also think the jury has ears and eyes and
23 they can see this for themselves, and they can determine
24 what my client is saying and what Detective Brown is
25 saying in those videos, so I think it's unnecessary and I

1 also think it's prejudicial toward that.

2 So that, as far as I'm concerned, the defense
3 is concerned, is what our motion is as far as statements
4 of the defendant.

5 MR. WARING: Judge, I guess I'd like to -- if
6 that's the position of the defense, I would like to get
7 some form of stipulation that there was no coercion, that
8 this statement was given freely and voluntarily, if we
9 can do that.

10 With regard to the transcripts, there's some
11 case law from the U.S. Supreme Court and South Carolina
12 courts that specifically deal with transcript issue.
13 It's a discretionary issue for the trial court, and it is
14 permissible for the trial judge to allow such aids to be
15 passed out to the jury as tools to be looked at in
16 conjunction with videos and recordings of statements, and
17 I think that would be appropriate in this case, just
18 because it is kind of difficult to hear.

19 Obviously, the video itself would be the
20 evidence. This is not evidence, so to speak, Your Honor.
21 We're not trying to suggest it's evidence. It would just
22 be looked at as a tool for the jury to assist in
23 listening to the statement. Courts are pretty consistent
24 with their rulings that this is admissible, or at least
25 allowable, Your Honor.

1 Regarding the gerunds and the apostrophes
2 that kind of cut off the end of the word, I would submit
3 that that just makes it more accurate. There's no
4 requirement that these transcripts be done by a
5 professional. They were done by a law clerk, and the
6 courts don't require, to my knowledge, they be done by a
7 professional. We ask that those be allowed.

8 THE COURT: How long are they?

9 MR. WARING: Each clip -- so there's three
10 clips. First and third clip are probably no more than a
11 minute, and the middle clip is maybe five minutes, four
12 to five minutes.

13 THE COURT: Well, why don't you have them go
14 in and take out the apostrophes and put in proper English
15 endings. If it's hard to hear, I'd give them the benefit
16 of the doubt, that he's not speaking slang.

17 MR. KOZELSKI: And I think the case law that
18 he says that the defendant didn't have any objection to
19 what was actually written in there, and we just note for
20 the record that we do have an objection to what is
21 written in there and the style that it is written in
22 there. Hopefully they -- you know, they correct that and
23 there won't be --

24 THE COURT: Are you all contesting the
25 admissibility or voluntariness of the statements?

25 MR. WARING: Your Honor, tonight we'll go

1 back and take out all those apostrophes or those words
2 that are cut short.

3 THE COURT: Okay. Thank you.

4 MR. KOZELSKI: The third motion that I have
5 is motion to exclude testimony of prior bad acts. I
6 think the issue here, and I think it's been resolved for
7 the most part, is that there were three armed robberies,
8 three bank robberies, that Mr. Scott was charged with.
9 The two were from -- the two that are not in court today
10 are from 2014.

11 The previous solicitor, Chad Simpson, who had
12 this case, was going to attempt to Lyle those into this
13 case. I don't think that's going to be an issue here.
14 Mr. Waring has already agreed that he's not going to
15 mention any of the previous bank robberies and try to get
16 into that, but I don't think that that's going to be an
17 issue here. I just want to make that clear for the
18 record is that he has told the witnesses not to mention
19 anything about these prior robberies, so I think that
20 that issue has sort of resolved itself.

21 MR. WARING: Yes, sir, Your Honor. We don't
22 plan to go into Lyle stuff unless somehow the defense
23 opens the door at some point.

24 THE COURT: Well, if you decide that the door
25 perhaps is open, we'll take a break and discuss that

1 further.

2 MR. KOZELSKI: The only other issue dealing
3 with that, Your Honor, is when my client was arrested on
4 this Charger, there were drugs in his room. I'm not
5 exactly sure how they're attempting to bring that into
6 this trial, and so that's --

7 MR. WARING: Judge, the drugs found -- it was
8 crack. Heroin was a little bit more prevalent in this
9 case than crack. We don't plan to talk about the crack.
10 I've instructed the detective who searched the room not
11 to talk about the crack. In one of the defendant's
12 statements, he admitted he would get these guys who were
13 involved heroin, so I don't really see any reason to talk
14 about crack.

15 THE COURT: Does that take care of your
16 issue?

17 MR. KOZELSKI: That takes care of the issue,
18 Your Honor. So the next two I have, I think, are
19 actually lengthy ones, but I would skip down to my number
20 seven, motion to preclude law enforcement to providing
21 the video narrative.

22 I only do this because I've seen a number of
23 trials with Sergeant Tuttle where he describes a
24 surveillance video and the persons in it as there's the
25 defendant walking down. He's basically making an

1 identification, or giving his own opinion, and I think
2 that is uncalled for in this case. I think the video
3 speaks for itself. We don't think any type of narration
4 of the video by somebody who was not there, an officer,
5 would be a violation of Rule 403 and would be more
6 prejudicial than probative and improper opinion by a
7 person who was not familiar with what actually happened,
8 but I don't know if that's going to be an issue here. I
9 just wanted to bring that to the Court's attention.

10 MR. WARING: Judge, we don't really plan to
11 show any of the officers any surveillance videos. There
12 is one SLED witness who works the vehicle crimes unit.
13 There's a couple still photos from each of these videos
14 we wanted to show just of a vehicle, not of a defendant
15 or the alleged robber. We just want to show a couple
16 pictures of the vehicles and kind of have him talk about
17 what he sees on that vehicle as far as after-market
18 additions, black top, fancy rims, that kind of thing, but
19 there won't be any actual playing of the video for this
20 witness, or any other law enforcement witnesses, to my
21 knowledge, at this point.

22 So I don't think there will be commentary in
23 that regard, Your Honor.

24 THE COURT: All right.

25 MR. KOZELSKI: That solves that issue. We

1 are going to seek to exclude Agent Tyner's testimony.
2 This is a SLED agent -- and I don't know if you want us
3 to address this now or immediately before he testifies,
4 but this is a SLED agent that the State has, I guess,
5 brought into the case. It's a four-year-old case, and
6 this agent met with them on March 1st, ten days ago.

7 He's not involved in this case in any way.
8 He's just taking pictures of a car and saying it's
9 familiar to another car. They're not calling him as an
10 expert in anything, so he's not an expert witness. He's
11 just a SLED agent they're calling in to give his opinion
12 on something, and it's in a backdoor way of trying to get
13 an expert opinion on something that I think is not
14 necessary.

15 THE COURT: I'm not clear. What is he
16 testifying to?

17 MR. KOZELSKI: I'm pretty unclear about it
18 too, Your Honor. I've called Agent Tyner, and I've asked
19 him, and he's trying to compare pictures that were taken
20 during the search warrant of this getaway car and compare
21 it to pictures that were taken from the surveillance of
22 the bank, but he's not doing this as an expert in
23 anything. He's just a SLED agent that they called to
24 sort of bolster, I guess, another witness's testimony who
25 is familiar with the vehicle who I think they are going

1 to testify to them being the same vehicle, but they're
2 just calling the SLED agent just to call him.

3 THE COURT: What are you offering this
4 witness for?

5 MR. WARING: Judge, we just wanted somebody
6 to talk about differences in vehicles from -- so the
7 actual vehicle, the search warrant of the vehicle in
8 question, then a similar looking vehicle was seen in the
9 surveillance video, the bank video, and a similar looking
10 vehicle was seen at the Family Dollar 15 minutes
11 beforehand. It just happens that he works at SLED, but
12 we're not asking him or declaring him an expert. We're
13 essentially asking him under Rule 701 to more or less
14 give a lay witness testimony. We're not trying to
15 declare him an expert. He just knows about cars and
16 seemed like the best person to have testify about the
17 similarities of the cars, but under 701, as long as the
18 lay witness testimony is rationally based on his
19 perception, it's helpful to a clear understanding of the
20 witness's testimony or a determination of the fact at
21 issue, in this case whether or not the cars look similar,
22 and, thirdly, it does require special knowledge, skill,
23 knowledge, or training, it seems that they're able to
24 offer their opinion.

25 THE COURT: I'm not clear, though, what this

1 witness is going to be testifying about. Educate me here
2 a little bit.

3 MR. WARING: So you've got three sets of
4 pictures of a similar looking vehicle. The vehicle in
5 question has multiple after-market additions to it. It's
6 got a spoiler, a black top, tinted windows, the fancy
7 rims. Arguably, each set of these three photos you've
8 got a very similar looking vehicle. So essentially I
9 would show him the search warrant photos of the car, then
10 have him talk about the description of the vehicle that
11 he sees based on what's in the photo.

12 Then I would show him the Family Dollar
13 surveillance video with the similar vehicle and have him
14 talk about what features that shows and then show him a
15 third set of photos of the bank, similar looking vehicle,
16 what kind of additions does he see, and then ask him do
17 they appear to be similar, based on his, essentially, lay
18 witness opinion, which under 701 appears to be
19 admissible, Your Honor.

20 THE COURT: Well, I think what is allowable
21 is you can have this witness describe what's in the
22 photos that he sees where they were taken at.

23 As to him then connecting the dots and saying
24 they're similar, well, if they're similar, then the jury
25 is the best judge of that. So I won't let you ask that

1 kind of opinion question, but you can -- he can describe
2 what it is that he sees in the pictures and then on each
3 of the sets as they go along, and then the jury is free
4 to make the decision as to whether or not they look like
5 the same car.

6 All right?

7 MR. WARING: Understood.

8 MR. KOZELSKI: So, Your Honor, I think the
9 next motion we have is a motion to suppress, and I guess
10 I will do the cellphone data first.

11 I think that is the primary motion that I
12 briefed and I sent to your clerk late last night, but
13 just to give a little history on this, Your Honor -- and
14 I do think I have this outlined briefly in my brief.

15 There is search warrant that is taken out on
16 March 11, 2015 by Detective Eric Tuttle, and essentially
17 this warrant says they're looking for all toll records
18 including call details, cell site, cell site sector
19 information from March 2nd to March 6th, 2015 for
20 [REDACTED]. That is the target number.

21 Essentially, the reasons for what's described
22 in the affidavit for the warrant are that there was a
23 bank robbery at 3:30 p.m. on March 4, 2015, First
24 Palmetto Savings Bank in West Ashley, and they give a
25 description of this suspect. I think that there are

1 misstatements within this description of the suspect. I
2 outlined that in my brief. I think one of them is the
3 age that is described in the warrant affidavit. It
4 says -- he's described to be in his late 30s, early 40s.
5 In my review of discovery and what I look at, the only
6 identification that's made as to the suspect's possible
7 age was given by the head teller who says that the person
8 is possibly late 20s to 30s.

9 That's not the only misstatement I think
10 there is in this warrant. There are several others,
11 including that one of these witnesses, witness number
12 one, was shown a sixpack photo lineup and that he
13 tentatively identified my client as the person who he
14 lent his vehicle out to. I've been given the photo
15 admonition form from CPD, and the person who is filling
16 this out, Anthony Holsberg -- who apparently cannot be
17 found. We don't know where he is now and he's not here
18 to testify, but he did fill out a photo admonition form.
19 He did not circle anything on the sixpack identification
20 that was given. I can make this a Court's exhibit, Your
21 Honor.

22 He says photo three looks a lot like the
23 individual but he's not sure. He says he was not able to
24 make an identification. You know, it may be semantics,
25 but I did want to bring that to the Court's attention,

1 that, you know, the -- Mr. Holsberg checked that he was
2 not able to make an identification but did say number
3 three does look like the person. The big concern that I
4 had with this and what I told Mr. Waring in a pretrial
5 conference before this case is the nexus between my
6 client and this phone number, which the warrant states
7 that, in a post-Miranda statement, Silvester told police,
8 told Detective Brown, that this was his target cellphone
9 number.

10 Nowhere in his interview does he claim that
11 that is his number. In fact, he gives a completely
12 different number for the phone number he actually had
13 which is a 927 number, not this 276 number. I made
14 Mr. Waring aware of this at our pretrial conference the
15 one I guess Judge Dennis holds every month beforehand and
16 asks what our pretrial motions are. I said I'm making a
17 motion to suppress because this is an inaccurate
18 statement, and I think if you take this out of the
19 warrant, then you do not have probable cause.

20 Immediately that day, later that night,
21 Friday, Mr. Waring wrote me an email saying, I think I
22 agree with your assessment of the search warrant stuff
23 regarding the target number. I'm having Tuttle redo it.

24 So I've essentially shown my hand before the
25 trial. He has agreed with me that this is a bad warrant,

1 and he's made Detective Tuttle redo the warrant in order
2 to, I guess, effectively try to cure the defective
3 warrant in order to get the information again. So on
4 February, I guess, 15th, that same day, Detective Tuttle
5 then writes -- drafts a new search warrant and has it
6 signed by the Honorable Judge Bligen, magistrate judge
7 here, and in that he expands on his property, the scope
8 of the property that he's trying to seek, which he then
9 adds all subscriber and billing data, including names,
10 addresses, and any other subscriber's phone numbers as
11 being a source of payment, so he expands upon the scope
12 of it.

13 I'm not as much concerned about that, but he
14 has the same statements about the description of the
15 suspect being in his late 30s or early 40s which is
16 nowhere in the discovery.

17 In fact, it is a different description. He
18 still has the statement as a photographic lineup, and
19 essentially what they're doing is there is saying --
20 there's just a ton of conclusory statements in here, and
21 I think the Supreme Court, and I laid out in my brief,
22 that you have State v. Smith and State v. Weston that
23 says this is not how, you know, you write search
24 warrants. You don't make conclusory statements saying we
25 know this guy did it, and this is why we want a warrant.

1 And that is what they're saying here:
2 Silvester Scott is known to CPD officers, and he was
3 arrested in three previous bank robberies. Silvester is
4 believed to have robbed this same bank on April 15th and
5 the Ameris Bank on February 24th in CPD's jurisdiction.
6 The defendant's physical match -- physique matches the
7 description of the suspect. In addition, the modus
8 operandi of the three bank robberies, the defendant
9 utilized a dust mask to conceal his identity.

10 So they're essentially giving a conclusory
11 statement saying, We know Silvester Scott is a bank
12 robber. We believe he had robbed these banks, and it's
13 the same modus operandi that they used for this. There
14 is nothing that actually gives a reason as to why they
15 believe he robbed the bank other than somebody said he
16 lent them the car, the car that is suspected of being the
17 getaway car.

18 So the nexus requirement that was the issue I
19 believe with the first warrant saying my client provided
20 the police with this number in a post-Miranda statement,
21 which he never did, and they agreed that that was
22 incorrect and they redid it, they just replaced it with
23 that witness number two, who is Alonzo Green in their
24 case, who has known the defendant for more than 20 years,
25 provided the defendant's number as the -- [REDACTED]

1 as the number he communicated with the defendant on the
2 day of the robbery.

3 Well, I don't believe this is accurate as
4 well, and I don't believe this is accurate because I've
5 seen Alonzo's statement to police. It was video
6 recorded, and the thing about Alonzo's statement to
7 police is he doesn't have any phone numbers in his phone
8 because when the police start talking to him, he does a
9 hard reset on his phone. All the numbers in his phone
10 and all the contacts in his phone are deleted, so the
11 three hours of him being in the interview room are him
12 messing around with his phone, seeing if he can get his
13 phone numbers back. He doesn't get the phone numbers
14 back, and that's the end of the interview. There's
15 nothing in the interview of him providing this number
16 [REDACTED] to Detective Brown. In fact, there's
17 nothing in Detective Brown's incident report that says
18 Alonzo Green gave me this number of [REDACTED]. So I think
19 they replaced one misstatement and said, oh, we got to
20 find a way there's a connection to this phone, so they
21 just added this statement.

22 You know, all the work that they have done in
23 this case in getting the FBI involved has come within the
24 last month of Mr. Waring being in this case. Obviously,
25 it's a four-year-old case, but I think most of the stuff

1 that you're going to see in trial has come up in the last
2 month, and one of those being an FBI assessment of
3 historical cell site data for this number, and obviously
4 the data that was put together and formed with the
5 information using -- under the bad warrant, that the bad
6 warrant had.

7 As I said, Mr. Waring attempted to cure that
8 by taking out the misstatements and getting new data and
9 giving it to the FBI, and I guess they said they redid
10 their PowerPoint for the historical cell site data.
11 There's nothing different from the ones that they sent me
12 with the bad data as the ones that they sent me with the
13 new retrieved data, absolutely nothing different except
14 one says draft on it and one says final on it, but I
15 still don't see how they get to this nexus requirement.
16 I don't know how they get this number, and I don't know
17 how what they -- essentially, what Detective Tuttle says,
18 I've been in law enforcement for a long time, and I know
19 suspects of crimes, especially bank robbers, use cellular
20 telephones to orchestrate the execution of bank
21 robberies.

22 He's essentially saying bank robbers, like
23 everybody else, use cellphones, but I don't understand
24 how you're going to get anything that shows an
25 orchestration or a communication in the planning of an

1 operation of a bank robbery from historical cell site
2 data. You might get that from text messages. You might
3 get that from something else that shows an actual
4 communication, but historical cell site data doesn't show
5 any type of communication. It shows a proximity of where
6 a person is, GPS. It has nothing to do with what he's
7 asking for.

8 So I think that that nexus requirement is not
9 met in the second search warrant, and I don't believe
10 that they can meet the -- I don't know how they got this
11 number other than they're saying they got it from my
12 client. It turned out to be true. Then they're saying
13 they got it from another guy, and that's nowhere in the
14 discovery that he provided that number to them.

15 THE COURT: You're saying that it's not true
16 that they got it from your client?

17 MR. KOZELSKI: It is not true.

18 THE COURT: I think you misspoke or she wrote
19 it down wrong.

20 MR. KOZELSKI: And so I think that there are
21 other things that are connected to this. There is an
22 actual cellphone extraction that I also received in
23 February, last month, that -- and I'm -- I've had to hire
24 an expert. The expert I hired is still getting back to
25 me slowly and surely from the information they're giving

1 me, but what I'm understanding them to say is that the
2 new extraction -- they did an extraction back in, I
3 think, March or April of 2015, and nothing came of it.

4 They ended up getting new equipment at some
5 point, and they ran the extractions again last month, and
6 according to this extraction, they're able to match a
7 number on the phone to a number on the subscriber's data
8 that was gotten as a result of these search warrants.

9 So I would certainly say that that would be
10 the fruit of the poisonous tree as far as that evidence
11 is concerned, as far as the extraction of the phone data
12 and how it relates back to the cellphone records that
13 were gotten from the cellphone company, but --

14 THE COURT: What do you mean when you say
15 they did an extraction? They pulled information off of
16 his phone or they got it off the carrier?

17 MR. KOZELSKI: From the phone, the physical
18 phone itself. So there were two phones located in the
19 motel room Mr. Scott was originally arrested in, on this
20 Charger, back in March 6th, I believe, March 6th or 7th.

21 THE COURT: And he was using the same phone
22 in 2019 as he was in '15?

23 MR. KOZELSKI: No, no. Those phones were
24 taken into evidence at that time.

25 THE COURT: How could they extract something

1 off of a newer phone?

2 MR. KOZELSKI: They were the same phones, but
3 they got a new system for extraction, I guess new
4 software. So the software they had back in 2015, they
5 attempted to do an extraction of the phone, and it came
6 back nothing. They couldn't get anything. These were
7 flip phones. There wasn't anything to get, you know, so
8 that's the evidence I've been working with.

9 THE COURT: Maybe I misheard: You're saying
10 the phone that he had in 2015 he did not have in 2019.

11 MR. KOZELSKI: It was taken into evidence.

12 THE COURT: All right. So in 2019, they went
13 back and used the phone that he was using in 2015 and
14 pulled it off of that phone?

15 MR. KOZELSKI: Yes.

16 THE COURT: Not a new phone that he had in
17 2019?

18 MR. KOZELSKI: No. He's been incarcerated
19 this entire time.

20 THE COURT: So they still have the same
21 phone, they just had new technology?

22 MR. KOZELSKI: New technology, a new
23 extraction. All this last month, again.

24 THE COURT: So there was nothing on the
25 phone -- or they weren't able to pull anything off of the

1 phone in 2015 that was useful?

2 MR. KOZELSKI: Right.

3 THE COURT: So nothing as a result of that
4 search warrant they then used to get a new search
5 warrant; is that correct?

6 MR. KOZELSKI: That is correct.

7 THE COURT: So it's not like there's a fruit
8 of the poisonous tree kind of thing; we got a little bit
9 of data off in 2015, and that is how we're really sure it
10 was him in 2019, correct?

11 MR. KOZELSKI: Here's how they're tying the
12 information together: They get the information from the
13 cellphone provider, and this is all the call details that
14 are made from March 2nd to March 6th. In that call
15 detail, there's a phone number that says the originating
16 call number and who it was called to, but they also
17 have -- Mr. Waring might be better off explaining this to
18 you, but it's an IMEI number that links the phone number
19 itself to a physical phone. Okay?

20 The physical phone that they had and they
21 attempted to do an extraction at first, did not have
22 anything else. The second extraction that they did in
23 2019, last month, they were able to get this IMEI number,
24 which they then link to the cellphone records which I
25 believe were gained through access of this warrant that

1 is not good, not a good warrant. I think the first
2 warrant was admittedly bad, and they replaced it with
3 information that was just as misleading and so that is
4 why I believe that the cellphone extraction and how that
5 ties to the cellphone records would be the fruit of the
6 poisonous tree, and I know that's confusing --

7 THE COURT: A little bit, but I just want to
8 make sure I understand. The data itself was not stored
9 on the phone. The data came from the cellphone carrier,
10 it's just that they had a new way to link that phone to
11 the data that the cellphone carrier had?

12 MR. KOZELSKI: Yes.

13 THE COURT: Okay.

14 MR. KOZELSKI: That's exactly -- and that's
15 my understanding too. It could be different at trial. I
16 haven't talked directly with my expert about that issue.
17 I've been dealing with the historical cell site data
18 because, like I've said, I have only gotten this over the
19 last three weeks, so I've been trying to determine, you
20 know, what's more important, and what Mr. Waring has
21 provided me, is that the physical phone is not the actual
22 number. That number has been deactivated, but they can
23 match the phone from that number to these routes.

24 THE COURT: Let me make sure I understand
25 this to be true then. You're saying that in 2015 when

1 they did a search based on what you maintain was an
2 imbalanced search warrant, they did not discover anything
3 that linked your client to being close to the robbery at
4 the time it took place; is that correct?

5 MR. KOZELSKI: I don't think -- from 2015 to
6 February 2019, I don't think there was anything linking
7 my client to this phone itself.

8 THE COURT: Okay.

9 MR. KOZELSKI: I wasn't provided --

10 THE COURT: So you had what you said was a
11 bad warrant, but it didn't produce anything that was
12 useful, correct?

13 MR. KOZELSKI: They got historical cell site
14 data from that.

15 THE COURT: In 2015?

16 MR. KOZELSKI: Yes, and they did not do
17 anything with that until February of 2019.

18 THE COURT: What do you mean, do something
19 with it?

20 MR. KOZELSKI: They did not -- they got the
21 FBI to make a nice PowerPoint with the historical cell
22 site data in February of 2000 -- February 5th is when I
23 received it.

24 THE COURT: So in 2019 when they got a new
25 warrant, are you saying that they got new information or

1 they had -- it's the same information that they had with
2 just a new technology for the FBI to link it together?

3 MR. KOZELSKI: It's the same information, so
4 I guess I will call it they procrastinated and didn't do
5 anything with this information until last month. This is
6 with the old warrant. They got this information and they
7 did a PowerPoint with the historical cell site data, the
8 CAT team of the FBI, they put this up.

9 THE COURT: And, eureka, they found a new way
10 to say Mr. Scott was at the scene of the crime.

11 MR. KOZELSKI: Right. Exactly.

12 THE COURT: And you pointed out to
13 Mr. Waring, I think you had a bad warrant.

14 MR. KOZELSKI: Yeah. I don't know what ties
15 my client to this phone because he certainly didn't admit
16 this in a post-Miranda statement, and that's what I'm
17 challenging and I'm making a motion to suppress.

18 THE COURT: You're making a motion to
19 suppress the 2015 data?

20 MR. KOZELSKI: Yes, Your Honor.

21 THE COURT: And you're saying Mr. Waring is
22 trying to cure that by coming out with a new warrant that
23 didn't produce any new information, he's just trying to
24 do kind of a nunc pro tunc back to his search warrant?

25 MR. KOZELSKI: Yeah. So they already created

1 this PowerPoint. They already have this information.
2 They know it's -- I think it's good information for them.
3 They want to have this information. They know I'm making
4 a motion to suppress, so what they do is they just ball
5 up that warrant, throw it in the trash, create a new one
6 they think will pass muster, get the same information,
7 and essentially they say they redo the PowerPoint.
8 There's nothing functionally different about it. It's
9 the same thing. It's the same information they're
10 getting.

11 THE COURT: Well, it sounds a little fishy,
12 but I'm still open on the idea that if they didn't -- if
13 they didn't discover anything in 2015 that they then use
14 in the warrant in 2019, then it may be okay that they
15 came up with a new warrant that produced the same
16 information.

17 Presumably -- it's data. It was there. They
18 just didn't have a way to retrieve it, but they didn't
19 create new data. It was there, now they got a way to
20 read it. So the real question is, did you have a valid
21 2019 warrant?

22 MR. KOZELSKI: Exactly, Your Honor.

23 THE COURT: And you're saying what they have
24 that they have in their new 2019 warrant still isn't
25 valid or we think maybe they misrepresented some things?

1 MR. KOZELSKI: Yes.

2 THE COURT: Or both?

3 MR. KOZELSKI: Yes. That's exactly what I am
4 saying.

5 THE COURT: Okay. So just walk me through
6 again what you think was new and what you think is
7 misrepresented?

8 MR. KOZELSKI: So I think that there are some
9 categorical misrepresentations, including description of
10 the suspect, that is the suspect is described as being in
11 his late 30s or early 40s, when, in fact, the only
12 witness that gave a description of the suspect's age was
13 Mitchell Burns, the head teller of the bank, who said the
14 suspect was in his late 20s to 30s. That is one thing,
15 and I think the case analysis is, well, if you take that
16 out and you replace it with what the actual thing is, is
17 there still probable cause? I don't know that a judge
18 would say that, in and of it --

19 THE COURT: My own thoughts are is that is
20 kind of one of those subjective things. I can't tell you
21 whether I think you're in your 30s or your 40s.
22 Everybody is a little bit different on that. You got an
23 overlap in the 30s and 20s to 40s --

24 MR. KOZELSKI: Well, I think they're making
25 it match my client, when, in reality, the only person who

1 said something different than what they put.

2 THE COURT: Well, some people age
3 differently.

4 MR. KOZELSKI: Yes, I know, and I get that.
5 I'm not saying that they're lying. I think that is a bit
6 of a misrepresentation.

7 THE COURT: So that's one thing.

8 MR. KOZELSKI: I think the other thing is the
9 fact that the sixpack photo lineup given to Anthony
10 Holsberg where he tentatively identified Silvester, this
11 is another wording issue. Obviously he checked on the
12 box, and I plan to make all this a court's exhibit, Your
13 Honor, and I can do that, but he was not able to make an
14 identification.

15 THE COURT: So you're saying Holsberg never
16 made an ID and they're saying in the warrant that he did
17 make a positive ID?

18 MR. KOZELSKI: They say tentative
19 identification, and I can bring this up to you, Your
20 Honor, but I think that it's somewhat misleading.

21 And this is the problem I've found throughout
22 this case, is obviously everybody who was shown a single
23 photo picture of my client identifies him, but the one
24 time they do a sixpack identification, he was not
25 identified.

1 THE COURT: Is Holsberg one of these people
2 he's known for 20 years?

3 MR. KOZELSKI: No, he's not, and he's the
4 owner of the getaway car, or suspected getaway car, so
5 that is --

6 THE COURT: So what did he say when he saw
7 the sixpack lineup?

8 MR. KOZELSKI: And I can bring it up to
9 you --

10 THE COURT: When you say he made a tentative,
11 what does that mean?

12 MR. KOZELSKI: Photo three looks like the
13 individual but not 100 percent sure.

14 THE COURT: And number three is Mr. Scott?

15 MR. KOZELSKI: It is.

16 THE COURT: Okay.

17 MR. KOZELSKI: He doesn't circle it or
18 anything like that, which, per their procedure, you're
19 supposed to do when you make an identification, but, you
20 know, I think that might be semantics, but I do think it
21 is somewhat misleading.

22 But the bigger thing that I think is at issue
23 here is where it says finally witness number two, who's
24 Alonzo Green, who's known the defendant for more than
25 20 years, provided the defendant's cellphone number as

1 the number he communicated with the defendant on the
2 incident date of the robbery.

3 That is the big thing that obviously they put
4 in there, that Silvester gave them the number. That
5 didn't turn out to be true, so now they're saying Alonzo
6 gave them the number, which is nowhere in the discovery.
7 As I stated, this video of his interview is three hours
8 long, and all it is, is him playing with his phone
9 because he did a hard reset when the police got there.
10 The police never took his phone, so he decided he was
11 going to delete everything out of it. He couldn't even
12 remember his long-term girlfriend's number, so it's not
13 like he had it memorized. He didn't know his
14 girlfriend's number, he didn't know any numbers.

15 I know he talked to the solicitor's office in
16 February of 2018 where they questioned him about this
17 number, and they said, you know, did you give this
18 number? And he said I don't remember. I don't know that
19 number. I can't tell you. I don't know anything about
20 that.

21 THE COURT: So the interview, when did it
22 take place, the one where he talked with them for three
23 hours and reset his phone? Is that in 2015 or was that
24 2019?

25 MR. KOZELSKI: That was the day of the

1 robbery into the early morning hours, so that was
2 March 4, 2015 at probably around 11:00 at night until
3 1:00 in the morning.

4 THE COURT: So nowhere -- that wasn't in the
5 first affidavit, the first search warrant?

6 MR. KOZELSKI: That was not in the first
7 affidavit.

8 THE COURT: And there's nothing in the notes
9 that said he gave them that number?

10 MR. KOZELSKI: There's nowhere in Detective
11 Brown's notes that she received this number from Alonzo
12 Green as being the number of Silvester Scott. There's
13 nothing in the videos that I can see. That's why I was
14 furiously going through when they replaced this section,
15 the post-Miranda statement by my client, to find out
16 where they got this number from, and there's nowhere in
17 the discovery that it says that, other than I think it's
18 mentioned in one of Detective Tuttle's supplements to get
19 a new -- to get the new warrant, that this is -- that
20 Alonzo Green gave this number to Detective Brown during
21 their interview and talked to me about the defendant,
22 which is -- you know, if you watch the interview, you
23 know that's not the case.

24 I've spoken to Alonzo a couple of times. You
25 know, I think he's maybe a little wary of talking to me,

1 but he has not -- he told me he doesn't remember anything
2 about it. He remembers doing a hard reset on his phone.
3 He doesn't remember -- he certainly doesn't remember that
4 number or how it connects to Silvester.

5 THE COURT: Okay. Did you have another basis
6 for saying that warrant was bad in 2019?

7 MR. KOZELSKI: So that's the primary one, is
8 the nexus between that phone and my client.

9 THE COURT: So the discrepancy between his
10 age, the tentativeness of Holsberg's identification, and
11 then where did they really get this number from?

12 MR. KOZELSKI: The nexus is what I've always
13 been concerned of. That's what I was concerned of in the
14 first warrant when I told them about that and they
15 changed -- they got a new warrant, and I still don't
16 think there's a nexus. Judge, I've been with this case
17 for four years, and there has never been a nexus, which
18 is why, you know -- this is somewhat of the frustration
19 of my job, in that I can only advise my client based on
20 what evidence they have against them.

21 You know, this has been four years, and there
22 hasn't been anything that has tied my client to this
23 phone until last month. Everything has come last month,
24 and this is after he's rejected all of his offers on the
25 record. This is after he's been served with LWOP notice,

1 and, you know, now this went from a very weak
2 circumstantial case to now it's a witness ID case with
3 strong ties to the cellphone, the historical cell site
4 data.

5 All of this has happened in the last month,
6 and I haven't gotten an offer from them, so my client
7 can't plead guilty, and I don't know what to do with
8 this. I mean, I can't do my job with this, Judge.

9 THE COURT: Got you. All right. Are you
10 finished, before I hear from Mr. Waring?

11 MR. KOZELSKI: I am.

12 THE COURT: All right. Mr. Waring?

13 MR. WARING: Thank you, Judge. I'll try to
14 keep it brief. I just want to clear up a couple things.

15 There was mention that in the affidavit that
16 the description of the defendant's age was approximately
17 late 30s to 40s. That is referenced in discovery. There
18 is a page with a detective who shows up on scene, speaks
19 with the victim, and that shows up in discovery. That
20 has been provided, so we don't think there's any
21 misstatement there.

22 The photo lineup, the defense is saying it
23 was not an identification. I understand Mr. Holsberg is
24 not a police officer. He checked not identification, but
25 at the same time, he did select the photo of the

1 defendant out of six other people, or five other people,
2 and did write looks like Vessi or whatever he knew him as
3 at that time. That is an identification of sorts.

4 He said he couldn't be 100 percent, but I
5 think that's an identification of sorts, and,
6 furthermore, the warrant, or the affidavit, did include
7 the followup that Mr. Green, Alonzo Green, the other
8 person who was there with the defendant, who's known him
9 for over 20 years, did identify him by a single photo, so
10 we're not just looking at Anthony Holsberg's
11 identification. We've also got Alonzo Green who did
12 identify him, and that's all in the affidavit.

13 Now, I know the defense keeps referencing
14 this old search warrant. Personally, I don't think the
15 old search warrant and the old phone records have
16 anything to do with what we're doing today, which is
17 dealing with the new search warrant because we're not
18 trying to use the old records, we want to use the new
19 records and so I think any suppression motion would deal
20 with that, with the new search warrant, because we're not
21 concerned with the old records. There was an issue. I
22 acknowledged it. We cleared it up, and there's a good
23 warrant. There's more than enough probable cause in
24 there.

25 Regarding the phone number of the defendant,

1 now, it is true that he admitted in his interview to
2 ownership of the physical phone, but we were able to get
3 that number linked to the defendant back then, the police
4 were, by getting Alonzo Green, that witness who was with
5 Anthony Holsberg, to provide that information to
6 Detective Brown.

7 Now, I understand that it is not referenced
8 in her report, but despite what the defense says,
9 Detective Tuttle did reference it in his report from two
10 days after the incident, where he said that he learned
11 that Alonzo Green provided the number of [REDACTED]
12 for Silvester, and this is right after he's talking about
13 post-Miranda interview with Detective Yolanda Brown. So
14 that is in the discovery.

15 So, Your Honor, that's also in the affidavit,
16 and I think that creates the nexus for why they believe
17 that this particular phone number would be important to
18 the investigation and linked up to this defendant.

19 THE COURT: So he said he got the number from
20 Green, Alonzo Green?

21 MR. WARING: Alonzo Green told Detective
22 Brown what the defendant's phone number was that he had
23 been communicating with him on that day.

24 THE COURT: In March of 2015?

25 MR. WARING: Yes.

1 THE COURT: All right.

2 MR. WARING: And that information is in the
3 new warrant.

4 THE COURT: It's in the new warrant, but it
5 wasn't in the old warrant. According to Mr. Kozelski, it
6 wasn't in any notes or anything prior to him putting it
7 in the affidavit in 2019.

8 MR. WARING: That is correct. So Detective
9 Tuttle erroneously said that he claimed target cellphone
10 number. He actually claimed the actual phone, the
11 physical phone, but not the number, but in the new
12 warrant it does mention where they got that cellphone
13 number from.

14 THE COURT: Where? Where did they get it
15 from?

16 MR. WARING: They got it from Alonzo Green.

17 THE COURT: But, again, Alonzo had reset his
18 phone. He didn't remember the number. There's nothing
19 in that three-hour interview that shows him saying that
20 this is the phone number, is there?

21 MR. WARING: Your Honor, there is a moment
22 in -- and we can play it, if need be, but there's a
23 moment where Detective Brown asks Alonzo Green to step
24 out of the room for a minute, to come over to her
25 computer to see if he can work on it there a little bit

1 better, and while out of the room, Detective Brown would
2 be prepared to testify that's where the phone number was
3 apprehended, from Green.

4 Now, it's not in her report, but it's in
5 Detective Tuttle's report, that references --

6 THE COURT: The report that he wrote that
7 day, contemporaneously?

8 MR. WARING: Yes, sir.

9 THE COURT: How contemporaneously?

10 MR. WARING: Let's see. Green was
11 interviewed March -- early in the morning of March 5th,
12 2015. He wrote the report the next day.

13 THE COURT: And his report says what about
14 that phone number?

15 MR. WARING: His report says I learned that
16 there were two cellphones recovered in the Evergreen
17 Motel that Silvester was arrested in. In addition, I
18 learned that in a post-Miranda interview, Silvester told
19 Detective Yolanda Brown that both the cellphones belonged
20 to him, which is correct. He did say that in the
21 interview.

22 I also learned that Alonzo Green provided the
23 phone number of [REDACTED] for Silvester, and it was
24 known to be active up at least until his arrest at least
25 of March 5, 2015 so that information was documented.

1 THE COURT: Let me see that.

2 MR. WARING: May I approach, Your Honor?

3 THE COURT: Yeah.

4 Right. This is a supplemental case report.
5 It looks like it's stamped, or time stamped, 3/6/2015 at
6 19:14:02. This was a Friday. On Tuesday -- so on
7 Tuesday the 10th, he wrote this additional note because
8 the original only had one little paragraph, I take it, so
9 below, on Tuesday, March the 10th, 2015, he wrote I
10 learned there were two cellphones recovered in the
11 Evergreen Motel that Silvester was arrested in.

12 In addition, I learned that in a post-Miranda
13 interview, Silvester, that would be the defendant, told
14 Detective Yolanda Brown that both of the cellphones
15 belonged to him. I also learned that Alonzo Green
16 provided the phone number [REDACTED] for Silvester,
17 and it was known to be active at least up until his
18 arrest on March 6th, 2015.

19 Two cellphones located are listed below, and
20 that's serial numbers, SMS numbers, IMEI numbers. With
21 the above listed information, Detective Y. Brown, I
22 believe there to be probable cause to search the contents
23 of the cellphone as well as the cellular provider or
24 information regarding the phone number [REDACTED].

25 That's the phone number that links him to the

1 robbery site?

2 MR. WARING: Yes, sir, Your Honor.

3 THE COURT: Well, he's stating in March of
4 2015 that he knew of the number and that's some
5 information --

6 MR. KOZELSKI: They have that number, Your
7 Honor. I understand they have that number, but he's
8 saying that Alonzo Green gave that number to Detective
9 Brown during their interview, which Mr. Waring is now
10 saying he went to her computer --

11 THE COURT: Well, he didn't say that he gave
12 it to him in the interview. He said I also learned that
13 Alonzo Green provided the number for Silvester. It
14 didn't say where he learned it from. Maybe Alonzo Green
15 gave it after the interview.

16 MR. KOZELSKI: And that's what I'm wondering
17 too because Alonzo Green is saying he doesn't know
18 anything about that number. He hard reset his phone, so
19 this is a sort of conundrum that --

20 THE COURT: What is this information you said
21 didn't exist in 2014 that exists now, when you're talking
22 about this IMEI number?

23 MR. KOZELSKI: Right. So the phones when
24 they found when they did the dumps they got nothing out
25 of. Now that they redid the dumps in February, the

1 information that they have on this cellphone extraction
2 itself is not the number. You don't get the actual
3 cellphone number from the dump, but you get the numbers
4 that you're able to later attach to the numbers that are
5 on the information provided by the cellphone provider,
6 and that is how -- I guess I got this I think
7 February 10th or something from one of the CPD analysts,
8 Jerry Roberts, who did a sort of question-and-answer of
9 Mr. Waring in which he showed pictures of the actual
10 phone and the cellphone extraction and how it tied
11 everything together, not to the number itself, but tied
12 the physical phone to the number itself.

13 THE COURT: All right. Well, this
14 IMEI number is written on his 2015 supplemental report?

15 MR. WARING: Your Honor, for everybody's
16 benefit, I didn't know this either. On the back of the
17 phone, that same number is on the back of the phone, so
18 they've had that number since 2015.

19 THE COURT: So it didn't look like that IMEI
20 number was available to them in 2015. That didn't exist
21 in 2015.

22 MR. KOZELSKI: And I'm not challenging the
23 cellphone extraction or that information that was on the
24 phone. I'm only challenging how it ties into the
25 cellphone provider records, which I believe were obtained

1 with the bad warrant, and tying that in would make it the
2 fruit of the poisonous tree, from the cellphone records,
3 so --

4 THE COURT: But they had that information
5 prior to the issuance of the search warrant, so it wasn't
6 fruit of the poisonous tree.

7 MR. KOZELSKI: Right, Your Honor. No, I'm
8 not saying that they have that information. They have
9 that information, but the only way that they can tie it
10 to the actual number itself is through the phone records.
11 These numbers in and of themselves don't mean anything
12 until they're actually tied back into the cellphone
13 records.

14 THE COURT: But they had that information in
15 2015. It's not that they discovered it as a result of
16 the search. They had this information in 2015 prior to
17 the search.

18 MR. KOZELSKI: Yes.

19 THE COURT: So it's not fruit of the
20 poisonous tree.

21 MR. KOZELSKI: Well, I guess what I'm saying
22 is because I believe that the data that has been provided
23 by the cellphone provider is the only way that they
24 can -- from a bad search warrant, is the only way that
25 they can link these numbers that they already have, that

1 that they got from the cellphone extraction or they got
2 from the back of the phone which they already have the
3 only way they can link that to an actual phone number
4 itself, that 276 number, is through the cellphone data.

5 They can't bring in the phone and say this
6 phone is 276, whatever the number is -- [REDACTED]. The
7 cellphone itself, the physical phone, they can't come in
8 here and say this is this number unless they can tie it
9 to the cellphone records.

10 THE COURT: I understand that.

11 MR. KOZELSKI: Yeah.

12 THE COURT: But that was information that
13 they had in 2015 prior to the issuance of the search
14 warrant. It was not information that they gained as a
15 result of the search warrant.

16 MR. KOZELSKI: No. You're right.

17 THE COURT: So if they had gained that
18 information as a result of the search warrant, then you
19 would have a fruit of the poisonous tree argument. Now,
20 they had a bad warrant in 2015, they don't get to put in
21 the data from 2015, but if it was information that they
22 had and they had an otherwise valid search warrant in
23 2019, as long as there wasn't anything that they
24 extracted from the bad search in 2015, there's nothing to
25 preclude them from getting a new search warrant from

1 2019, if it's otherwise valid and it wasn't -- there
2 wasn't anything gained or extracted from the 2015 search
3 that was used to support -- to get a new pull of the data
4 from the provider.

5 MR. KOZELSKI: And I understand what you're
6 saying, Your Honor, and I agree with that. The only
7 thing would be that I don't think they could have their
8 CPD analyst who did this -- calling it a report, it's not
9 necessarily a report, but I guess in a way it kind of is.

10 He couldn't testify to what he has in his
11 report but for those other records, which I'm claiming
12 were obtained with a bad warrant, so I guess it's not the
13 fruit of the poisonous tree, in a sense, but I don't
14 think they could testify to that unless they had these
15 records.

16 THE COURT: Well, I don't see it that way
17 factually. If they had the IMEI correct numbers prior to
18 the issuance of the 2015 search warrant, then if they
19 then have other knowledge to get and link that IMEI
20 number to a telephone number and get a valid search
21 warrant in 2019, then if it was a valid 2019 search
22 warrant, there's no fruit of the poisonous tree argument
23 for 2015 data.

24 So then we need to focus on did they have a
25 valid 2019 search warrant? If the three bases of it is

1 this kind of vague 20s to 30s versus 30s to 40s
2 description, well, you know, I don't really know that
3 that's a good indicator -- I mean, I think you can tell
4 somebody in the first five years that they're, you know,
5 five years; a two-year-old versus a three year-old, but
6 when you start getting past teenage, I don't really know
7 that -- I mean, people age differently. I don't know
8 that that's a valid basis for saying it's a bad warrant.

9 The sixpack photo, it was a tentative ID. It
10 wasn't necessarily 100 percent positive, but it's
11 something, and I don't think you have to have
12 100 percent, or 100 percent positivity on that, but it's
13 a link. If it was only that, that would be one thing,
14 but then we get down to this where did they get a phone
15 number from? And they've got this vague -- well, Alonzo
16 Green has known him for 20 years.

17 It's not an identification issue to him, but
18 there's nothing on the data or there's nothing on a three
19 year -- three-hour-long interview which he positively
20 said this is the number. There's nothing -- but what you
21 had was this Tuttle wrote a report in 2015, March the
22 10th, 2015, where he stated that he learned that from
23 Alonzo, that the [REDACTED] number belonged to
24 Silvester.

25 You got that, and he said he learned stuff in

1 a post-Miranda interview. Silvester told Yolanda Brown
2 that both of those belonged to him; you know, that's, I
3 think, enough evidence. It could have been put into the
4 first warrant, but it wasn't. That doesn't mean that it
5 couldn't be used later on. The fact that it was there
6 and in a note that was contemporaneously created back in
7 March of 2015 within a couple of days of the actual first
8 interview with Alonzo, I guess, and Silvester, I would
9 say it's a good 2019 search warrant, so I'll have to deny
10 your motion.

11 MR. KOZELSKI: And, for the record, I want to
12 put in there that I do not believe my client admitted
13 that both target cellphones or both cellphones were his.
14 He gave a specific number in the interview. They asked
15 him about the other phone. He says, I don't know that
16 number, but I guess they're claiming that because there
17 was a phone in the room that he claimed it. This is one
18 of the clips that Mr. Waring is trying to provide to the
19 jury to say that he claimed ownership of it.

20 She asked him do people call you on that, and
21 he said yeah, sometimes. I don't know what the number
22 is, but I don't know if that is claiming ownership of the
23 phone in the sense that they did that, but I understand
24 the Court's ruling. I just -- my confusion is how did
25 Alonzo provide this cellphone number? Who did he provide

1 it to? I don't know, and I can't grasp that from any of
2 the information that I got other than this small excerpt
3 that Officer Tuttle wrote saying that he learned that it
4 was provided by Alonzo Green.

5 And as I stated to the Court, I've talked to
6 Alonzo. I've seen his interview. I know the State's
7 talked to Alonzo. I don't think he would ever get up and
8 testify that yeah, I gave him that number, so I'm curious
9 as to how they got it, how he obtained it, but I do
10 understand the Court's ruling.

11 THE COURT: Well, if it gets to that point, I
12 suppose you can cross-examine him on it.

13 All right. Do you have another motion?

14 MR. KOZELSKI: I do, Your Honor. The next
15 motion we have is regarding the identification of
16 Mr. Scott by Venezaree Simon. This is a new
17 identification, a surprise, Your Honor. Ms. Simon is the
18 manager of the Family Dollar store and how the Family
19 Dollar Store is linked to this crime is there was a
20 receipt recovered in the getaway car that was recovered
21 by the police that showed a purchase being made of a dust
22 mask, dust mask that was presumably used in the robbery.

23 Detective Bailey with the Charleston Police
24 Department then goes to the Family Dollar in an
25 attempt to recover video at the time of this purchase to

1 see if there's any person of interest. Ms. Simon
2 assisted Detective Bailey in viewing and downloading the
3 times from 3:11 to 3:21. Detective Bailey goes on in his
4 report -- and he's here. We can have him testify, if he
5 needs to, but at that time, he has Ms. Simon identify the
6 cashier that is servicing the subject. He gets the name
7 of the cashier to see if the cashier remembers who the
8 subject is.

9 At that point, Ms. Simon says nothing about
10 the subject, that she knows him; he's a familiar person;
11 that he's a regular customer. She says nothing about it.
12 It's not in his report. I don't know -- I've asked
13 Detective Bailey if he asked her about that. He says he
14 didn't remember asking her about that, but obviously in
15 his report he has written down that he -- the manager
16 advised that the cashier that services the subject was a
17 Raven Brown, so she's reviewing the video, did not say
18 anything at this point.

19 And, surprise, surprise, in February of this
20 year, I get an email from Mr. Waring saying we showed
21 this picture of your client, the single photo
22 identification of your client, to Ms. Simon when she came
23 in here, and she told us that she's seen him before, that
24 he's a regular in the store, and she signed a piece of
25 paper to that effect.

1 I asked Mr. Waring, okay. She's not
2 identifying him in the video, is she? And Mr. Waring
3 told him that no, no, she's not. And this was, I think,
4 February 10th. This was Mr. Scott's last bond hearing
5 that we had. I get an email later that day saying we
6 called Ms. Simon in, and Ms. Simon then -- they gave
7 her -- showed the video, gave her the stills, and said,
8 you know, basically, who's this? Is this the guy from
9 the photo?

10 She writes this is the guy from the photo,
11 the one that you showed me. So they go to her. In March
12 of 2015, she points out people in the video that she
13 knows. She doesn't say anything about my client. They
14 go back to her in February of 2019, show her a picture of
15 my client, a single photo identification. She identifies
16 him as somebody who comes in the store before.

17 Then after I bring that issue up with
18 Mr. Waring, they go back and essentially show her photos
19 of one person and say is this the same guy in the photo
20 that we showed you? And she writes this is the same guy
21 in the photo.

22 I think that this is certainly suggestive,
23 and I think that the manner in which they did this would
24 cause irreparable harm in creating an identification, and
25 for those reasons, we're asking her not to make an

1 identification in court. I think the case law supports
2 the fact that if an out-of-court identification is
3 suggestible, causing the likelihood of irreparable
4 misidentification, then you cannot do an in-court
5 identification, and I think that's what we have here.

6 I've talked to Mr. Waring about that. He
7 says they don't plan to bring in the single photo ID and
8 the photo that she signed, but they're going to play the
9 video through her, and they're going to ask who it is in
10 the video, and she's going to point to my client. And I
11 think that essentially it's a tainted ID that they have
12 shown her, you know, and she had an opportunity to point
13 him out --

14 THE COURT: What's the purpose in her
15 identifying him? This wasn't the place that was robbed,
16 was it?

17 MR. KOZELSKI: It's not, Your Honor. It's
18 immediately before the bank robbery, a person in the
19 video clearly wearing the same clothing that was worn in
20 the bank robbery. So, I mean, they're essentially saying
21 she's pointing out the bank robber. This is the person
22 that is buying dust masks. Dust masks were used in the
23 bank robbery, wearing the same blue jumpsuit in the bank
24 robbery, so they're essentially using her as an
25 ID witness in this case, again, four years after the

1 fact.

2 THE COURT: Again, slow down and walk through
3 this a minute. So this was a convenience store?

4 MR. KOZELSKI: Family Dollar Store store.

5 THE COURT: There is a video of him being --
6 or somebody dressed however they're dressed.

7 MR. KOZELSKI: Yes.

8 THE COURT: And they want her to say it's
9 him?

10 MR. KOZELSKI: Yes.

11 THE COURT: Why not just play the video?

12 MR. KOZELSKI: I agree, Your Honor.

13 THE COURT: If they were using a one-photo
14 lineup, that's looked at with disfavor by the courts.

15 MR. OSBORNE: Your Honor, if I could just --
16 I'm sorry to interrupt you. There were a couple things
17 that weren't actually surprise, surprise, weren't exactly
18 accurate about what Mr. Kozelski just said.

19 I just spoke to Sergeant Bailey on the phone.
20 I asked him, I said do you have any idea why the defense
21 is calling you in this case? He said, well, it may have
22 something to do with the Family Dollar Store situation.
23 I said what happened there?

24 He said that when they searched the Charger,
25 which they believe to be the getaway car, they found a

1 receipt from Family Dollar for a dust mask. The robber
2 is using a dust mask to conceal his face, so he went to
3 Family Dollar for the sole purpose of retrieving the
4 video from that transaction. He said this manager,
5 Venzaree Simon, who had been a manager there for about
6 ten years, multiple years, she brought him to the back
7 room, and he said it's my recollection I went into the
8 back room. She showed me how I could download the video.
9 I started to download the video. That was my only
10 objective.

11 He said that prior to leaving, he asked her,
12 he says who is the cashier who conducted this
13 transaction? And she said, well, it's Raven Brown. I
14 said when you asked her that question, did you show her
15 the video and say who is that person, that cashier? And
16 he says, in all honesty, I can't remember whether I
17 showed her a receipt, whether I showed her the video. I
18 don't know.

19 So it's not like they were -- he says what I
20 can tell you is that the room was very small and she
21 wasn't in there with me the whole time. So it's not like
22 they were watching the video together and him and her
23 seeing the interaction with the individual we're saying
24 to be the defendant. I said, well, why didn't you simply
25 ask her who was the individual that purchased the dust

1 mask? He said I had no reason to believe that she would
2 even know him, so I just didn't ever really consider
3 asking that.

4 Now, all of this happened after that, coming
5 up to this point, is us actually trying to authenticate
6 the video. So we were trying to authenticate the video
7 through Ms. Brown, which turned out to not be nearly as
8 fruitful as authenticating it through the manager, so it
9 was through this first visit and it was simply an
10 authentication and during that time it was actually
11 Mr. Waring that came back to me and said she's worked
12 there for multiple years.

13 I said, well, why not just ask her if she
14 knows the defendant? And that's how that came out. So
15 it's not actually an eyewitness to a crime so much as she
16 says this guy comes into the store, multiple times, every
17 day. He's always flirting with me, and I've worked there
18 for 10, 15 years. That's why we're trying to get that
19 in.

20 MR. KOZELSKI: Your Honor --

21 MR. OSBORNE: And some of the details I might
22 be off on how that came out with Mr. Waring in 2019.

23 MR. KOZELSKI: Your Honor, you can see in the
24 video that there are, I think, five different aisles
25 where you can check out. There are multiple cashiers

1 during this time of the incident. There's nothing on the
2 receipt that would say your service, your cashier was
3 Ms. Brown or anything like that, and to be able to tell
4 who the cashier was who checked this person out, you
5 would have to view the video because there's one cashier
6 that is I think at the time closing out her drawer.
7 There's another cashier on the other side that is doing
8 it, and I think there might be another cashier on the
9 other side of her.

10 So there's three, potentially four cashiers
11 at this point. You know, when you're talking about and
12 you have it written in your statement, the manager
13 advised them the cashier that services subject name was
14 Raven Brown, the only way possible that you can do that
15 is by looking at the video because there's nothing on the
16 receipt that would tell you that, and there's no way -- I
17 mean, unless she just guessed correctly that that's what
18 it was, the only way you can look at that is by viewing
19 the video, and at that point she did not say anything
20 about who that subject was, who she seems to now be so
21 familiar with, which -- you know, I don't know why she
22 would not at that point say, I know who that subject is,
23 rather than this is the cashier that served that subject.

24 I mean, that doesn't make any sense to me.
25 What does make sense to me is now she's saying it's him

1 based on the photo he showed her and then only showing
2 her this photo of one person.

3 THE COURT: Wait a minute. That photo,
4 you're saying that's -- it's not a driver's license photo
5 or a mugshot or anything. It's that photo you have in
6 your hand, which is a picture of somebody walking in the
7 door?

8 MR. KOZELSKI: So, Your Honor, what -- sorry.
9 The public defender's office, we only have black and
10 white photos, but they showed her this photo of my client
11 on one day, and the next day they came back and they
12 showed her this.

13 THE COURT: All right. So tell me again how
14 this ID time frame went.

15 MR. WARING: Judge, I'll try to be concise
16 with this procedurally.

17 So we found out that this manager was in
18 existence. I got on the case very recently, as
19 Mr. Kozelski pointed out, about a month ago, found out
20 that there were a couple people we need to talk to. So
21 we went there for the express purpose initially of just
22 having her authenticate the video for trial. She'll be a
23 custodian, and that's what the extent of her involvement
24 would be.

25 In talking with her while we were there, we

1 didn't ask her who's in the video. We didn't ask her
2 anything, so I don't think she would have any reason to
3 say oh, hey, that's, you know, so-and-so. She doesn't
4 know his name. She's been working there for 15 plus
5 years, and she says is that the defendant, who she
6 doesn't know by name, is a regular who goes there,
7 essentially, every day of the week, multiple times a day,
8 has been doing that since 2005.

9 So she's also a manager. So, according to
10 her, she deals with people on a regular basis, and she
11 knows and is more familiar with people who are regular
12 customers. So we showed her -- I said we. My
13 investigator, Jen Hall, and I stepped out of the room,
14 she showed her -- excuse me, showed the witness a
15 redacted DMV photo, and according to Investigator Hall
16 she said yeah, he's a regular. Always here.

17 So after that we left, came back --

18 THE COURT: I'm just trying to remember that
19 he's been in jail for four years, so when you say oh,
20 yeah, he's always here, it makes it sound like he's been
21 in recently.

22 MR. WARING: Well, she actually did comment
23 on that. She said he hasn't been in in a while, so that
24 would explain that. So after a couple days, after
25 conferring with my co-counsel, we thought it would be

1 kind of an elephant in the room if we have this witness
2 authenticate the video and not ask her the \$1 million
3 question of who's in the video? So went back couple days
4 later, outside my presence. Investigator Hall showed her
5 the video and some still shots and did not, what the
6 defense is alleging, did not say, hey, is this the same
7 guy as before?

8 Investigator Hall would testify, if need be,
9 that she just said do you recognize this person? There
10 was no mention on either occasion of what these cases
11 were about, what this case was about, what the
12 defendant's name was, what he looked like, and on that
13 occasion, according to Investigator Hall, she again said
14 that's the person you showed me in the photo the other
15 day.

16 THE COURT: She didn't know you were
17 investigating an armed robbery at that point?

18 MR. WARING: No, sir. We didn't tell her a
19 single thing. I think it's also important to mention,
20 just to kind of differentiate between two points, this is
21 not a witness identification. And I think it's the McGee
22 specifically talks about how an identification in this
23 kind of situation almost doesn't even apply to Biggers,
24 that those factors are for eyewitness identifications.

25 So, arguably, it's the State's position that

1 he's not necessarily entitled to a Biggers hearing, but
2 assuming he is and we're talking about the two-factor
3 test of suggestiveness and reliability, even if it were
4 suggestive, it's certainly reliable because she's known
5 this person, the defendant, and has seen him for
6 approximately 15 years. So I think any suggestiveness
7 would be cured by that reliability and should still be
8 admissible, Your Honor.

9 MR. KOZELSKI: Your Honor, if I could just
10 make a comment on the fact that she's seen him every day
11 for 15 years is impossible, it is clearly impossible,
12 because most of that time my client has been in prison.
13 He was in prison from 2009 to 2014.

14 You know, when he got out, he certainly --
15 I'm sure he went to the Family Dollar Store at some
16 point, but he's not a regular customer for 15 years. He
17 can't be because he's incarcerated. The fact that he
18 shops at the Family Dollar or has been there before, like
19 she said, she doesn't know his name. She doesn't know
20 anything about him. She doesn't know his family. She
21 just says she knows him, and, you know, the fact that
22 they showed her a picture and then they come back and say
23 is this the guy in the photo, that's about as suggestive
24 as it possibly can be.

25 I mean, if you look at that photo, what she

1 writes in that is about as suggestive as possible; yes,
2 that's the guy from the photo you just showed me. I
3 think, like Your Honor said, the video speaks for itself.
4 She's the custodian. They can get the video in through
5 her, but her adding in an ID to this case after four
6 years, after I believe she has viewed this video in the
7 past in order to identify the cashier and did not make
8 any type of identification, then I think that clearly
9 shows she suggested that this was the person that she
10 needs to identify.

11 So that's why I don't believe an in-court
12 identification is warranted because I believe the
13 out-of-court identification is tainted.

14 THE COURT: So between 2009 and 2019, he's
15 been in prison essentially nine out of those ten years?

16 MR. KOZELSKI: Yes, Your Honor.

17 MR. WARING: Your Honor, so --

18 THE COURT: That's a little bit different
19 than he's been in here every day hitting on me for ten
20 years.

21 MR. WARING: Your Honor, he was certainly out
22 in 2014, and I'm not sure exactly when he got out of
23 prison for the last time he was convicted. He got a PCR,
24 but I'm not sure how long -- 2014, but he was out for a
25 period of time. His house is right down the road. She

1 said he's been coming there since 2005.

2 She recognizes him. She said I hadn't seen
3 him for a while, so she recognizes that he's been gone
4 for a time period, Your Honor, and all these questions I
5 think are still more fodder for cross-examination. I
6 don't think it makes it an illegal identification. I
7 think, again, a lot of these factors don't apply to this
8 situation because she knows him. She's not identifying
9 him as the perpetrator. She's saying this is a person I
10 recognize who used to be a regular customer.

11 I think that should be admissible, Your
12 Honor, and that's our argument.

13 THE COURT: I think I'm just going to limit
14 you to the authenticity of the video and let the jury
15 know if that looks like the same person, because if you
16 get into the nitty-gritty of it, he's been in jail for
17 the better part of a decade and for them to start getting
18 into, well, you really have a valid cross-examination,
19 you've got to be able to say, well, you make it sound
20 like he's been hitting on you every day for the last 10
21 to 15 years, but, in reality, nine out of those last ten
22 years he's been in prison, and that, I think, causes a
23 substantially unfair situation for the defendant to then
24 have to volunteer that he was in prison to cast doubt on
25 her identification.

1 So I think it's unduly prejudicial, and I'll
2 limit you to just being able to bring that witness in for
3 the purposes of authenticating the video. All right?

4 MR. WARING: Understood, Judge.

5 THE COURT: What else you got?

6 MR. WARING: Judge, just briefly, just
7 backtracking about the phone records, not dredging up old
8 news, but there's a statute that essentially -- I don't
9 know if you've come in contact with it yet that allows a
10 party to not have to call a custodian to authenticate
11 business records such as cellphone records. We have
12 under, that statute, submitted a notice to the defense
13 with prior notice, and under that statute, as long as the
14 custodian verifies that it complies with the business
15 record exception to the hearsay rule --

16 THE COURT: 803(6)?

17 MR. WARING: Yes, Your Honor. As long as he
18 complies with that then we don't have to call a
19 custodian.

20 THE COURT: You're talking about 19-5-510?

21 MR. WARING: 520, Your Honor. Very close.
22 Yes, that's what we're talking about. We ask to have
23 that apply in this case so we don't have to call in
24 somebody from out of state to come testify.

25 MR. KOZELSKI: Your Honor, the only issue

1 that I have with the information that I've got about the
2 subscriber information, which I got on February 19th, I
3 would like to ask somebody about how they go about, you
4 know, subscribing to a phone and whether anybody can do
5 it or something like that.

6 I don't mind them doing it by Skype or
7 something in that realm, but I do have questions to ask
8 of the person if they're just going to have an
9 investigator say these are certified, I mean, I don't
10 know that I can ask their investigator anything about how
11 Cricket works or how AT&T works. I don't think they have
12 knowledge of doing that.

13 I understand what the statute says, and I
14 don't think they should have to fly somebody here just to
15 put in these records, but I don't think it's very
16 difficult. I've had this happen in cases before where
17 they can just Skype somebody in to say yes, that's what
18 they are. That way that would give me an opportunity to
19 cross-examine them as to how this information came to be.

20 MR. WARING: Your Honor, we sent notice to
21 the defense of some time ago, and I asked multiple times
22 along the way if he was going to object, if he had any
23 objection. This is the first time I'm hearing that he's
24 making a bona fide objection to this. I think the
25 statute was created so you wouldn't have to call in

1 somebody to testify or Skype them.

2 We do have two phone experts who are going to
3 testify. I think they are more than capable of answering
4 most questions Mr. Kozelski would have about how phone
5 companies operate and store records and things of that
6 nature. We would ask that we be allowed to proceed with
7 just a certification letter, not have to call somebody
8 through Skype, Your Honor.

9 MR. KOZELSKI: Your Honor, as to -- you know,
10 again, part of this is I just received the subscriber
11 information on February 19th. I think he sent it to me
12 after that. I don't know what to do with it until I give
13 it to my expert, which I just had to hire, and that
14 expert will tell me the questions I need to ask. I don't
15 think it's that difficult to get a person that can
16 testify via Skype.

17 THE COURT: Why don't we set it up? If he's
18 willing to do it by Skype, let's set up a Skype call. It
19 sounds like he just got this information and then had to
20 get somebody to tell him what to do with it, so I don't
21 really think he's had it for five years.

22 MR. WARING: He's had it for four years, Your
23 Honor.

24 THE COURT: No, he got it as a result of your
25 new search warrant that you got in March -- this year

1 sometime.

2 MR. WARING: Right, but he did admit that it
3 has the same information essentially on it.

4 THE COURT: I'm not going to argue semantics
5 over -- he's willing to stipulate to a Skype telephone
6 conversation, so that's pretty doable. Who is the
7 cellphone carrier?

8 MR. WARING: AT&T, Your Honor.

9 MR. OSBORNE: Just for the Court's
10 edification, when I have gone through this before, so I
11 just don't want to swear a jury in and have this come up,
12 custodians do not know anything about how a phone --

13 THE COURT: It might not be much, and I've
14 gone through it before too, but, you know, he just got
15 it, and it's almost, you know, last minute. I understand
16 you said well, he's had it for this long, but the fact
17 that he's had it for this long didn't come in. The fact
18 that he just got it came in.

19 MR. OSBORNE: I want to advise him that the
20 question that he is trying to get he is not going to be
21 able to get through this custodian, just so you know
22 that -- they are not going to answer those questions.

23 THE COURT: They might not know. But let's
24 see if we can't get that set up.

25 MR. WARING: Okay, Your Honor.

1 MR. KOZELSKI: Thank you, Your Honor.

2 THE COURT: What else do we have?

3 MR. KOZELSKI: I think that is it for the
4 defense.

5 THE COURT: Do you have any?

6 MR. WARING: Your Honor, just a couple other
7 miscellaneous matters. One is I mentioned to the defense
8 that the single photo of the defendant that was shown to
9 one of the guys the defendant was hanging out with Alonzo
10 Green is a booking photo. I know that there's a couple
11 hoops we got to jump through in order for that not be
12 reversible error, and there's a three-part test I was
13 going run through real quick.

14 In order for us to get that in, the State has
15 to have the demonstrable need to introduce the photograph
16 which I think we do in this case since Alonzo Green's
17 identification of the defendant is very important to
18 putting him -- putting the defendant in the vehicle in
19 question on the day of the incident.

20 Secondly, the photograph, showing the jury
21 can't suggest the defendant has a criminal record, which
22 it does not. There's no mention on there of any criminal
23 record. There's no reference to any criminal history,
24 and the defendant is not wearing any jail clothes.
25 Third: The photograph can't be introduced in such a way

1 as to draw attention to its origin or implication, and I
2 think it satisfies that as well because there's no
3 Charleston County Detention Center heading on it or
4 anything to suggest what the origin of the photo is.

5 We don't plan to ask the detective where the
6 photo came from, and the photo itself doesn't mention
7 anywhere where it came, from so we think we've satisfied
8 that test. We would ask that the photo be admissible,
9 assuming that foundation is laid otherwise.

10 MR. KOZELSKI: Well, Your Honor, I think it
11 looks like a booking photo. I think Alonzo Green, he's
12 known for 20 years, can point him out in the court, but
13 if the Court sees --

14 THE COURT: Is Alonzo going to be joining us?

15 MR. WARING: He is, Your Honor.

16 THE COURT: I don't think you and I -- you
17 and I probably have more of a familiarity with what a
18 booking photo looks like than the average person, so if
19 it is extracted and has no identifying marks as a
20 criminal record or being part of a video or a booking
21 photo, then I think it's fine for the State to use it.

22 MR. WARING: Thank you, Your Honor.

23 Two other minor matters. One is it's kind of
24 unusual. Judge Nettles out of town came in -- this
25 relates to bond. So we had a bond hearing recently, and

1 the judge, hearing that this case has been pending for
2 four years, said that if the case wasn't tried by
3 today -- I think he meant by the end of the week, but the
4 order says by today -- that the defendant gets \$100,000
5 bond today.

6 THE COURT: He's not going to get a bond
7 today. He's going to remain in custody throughout the
8 trial.

9 MR. WARING: Okay. I just wanted to make
10 sure if he does bond out in the middle of trial that he
11 be tried in his absence.

12 THE COURT: All right. I'll alleviate your
13 concern.

14 MR. WARING: Your Honor, the last matter
15 is -- and I don't normally do this in most trials, but we
16 would like the Court at some point in the trial to take
17 judicial notice of the fact that on the day of the
18 incident, the sun set at 6:19 p.m., and we've got a
19 reference here that according to Rule 201, as long as
20 it's indisputable, it seems to be qualifying for --

21 THE COURT: Where did you get that from?

22 MR. WARING: I got it online.

23 THE COURT: What is the source online?

24 MR. WARING: Timeanddate.com. And it's got a
25 table and every other source I've checked seems to be

1 consistent with that.

2 THE COURT: Do you got an objection?

3 MR. KOZELSKI: No, Your Honor, I don't.

4 MR. WARING: It's all good, Judge.

5 THE COURT: All right. Well, then, I guess
6 we're ready to go in the morning at 9:30.

7 So again, I encourage you all to continue any
8 plea discussions that you might have, and, if not, we'll
9 start up tomorrow morning at 9:30.

10 MR. WARING: Thank you, Judge.

11 (Court's Exhibit 1 was marked for
12 identification.)

13 (The court recessed at 3:40 p.m. and
14 reconvened on Tuesday, March 12, 2019.)

15

16

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON 2015-GS-10-4003

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
 -VS-)
) March 11-13, 2019
SILVESTER D. SCOTT,)
) Charleston, South Carolina
 Defendant.)

VOLUME II - March 12, 2019

B E F O R E:

The Honorable Roger M. Young, Sr., Judge, and a Jury.

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

For the State:
Thomas Richard Waring, II, Assistant Solicitor
David Osborne, Assistant Solicitor

For the Defendant:
John Joseph Kozelski, III, Attorney
Susannah Knox, Attorney

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

I N D E X

PAGESTATE WITNESSES

MELISSA AUBREY

Direct Examination By Mr. Osborne	146

Cross-Examination By Ms. Knox	152

TONIA MALLETT

Direct Examination By Mr. Osborne	152

Cross-Examination By Ms. Knox	157

JASMINE JENKINS

Direct Examination By Mr. Waring	158

Cross-Examination By Ms. Knox	166

Redirect Examination By Mr. Waring	167

Recross-Examination By Ms. Knox	168

JOHN LAYCOCK

Direct Examination By Mr. Osborne	169

Cross-Examination By Ms. Knox	177

MARY KATHERINE PHILLIPS

Direct Examination By Mr. Osborne	179

Cross-Examination By Mr. Kozelski	186

Redirect Examination By Mr. Osborne	204

VENZAREE SIMON

Direct Examination By Mr. Waring	209

ALONZO CLINTON GREEN

Direct Examination By Mr. Waring	214

Cross-Examination By Mr. Kozelski	230
Redirect Examination By Mr. Waring	254
Recross-Examination By Mr. Kozelski	262

JOHN KIRKLAND TYNER

Direct Examination By Mr. Waring	266
Cross-Examination By Mr. Kozelski	270
Redirect Examination By Mr. Waring	273

SARA TUUK

Direct Examination By Mr. Osborne	274
Cross-Examination By Mr. Kozelski	280
Redirect Examination By Mr. Osborne	287
Recross-Examination By Mr. Kozelski	289

CORY BROADWATER

Direct Examination By Mr. Waring	291
Cross-Examination By Mr. Kozelski	296
Redirect Examination By Mr. Waring	302
Recross-Examination By Mr. Kozelski	304

STATEEXHIBITS

NO.	DESCRIPTION	MARKED	RECEIVED
1	Photograph	149	149
2	Photograph	149	149
3	Photograph	149	149
4	Photograph	149	149
5	Photograph	149	149

6	Photograph	149	149
7	Photograph	149	149
8	Photograph	149	149
9	CAD Report	155	155
10	CD containing 911 call	155	155
11	Report generated from dispatch center	156	156
12	Photograph	164	164
13	Photograph	164	164
14	Photograph	164	164
15	Photograph	164	164
16	Photograph	164	164
17	Photograph	164	164
18	Photograph	164	164
19	Photograph	164	164
20	Photograph	164	164
21	Photograph	164	164
22	Photograph	164	164
23	Photograph	164	164
24	Photograph	164	164
25	Photograph	164	164
26	Photograph	164	164
27	Photograph	164	164
28	Photograph	164	164
29	Photograph	164	164
30	Photograph	164	164

31	Photograph	164	164
32	Photograph	164	164
33	Photograph	164	164
34	Photograph	164	164
35	Photograph	164	164
36	Photograph	173	173
37	Photograph	173	173
38	Photograph	173	173
39	Photograph	173	173
40	Photograph	181	181
41	Photograph	181	181
42	Photograph	181	181
43	Photograph	181	181
44	Photograph	181	181
45	Receipt, Family Dollar plastic bag, and dusk mask packaging	184	184
46	Receipt, Family Dollar plastic bag, and dusk mask packaging	184	184
47	Safety Glasses	184	184
48	CD of Surveillance Tape	213	213
49	Photograph	213	213
50	Photograph	213	213
51	Photograph	213	213
52	Photograph	213	213
53	Photograph	213	213

54	Photograph	213	213
55	Photograph	213	213
56	Photograph	213	213
57	Photograph	213	213
58	Photograph	213	213
59	Photograph	213	213
60	Photograph	213	213
61	Photograph	213	213
62	Photograph	213	213
63	Photograph	213	213
64	Photograph	213	213
65	Photograph	213	213
66	Photograph	213	213
67	Photograph	213	213
68	Photograph	213	213
69	Photograph	213	213
70	Photograph	213	213
71	Photograph	213	213
72	Photograph	213	213
73	Photograph	213	213
74	Photograph	213	213
75	Photograph	213	213
76	Photograph	213	213
77	Photograph	213	213
78	Photograph	213	213

79	Photograph	213	213
80	Photograph	221	221
81	Photograph	229	229
93	Photograph	276	276
94	Photograph	276	276
95	Photograph	276	276
96	Left shoe collected from English Street address	279	279
97	Right shoe collected from English Street address	279	279
98	Watch collected from English Street address	279	279
99	Shirt collected from English Sheet address	279	279
100	\$635 in U.S. Currency	294	294
101	Cricket Flip Phone	295	295
102	Cricket Flip Phone	295	295

DEFENSEEXHIBITS

No.	DESCRIPTION	MARKED	RECEIVED
1	Swabs Collected	200	200
2	Fingerprints collected	200	200

P R O C E E D I N G S

(Tuesday, March 12, 2019. Court resumed session in the case of State of South Carolina vs. Silvester D. Smith at 9:27 a.m.)

THE COURT: We got anything we need to take up before the jury comes in?

MR. OSBORNE: Your Honor, if possible, I was hoping to reargue the Skype issue in hopes to maybe persuade you to change your ruling in reference to us being required to Skype in the custodian. We have so some new developments from last night into this morning that may change your position, hopefully.

THE COURT: What was the last part?

MR. OSBORNE: That we have some new developments from last night into this morning that hopefully might persuade you to --

THE COURT: What is the new development?

MR. OSBORNE: This morning we did a conference call with Darko Gospavic. We did a conference call with Darko and Mr. Kozelski, and I went through the standard identification questions with Darko concerning all detailed records that we want to bring in, and I actually emailed the phone records to Mr. Kozelski and to Darko at the time so we could all be tracking off the same sheet of music. Darko said yes, they're authentic.

1 They haven't been altered or tampered in any way.

2 I asked Mr. Kozelski, do you have any
3 challenge to the authenticity of the records? He said
4 no, I'm not challenging the authenticity of the records.
5 What Mr. Kozelski does want to ask Darko are some
6 collateral issues regarding subscriber information, how
7 the subscriber information is inputted into the system.
8 I would ask, or I would say, that for our purposes we are
9 trying to introduce those call detailed records -- we're
10 simply trying to authenticate them using that statute.

11 They would still have to prove their
12 relevance, but we do that through other witnesses, and
13 we're going to attempt to do that through other
14 witnesses. The testimony that Mr. Kozelski wishes to
15 elicit has nothing to do with our purpose to
16 authenticating the records. We would consent to allowing
17 him to Skype in Mr. Gos -- or Darko, if he would like to,
18 but for our purposes, I don't see where we need to call
19 him to simply authenticate a record in which Mr. Kozelski
20 is not challenging.

21 THE COURT: Mr. Kozelski?

22 MR. KOZELSKI: Your Honor, I did have several
23 pointed questions for Mr. Gospavic about the subscriber
24 information and how it's inputted into their system. He
25 seemed to have some information as to how that was done,

1 and I'm specifically talking about the subscriber
2 information sheet and how it relates to the authenticated
3 cellphone data, and that is, you know, how is the
4 subscriber data inputted into the system? And it's my
5 understanding that there are multiple ways to do that:
6 They can do that online; they can do that in the store;
7 you know, they can prepay this whatever amount of minutes
8 they want on these phones, but there's not necessarily
9 anybody checking into who the subscriber information is.
10 It's possible, but he didn't --

11 THE COURT: No question, it sounds like --
12 you can call him as a witness if you want in your case,
13 if you want. He's just saying that's got nothing to do
14 with authentication; that is, these are business records.
15 They're created in the normal course of business, and we
16 push a button, spit it out, and here it is.

17 That's authentication, and it sounds like
18 you're okay with them being declared authentic.

19 MR. KOZELSKI: Yes, I am, Your Honor.

20 THE COURT: Okay. So then if you want to ask
21 this individual some questions, then you can do it during
22 your case in chief because, basically, if you're
23 conceding they're authentic, then there's no reason why
24 you -- why they need to put him on a Skype call when they
25 have this statute that allows him to sign an affidavit.

1 As a practical matter, it just means you can
2 still call him and still get the same thing, and they
3 don't care if you do it by Skype.

4 MR. KOZELSKI: Okay. And what I am wondering
5 is how they're going to get in the affidavit? Are they
6 going to call their investigator to go up there?

7 MR. OSBORNE: Well, typically the way we've
8 done that is we make it a Court's exhibit, and now it's
9 already been marked, and then we would have -- I think
10 we're planning on doing it through the FBI agent because
11 the real crux of the records is the cell tower data.

12 THE COURT: The question is, is admitted
13 authenticity means it is what it purports to be, which is
14 a business record, and then they would offer it in under
15 803(6) as an exception to the hearsay rule, so unless
16 you're making some kind of challenge that it's
17 testimonial in nature and, you know, there's no reason to
18 have him appear via Skype to authentic that's what these
19 documents are.

20 They're just business records created in the
21 normal course of business, and I pushed the proper
22 buttons and it created this report. All right? That's
23 the first prong of admissibility, and if you're not
24 challenging that, you still can challenge whether or not
25 they are a business record under, I guess -- or whether

1 or not they're admissible, that's a different issue, but
2 if you want to ask Mr. Darko some questions, then you can
3 set up a Skype call, I mean, they'll assist you, I guess,
4 or the court will assist you in setting up a call with
5 this guy at the proper time. They just don't want to
6 call him in their case.

7 MR. KOZELSKI: And I understand that, Your
8 Honor. What I am concerned about is, I guess, I don't
9 want it to be, you know -- have the Court, in a sense,
10 take judicial notice that these are accurate records. If
11 there's an affidavit, I think they have to have somebody
12 say that they went and got the affidavit and it's a true
13 affidavit they testified to. I know in the last trial
14 that I had in December, they did the same thing, and they
15 called their investigator up to say --

16 THE COURT: But he's saying they're going to
17 put his affidavit in through this FBI agent.

18 MR. WARING: Judge, we've got a detective,
19 the one who got the actual records. He's the one that
20 got the certification letter. He would be the one that
21 we would be having read that out.

22 MR. KOZELSKI: That's fine, Your Honor. I
23 just didn't want the Court to sort of lend credence to
24 this as a true -- even though I'm not --

25 THE COURT: I actually wouldn't mention it at

1 all, so it's not like I'm putting my imprimatur of
2 approval on it.

3 MR. KOZELSKI: I was hoping they could get
4 that affidavit in through somebody, and if they're going
5 to put it in through Detective Tuttle, that's okay with
6 me. I understand.

7 THE COURT: Okay.

8 Is there anything else?

9 MR. WARING: Not from the State, Your Honor.

10 THE COURT: Anything else from the defense?

11 MR. KOZELSKI: Nothing from the defense.

12 (The jury came back into the courtroom at
13 9:37 a.m., and the following proceedings were
14 had in the presence of the jury.)

15 THE COURT: Well, folks, welcome. We're
16 getting ready to start a trial, and the first thing we
17 need to do is have the clerk administer the oath to you,
18 so if you would, please stand and raise your right hand.

19 (Jury duly sworn.)

20 All right. Be seated.

21 Sir, you in the first seat there, what's your
22 name and number?

23 A PROSPECTIVE JUROR: Jon, 309.

24 THE COURT: All right. Mr. Sullivan,
25 congratulations. You just got appointed foreman of the

1 jury. There's no extra pay involved. You just write the
2 verdict down at the end of the trial, is really what it
3 boils down to.

4 Now, I want to give you some preliminary
5 instructions on what we do in a trial, how it goes about,
6 just a few things like that before we begin. I recognize
7 most of you probably have never served on a jury before.
8 Maybe you've seen it on TV. Some of the things that we
9 do, what they do on TV is based on what we do, but it's
10 not quite the same. It moves a little bit slower. We
11 don't wrap it all up within an hour, hour-and-a-half, and
12 we don't take commercial breaks every 8 to 12 minutes,
13 but there's a method to our madness, and it's tested over
14 time, and it works pretty well, and hopefully by the end
15 of the time that you're here with us this week, you will
16 appreciate that -- you know, the judicial system, I
17 think, works pretty well, and jury trials work pretty
18 well, and you'll enjoy the experience and actually feel a
19 better appreciation for what we do and why we do it.
20 That's why I like to explain things along the way,
21 because sometimes there's some words and phrases you'll
22 hear along the way that you probably have heard but don't
23 know exactly what they mean and explain why we do what we
24 do.

25 So, I told you yesterday, this is a criminal

1 case. The State of South Carolina has charged
2 Mr. Silvester Scott, the defendant here, with two
3 charges, armed robbery, possession of a weapon during the
4 commission of a violent crime, and I told you Mr. Scott
5 pled not guilty to both of those charges, so it is
6 incumbent upon the State to provide him with a jury
7 trial, which you 12 folks are, and that you -- and they
8 have to present enough evidence to convince you 12 jurors
9 that he is guilty of this charge beyond a reasonable
10 doubt. He does not have to prove that he is not guilty
11 or innocent. At the trial the State has to prove he's
12 guilty, and that presumption of innocence is with him
13 from the time he is arrested and throughout the trial and
14 unless and until the State convinces you of his guilt
15 beyond a reasonable doubt.

16 I bring these things up because, one, that
17 presumption of innocence is not just some legal theory
18 that gets tossed about, gets talked about in law school,
19 but it's a very real right. It's a constitutional right
20 that you have, that I have, Mr. Scott has, and all the
21 citizens of the United States have, and it is a very
22 important concept in our legal system, that no defendant
23 has to prove he is innocent. The government has to prove
24 that he is guilty.

25 Now, as I mentioned yesterday, I believe,

1 these indictments are not evidence. They are not proof.
2 They're not to be considered as a presumption of guilt or
3 anything. Indictments simply provide the means by which
4 to notify Mr. Scott of what he is to stand trial for and
5 it gives this Court jurisdiction to hear the case. Why I
6 mention that is because these are the only two documents
7 that are going to go back with you during your
8 deliberations at the end of the trial that are not to be
9 considered as evidence, and the only reason they go back
10 with you is because on the back of them there is a place
11 where the foreman writes what the verdict is, which is
12 either guilty or not guilty. All right?

13 So, again, Mr. Scott is presumed to be
14 innocent of this charge, and he, as part of his right to
15 be presumed innocent of this charge, does not have to
16 present a defense. He doesn't have to testify if he
17 doesn't want to, and, in fact, at this point, he doesn't
18 have to tell me what his intentions are with regard to
19 either of those. Again, those are constitutional rights
20 that he has, that you have, we all have as citizens of
21 South Carolina and the United States. I tell you that
22 because if he does not present a defense and he does not
23 testify, you are not to hold that against him in any way
24 while you're deliberating at the end of the trial.
25 You're not even to mention that during your jury

1 deliberations.

2 Now, I've said a number of times that the
3 State has to prove him guilty, and there's this thing
4 called a burden of proof and that is how much evidence
5 the State has to present in order to convince you of his
6 guilt, and that amount of evidence, or burden of proof,
7 in a criminal case is called proof beyond a reasonable
8 doubt.

9 You probably have all heard that phrase
10 before, either movies or books or TV, and you maybe have
11 wondered for a second, well, what exactly does proof
12 beyond a reasonable doubt mean? And our law basically
13 defines that as are you firmly convinced of his guilt?
14 The State doesn't have to prove beyond every doubt that
15 he is guilty, just beyond a reasonable doubt, so at the
16 end of the case, when all the evidence is in and I tell
17 you what the law is that applies to these charges, then
18 you have to be firmly convinced that he is guilty of
19 these charges; otherwise, the law demands that you find
20 him not guilty because, again, the burden is on the
21 State, the burden is not on him.

22 Now, it might be helpful to some of us that
23 are visual learners -- some of us are visual learners.
24 I'm a visual learner, and some of you probably are, and
25 it is often useful to see something to help you truly

1 understand that, so you have that concept of proof beyond
2 a reasonable doubt. Well, compare it to what the burden
3 of proof is in a civil case, and that might be helpful to
4 you.

5 Proof in a civil case is called a
6 preponderance of the evidence, or is what the party is
7 trying to prove more likely true than not true. It's
8 also called greater weight of the evidence sometimes. So
9 let's imagine a set of scales, you sometimes see Lady
10 Justice out in front of the courthouse, and she's got her
11 hands out and a set of scales, the scales of justice
12 maybe you've seen in a symbol or an emblem someplace.

13 So at the beginning of a trial, those scales
14 are even. Imagine that you have one party in one hand,
15 the State, the defendant in the other hand, and at the
16 beginning of the trial, these scales are even. In a
17 civil case, the party who brings the lawsuit, or sues
18 somebody for, you know, like, an automobile accident or
19 breach of contract or whatever it is, a preponderance of
20 the evidence, or the greater weight of the evidence,
21 simply means they have to tip those scales, even if it's
22 just a little bit in their favor, and they have met the
23 burden of proof, and the plaintiff would be entitled to a
24 verdict. If you imagine the scales to still be even, or
25 maybe you think they tip in favor of the defendant, they

1 haven't met the burden of proof, and the defendant is
2 entitled to a verdict in a civil case.

3 In a criminal case, though, it's a much
4 higher burden of proof on the State than it is in a civil
5 case for a plaintiff. So you have those same set of
6 scales. You have the State who has alleged the defendant
7 has committed a crime, well, those scales have to tip
8 quit a bit in order to meet the burden of proof beyond a
9 reasonable doubt. Again, they don't have to prove it
10 beyond every doubt whatsoever, every conceivable outcome
11 that you can think of, but you do have to be firmly
12 convinced of the guilt of the defendant before you can
13 render a verdict of guilty. So the scales have to be
14 tipped quite a bit more than they do in a civil case, and
15 if you don't believe that those scales have been tipped,
16 again, it is your duty under the oath that you took to
17 find the defendant not guilty.

18 So we have roles in this trial, all of us do,
19 that are here. You're the jury and I'm the judge. She's
20 the court reporter. You got the lawyers; you got
21 spectators; that's my law clerk; clerk of court; bailiff,
22 everybody has got a job in the room. Sometimes some of
23 the spectators are just here because they're interested,
24 but sometimes you got spectators because they, you know,
25 might want to watch a trial, just for instance, but

1 usually everybody that's here has a reason to be here,
2 and you have a reason and I have a reason.

3 We're both considered judges throughout this
4 week. I'm the trial judge, and I have basically two
5 jobs. One is to preside over the trial and make sure
6 that both sides get a fair trial. I don't really have an
7 interest in the outcome of the case. I don't know the
8 defendant. I don't know anything about the case all that
9 much, and it's not my role to determine whether or not
10 the defendant is found guilty or not guilty. That is
11 solely your job.

12 You are the judges of the facts, all right?
13 There is a dispute of facts in this case; otherwise, we
14 probably wouldn't be here. It's up to you to decide how
15 to resolve factual disputes, and you do that by
16 considering whatever the evidence is, and the evidence in
17 this case, and in any case, comes in through one of
18 several means: Usually it's through people that get put
19 on the witness stand, they're placed under oath, and then
20 they tell you what they heard, they saw, they felt, they
21 touched, they smelt, all right? We don't usually let
22 people come in and give their opinions about things.
23 They just are telling you what they observed, that sort
24 of thing. That's one way evidence comes in.

25 Sometimes they're allowed to show photographs

1 or documents or other physical items. Those are things
2 that are considered to be evidence. So if there's a
3 factual dispute among, say, what one person said versus
4 what another person said, or maybe there's a photograph
5 and somebody says, oh, that's a particular person and I
6 can identify them, you might say that, huh, doesn't look
7 so good, maybe not, that's totally up to you, and I don't
8 have a thing to say about that. That's totally within
9 your discretion.

10 What my job -- the second part of my job,
11 though, is to rule on things like the admissibility of
12 evidence. So sometimes you may get somebody ask a
13 witness a question and the other lawyer may stand up and
14 say objection, which is kind of our code word for saying,
15 Judge, you need to make a ruling on whether or not it's
16 proper for the jury to hear what this witness is going to
17 say or they can see this photograph, that sort of thing.

18 That's my job to determine whether or not
19 it's proper for you to hear it, and we have rules of
20 evidence, and sometimes I can make those rulings simply
21 based on what I've picked up along the way about this
22 trial and what I know the objection to be because they'll
23 state, like, hearsay or something like that, and I can
24 rule, you know, either sustained or overruled and let you
25 decide whether or not to see it.

1 Sometimes I just ask the lawyers to come up
2 and just out of earshot tell me a little bit about what
3 the objection is because it doesn't really serve a
4 purpose to let you hear all the arguments about something
5 and then decide, well, they can't hear that when you've
6 already heard everything about it, so I just do that out
7 of earshot, if possible. Sometimes I have to send you
8 out back into the jury room so I can actually hear what
9 the witness was getting ready to say before I allowed
10 them to say it. All right?

11 That's part of my job as the trial judge, and
12 the reason that we do that is because we have to have
13 this trial conducted under our rules of procedure as well
14 as our rules of evidence, and if we ever have, you know,
15 an outcome in which one of the sides wants to appeal,
16 then they do that based on errors that I might make
17 during the trial. It's very rare that an appeal is
18 successful based upon the amount of factual evidence to
19 support a decision, because the appellate courts are very
20 deferential to juries and so if there is any basis at all
21 in the record for a factual determination by a jury, they
22 defer to the jury, but they might say, you know what, the
23 judge shouldn't have let them hear that; or they might
24 have said, you know what, the judge should have let them
25 hear that; or they might say -- well, you know, at the

1 end of the trial, I tell you -- I'm charging you on what
2 the law is, well, the judge was just incorrect on what he
3 said the law is on this kind of case.

4 So those are on me, and nobody wants to do
5 this twice, so that's why I send them out sometimes, send
6 y'all out sometimes, so I can hear that and try the best
7 that we humanly can so we only end up doing this one
8 time, all right? So we're not trying to hide anything
9 from you. We're just trying to do it correctly, and, you
10 know, human beings, what they are, you know, we just do
11 the best we can. That's really all we can do. So don't
12 hold it against one of the parties when they say
13 objection. They're just trying to do their job, and I'm
14 just trying to do my job. Okay?

15 Now, once we start a trial here in a minute
16 when I finish, there's several things to the trial, and
17 the first phase of a trial is called opening statements.
18 And the opening statements are the lawyers are going to
19 get up and give you a brief overview of what this case is
20 about from their perspective. I call it the Reader's
21 Digest condensed version of the case, and I keep saying
22 to myself I have to come up with a better thing to call
23 it because as we get older, the younger people, I don't
24 think, even know what a Reader's Digest condensed version
25 of a book is, and I'm not even sure if they still make

1 Reader's Digest condensed versions of books. I'll be
2 honest with you, the only time I ever see them is, like,
3 if you go to somebody's mountain house and somebody's got
4 old copies of Reader's Digest condensed books up there.
5 I don't even know if they do that anymore.

6 But, anyway, they're just giving you a little
7 overview of the case. Here's what's important to
8 remember: The lawyers are not witnesses. They aren't
9 allowed to testify, and what they say should not be
10 considered by you as evidence. Again, evidence is people
11 getting up on the witness stand, telling you what they
12 heard, saw, touched, felt, smelt; documents, photographs,
13 any tangible items. Those things are evidence. What the
14 lawyers are saying is not evidence.

15 It never is considered evidence, so when you
16 are listening to a lawyer during the opening statements
17 or during the course of the trial the lawyers getting up
18 and asking a question of a witness, the question is not
19 considered evidence, but the answer to the question by
20 the witness should be considered evidence. Okay? So
21 keep that in mind because, you know, we tend to fall into
22 habits, and we might consider what the lawyers to have
23 said to be evidence. What they say is not evidence and
24 shouldn't be considered by you as evidence.

25 All right? So the lawyers will give a little

1 five-minute overview of the case, and then we'll go right
2 into presenting the case to you. The State has the
3 burden of proof, and so the State gets to put their
4 evidence up first. They call the witnesses first; they
5 ask questions first. Now, when a side calls a witness,
6 that's called direct examination when they ask their
7 questions first. All right? But the other side will
8 then have the opportunity to ask questions, and that's
9 called cross-examination.

10 So you've heard that before, I'm sure. So I
11 usually have direct examination by the attorneys who call
12 the witness, cross-examination by the other side, and
13 then I allow one followup round, so that's redirect and
14 recross. So we have direct, cross, redirect, recross;
15 then we move on to the next witness. All right?

16 So once the State calls all of their
17 witnesses, puts in all the evidence that they want to,
18 then we move on to the next phase, which the defendant
19 can, if he wishes, put up a defense, testify if he wants
20 to, but, again, I stress to you, he is not required to
21 put up a defense, and he is not required to testify.
22 And, again, I stress strongly if he decides that he does
23 not want to, you are not to hold that against him in any
24 way, and you may not even talk about it during your
25 deliberations. All right?

1 Now, I want you to remember, because it's
2 important and it sounds so simplistic, but it's a lot
3 harder to do than you think it is: Keep an open mind.
4 It's only human nature that when you hear something the
5 first time you get a first impression. It might be a
6 good first impression; it might be a bad first
7 impression, but first impressions are just that: They're
8 not always how we ultimately decide on something.

9 And y'all have all been here long enough.
10 You're all adults. You're all over 18. You've had life
11 experiences, and sometimes you hear things and it makes a
12 first impression, and then you hear more, and you go, oh,
13 you know what? I see a different side now, and that's
14 the way we present trials.

15 You're going to hear one witness first. One
16 side asks questions first, but then you're going to hear
17 cross-examination and redirect and recross, and then
18 we're going to hear other witnesses. So if you make up
19 your mind about something early on, it really makes it
20 hard then to keep an open mind towards something that
21 might change your mind later on.

22 So that really sounds kind of simple, but
23 it's hard to do, but I want you to think about it, and
24 it's one of the reasons why every time we take a break
25 for either like going to the restroom or lunch or break

1 for the day I say don't begin your deliberations or
2 discussions about the case because if you start making
3 decisions and talking about it, even if you go -- you
4 know, you might walk into the jury room after you hear a
5 witness, and somebody might go, I don't believe a word
6 that guy had to say.

7 All right? Well, that's going to make an
8 impression on somebody. So don't even talk about what
9 you think about witnesses along the way. Don't talk
10 about decisions about what the outcome of the case ought
11 to be along the way. When you go home at night -- I
12 mean, it's human nature you're probably going to think
13 about it, but don't form an opinion, because; one, you
14 might hear something that might change your mind; and,
15 two, until the end of the trial, I haven't told you what
16 the law is that applies to this case, so you really can't
17 begin deciding, oh, well, I think he's guilty, because
18 you don't know what the elements of the crime are. All
19 right? So that's two things to think about.

20 Now, we have the flow of the trial where you
21 hear all the evidence. Once you've heard all the
22 evidence, then we have closing statements in which the
23 lawyers then get up review the evidence that you've
24 heard, give -- they also know at that point what I'm
25 going to charge you the law is, and they will attempt to

1 persuade you to render a verdict on their client's
2 behalf, and when they're done with their closing
3 arguments, then I will charge you on the law, and then
4 you will retire to consider what your verdict is. Okay?

5 So that's the order that we go. We don't
6 move along very well if I just stand up here and talk all
7 day long, so I'm now going to turn it over to the lawyers
8 to begin with their opening statements.

9 So, Mr. Solicitor, if you're ready, you may
10 begin.

11 MR. WARING: Thank you, Your Honor. May it
12 please the Court: Good morning, everybody.

13 Removing the mask: That's what this case is
14 about. Throughout the course of this trial, an armed
15 robber who went to the bank on Sumar Street in West
16 Ashley robbed with a gun the teller who is sitting over
17 there in the yellow shirt, robbed her at gunpoint. That
18 individual is going to transform before your very eyes
19 throughout the course of this trial from an abstract
20 concept, from a faceless individual, into the defendant,
21 Silvester Scott. I want to tell you a little bit about
22 the case.

23 On March 4, 2015, sometime around 1:00 in the
24 afternoon, the defendant went over to his buddy's motel
25 room at the Best Western in Charleston. He had two

1 buddies there, two guys: Anthony Holsberg and Alonzo
2 Green. Now, the defendant went over there because these
3 guys wanted him to go get them some heroin. So he came
4 over. He was wearing a red and white striped shirt, but
5 rather than using his own vehicle to go get these drugs,
6 he wanted to swap cars with Anthony Holsberg, and at that
7 time, Mr. Holsberg was driving a silver or Dodge gray
8 Charger, and you're going to hear about that. That
9 vehicle has after-market additions to it. For example:
10 It had a black top, some fancy rims; it also had tinted
11 windows, a spoiler on the, back things of that nature.
12 You're going to hear all about that.

13 So he took that vehicle. Fast forward a few
14 hours, approximately 3:15 p.m. in the afternoon, and an
15 individual can be seen driving a similar such type
16 vehicle, again, a gray or silver Dodge Charger-type
17 vehicle with aftermarket additions, flat top, fancy rims,
18 pulls into the parking lot of the Family Dollar on Rivers
19 Avenue. The individual gets out and walks into that
20 Family Dollar location wearing dark blue coveralls
21 covering his arms and legs, and wearing a red and white
22 striped shirt similar in nature to what the defendant was
23 wearing at his buddy's motel room.

24 That individual purchased a sixpack of dust
25 masks and received a receipt for it. It's time stamped

1 approximately 3:17 p.m. that afternoon, and that
2 individual then leaves the Family Dollar. Fast forward
3 approximately 15 minutes later, around 3:30 in the
4 afternoon, across town, over the Cosgrove Bridge and at
5 the First Palmetto Bank, a similar such type vehicle,
6 again, gray-ish, silver Dodge Charger vehicle,
7 aftermarket additions, black top, spoiler on the back,
8 fancy rims, et cetera, pulls into the parking lot of that
9 First Palmetto Bank on Sumar Street.

10 The individual then walks into that bank
11 wearing dark blue coveralls covering his arms and legs,
12 and a distinct red and white striped shirt similar to the
13 one the defendant was wearing over at his buddy's house.
14 Now, the robber walked in wearing Sperry boat-type shoes,
15 gloves on his hands, dust mask over his face, clear
16 glasses on, silver metallic circular type watch, and he's
17 got a silver gun.

18 He walks up to the victim who's sitting over
19 there in the yellow, points the gun at her, demands
20 money. He's waving the gun around, and he's walking
21 around, and you're going to see this video. All this is
22 on video. Takes the money and then leaves. As he's
23 leaving, the victim, Jasmine Jenkins, looks out the
24 window and sees a similar such vehicle peeling out of the
25 parking lot. She called 911 almost immediately, and so

1 around that time the police are looking for that type of
2 vehicle.

3 Later that night, they see such a vehicle
4 that sounds similar in description to that in the parking
5 lot of the Quality Inn motel, different motel, and it's
6 determined that two individuals who are associated with
7 that vehicle turn out to be the two buddies that the
8 defendant had been hanging out with earlier, and it was
9 determined that the owner of the vehicle was Anthony
10 Holsberg, and Alonzo Green, the other individual, has
11 known the defendant for over 20 years and can identify
12 him by sight and by name.

13 Now, the police did a search warrant on that
14 vehicle, and that's when things started getting
15 interesting. Inside the vehicle, a Family Dollar bag was
16 found. Inside of that Family Dollar bag, there was a
17 receipt for the purchase of a sixpack of dust masks, and,
18 in addition, there was the actual sixpack of the dust
19 mask packing, minus a dust mask. So we got that in
20 there.

21 Now, the defendant's house was also searched
22 on English Street in North Charleston, and at that house,
23 there was some more interesting things found as well.
24 There was a distinct red and white striped shirt that
25 appeared to be similar to what the individual was wearing

1 in the Family Dollar video who bought the dust masks and
2 similar to what the individual -- robber who robbed the
3 bank was wearing, so you got the red and white striped
4 shirt. You had some Sperry shoes or boat shoes that were
5 similar in nature to what the defendant was described --
6 the robber was described as wearing in the bank video.

7 There was also some other interesting things.
8 There was a Family Dollar bag indicating that the
9 defendant had purchased items before at the Family
10 Dollar. Now, he was apprehended a couple days later, and
11 on the defendant there was about \$635 in cash and there
12 were two phones found.

13 Now, the police gave a search warrant for his
14 cellphone records, and that's when things really got
15 interesting because cell tower mapping, which is
16 essentially technology that can take somebody's cellphone
17 number and map it out and determine where you are,
18 location-wise, based on which phone calls throughout the
19 day.

20 That cellphone tower mapping pinpointed the
21 defendant's cellphone at specific locations throughout
22 Charleston County at specific times, specifically Best
23 Western before the robbery. Boom. His cellphone is in
24 that area. Family Dollar, around 3:17, boom. His
25 cellphone is in that area. Robbery location: What am I

1 going to say next? Boom. He's in that area, and then,
2 sure enough, later that day, he's back at Best Western in
3 that area, around the area of the Best Western.

4 Due to the evidence against him, the
5 defendant was charged with two crimes: Armed robbery and
6 possession of a weapon during the commission of a violent
7 crime. As the judge has mentioned, it's our burden to
8 prove the defendant guilty beyond a reasonable doubt,
9 firmly convince you of his guilt. For armed robbery that
10 means we have to prove he took and carried away personal
11 property of another through the use of force, threats, or
12 intimidation and with the intent to permanently deprive
13 them of that property while armed with a deadly weapon.

14 For the gun charge, we have to prove he
15 possessed a deadly weapon, such as a gun, during the
16 commission of a violent crime, such as armed robbery.
17 I'm going to challenge you right now to focus on all this
18 evidence that comes out like the judge said, what comes
19 out up on the stand. That's the evidence. I'm going to
20 challenge you to focus on that evidence as it applies to
21 the elements of these charges, and I think if you do
22 that, you'll determine that we've carried our burden,
23 find the defendant guilty. You'll determine that we have
24 removed the mask and identified him as the robber, and
25 you'll find him guilty.

1 THE COURT: All right. Mr. Kozelski?

2 MR. KOZELSKI: Thank you, Your Honor. May it
3 please the Court:

4 I wish I could stand up here before you and
5 tell you that Silvester has lived a blameless life: He's
6 never broken the law, he's never made a mistake, but I'm
7 not going to because I can't do that. The fact is that
8 Silvester, like many Americans, has struggled with
9 addiction, and part of that struggle involves finding and
10 selling drugs to other people that are caught in this
11 vicious cycle.

12 As part of this trial, you're going to get a
13 brief glimpse into heroin sales and addiction. It's a
14 national epidemic that America is dealing with, and
15 Silvester is just one of the millions caught up in the
16 middle of it, but I'm asking you to not let all this talk
17 about drug use and drug addiction distract you from what
18 you're really here to do, which is to be the judges of
19 the facts and to view the evidence objectively.

20 You're not going to hear about any sort of
21 forensic evidence like fingerprints or DNA anywhere, not
22 at the bank, not in Anthony Holsberg's car, not in Alonzo
23 Green's hotel room, nowhere. You're not going to hear
24 Ms. Jenkins from the bank get up there on the stand and
25 point the finger at Silvester and say that's the guy who

1 did it. You're not going to see a gun or any blue
2 jumpsuit that was used in the robbery.

3 Silvester cooperated fully with Detective
4 Brown. He sat in that interview room and talked with her
5 for hours about using drugs and selling drugs, but he
6 adamantly denied being involved in any type of a bank
7 robbery. Drug dealers make a lot of easy money. Alonzo
8 Green will attest to that, and Silvester had his own job.
9 There's no reason for him to rob a bank. The evidence
10 that the State is going to present you is going to try to
11 make it look like he did rob a bank, and that's because
12 Silvester is a problem to them, and this is a solution to
13 that problem.

14 Now, a majority of the evidence that you're
15 going to hear from the State doesn't come from 2015 or
16 2016 or 2017 or '18. No. What you're going to hear and
17 the majority of the evidence you're going to hear was
18 created by the State last month, in February. After four
19 years of anxiously waiting and demanding for a trial, the
20 State is manufacturing evidence in the 11th hour to
21 convict an innocent man because he won't plead guilty to
22 something he had no part in, and we know that Silvester
23 had no part in this because you're going to hear from an
24 alibi witness who said Silvester was with her, in North
25 Charleston, at the time they're saying he did the

1 robbery.

2 You're going to hear from Harriet Cordero who
3 says that shortly -- who spoke to my investigator shortly
4 after Silvester was arrested and said that Silvester
5 couldn't have robbed the First Palmetto Bank in West
6 Ashley on March 4, 2005, at the time they're saying he
7 did because she was with him outside of his house because
8 he was helping her fix her moped when it broke down after
9 she was coming home from her Bible study. This woman has
10 absolutely no reason to lie for Silvester, and after four
11 years, she remembers it like it was yesterday.

12 Now, I'm not saying that Silvester didn't
13 have dealings with Alonzo Green on March 4, 2015. He
14 dealt with Alonzo plenty of times over the time they had
15 known each other, and, frankly, I don't know what to make
16 of Alonzo Green, the State's star witness. Alonzo Green
17 is going to get up there on the stand, and part of what
18 he is going to tell you is going to be the truth, and
19 part of what he tells you is going to be a lie, and it's
20 up to you to determine what you want to believe.

21 You can believe all of what Alonzo says, you
22 can believe some of what Alonzo says, or you can believe
23 nothing at all of what Alonzo Green says. Alonzo has a
24 very checkered past with the Charleston Police Department
25 and the Ninth Circuit Solicitor's Office, and he surely

1 doesn't want to mess up his parole and get sent back to
2 prison, so when he gets up there on the stand, he's
3 probably going to tell you that on March 4, 2019, he
4 called Silvester to try and help him find some drugs
5 because the area was dry.

6 After that, Alonzo's story keeps changing and
7 changing and changing. He's going to tell you that he
8 was high, as he always is, at that time and that
9 Silvester asked to borrow the car, and then later he says
10 that Silvester was with another man named William
11 Drayton, a man he never mentions to the police, and then
12 he says that this man, William Drayton, later had the car
13 when Silvester wasn't around.

14 I don't know exactly what Alonzo Green's
15 going to tell you, but what I will tell you he's not
16 going to tell you is that Silvester robbed that bank. He
17 may know more than what he knows, but he's not going to
18 tell you Silvester robbed that bank. Now, did Alonzo rob
19 that bank? It's possible. He matches the description.
20 When the police first found him, he had thousands of
21 dollars in his pocket. He had a gun in his hotel room
22 with the suspected getaway car parked right out in front
23 of it.

24 He even told Detective Brown that if I would
25 have been caught in that car, I would be going to prison

1 for the rest of my life, but they never treat Alonzo like
2 a suspect. They didn't treat him as a suspect even as he
3 destroyed evidence right in front of their face. Quite
4 frankly, it's shameful.

5 Now, there is no doubt that the First
6 Palmetto Savings Bank in West Ashley was robbed by a
7 masked gunman who was wearing a blue jumpsuit. You can
8 see on the surveillance video that gunman pointing a gun
9 at Jasmine Jenkins and Mitchell Burns who were working at
10 the bank that day. Nobody deserves to go through that
11 type of traumatic experience. They are true victims, and
12 I'm sure this experience has changed their lives, but
13 this jury box is not the place for your sympathy.

14 We picked each of you because we believed
15 that you could put your feelings to the side and become
16 the judges of the facts. How each and every one of you
17 interpret those facts is important. Do not create
18 another tragedy by convicting an innocent man based on
19 him being involved in this world of drug addiction.
20 Armed robbery is one of the most serious crimes under our
21 laws.

22 This is without a doubt the most important
23 week of Silvester's life. Each and every one of you
24 holds his fate in your hands, so each and every one of
25 your opinions matter. As he sits before you today,

1 Silvester is an innocent man, and as the judge just
2 instructed you, he remains an innocent man throughout the
3 entirety of this trial until you hear evidence that
4 leaves you firmly convinced beyond a reasonable doubt in
5 your mind that he robbed that bank.

6 You're not going to hear that evidence,
7 ladies and gentlemen. You're not going to hear it today;
8 you're not going to hear it tomorrow; you're not going to
9 hear it ever because Silvester did not rob that bank, and
10 that's why, at the end of this trial, I'm going to come
11 right back in front of you, and I'm going to ask you to
12 find him not guilty.

13 THE COURT: All right. Mr. Solicitor, call
14 your first witness.

15 MR. OSBORNE: State calls Officer Melissa
16 Aubrey.

17 MELISSA AUBREY
18 having been called as a witness for the State at
19 10:18 a.m., was sworn and testified as follows:

20 DIRECT EXAMINATION BY MR. OSBORNE:

21 Q. Officer Aubrey, first question, did you
22 manufacture any evidence in this case?

23 A. No.

24 Q. Did we ever ask you to manufacture evidence in
25 this case and you just not do it?

1 A. No.

2 Q. Okay. Where do you work?

3 A. City of Charleston Police Department.

4 Q. All right. How long have you worked there?

5 A. Six years.

6 Q. And what have been some of the various assignments
7 that you've had, or held while you've been there?

8 A. Team 4 patrol, Team 5 patrol, and I currently work
9 as a school security response team member on Team 6.

10 Q. What are your duties there, just out of curiosity,
11 school response?

12 A. So we have clusters of schools that we
13 periodically go to each and every day, make sure the
14 school security is up to par.

15 Q. And that's like an auxiliary job as well --

16 A. No.

17 Q. That's your sole responsibility?

18 A. No, that's my sole responsibility.

19 Q. Let's go back to March the 4th of 2014. Were you
20 working that day?

21 A. Yes.

22 Q. And what was your assignment that day?

23 A. Team 4 patrol.

24 Q. Team 4 is West Ashley?

25 A. Yes, sir.

1 Q. Did you have the occasion to respond to a bank
2 robbery at 5 Sumar?

3 A. Yes.

4 Q. And what was the name of that bank?

5 A. First Palmetto Bank.

6 Q. Is that in the city and county of Charleston?

7 A. Yes, it is.

8 Q. Do you know about what time you first got the
9 call?

10 A. I was dispatched approximately 3:30 p.m.

11 Q. All right. Tell the jury what happened when you
12 got there.

13 A. So when I first arrived on scene, I was the first
14 responding officer on the location. I went into the bank
15 to make sure that everybody was okay and to start
16 gathering additional information for the other Team 4
17 responding officers.

18 Q. Okay. Did you have the occasion to meet with a
19 Ms. Jasmine Jenkins?

20 A. Yes.

21 Q. And what was her -- well, what was her role or
22 occupation in this investigation?

23 A. She was the victim. She was a bank teller at the
24 time.

25 Q. Okay. And did other officers respond to the scene

1 as well?

2 A. Yes. Additional Team 4 officers arrived on to the
3 scene as well as CPD crime scene, central investigations,
4 and then several staff, command staff members, responded
5 to the scene.

6 Q. Okay. And when crime scene responds to the scene,
7 typically they take photographs of the area?

8 A. Yes.

9 Q. I'm showing you what's been marked as State's
10 Exhibits 1 through 8. Will you take a look at those and
11 tell me if you recognize them.

12 A. Yes. Yes, I recognize these.

13 Q. What are they?

14 A. They are photos of the First Palmetto Bank.

15 Q. And do they fairly and accurately depict the way
16 the bank looked on the day of the robbery?

17 A. Yes.

18 MR. OSBORNE: Your Honor, at this time we
19 would seek to admit State's 1 through 8 into evidence, I
20 believe without objection.

21 MS. KNOX: No objection, Your Honor.

22 THE COURT: Admitted.

23 (State's Exhibit Nos. 1 through 8 were marked
24 for identification and admitted into
25 evidence.)

1 BY MR. OSBORNE:

2 Q. We're just going to go through them briefly.

3 Okay.

4 Starting with State's 1, tell the jury what we're
5 looking at here.

6 A. That is the front entrance to the bank.

7 Q. Okay. State's 2?

8 A. So it's the front entrance. The driveway curves
9 around, so this is just from the side where the ATM is
10 towards the front entrance.

11 Q. Okay. And for those who aren't familiar with the
12 bank -- and you can write on that. That's a touch screen
13 in front of you. Do you know where Sumar is located in
14 reference to this?

15 A. Yes. So Sumar is going to be back this direction.
16 This street right here is -- it's  --

17 Q. Is it Old Towne Road?

18 A. Yes. Thank you. It is Old Towne Road. This is
19 Old Towne, and Sumar is actually at the rear of the bank,
20 so to the left.

21 Q. Okay. If you press that arrow up there, you see
22 that, and you can clear it right there.

23 A. Okay.

24 Q. Showing you State's 3, another photo of the front
25 door?

1 A. Yes.

2 Q. I believe -- State's 4, are we inside the bank
3 now?

4 A. Yes. So this is a little bit in front of the
5 center of the lobby facing out towards the entrance.

6 Q. Okay. State's 5?

7 A. So this is going to be farther back into the
8 lobby. That's the front entrance. Offices are off to
9 the left, and the teller areas are to the right.

10 Q. All right. State's 6?

11 A. There is the teller areas.

12 Q. State's 7?

13 A. Again, just the teller areas, and this is the rear
14 double doors of the bank.

15 Q. Okay. And State's 8.

16 A. And that is the victim, Jasmine Jenkins, actually
17 teller station.

18 Q. And without getting into anything anyone
19 specifically told you when you cleared up from the scene,
20 did you have a suspect vehicle that you were looking for?

21 A. Yes.

22 Q. And what was that?

23 A. A silver Dodge Charger.

24 MR. OSBORNE: No further questions.

25 THE COURT: Cross?

1 CROSS-EXAMINATION BY MS. KNOX:

2 Q. Officer Aubrey, the robber was no longer on the
3 scene when you arrived; is that correct?

4 A. No.

5 Q. And you never saw Mr. Scott on scene?

6 A. No.

7 Q. And the Dodge Charger was not on scene when you
8 arrived either?

9 A. No.

10 MS. KNOX: I have no further questions.
11 Thank you.

12 THE COURT: Redirect?

13 MR. OSBORNE: No, sir.

14 THE COURT: You may step down.

15 MR. OSBORNE: We have no objection to the
16 witness being released.

17 MR. KOZELSKI: Nor do we.

18 THE COURT: You're free to go. Thank you.
19 Call your next witness.

20 MR. OSBORNE: State calls Tonia Mallette.

21 TONIA MALLETT

22 having been called as a witness for the State at
23 10:26 a.m., was sworn and testified as follows:

24 DIRECT EXAMINATION BY MR. OSBORNE:

25 Q. Ms. Mallette, have you or have you been asked to

1 manufacture any evidence in this case?

2 A. No.

3 Q. Where do you work?

4 A. Charleston County consolidated 911 center.

5 Q. How long have you worked there?

6 A. Twenty-eight and a half years.

7 Q. What's your title?

8 A. Current title is analyst.

9 Q. All right. Explain to the jury what you do as an
10 analyst.

11 A. As an analyst, I serve as records custodian. That
12 means I am responsible for the keeping of 911 calls, tag
13 reports, and radio audio. I also serve as quality
14 assurance assistant. I also handle complaints and other
15 duties as assigned.

16 Q. All right. In your capacity with consolidated
17 dispatch, do you sometimes receive subpoenas from law
18 enforcement agencies, such as my office?

19 A. Yes, I do.

20 Q. What are some of the things that are requested via
21 subpoena?

22 A. Some of the things requested from the solicitor's
23 office, or the public defenders, could be the 911 audio;
24 could be the radio audio, which is the transmission
25 between the dispatchers and the officers; or it could be

1 the CAD report.

2 Q. Okay. Let's start with the 911 call and the radio
3 transmissions.

4 A. Sure.

5 Q. So 911 calls, is it that any time someone calls
6 911 those calls are always recorded or are some recorded
7 and some aren't?

8 A. 911 calls, all calls to -- all calls to the
9 consolidated center are recorded; 911, as well as
10 administrative calls.

11 Q. And are those calls recorded at or near the time
12 the call is actually made?

13 A. Yes.

14 Q. And are they kept in the normal course of business
15 for consolidated dispatch?

16 A. Yes, they are.

17 Q. And you mentioned radio transmissions. Are we
18 talking about the police officers' transmissions over the
19 radio?

20 A. Yes.

21 Q. And are those captured as well?

22 A. Yes, they are.

23 MR. OSBORNE: Your Honor, may I approach?

24 THE COURT: Yes.

25 BY MR. OSBORNE:

1 Q. I'm showing you State's 9 and State's 10. Can you
2 take a look at those and tell me if you recognize those.

3 A. Yes, I can.

4 Q. All right. What is State's 9?

5 A. State's 9 is the 911 call, CAD report.

6 Q. And with the radio transmissions, I think?

7 A. Yes, I'm sorry. And the radio audio as well.

8 Q. That's fine. And State's 10 just simply has the
9 911 call without the radio transmissions?

10 A. That is correct.

11 Q. How do you know that's what's on those CDs?

12 A. My initials, TM, are noted on both CDs.

13 MR. OSBORNE: At this time I would seek to
14 admit State's 9 into evidence, I think without objection.

15 MR. WARING: 10.

16 MS. KNOX: No objection.

17 THE COURT: Admitted.

18 (State's Exhibits 9 and 10 were marked for
19 identification and admitted into evidence.)

20 BY MR. OSBORNE:

21 Q. I'm showing you State's 11, and you mentioned CAD
22 reports earlier?

23 A. This is a CAD report, also known as the incident
24 detail report.

25 Q. Okay. And, just generally speaking, explain to

1 the jury, what is a CAD report?

2 A. This is a report generated from the dispatch
3 center. It starts between the call taker and the caller.
4 All information such as the location of where the call
5 came from, the caller's name, the incident location,
6 officers that responded to the scene; some of the
7 information consists of audio between the dispatcher and
8 the officer.

9 Q. All the information --

10 A. All the information related to the call.

11 Q. And is that information recorded at or near the
12 time of the incident?

13 A. Yes, it is.

14 Q. And do you or consolidated dispatch maintain those
15 records in the normal course of business?

16 A. Yes, we do.

17 MR. OSBORNE: At this time we seek to admit
18 State's 11.

19 MS. KNOX: No objection.

20 THE COURT: Admitted.

21 (State's Exhibit 11 was marked for
22 identification and admitted into evidence.)

23 BY MR. OSBORNE:

24 Q. I just want to draw your attention to a couple
25 things here. Okay. What was the nature of this call?

1 A. It was a robbery to -- robbery business with a
2 weapon.

3 Q. And what was the location?

4 A. The location was 5 Sumar Street.

5 Q. And can you tell on this page or do you need to
6 see the next page the time the call was made, the 911
7 call was made?

8 A. I don't see it here on this page. The telephone
9 was answered at 1532.

10 Q. Okay. 3:32 p.m.?

11 A. 3:32 p.m.

12 MR. OSBORNE: No further questions.

13 THE COURT: Cross?

14 MS. KNOX: Thank you, Your Honor.

15 CROSS-EXAMINATION BY MS. KNOX:

16 Q. Ms. Mallette, you're not the dispatcher in these
17 recordings; is that correct?

18 A. I am not the dispatcher.

19 Q. And you have no personal knowledge of the events
20 recorded?

21 A. No, I don't.

22 MS. KNOX: Thank you. I don't have any
23 further questions.

24 THE COURT: Any redirect, Mr. Osborne?

25 MR. OSBORNE: Oh, no, sir.

1 THE COURT: You may step down.

2 MR. OSBORNE: May she be released as well?

3 THE COURT: She may. Next witness.

4 MR. WARING: Thank you, Your Honor. The
5 State calls Jasmine Jenkins.

6 JASMINE JENKINS

7 having been called as a witness for the State at
8 10:33 a.m., was sworn and testified as follows:

9 DIRECT EXAMINATION BY MR. WARING:

10 Q. Good morning, Ms. Jenkins.

11 A. Good morning.

12 Q. How are we doing today?

13 A. A little nervous.

14 Q. Ms. Jenkins, can you tell the jury, have you
15 manufactured, cooked up, made up any evidence in this
16 case?

17 A. No.

18 Q. Now, please tell the jury where you live.

19 A. I live in Tennessee right now.

20 Q. So you're from -- or you're living in Tennessee.
21 How did you make it over here for this trial?

22 A. I drove.

23 Q. All right. Do you currently work?

24 A. Yes.

25 Q. And where do you work?

1 A. I'm a mental health therapist.

2 Q. And is that in Tennessee?

3 A. Yes.

4 Q. What about back in March 2015? Were you working
5 then?

6 A. Yes.

7 Q. And where were you working at that time?

8 A. First Palmetto Bank.

9 Q. Can you tell the jury where that is?

10 A. It's 5 Sumar Street in Charleston.

11 Q. Is that in Charleston County, to your knowledge?

12 A. Yes.

13 Q. At that time, what was your role?

14 A. I was a teller.

15 Q. And perhaps for individuals that don't go to the
16 bank very often, what does the teller do?

17 A. I handle any type of cash transactions and
18 disputes, closing and opening accounts.

19 Q. Are the tellers at the First Palmetto Bank located
20 in the specific location physically?

21 A. Behind the teller line.

22 Q. And were you working back on March 4, 2015?

23 A. Yes.

24 Q. Can you tell us what happened that day.

25 A. I was sitting at my teller station when the robber

1 came in with a gun pointed straight at the teller line.
2 He specifically came straight to me because I was the
3 only one back there, and he specifically asked me for all
4 the money that I had. He asked for only \$50s and 100s
5 and did not want any bait money. Then he proceeded to
6 ask me for all of the money on the other teller station
7 and asked for the money behind the safe in the vault.

8 Q. Can you tell the jury what this individual looked
9 like, description-wise?

10 A. He was African American. He had on a blue
11 jumpsuit with white gloves, clear glasses, and he had on
12 a painter's mask that covered his nose and his mouth.

13 Q. Was he wearing shoes?

14 A. Yeah. They were Sperry-like shoes. They were
15 brown.

16 Q. And so for folks that don't know what Sperry shoes
17 are, what are Sperry shoes?

18 A. They are boat-looking shoes.

19 Q. What about -- do you recall approximately what his
20 height and weight were?

21 A. He was about six foot and I would estimate around
22 180 pounds.

23 Q. What about age?

24 A. I would say late 30's, maybe early 40's.

25 Q. Okay. Do you recall anything about his voice?

1 A. It was raspy.

2 Q. What about the gun? Do you remember what the gun
3 looked like?

4 A. It was a silver handgun.

5 Q. Now, you mentioned that he demanded money. Did
6 you give him any money?

7 A. I gave him the money that was in my top drawer.

8 Q. Okay. Do you recall about how much that was?

9 A. I would have estimated around a little over 1,000
10 back then.

11 Q. Was it, in fact, bait money?

12 A. No. I didn't give him any bait money.

13 Q. Was anybody else in the bank at that time?

14 A. My coworker Mitchell Burns.

15 Q. And what was going on with him during this
16 robbery?

17 A. He was sitting in one of the offices, and the
18 robber kind of walked his way over there and specifically
19 told Mitchell not to touch anything, and then he walked
20 back toward me.

21 Q. While this is all going on, is the robber pointing
22 the gun at both of y'all?

23 A. Yes.

24 Q. About how far away from you was he pointing the
25 gun?

1 A. So if this was the teller line, he was probably
2 right behind this brown wall.

3 Q. Okay. So a few feet about?

4 A. Yes.

5 Q. What happened next?

6 A. He -- after he had asked for all the money behind
7 the teller line, I told him I didn't have any keys for
8 those teller drawers and that I didn't have any keys for
9 anything in the back, and then as he was telling Mitchell
10 to not touch anything, I was able to get a better
11 description of what he had on, and I was filling up the
12 white bag that he had with him to put the money in, and
13 then after he got the money, he left and Mitchell came
14 out and he locked the door and I immediately called 911.

15 Q. All right. Time-wise, approximately how long
16 would you say that the whole incident lasted?

17 A. It felt like an hour, but it was only a couple of
18 minutes.

19 Q. And you mentioned you called 911. Would you say
20 it took you a while or was it right after?

21 A. It was right after.

22 Q. Did you note anything significant after he ran
23 out?

24 A. Yeah, the vehicle, the getaway vehicle.

25 Q. What can you tell us about the vehicle as far as

1 what you remember it looking like?

2 A. It was very distinctive. It was a two-tone car,
3 silver and black, and I remember seeing rims on the car
4 and a spoiler.

5 Q. All right. How long had you worked at the bank?

6 A. Three years.

7 Q. Three years?

8 May I approach the witness, Your Honor?

9 THE COURT: Yes.

10 BY MR. WARING:

11 Q. All right. Ms. Jenkins, I'm going to show you
12 what has been premarked for identification purposes only
13 as State's Exhibits 12 through 35. Would you mind taking
14 a look at those and tell us if you remember that.

15 A. These are photos of the day of the robbery.

16 Q. Okay. And do those photos contain images of the
17 bank where you worked?

18 A. Yes.

19 Q. Do they include you in those photos?

20 A. Yes.

21 Q. What about the disk? What is that?

22 A. This is the 911 call I made -- oh, I'm sorry.
23 This is the bank video. I'm sorry. This is the bank
24 video.

25 Q. Have you had an opportunity to watch that video?

1 A. Yes.

2 Q. Are your initials on that disk?

3 A. Yes.

4 Q. So does Exhibit 12, that disk, fairly and
5 accurately reflect the video from the bank the day of the
6 robbery and do 13 through 35 fairly and accurately depict
7 the still shots from the bank?

8 A. Yes.

9 MR. WARING: The State moves to have Exhibits
10 12 through 35 admitted.

11 MS. KNOX: No objection, Your Honor.

12 THE COURT: Admitted.

13 (State's Exhibits 12-35 were marked for
14 identification and admitted into evidence.)

15 BY MR. WARING:

16 Q. Ms. Jenkins, I'm going to play the video.

17 (Video played.)

18 Due to the spread-out camera orientation, I
19 may pause at certain points in time and talk about what's
20 going on.

21 Ms. Jenkins, this vehicle on the overhead, is
22 that the type of vehicle that you saw leaving the parking
23 lot?

24 A. Yes.

25 Q. And who are we looking at here?

1 A. The robber.

2 Q. All right. What's happening here, Ms. Jenkins?

3 A. He was asking for everything in my drawer.

4 Q. Asking for money?

5 A. Yes.

6 Q. What's going on right now?

7 A. He had noticed Mitchell Burns in the office and
8 was telling Mitchell not to touch anything.

9 Q. And was he pointing the gun at Mitchell too?

10 A. Yes.

11 Q. Is that the gun you were referring to?

12 A. Yes.

13 Q. I'm going to put up a couple still photos since we
14 just looked at the video, ask you some questions. This
15 is State's Exhibit 16. Again, is that the style of
16 vehicle you saw leaving the parking lot?

17 A. Yes.

18 Q. And earlier you had mentioned some physical
19 descriptions of the vehicle. Are those consistent with
20 this vehicle?

21 A. Yes.

22 Q. Now, in this photo, you had mentioned the Sperry
23 shoes. Is that what we're looking at here?

24 A. Yes.

25 Q. All right. What I want to do right now,

1 Ms. Jenkins, is briefly play the 911 call for you. This
2 is State's Exhibit 10.

3 (Audio played.)

4 MR. WARING: Please answer any questions the
5 defense has.

6 THE COURT: Cross?

7 CROSS-EXAMINATION BY MS. KNOX:

8 Q. Ms. Jenkins, the robber was wearing a hat; is that
9 correct, and a painter's mask?

10 A. Yes.

11 Q. He was also wearing safety glasses?

12 A. Clear glasses.

13 Q. You couldn't see much of his face, could you?

14 A. No.

15 Q. You couldn't identify him in a photograph?

16 A. No.

17 Q. You weren't asked to identify him in a photo?

18 A. No.

19 Q. You weren't given any sort of photo lineup?

20 A. No.

21 Q. You gave a written statement to the police when
22 they arrived; is that correct?

23 A. Yes.

24 Q. You didn't mention his age in the written
25 statement, the age of the robber, did you?

1 A. No.

2 Q. You didn't mention his height in the written
3 statement?

4 A. No.

5 Q. Or his weight?

6 A. No.

7 Q. Okay. You didn't mention the robber's age in that
8 911 call that we just heard?

9 A. No.

10 Q. And you didn't mention his height or weight in
11 that 911 call either?

12 A. No.

13 MS. KNOX: I have no further questions.
14 Thank you.

15 THE COURT: Redirect?

16 MR. WARING: Thank you, Your Honor, just
17 briefly.

18 REDIRECT EXAMINATION BY MR. WARING:

19 Q. Ms. Jenkins, all the information Ms. Knox was
20 asking you about, did you provide that information to law
21 enforcement?

22 A. Yes.

23 Q. And at what point did you do that?

24 A. When they were interviewing me.

25 Q. So you did provide it?

1 A. Yes.

2 Q. And, just briefly, again, so the denominations
3 that the individual asked for, can you repeat that again?

4 A. 50s and 100s.

5 MR. WARING: No further questions, Your
6 Honor.

7 THE COURT: Recross?

8 MS. KNOX: Beg the Court's indulgence.

9 RE CROSS-EXAMINATION BY MS. KNOX:

10 Q. I asked you earlier if the police asked you to
11 write a written statement at the scene?

12 A. Yes.

13 Q. And did they ask you to include all relevant
14 information?

15 A. They asked me certain questions, yes.

16 Q. Okay. So they asked you to write a statement, and
17 then they asked you some followup questions?

18 A. Yes.

19 Q. And the information I just asked you about, the
20 height, the weight, that was not in your written
21 statement?

22 A. No.

23 Q. Okay.

24 MS. KNOX: Thank you.

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

1 Thank you.

2 Okay. Why don't we take a ten-minute break
3 while we get ready for the next witness. Stretch your
4 legs, use the restroom. Again, don't begin deliberations
5 or discussions about the case, and we'll see you in about
6 ten minutes.

7 (A recess was taken at 10:54 a.m.)

8 All right. Are you ready?

9 MR. WARING: Yes.

10 THE COURT: Bring the jury back.

11 (The jury came back into the courtroom at
12 11:10 a.m., and the following proceedings
13 were had in the presence of the jury.)

14 Be seated. All right. Call your next
15 witness, Mr. Solicitor.

16 MR. OSBORNE: State calls Officer John
17 Laycock.

18 JOHN LAYCOCK

19 having been called as a witness for the State at
20 11:13 a.m., was sworn and testified as follows:

21 DIRECT EXAMINATION BY MR. OSBORNE:

22 Q. Officer Laycock, have you manufactured or
23 fabricated any evidence in this case?

24 A. No, sir.

25 Q. All right. Where do you work?

1 A. City of Charleston Police Department.

2 Q. And how long have you worked there?

3 A. Since 2010.

4 Q. And what have been some of your various
5 assignments?

6 A. I began in Team 2 for the first six months,
7 patrols, then I went to Team 4, which is West Ashley. I
8 started out in the addiction unit and then moved to the
9 power squad and then the flex unit, which is all those
10 units are like proactive units, so --

11 Q. And you currently work in the entertainment
12 district downtown?

13 A. Yes, sir, Team 9, which is the King Street/Market
14 Street area.

15 Q. You might have to lean into that microphone a
16 little bit so your voice carries. Let's go to March 4th
17 of 2015. What was your assignment then?

18 A. I was part of the power squad.

19 Q. Explain to the jury -- I know you explained to the
20 jury it's a proactive unit. Just elaborate on that a
21 little bit.

22 A. We look at all the BOLOs that come out of the
23 emails and look for wanted parties that come out of
24 BOLOs, wanted parties as far as whatever, child support
25 warrants, whatever comes out, go and do knock-and-talks

1 on the doors, see if they're home; serve warrants, things
2 like that, look for vehicles that have been stolen
3 involved in things, things like that; we also do traffic
4 stops, you know, get put in areas with they're having
5 some crime issues and try to, you know, curb crime that
6 way.

7 Q. Okay. And you said BOLOs. That's just be on the
8 lookout?

9 A. Yes.

10 Q. And flyers?

11 A. Yes, and email also.

12 Q. On that night of March 4, 2015, what were you
13 doing?

14 A. Keeping checks on some of the hotels off Savannah
15 Highway. A couple hotels in that area are kind of our
16 problem or issue areas, so --

17 Q. And did you have a specific assignment, or what
18 were you looking for?

19 A. We were just looking for a dark in color Charger
20 that was involved in possibly a bank robbery earlier
21 because that was one of the most recent BOLOs, so we just
22 hit all the hotels in that area because that's typically
23 where people kind of show up at.

24 Q. Okay. And you said this was in reference to a
25 bank robbery?

1 A. Yes.

2 Q. And do you remember when the bank robbery occurred
3 in reference to you working that night?

4 A. I don't know exactly when the bank robbery
5 occurred because I just know when the BOLOs come out.

6 Q. And you all were out looking for that car?

7 A. Right. Sometimes they come out sooner rather than
8 later, depending on the investigators.

9 Q. Did you have any luck finding the car?

10 A. Yes, sir. We located a car that looked like it at
11 the Econolodge, which is now a Quality Inn.

12 Q. And where is that?

13 A. 2037 Savannah Highway. It's right next to the
14 Waffle House closer to Savage Road, directly across the
15 street from the InTown Suites.

16 Q. Okay. And were you with anyone that night?

17 A. Yes, sir. I was with Officer Kevin Schleiben.

18 Q. I'm showing you State's 36 through 39. Could you
19 take a look at those images or photos and tell me if you
20 recognize them.

21 A. Yes. That was the car we saw at the hotel.

22 Q. And do those photos depict the car as you saw it
23 that night, or fairly and accurately depict them?

24 A. Yes.

25 MR. OSBORNE: Your Honor, at this time we'd

1 seek to admit State's 36 through 39 into evidence.

2 MS. KNOX: No objection, Your Honor.

3 THE COURT: Admitted.

4 (State's Exhibits 36 through 39 were marked
5 for identification and admitted into
6 evidence.)

7 BY MR. OSBORNE:

8 Q. Is this photograph showing the front of the car,
9 State 36?

10 A. Yes.

11 Q. What are we looking at on State's 37?

12 A. More like directly at the front, a little less of
13 the side.

14 Q. Okay. State's 38?

15 A. That looks like the right side, the passenger
16 side.

17 Q. And State's 39?

18 A. That's going to be the driver's side back toward
19 the rear of the vehicle.

20 Q. And now these photographs, they're not taken where
21 you saw the car; is that fair to say?

22 A. Yes.

23 Q. Do you know, looking at these pictures, where
24 those photos were taken?

25 A. I don't 100 percent know, maybe at the crime scene

1 possibly, but definitely not at the hotel.

2 Q. Not at the hotel?

3 A. No, sir.

4 Q. Now, once you saw the car in the hotel, did you
5 have the occasion to check the plate?

6 A. Yes, sir. We ran the plate.

7 Q. And who did the car come back to?

8 A. It comes back to a guy with the last name of
9 Holsberg.

10 Q. Anthony Holsberg, does that sound familiar?

11 A. Yes.

12 Q. Once you found this vehicle and the registered
13 owner, what did you do next?

14 A. Went up to the front desk and asked what room the
15 vehicle was associated with, and then they gave the name
16 of Anthony Holsberg who was the owner of the vehicle.

17 Q. And did you end up going to that room?

18 A. We did go to the room after the investigator
19 showed up and knocked. We were there when they knocked.

20 Q. So you got the vehicle that's involved in -- or
21 believed to be involved in this bank robbery. You called
22 up central; they responded?

23 A. Yes, sir.

24 Q. And then you made contact with the room?

25 A. Yes.

1 Q. Do you remember what room number it was?

2 A. I believe it was 117.

3 Q. Was there anyone in the room?

4 A. Yes, sir. There were three individuals in the
5 room.

6 Q. Who was in the room?

7 A. Holsberg, Mr. Green, and Mr. Thompson.

8 Q. Alonzo Green?

9 A. Yes, sir.

10 Q. And Charles Thompson?

11 A. Yes, sir.

12 Q. Let's just talk briefly about these guys and what
13 they look like. Holsberg, was he a white guy or black
14 guy?

15 A. White male.

16 Q. And Green, white or black?

17 A. Black male.

18 Q. And how about Thompson, was he white or black?

19 A. Black.

20 Q. And how old was Thompson?

21 A. I don't know.

22 Q. Would it help refresh your recollection if I were
23 to show you your report?

24 A. Yes.

25 MR. OSBORNE: Beg the Court's indulgence.

1 BY MR. OSBORNE:

2 Q. I'm showing you what's been marked for ID purposes
3 as State's Exhibit 117. Would you take a look at that
4 and tell me if that helps refresh your recollection?

5 A. As to Mr. Thompson's age, he was born in 1950,
6 so --

7 Q. 1950 and that was in '15 so about 65, I guess?

8 A. Yes, sir.

9 Q. Okay. Older gentleman. Is that fair to say?

10 A. Yes.

11 Q. Okay. So you had said earlier that central
12 detectives responded to the scene; I think Detective
13 Brown was one of the detectives?

14 A. Yes, sir.

15 Q. And what happened after that?

16 A. Once we kind of gave them a rundown of what we
17 had, myself and Officer Schleiben we cleared up. We
18 typed our supplemental report later, and we cleared the
19 scene.

20 Q. Let me address one issue. Are you aware if a
21 search warrant was executed in room [REDACTED] that night?

22 A. They did do a search warrant, yes, sir.

23 Q. Now, did Mr. Green stay on scene --

24 A. I don't know, sir.

25 Q. -- the entire time?

1 A. I'm not sure. We left shortly after they knocked
2 on the door, and we kind of gave them a rundown of what
3 we did, as far as like how we got there, and then we
4 cleared up. We weren't even there when they executed the
5 search warrant, so --

6 Q. But did you or were you at all involved in
7 securing that hotel room?

8 A. We stood outside. We allowed no one to leave, but
9 we didn't go in or move anything. We didn't even set
10 foot in the room.

11 Q. That's what I'm getting at. Were people free to
12 go and come as they please out of 117 once y'all made
13 contact with room 117?

14 A. No, sir.

15 MR. OSBORNE: Okay. No further questions.

16 THE COURT: Cross?

17 MS. KNOX: Thank you, Your Honor.

18 CROSS-EXAMINATION BY MS. KNOX:

19 Q. Officer Laycock, when you went to room 117, as you
20 just testified, to make contact with the occupants,
21 Anthony Holsberg was in there?

22 A. Yes, ma'am.

23 Q. And room 117 was registered to him; is that
24 correct?

25 A. Yes, ma'am.

1 Q. Alonzo Green was in there?

2 A. Yes, ma'am.

3 Q. And another gentleman named Charles Thompson was
4 in there as well?

5 A. Yes, ma'am.

6 Q. Just to be clear, Silvester Scott was not in that
7 room?

8 A. No, ma'am.

9 Q. The Dodge Charger was still in the lot at that
10 time?

11 A. Yes, ma'am.

12 Q. And as you just testified, you helped secure that
13 vehicle?

14 A. I stayed -- no one else went to it or moved it or
15 went inside the vehicle, but I didn't assist in taking it
16 somewhere else.

17 Q. You did not assist in taking the vehicle somewhere
18 else.

19 A. No, ma'am.

20 Q. Okay.

21 MS. KNOX: Beg the Court's indulgence.

22 No further questions. Thank you.

23 THE COURT: Redirect?

24 MR. OSBORNE: No, Your Honor.

25 THE COURT: You may step down.

1 Next witness?

2 MR. OSBORNE: State calls Mary Phillips.

3 MARY KATHERINE PHILLIPS

4 having been called as a witness for the State at

5 11:24 a.m., was sworn and testified as follows:

6 DIRECT EXAMINATION BY MR. OSBORNE:

7 Q. Ms. Phillips, have you manufactured or fabricated
8 any evidence in this case?

9 A. No, sir.

10 Q. Where do you work?

11 A. I work with the City of Charleston Police
12 Department within the crime scene unit.

13 Q. All right. And how long have you worked there?

14 A. Since October of 2006.

15 Q. Okay. And you said that you worked in the crime
16 scene unit. What are some of your duties and
17 responsibilities in the crime scene unit?

18 A. I'm the master crime scene investigator, so I
19 supervise a team of crime scene unit investigators. We
20 go to different scenes for the purpose of documenting the
21 scene and identifying evidence and processing evidence,
22 collecting it for further analysis, and I also work in
23 our recovery lab, processing evidence in a laboratory
24 setting that can't be processed on the scene.

25 Q. And so how does evidence get to you in latent

1 processing?

2 A. If I process something in the lab, it would be
3 collected on the scene, and then it would be packaged
4 with the crime scene investigator who's collected it.
5 They would package it, seal it, and they would submit it
6 to me, and I would put it in my custody. And then,
7 depending on what type of item it was, I would process it
8 with whatever techniques we needed for fingerprint
9 processing for that item.

10 Q. And were you involved in this investigation?

11 A. I was.

12 Q. And what was your role in this case? How did you
13 become involved?

14 A. In this case, I did kind of both. I processed a
15 vehicle in our crime scene vehicle bay as well as
16 processing some evidence that was submitted to me.

17 Q. Okay. And the vehicle that was in the vehicle bay
18 that was processed, what kind of car was it?

19 A. It was a Dodge Charger.

20 Q. Do you happen to know where that car came from
21 before it got to the crime scene office?

22 A. I don't.

23 Q. So you're just brought in to process it once it's
24 brought to the crime scene office?

25 A. Correct.

1 Q. Okay. And did you collect any evidence from the
2 Dodge Charger?

3 A. I did.

4 MR. OSBORNE: May I approach?

5 THE COURT: You may.

6 BY MR. OSBORNE:

7 Q. I'm showing you State's 40 through 44. Can you
8 take a look at those and tell me if you recognize those.

9 A. I do.

10 Q. And what are these?

11 A. These are items that I located within the vehicle.

12 Q. And so we're looking at photographs of those
13 items, I take it?

14 A. Correct.

15 MR. OSBORNE: Your Honor, at this time we
16 would seek to admit 40 through 44 into evidence.

17 MR. KOZELSKI: No objection.

18 THE COURT: Admitted.

19 (State's Exhibits 40 through 44 were marked
20 for identification and admitted into
21 evidence.)

22 BY MR. OSBORNE:

23 Q. I'm going to start by showing you State's 38
24 first. Is that the vehicle that you processed?

25 A. It is.

1 Q. And then we'll move on to State's 40. Do you know
2 what area of the vehicle we're looking at here?

3 A. I believe it's behind one of the back seats. I
4 would have to refer to my report just to clarify that.

5 Q. Okay.

6 A. I'm sorry. There was a lot of things in that
7 vehicle. Rear driver's side floorboard.

8 Q. So behind the driver?

9 A. Correct.

10 Q. State's -- well, what are we looking at there?

11 A. You have an empty Newport cigarette box, Nemesis
12 brand safety glasses, some camouflage fabric, and a dime.

13 Q. Safety glasses?

14 A. Correct.

15 Q. State's 41, what are we looking at and where is
16 that?

17 A. You have, like, the dust mask protector, the
18 packaging for it, a Family Dollar bag, and a receipt, and
19 those were collected from -- I know they were on the
20 floorboard from -- I'm sorry. They were on the front
21 passenger seat.

22 Q. All right. Front passenger seat?

23 A. Correct.

24 Q. All right. And now State's 41, what are we
25 looking at here?

1 A. That's a close-up picture of the dust mask
2 packaging.

3 Q. State's 43?

4 A. That would be a close-up picture of the receipt.

5 Q. Can you see what items were purchased on this
6 receipt?

7 A. Yes; a Sprite, a Coke, it looks like a Snickers,
8 and the dust mask sixpack.

9 Q. Okay. And from where?

10 A. Family Dollar.

11 Q. And the location?

12 A. 3315 Rivers Avenue, North Charleston.

13 Q. State's 44, what are we looking at here?

14 A. That would be the bottom of the receipt.

15 Q. And those four items, do you see a date and time
16 of that purchase?

17 A. It would be March 4, 2015, at 1517.

18 Q. 3:17 p.m.?

19 A. Correct.

20 MR. OSBORNE: Beg the Court's indulgence.

21 All right, Your Honor. May I approach?

22 THE COURT: Okay.

23 BY MR. OSBORNE:

24 Q. I'm showing you two bags. One bag is numbered 45
25 and 46, and the second bag is numbered State's 47. Can

1 you take a look at those items and tell me if you
2 recognize them, and, if so, what are they?

3 A. Okay. Bag -- well, Exhibit 45 and 46 contains the
4 receipt, the Family Dollar plastic bag, and the dusk mask
5 packaging, and 47 contains the safety glasses.

6 MR. OSBORNE: Your Honor, at this time we
7 would seek to admit 45 through 47 into evidence.

8 MR. KOZELSKI: No objection.

9 THE COURT: Admitted.

10 (State's Exhibits 45 through 47 were marked
11 for identification and admitted into
12 evidence.)

13 BY MR. OSBORNE:

14 Q. Okay. So these are just -- these are just the
15 actual items, and what we were looking at before were the
16 photographs?

17 A. Correct.

18 Q. And that's 45 and 46. They contain the dusk mask;
19 is that fair to say --

20 A. Correct.

21 Q. -- wrapping?

22 A. And the Family Dollar bag.

23 Q. And if you don't mind, just go ahead and pull
24 those glasses out. Can you show those to the jury? And
25 just so the jury knows, you processed those items for

1 fingerprints too?

2 A. I did.

3 Q. Any luck?

4 A. I do not believe so, no.

5 Q. Okay. Do you know -- can you testify much to how
6 many times you fingerprint -- well, let me just ask you:
7 How many times do you fingerprint items in your work?

8 A. Every day.

9 Q. And what are some of the factors that go into your
10 abilities to recover fingerprints?

11 A. The surface plays a lot to do with it. If it's a
12 clean surface and you've touched something, we're more
13 likely to get a fingerprint off of it because it doesn't
14 have oils or any buildup on it. If there are dirt,
15 debris, and oils already on it and you touch it, your
16 finger should just take away the dirt. They don't leave
17 an impression. We also need to have a smooth surface.
18 If it's a textured surface, a lot of times the print gets
19 lost because you're only making contact with a thing
20 that's raised.

21 If you think of your car dash, it's really
22 textured, and also if it's an item that absorbs oils
23 really well, I think of leather, that's why you clean it
24 with oils, because it absorbs, so those surfaces would
25 just absorb the oils. So there's a lot of factors that

1 go into making sure you get a really good print, and
2 usually it depends on how much oil or ink you have on
3 your skin when you make contact with it as well.

4 Q. Would an individual wearing gloves affect your
5 ability to recover fingerprints?

6 A. Absolutely. You should not leave prints if you're
7 wearing gloves.

8 Q. Okay.

9 MR. OSBORNE: Just for clarification, 45
10 through 47 we're seeking to admit, I believe without
11 objection.

12 THE COURT: They're admitted.

13 MR. OSBORNE: No further questions.

14 THE COURT: Cross?

15 CROSS-EXAMINATION BY MR. KOZELSKI:

16 Q. Good morning.

17 A. Good morning.

18 Q. I just want to talk to you briefly just about what
19 it means to be a crime scene investigator.

20 A. Okay.

21 Q. Your job is basically to investigate crime and
22 gather evidence?

23 A. Correct.

24 Q. And you want to arrest the correct person,
25 correct?

1 A. Correct.

2 Q. You collect evidence that helps do that, that
3 helps convict guilty people?

4 A. Correct.

5 Q. Sometimes collecting evidence can also exclude
6 innocent people?

7 A. Correct.

8 Q. Sorry. This woman next to you is writing down
9 everything you said, so she can't just do a head nod, but
10 one of the things that you do is write reports.

11 A. Yes.

12 Q. And you do that so you can refresh your
13 recollection about cases, right?

14 A. That is correct.

15 Q. Because you handle a lot of cases. You said you
16 do fingerprints every day?

17 A. That is correct.

18 Q. And sometimes the problem is that you work on more
19 than one case at one time?

20 A. I suppose so.

21 Q. You don't close a case before you move on to the
22 next case. You sometimes -- you just go with the
23 evidence that's coming to you, and you're analyzing it
24 and processing it, right?

25 A. Well, I process a case at a time, so --

1 Q. And it can be years before you go to trial?

2 A. That is correct.

3 Q. So it is important that when you write the reports
4 that those reports are accurate?

5 A. That is correct.

6 Q. People are relying on those reports?

7 A. That is correct.

8 Q. Detectives rely on those reports?

9 A. Correct.

10 Q. Mr. Osborne and Mr. Waring, they rely on those
11 reports?

12 A. That is correct.

13 Q. And, of course, the defense attorney relies on
14 those reports, correct?

15 A. Correct.

16 Q. So it's important when you write these reports
17 that they're complete?

18 A. Yes.

19 Q. You don't want to leave anything out?

20 A. To the best of my ability.

21 Q. And that's just like I said, other people are
22 relying on your reports.

23 Now, crime scene investigation is an important
24 part of a lot of criminal investigations, right?

25 A. Yes.

1 Q. You can collect evidence that identifies an
2 individual perpetrator?

3 A. Yes.

4 Q. And you're trained on how to protect a crime
5 scene?

6 A. Yes.

7 Q. You're also trained in other types of specialized
8 techniques, like how to document evidence?

9 A. Yes.

10 Q. Right? You can take photos?

11 A. Uh-huh.

12 Q. You can draw diagrams of crime scenes?

13 A. Correct.

14 Q. You're also trained in how to collect evidence?

15 A. Yes.

16 Q. Fingerprints?

17 A. Yes.

18 Q. Shoe prints is one of the things you collect as
19 well?

20 A. Yes.

21 Q. DNA?

22 A. Yes.

23 Q. And you can get DNA from a lot of different
24 things, right?

25 A. Correct.

1 Q. You can get DNA from blood?

2 A. Yes.

3 Q. Hair?

4 A. Yes.

5 Q. Saliva?

6 A. Yes.

7 Q. Semen?

8 A. Yes.

9 Q. Touch DNA?

10 A. Yes.

11 Q. And touch DNA is basically if somebody touches a
12 surface, they can rub off the oils on their skin, and you
13 can collect that?

14 A. Yes.

15 Q. I mean, you would call it contact DNA or touch
16 DNA, correct?

17 A. Correct.

18 Q. You can also collect shell casings, projectiles,
19 unspent rounds, things like that?

20 A. Yes.

21 Q. And, basically, you're collecting anything that
22 might shed light on what happened?

23 A. That is correct.

24 Q. And once you collect the evidence, you're trained
25 in how to preserve it, right?

1 A. Correct.

2 Q. You have to follow certain protocols?

3 A. Yes.

4 Q. And that's to make sure the evidence doesn't go
5 bad or mishandled in any way?

6 A. Yes.

7 Q. Then you take it back to your lab?

8 A. Correct.

9 Q. And once you are back at your lab, you process the
10 evidence?

11 A. Yes.

12 Q. And that just means you examine it.

13 A. Using techniques, depending on what processing
14 we're doing, yes.

15 Q. Sometimes you literally put it under a microscope
16 or whatever you need to do to figure it out?

17 A. Right.

18 Q. And you're a scientist, essentially?

19 A. Yes.

20 Q. And as a scientist, you're looking objectively at
21 the evidence that you examine?

22 A. Correct.

23 Q. And the hope is that once you do examine it, you
24 can find that one identifying piece of evidence?

25 A. Yes.

1 Q. That's the holy grail of crime scene
2 investigation?

3 A. Absolutely.

4 Q. I just want to go back briefly and touch on when
5 you're talking about collecting DNA from all these
6 sources. You only need a small amount of DNA to collect.
7 You don't need to have a huge pool of blood, right?

8 A. Correct.

9 Q. And this touch DNA, or contact DNA, you
10 essentially get that by taking a cotton swab, or it looks
11 like a Q-tip, and then swabbing the surface?

12 A. Correct. We usually premoisten it to help pick up
13 any residue that might be left.

14 Q. And you're trained to figure out where that
15 contact DNA is probably most likely going to be?

16 A. We always try to keep in mind the item, whatever
17 we're swabbing, where it most likely touched.

18 Q. Right. Like in a car, for instance, you think
19 people are going to touch the steering wheel?

20 A. Correct.

21 Q. And fingerprints too, they can be left behind by
22 somebody touching something?

23 A. Correct.

24 Q. And that's just the oils from the fingers left
25 behind on a hard surface?

1 A. Yes.

2 Q. And depending on where the surface is located can
3 depend on how long the fingerprint stays on the surface,
4 right?

5 A. Correct.

6 Q. If the surface is outside, exposed to the
7 elements, a fingerprint might not stay on the surface for
8 very long?

9 A. That is correct.

10 Q. Rain can wash it away?

11 A. Uh-huh.

12 Q. Alternatively, if you touch something that is in a
13 safe and closed-in space, a fingerprint can stay for a
14 long time?

15 A. Yes, sir.

16 Q. There's no telling how long it's been there?

17 A. As long as nothing comes into contact with it.

18 Q. And, like I said, there's no way for you to tell
19 how long it's been there.

20 A. That is correct.

21 Q. And you're trained to know where to expect to find
22 fingerprints as well?

23 A. Yes.

24 Q. And once you find fingerprints, you're trained in
25 how to lift those fingerprints from the surface?

1 A. Yes, sir.

2 Q. And I guess you would apply a powder or acrylic,
3 is that what it is?

4 A. We have different types of powder, depending on
5 the substance, but it's a black powder.

6 Q. I guess you could also use like a Super Glue tube?

7 A. When things are submitted in the lab, if there's
8 something hard, we will Super Glue them. It increases
9 your chance of recovering a print and also of being able
10 to lift it a few times if needed.

11 Q. And then once you see a print, then you slap a
12 piece of clear tape on it?

13 A. Yes.

14 Q. And you literally lift the print off the tape --

15 A. Off the item.

16 Q. That's why it's called a lift?

17 A. Correct.

18 Q. And you put that tape on a white card?

19 A. Yes, sir.

20 Q. And you're supposed to label the card?

21 A. Yes, sir.

22 Q. And then you put that, I guess, print in what's
23 called an AFIS box?

24 A. It is sealed and then dropped into an AFIS box.

25 Q. And AFIS stands for Automatic Fingerprint

1 Identification System?

2 A. Yes, sir.

3 Q. And that's just a giant database with fingerprints
4 in it that you can search, right?

5 A. Correct.

6 Q. It's not you doing the searching; it's a latent
7 print examiner?

8 A. Correct.

9 Q. It's somebody who has that job?

10 A. Yes, sir.

11 Q. Who picks it up out the AFIS box and examines it,
12 right?

13 A. Yes.

14 Q. So in this case you just talked about with
15 Mr. Osborne that you were processed -- called out to
16 process the Dodge Charger?

17 A. Yes, sir.

18 Q. And that was located in a secure area of the crime
19 scene office?

20 A. Yes.

21 Q. And there were actually patrol units assigned to
22 watch that vehicle until you could process it?

23 A. Correct.

24 Q. And that's -- the golden rule in your department's
25 crime scene management policy is don't touch anything

1 until you get there, right?

2 A. Correct.

3 Q. Don't mess with anything with the scene until
4 you're able to photograph and document it?

5 A. That is correct.

6 Q. So there are patrol units there making sure nobody
7 touches that vehicle before you get there?

8 A. Correct. It was also in a gated area that was
9 locked.

10 Q. And that's standard practice?

11 A. That is correct.

12 Q. And if an officer does touch something, they have
13 to let you know that they touched something and then they
14 document in a report?

15 A. We always hope they would.

16 Q. That's what your policy dictates, right?

17 A. Correct.

18 Q. And when you get there, you start by photographing
19 both the exterior and the interior of the vehicle, right?

20 A. Correct.

21 Q. And, ideally, it should be just like it was when
22 the officers originally found it?

23 A. Yes.

24 Q. I just want to talk to you about some of the stuff
25 you did collect. I know Mr. Osborne did go over some of

1 the stuff, but I did want to go over some of the other
2 stuff that you might have left out.

3 You -- after you photograph, you begin by swabbing
4 for contact DNA, like we discussed?

5 A. That is correct.

6 Q. And that is essentially you're taking these
7 dampened Q-tip like --

8 A. Swab.

9 Q. -- swabs and you're rubbing them on certain areas
10 of the car?

11 A. Correct.

12 Q. And that is -- I'm going to show you --

13 MR. KOZELSKI: I'm not going to open this,
14 but I'm going to mark this for ID purposes.

15 May I approach?

16 THE COURT: Go ahead.

17 BY MR. KOZELSKI:

18 Q. I'm going to show you what has been marked as
19 Defense Exhibit 1 for ID purposes. Can you see what's in
20 this?

21 A. This is my package of swabs that was selected.

22 Q. It's difficult to see because it's actually in a
23 SLED containment bag, right?

24 A. Correct.

25 Q. And they do that for one reason: It's to secure

1 it, it's to make sure that nobody tampers with it?

2 A. Yes. Once it's brought to the SLED laboratories,
3 they repackage it in their own packaging.

4 Q. And just if you can see them in there, you have a
5 number of items you took swabs for. You took five swabs,
6 correct?

7 A. Correct.

8 Q. You took a swab of the exterior driver's door
9 handle?

10 A. Yes.

11 Q. That's item 201?

12 A. Yes.

13 Q. And you took a swab of the interior driver's door
14 handle?

15 A. Correct.

16 Q. That's item 202 in there? There is a swab of the
17 steering wheel, item 203?

18 A. Correct.

19 Q. A swab of the gearshift?

20 A. Correct.

21 Q. And a -- I think that that's -- oh, you also took
22 a swab of the safety glasses that were found that we just
23 introduced into --

24 A. Correct.

25 Q. Okay. You also performed -- or you also did

1 latent fingerprint processing --

2 A. Correct.

3 Q. -- of the vehicle, and that's both on the exterior
4 and the interior of the vehicle?

5 A. Correct.

6 Q. And you recovered two prints?

7 A. That is correct.

8 Q. I'm going to show you what has been marked as
9 Defense Exhibit 2.

10 A. Okay.

11 Q. Can you tell the jury what that is.

12 A. These are two print cards that I collected from
13 the vehicle.

14 Q. Okay. And that is -- those are items 2-1, which
15 is a print recovered from the exterior of the driver's
16 door?

17 A. Correct.

18 Q. And then there is item 2-2, which is the print
19 recovered from an empty Newport cigarette box within the
20 car?

21 A. Yes, sir. It was from the rear driver's side
22 floorboard.

23 Q. Okay.

24 MR. KOZELSKI: Your Honor, at this time I
25 would like to offer Defense Exhibit 1 and 2 into

1 evidence.

2 MR. OSBORNE: No objection.

3 THE COURT: Admitted.

4 (Defendant's Exhibits 1 and 2 were marked for
5 identification and admitted into evidence.)

6 BY MR. KOZELSKI:

7 Q. You also collected a Family Dollar bag from the
8 front passenger seat?

9 A. Yes, sir.

10 Q. In that bag you had dusk mask packaging you
11 collected as well?

12 A. That is correct.

13 Q. And you collected three cigarette butts from the
14 front center console ashtray, right?

15 A. Yes, sir.

16 Q. Once you collected all that stuff, you took
17 everything that you collected from the crime scene back
18 to your lab?

19 A. Correct.

20 Q. You examined the evidence that you personally were
21 able to examine?

22 A. Correct.

23 Q. And I say that because you might not have the
24 equipment necessary to do all the examination needed,
25 right?

1 A. For fingerprint recovery --

2 Q. You do?

3 A. Yes.

4 Q. You can put that in the AFIS drop box, like I
5 said, and somebody else could do it?

6 A. Yes, correct.

7 Q. But you have to send some of this evidence to
8 SLED.

9 A. Correct.

10 Q. And then SLED sends the results back to you?

11 A. Correct.

12 Q. So DNA gets tested by SLED?

13 A. That is correct.

14 Q. And so you send those contact swabs that you
15 collected up to South Carolina Law Enforcement Division?

16 A. Yes, sir.

17 Q. And as you just said, the fingerprint processing
18 is done inhouse?

19 A. That is correct.

20 Q. And you are in charge of examining the remaining
21 non-DNA evidence to see if you can get prints?

22 A. That is correct.

23 Q. And you dust the safety glasses?

24 A. I did.

25 Q. And you weren't able to recover any prints of

1 those, right?

2 A. No, sir.

3 Q. And you dust the Family Dollar bag?

4 A. Yes.

5 Q. You weren't able to recover any prints off of
6 that?

7 A. That is correct.

8 Q. Did you dust the dusk mask packaging?

9 A. That is correct.

10 Q. You don't recover any prints off of that?

11 A. That is correct.

12 Q. And you dust the Family Dollar receipt as well,
13 right?

14 A. We used a chemical processing for the Family
15 Dollar receipt, but it was for the purpose of fingerprint
16 recovery.

17 Q. And that's kind of -- if you look at the receipt
18 now, it doesn't have anything on it.

19 A. Because of the chemical processing, yes, sir.

20 Q. But that chemical processing did not reveal any
21 prints?

22 A. That is correct.

23 Q. But the prints that you did recover in the Defense
24 Exhibit 2 there you put in the AFIS dropbox?

25 A. I did.

1 Q. And then presumably a latent print examiner would
2 put them under a microscope, right?

3 A. That is correct.

4 Q. And they will see if there is a hit in that
5 database?

6 A. I believe that's how it works. I don't analyze
7 that.

8 Q. And as far as I can tell from reading your report,
9 there was no further examination of the cigarette butts
10 that you collected?

11 A. I collected them, and then there are meetings that
12 discuss what is sent for analysis, so --

13 Q. But that wasn't sent for analysis.

14 A. Okay. I don't always know what is and isn't sent.

15 Q. It isn't in your report that you sent it to SLED
16 or anything like that, is it?

17 A. No.

18 Q. And that was basically your whole involvement in
19 the case?

20 A. Yes, sir.

21 Q. And from the report that you did, as far as you
22 know, nothing that you collected or processed has been
23 linked to my client, Silvester Scott?

24 A. I do not know.

25 MR. KOZELSKI: Beg the Court's indulgence.

1 No further questions, Your Honor.

2 THE COURT: Redirect?

3 MR. OSBORNE: Beg the Court's indulgence.

4 REDIRECT EXAMINATION BY MR. OSBORNE:

5 Q. I'm guilty of this. We were kind of using these
6 terms pretty loosely, so let's really hammer this down,
7 okay?

8 A. Okay.

9 Q. When you are dusting and you are trying to collect
10 a print, just because you collect a print, does that mean
11 it has any evidentiary value?

12 A. No.

13 Q. And when -- you and Mr. Kozelski kind of hit on
14 this. When you collect a print, you send it off to
15 someone else who then analyzes that print; is that fair
16 to say?

17 A. That is correct.

18 Q. And who are those people?

19 A. We have -- I'm not sure who was in the unit at the
20 time, but we currently have two latent print examiners,
21 and that is all they do all day, and they analyze the
22 prints.

23 Q. Okay. And I think he showed you some prints at
24 some point?

25 A. Yes.

1 Q. And what exhibit was that?

2 A. It is 2.

3 Q. Okay. And may I see that for a second?

4 A. Yes.

5 Q. And what we're looking at -- this is Defense
6 Exhibit 2?

7 A. Yes.

8 Q. Explain to the jury, what are we looking at?

9 A. It's the front of the fingerprint card. It's
10 where we would do the description, the case number, the
11 date of where we collected that print, and then on the
12 reverse side of that card would be the actual tape with
13 the fingerprint that we lifted.

14 Q. All right. So -- and we can kind of see in this
15 bag here. I don't think we need to open it, but these
16 are the actual prints on the back of the card?

17 A. Correct.

18 Q. So the first one, where was this one recovered
19 from, lift number two?

20 A. That was from the Newport cigarette pack. That
21 was on the rear floorboard.

22 Q. And there's another print in here too, right?

23 A. Correct.

24 Q. What print was that?

25 A. The exterior of the driver's door.

1 Q. The exterior of the driver's door?

2 A. Correct.

3 Q. Now, once you collected those prints and they went
4 on those cards, they went to the AFIS unit you were
5 talking about?

6 A. They would have been sealed, and there is a drop
7 box, secured lock. Only the latent print examiners have
8 access to it, and they would have collected it from there
9 for when they were doing their analysis.

10 Q. And they do their analysis, try to match that
11 print up to someone?

12 A. Correct.

13 Q. Okay. And when they get through, through your
14 training and experience, do they generate a report?

15 A. They do.

16 Q. And you provide that report to us?

17 A. I think so.

18 Q. And then we provide it to the defense.

19 A. Correct.

20 Q. Okay. So let's -- and, again, just because the
21 card has some ink on it with some print doesn't mean it's
22 got any evidentiary value; it's actually the analyst who
23 determines whether there is anything to compare it to?

24 A. That is correct.

25 Q. And by that same token -- let's move into DNA. So

1 I think it was just phrased a little carelessly, but when
2 you're swabbing, you're not necessarily collecting DNA;
3 is that fair to say?

4 A. That is fair to say.

5 Q. You're just swabbing items?

6 A. Correct.

7 MR. KOZELSKI: Your Honor, I'm going to
8 object to leading.

9 THE COURT: Rephrase your question.

10 MR. OSBORNE: Yes, Your Honor.

11 BY MR. OSBORNE:

12 Q. When you swab items, what do you do with the
13 swabs?

14 A. The swabs are placed into little boxes that are
15 then packaged individually for each swabbed area and then
16 sealed.

17 Q. Do you have any idea whether your swabs actually
18 collected DNA? Do you know?

19 A. I have no idea. It's just swabbing the areas that
20 are most likely handled.

21 Q. And then those swabs, through your experience, are
22 typically sent where for testing?

23 A. We send all of our DNA evidence to SLED. We
24 currently have no DNA laboratory here.

25 Q. Working on that, though, right?

1 A. Working on that.

2 Q. And when SLED analyzes those swabs, do they or do
3 they not then generate a report?

4 A. They do.

5 Q. And we get that report, do you know?

6 A. I would hope so. They don't get sent to me
7 personally. The reports are usually generated to the
8 case officer.

9 Q. And those are then provided to the defense.

10 Last question, do you know if wearing gloves would
11 affect your ability to recover DNA from an item?

12 A. Absolutely.

13 MR. OSBORNE: No further questions.

14 THE COURT: Recross?

15 MR. KOZELSKI: No, Your Honor.

16 THE COURT: You may step down. Let me see
17 y'all up here a second.

18 (A bench conference was held off the record
19 at 12:00 p.m.)

20 (Back on the record at 12:01 p.m.)

21 Okay, folks. This looks like a good place to
22 break for lunch then. It's 12:00 now. If you would be
23 back in your jury room at 1:30, we'll resume then.

24 Now, you can go to lunch anywhere you want,
25 including with other members of the jury panel. Again,

1 it's important not to talk about the case in any way or
2 discuss any kind of witness demeanor or anything like
3 that. If anybody approaches you about the case or tries
4 to talk to you about the case, please report that to me
5 when you come back.

6 Now, as far as lunch goes, we're in
7 Charleston. There's lots of places to eat, and they can
8 make you or break you around here at lunch, but around
9 the corner on Meeting Street, I know there's a Subway, if
10 you go down about four blocks on Broad Street. Whatever
11 you do, don't drink alcohol, and we'll see you at 1:30.

12 (The jury left the courtroom at 12:02 p.m.)

13 (A recess was taken at 12:02 p.m.)

14 A F T E R N O O N S E S S I O N

15 (The jury came back into the courtroom at
16 1:39 p.m., and the following proceedings were
17 had in the presence of the jury.)

18 THE COURT: We'll resume now with the State
19 calling their next witness.

20 MR. WARING: Thank you, Your Honor. We call
21 Venzaree Simons.

22 VENZAREE SIMON

23 having been called as a witness for the State at
24 1:38 p.m., was sworn and testified as follows:

25 DIRECT EXAMINATION BY MR. WARING:

1 Q. Good afternoon, Ms. Simons.

2 A. Hello.

3 Q. How are you doing today?

4 A. I'm good.

5 Q. Ms. Simons, could you tell the jury, have you
6 fabricated, cooked up, manufactured any evidence in this
7 case?

8 A. Just a video.

9 Q. What I'm asking is, did you make up the videotape?

10 A. No, no.

11 Q. Did you make up any evidence you're about to
12 testify about?

13 A. No.

14 Q. Now, can you tell the jury where you work?

15 A. I work at Family Dollar on Rivers Avenue in North
16 Charleston.

17 Q. How long have you worked there?

18 A. Fifteen years.

19 Q. And in your role there, what exactly do you do?

20 A. I manage the business.

21 Q. What does that mean?

22 A. Of the store, I manage, you know --

23 Q. So you have employees?

24 A. -- all the people that work there with me.

25 Q. Does your store location have surveillance video

1 capabilities?

2 A. Yes, it does.

3 Q. And are those videos generated in the normal
4 course of business?

5 A. Yes.

6 Q. And is it a regularly conducted business activity
7 for your store to generate those videos?

8 A. Yes.

9 Q. Are they recorded at or near the time of what is
10 actually being seen in the video?

11 A. Yes, it is.

12 Q. Now, did y'all have surveillance video
13 capabilities back in March of 2015?

14 A. Yes, sir.

15 MR. WARING: May I approach?

16 THE COURT: You may.

17 BY MR. WARING:

18 Q. I'm going to show you what's been marked for
19 identification purposes only as State's 48 through 59.
20 Do you recognize Exhibit 48?

21 A. Yes.

22 Q. Can you tell the jury what it is?

23 A. It's a CD video of my store.

24 Q. Okay. Of the Family Dollar?

25 A. Of the Family Dollar, yes, sir.

1 Q. And have you watched that video?

2 A. Yes.

3 Q. And are those your initials on there?

4 A. Yes, it is.

5 Q. How about Exhibits 49 through 79? Do you
6 recognize those?

7 A. It's the front location of the Family Dollar where
8 I work at.

9 Q. What about the rest of the photos? Does that
10 fairly and accurately depict your store?

11 A. Yes. It's the front entrance where you enter into
12 the door of the store.

13 Q. And the rest of the photos, do they fairly and
14 accurately depict the interior of the store?

15 A. Yes, they do.

16 Q. Now, the date on there, can you tell the jury what
17 the date is on that?

18 A. It's March the 4th, 2015.

19 Q. What about the time? Can you give about the
20 general time of those photos and of these videos?

21 A. It's 3:12:18 p.m.

22 Q. So starting around 3:12, and does it go a little
23 bit later to different times?

24 A. 3:15; yes, sir.

25 Q. Okay.

1 MR. WARING: Your Honor, at this point the
2 State moves to have Exhibits 47 through 79 admitted into
3 evidence.

4 MS. KNOX: No objection, Your Honor.

5 THE COURT: Admitted.

6 (State's Exhibits 48 through 79 were marked
7 for identification and admitted into
8 evidence.)

9 BY MR. WARING:

10 Q. All right, Ms. Simons. We're going to play
11 Exhibit 48, the video, for you.

12 What are we looking at here?

13 A. When you enter the parking lot, that's the front
14 of the building, the Family Dollar.

15 Q. Is this the inside of your store?

16 A. Yes, it is, front entrance.

17 Q. Ms. Simons, does your store sell dust mask
18 packaging?

19 A. Yes, they do.

20 Q. And where is this area of the store, Ms. Simons?

21 A. When you enter the door, it's on your right-hand
22 side.

23 Q. All right, Ms. Simons. I want to show you a
24 couple quick photos real quick.

25 Showing you what's been marked and admitted as

1 State's Exhibit 43, is this from your store location?

2 A. Yes, it is. My store number is 680.

3 Q. So that sixpack of dust masks, y'all sell that
4 kind of stuff?

5 A. Yes, we do.

6 Q. And, again, is that -- this is Exhibit 42 -- is
7 that the type of dust masks that y'all sell?

8 A. Yes, sir.

9 Q. And then the date, the time stamp at the bottom,
10 to your knowledge, is that approximately accurate?

11 A. Yes, sir.

12 Q. Okay.

13 MR. WARING: Please answer any questions the
14 defense has.

15 THE COURT: Cross?

16 MS. KNOX: We have no questions.

17 THE COURT: You may step down.

18 Next witness?

19 MR. WARING: Thank you, Your Honor. The
20 State calls Alonzo Green.

21 ALONZO CLINTON GREEN

22 having been called as a witness for the State at
23 1:53 p.m., was sworn and testified as follows:

24 DIRECT EXAMINATION BY MR. WARING:

25 Q. Good afternoon, Mr. Green.

1 A. Good afternoon.

2 Q. Mr. Green, can you tell the jury, do you know the
3 defendant?

4 A. Yes.

5 Q. Okay. And what name do you know him as?

6 A. Vessi, Ves.

7 Q. Do you know him well?

8 A. I mean, like, I'm not -- I mean, like, we live in
9 the same neighborhood. Yeah, I know him pretty good, but
10 not -- like, we just -- we talk to each other, but --

11 Q. Mr. Green, do you not recall telling Detective
12 Brown on March 4th, 2015 at the Charleston Police
13 Department that the defendant's name is Silvester, last
14 name is Austin or Scott, and y'all grew up together and
15 that you've known him over 20 years?

16 A. No. I said we grew up in the same neighborhood.

17 Q. But you've more or less known him for over
18 20 years?

19 A. No, I ain't known him for 20 years, but I said I
20 know -- I mean, we grew up in the same neighborhood.
21 Like, we might have started to talking to each other
22 maybe ten years ago or --

23 Q. Okay. Is it safe to say you've known him for at
24 least a decade?

25 A. Yeah.

1 Q. All right. Were you with the defendant at all on
2 March 4, 2015, on the day of the incident?

3 A. Yeah.

4 Q. Now, where were y'all hanging out?

5 A. What happened that morning, I called him. He was
6 at the Best Western Hotel on Highway 17.

7 Q. And can you tell us a little bit about that. Why
8 did he come over?

9 A. Well, I was a heroin addict, and that morning I
10 couldn't find no heroin, and I knew that he used to use
11 heroin at one time too.

12 So I called him and asked him if he knew where
13 something was at, and he said he knew somebody that could
14 get something and he said he would come by.

15 Q. Okay. Do you recall about what time? I know it
16 was a long time ago. Do you remember about what time?

17 A. I know it was in the morning.

18 Q. All right. Now, Mr. Green, I know it was a long
19 time ago, but do you not recall telling Detective Brown
20 that day that the defendant came over after 1:00 p.m.
21 sometime and stayed for about 20, 30 minutes?

22 A. I don't know. I thought it was that morning,
23 though. I mean, that might have been what it was.

24 Q. So you're saying it might have been 1:00?

25 A. Yeah, it might have been. I mean, that was four

1 years ago, but I just thought it was that morning because
2 I knew I had just gotten up when I called him.

3 Q. Okay. Would it help if I played a portion of your
4 interview?

5 A. I mean, like I said, it's possible if I said it.
6 I mean, if he said I said it, then yeah, that's probably
7 what it was.

8 Q. So sometime after 1:00 p.m.?

9 A. I guess so, yeah.

10 Q. Now, when the defendant came over, can you
11 describe what he looked like that day, as far as physical
12 description, clothing?

13 A. He -- I remember he had on either orange and white
14 or red and white shirt.

15 Q. So orange and white or red and white striped
16 shirt. What about his physical description; height,
17 weight, that kind of thing?

18 A. I guess he's about my height, 5'11", I guess,
19 5'10", maybe 150, 160 pounds.

20 Q. Okay. So it was you and the defendant. Who else
21 was with you that day?

22 A. My girlfriend, Mercedes Williams, and the guy --
23 A.J., a guy I know as A.J.

24 Q. Could you tell the jury what A.J. looks like?

25 A. He's a heavysset white guy with a bald head.

1 Q. Short, tall?

2 A. Short.

3 Q. Do you know A.J.'s real name?

4 A. Anthony Holsberg. I know -- I know him as Anthony
5 Hall something.

6 Q. Did you say Anthony Holsberg?

7 A. Yes.

8 Q. Okay. Anthony Holsberg?

9 Now, here's another question for you: Was
10 anybody else there in addition to the people you've
11 already listed?

12 A. No.

13 Q. Now, do you not recall coming to our office
14 recently, back on February 12, 2019, and telling us that
15 one thing you lied about to the police is the existence
16 of this guy named William Drayton you didn't tell them
17 about but he was really there?

18 A. Yeah. What happened, I didn't tell them the name
19 at the time, but I told them -- what happened was, when I
20 talked to A.J., he told me that he did tell them about
21 the other guy, so I was --

22 MR. KOZELSKI: Objection, Your Honor.

23 THE COURT: What?

24 MR. KOZELSKI: Hearsay.

25 THE COURT: Sustained.

1 THE WITNESS: Well --

2 BY MR. WARING:

3 Q. Mr. Green, without saying what anybody else said
4 other than the defendant -- without saying what this
5 other person said, was that person there?

6 A. Well, what happened -- yeah. I didn't want to
7 bring nobody else into it, is basically what it was, but
8 later on when he told me that -- well, later on, I end up
9 saying that -- I end up, yeah, admitting it was somebody
10 else, but I didn't say who it was. I told him I didn't
11 know who it was.

12 Q. But do you recall telling us back in February in
13 our office, the solicitor's office, that the guy -- you
14 looked at a photo and it was a guy named William Drayton.
15 Do you remember that?

16 A. You mean this year? You mean just the other day?

17 Q. Yes.

18 A. Oh, yeah, yeah.

19 Q. And your testimony today is that you lied to the
20 cops?

21 A. Yeah, yeah.

22 Q. And is that because you didn't want to get anybody
23 else in trouble?

24 A. Yeah. I mean, I was just basically saying enough
25 to get by, I mean, because they had pulled me and I

1 didn't know what was going on, you know. So I just -- I
2 just, like, basically said enough -- like I said, I
3 didn't know what was going on, so the other guy had
4 already called his name, so, you know, so I did admit
5 that I knew him.

6 Q. Okay. Now, did the defendant say anything when he
7 came over?

8 A. Huh?

9 Q. Did he say anything, the defendant, when he came
10 over to the Best Western?

11 A. Yeah. I mean, I asked him if he could get heroin.
12 He said, well, he knew somebody that could get it, could
13 get some from -- I think it was a guy out in Walterboro
14 or something, somebody that could get it for him, and
15 then he told me, he said, well, he didn't want to drive
16 his car, so I told him, I asked A.J. if he can use the
17 car, and they traded cars.

18 Q. Okay. What kind of car did A.J. have?

19 A. A Charger.

20 Q. Do you remember any physical description of it?

21 A. It was silver, I believe, with a black roof.

22 Q. Silver with a black roof?

23 MR. WARING: May I approach the witness, Your
24 Honor?

25 THE COURT: Yes.

1 BY MR. WARING:

2 Q. All right. Mr. Green, I'm showing you what has
3 been premarked for identification purposes only as
4 Exhibit 80. Do you recognize this?

5 A. Yeah. It looks like A.J.'s car.

6 Q. And is this your handwriting on there?

7 A. Yeah.

8 Q. Does this photo fairly and accurately depict the
9 photo that you identified as A.J.'s car?

10 A. Like I said, it looks like A.J.'s car.

11 MR. WARING: Your Honor, at this point the
12 State moves to have Exhibit 80 admitted into evidence.

13 MR. KOZELSKI: No objection.

14 THE COURT: Admitted.

15 (State's Exhibit 80 was marked for
16 identification and admitted into evidence.)

17 BY MR. WARING:

18 Q. And for the jury, Mr. Green, is this the same
19 photo and vehicle we were just talking about?

20 A. Yes.

21 Q. And is this the same one you mentioned that had
22 the black roof that was A.J.'s car, looks like A.J.'s
23 car?

24 A. Yes.

25 Q. And is that your signature at the bottom?

1 A. Yeah.

2 Q. What about the defendant? Does he have a vehicle?

3 A. Yeah, yeah.

4 Q. Do you recall what he was driving back then?

5 A. No. A Fusion. I can't remember the color. I
6 know it was a Ford Fusion.

7 Q. Did A.J. and the defendant, in fact, swap cars?

8 A. They exchanged keys, I know.

9 Q. Okay. Did you not find it odd that he wanted to
10 swap cars?

11 A. No, not really. I mean, I do the same thing
12 sometimes. Like, if I don't want to take my car to a hot
13 drug neighborhood or something, I might, you know, see if
14 I could get another car I might do that.

15 Q. So at the time it didn't seem odd?

16 A. No. If it seemed odd, I wouldn't have asked him
17 to do it.

18 Q. Do you recall about how long he was gone?

19 A. I know it was some hours.

20 Q. Couple hours you said?

21 A. I know it was some hours.

22 Q. How about when he came back? Did he come back
23 with drugs?

24 A. No, no.

25 Q. Did he mention anything to you about not getting

1 drugs?

2 A. Yeah. He said that the guy couldn't get it. The
3 guy didn't get it.

4 Q. Now, when the defendant returned, can you tell us
5 anything about what kind of clothing he was wearing at
6 that point?

7 A. No, I can't remember that. I can't remember. I
8 would think it would have probably been the same thing.
9 I don't know.

10 Q. Do you recall telling Detective Brown back on the
11 same day when you spoke with her at Charleston Police
12 Department that when he returned he was wearing a red and
13 white striped shirt when he got back?

14 A. I don't remember saying that. Like I said, it was
15 four years ago, but, I mean, I would assume it's probably
16 the same thing.

17 Q. All right.

18 MR. WARING: Your Honor, at this point the
19 State would offer extrinsic evidence of prior
20 inconsistent statement for impeachment purposes.

21 MR. KOZELSKI: Can we approach, Your Honor?

22 THE COURT: Uh-huh.

23 (A bench conference was held off the record
24 at 2:06 p.m.)

25 (Back on the record at 2:06 p.m.)

1 BY MR. WARING:

2 Q. So, Mr. Green, I'll phrase the question a little
3 differently. Do you not remember on the exact date of
4 March 4, 2015 at Charleston Police Department
5 headquarters talking to Detective Brown that when the
6 defendant came back he was wearing a red and white
7 striped shirt?

8 A. I don't remember. Like I said, it was four years
9 ago. I don't remember what I told him. I don't
10 remember.

11 Q. Again, we offer that evidence.

12 MR. KOZELSKI: Judge, can we approach again?

13 (A bench conference was held off the record
14 at 2:07 p.m.)

15 (Back on the record at 2:09 p.m.)

16 (Video played.)

17 BY MR. WARING:

18 Q. Now, while the defendant was gone, did you ever
19 try to get in touch with him?

20 A. Yeah, yeah.

21 Q. All right. And how so?

22 A. I was calling the phone number that I reached him
23 on the first time, and at first nobody answered the
24 phone. And then somebody answered the phone and said to
25 try him on the other number. And I called the other

1 number, and I end up reaching him. He had two phones.

2 Q. Do you remember on that same date, March 4, 2015,
3 late that day, early into the next morning, March 5,
4 2015, at Charleston Police Department headquarters with
5 Detective Brown telling her that you called a couple
6 times initially but you couldn't get through and then
7 y'all ended up getting in touch a little bit after that?

8 A. Yeah. That's basically what I just said, yeah.

9 Q. Now, I want to talk about your own phone for a
10 second. At some point did you try to erase your phone?

11 A. Yes, yes.

12 Q. Can you tell the jury why you would want to do
13 that?

14 A. Because what had happened was I was in the hotel
15 room, and the police came and knocked on the door. I
16 didn't know what was going on, you know, and they pulled
17 me out of the room, and me and A.J. was in the room and
18 they separated us. So they took him one way and they
19 took me another way, and, like I said, I didn't know what
20 was going on.

21 So they was, like -- I guess they went to talk to
22 him first, and then they came back and talked to me, and
23 they was, like, what's going on in the room? I said
24 ain't nothing going on in the room. I said what's going
25 on? What are you all doing? And they said we'll tell

1 you about it later. They said do you have drugs in the
2 room? I said no, there ain't no drugs in the room.

3 So they just left me again, and I guess they went
4 back and talked to him, and then they came back to me
5 again. And this time when they came back to me, they
6 was, like -- he was, like, I'm going to ask you a series
7 of questions, and you better be honest with me. And they
8 was, like, who was --

9 MR. KOZELSKI: Objection, Your Honor.
10 Hearsay.

11 THE COURT: Sustained.

12 BY MR. WARING:

13 Q. Mr. Green, when you testify, just don't mention
14 what anybody else said, just either what the defendant
15 said or what you remember happening.

16 A. Well, because the police asked me, they asked me
17 about a guy named -- well, you told me not to say what
18 the police said, so, I mean, I don't know how to do that.

19 Q. How about this. Why don't you answer this
20 question: Did you try to erase your phone?

21 A. Yeah, I tried to erase the phone.

22 Q. Okay. Did you know what was going on at the time.

23 A. No, I didn't know what was going on. I just know
24 it involved something to do with the phone -- Vess with
25 the phone. So, like I said, I didn't know what was going

1 on, so I just erased the phone.

2 Q. Regarding your phone, do you remember what your
3 phone number was from back then?

4 A. No, I have no idea.

5 Q. Do you remember telling Detective Brown on
6 March 4, 2015, late at night at CPD headquarters, that
7 your phone number was [REDACTED]?

8 A. No, I don't recall that, no. I mean, that
9 might've happened, but, like I said, I don't remember
10 much of anything from four years ago.

11 Q. Okay. Does that number sound familiar?

12 A. What was it?

13 Q. [REDACTED]?

14 A. Seems like I heard that number before, yeah.

15 Q. Now, what about defendant's number? Again, it was
16 a long time ago. Do you remember his phone number?

17 A. No.

18 Q. Similar scenario? Do you not remember telling
19 Detective Brown, March 4, 2015, late at night into early
20 morning of March 5, 2015, at CPD headquarters with
21 Detective Brown that the defendant's number was
22 [REDACTED]?

23 A. No, because I know when I erased the phone, I
24 didn't know the number because I know that when I got it
25 backed up it was a long time, and I kept trying to bring

1 the numbers back up, so I know I didn't know the number
2 off of my head.

3 Q. Okay. You had to pull it up?

4 A. Yeah. I was trying to recover my Google account.
5 I couldn't get the password for the Google account to get
6 my contacts back.

7 Q. Do you remember at some point retrieving the
8 number?

9 A. I don't recall whether I did or not. I know it
10 was a long time that I was trying to do it. I can't
11 remember whether I got it or not.

12 Q. But do you recall actively trying to find the
13 number?

14 A. I remember, yeah, trying to find the number,
15 trying to bring my contacts back up.

16 MR. WARING: May I approach the witness, Your
17 Honor?

18 THE COURT: Yes.

19 BY MR. WARING:

20 Q. Mr. Green, I want to show you what's been marked
21 for identification purposes as State's Exhibit 81. Do
22 you recognize this?

23 A. Yeah.

24 Q. And what is that?

25 A. A picture of Silvester.

1 Q. A picture of Silvester?

2 A. Yes.

3 Q. And is that your handwriting on there?

4 A. Yes.

5 Q. And is that your signature on there?

6 A. Yes.

7 Q. And do you recognize that person?

8 A. Yes.

9 MR. WARING: Your Honor, at this point the
10 State moves to have Exhibit 81 admitted.

11 MR. KOZELSKI: No objection.

12 THE COURT: Admitted.

13 (State's Exhibit 81 was marked for
14 identification and admitted into evidence.)

15 BY MR. WARING:

16 Q. Showing you State's Exhibit 81, is this the photo
17 we were just talking about?

18 A. Yeah.

19 Q. Can you tell us what that says at the top?

20 A. It says I know him as Vess, or Silvester.

21 Q. And is that your signature?

22 A. Yeah, yeah.

23 Q. And what about the date?

24 A. Yeah.

25 Q. Can you tell us what the date is?

1 A. March 5th, 2015.

2 Q. Now, Mr. Green, just a couple other questions. Do
3 you see the defendant in the courtroom today?

4 A. Yeah.

5 Q. Can you point him out for us?

6 A. Right there (indicating).

7 Q. Right where?

8 A. Right here, with the gray suit on, right there.

9 Q. In the suit?

10 A. Yeah.

11 MR. WARING: Your Honor, let the record
12 reflect the witness has identified the defendant.

13 THE COURT: So ordered.

14 MR. WARING: Court's indulgence.

15 Please answer any questions the defense has.

16 THE COURT: Cross?

17 CROSS-EXAMINATION BY MR. KOZELSKI:

18 Q. Mr. Green, you're a convicted felon, right?

19 A. Yes.

20 Q. You've got a couple property crimes on your
21 record, like receiving stolen goods?

22 A. Yeah.

23 Q. But your record primarily consists of drug-related
24 offenses, right?

25 A. Yeah.

1 Q. Distribution, possessions, drug distributions,
2 right?

3 A. Yeah.

4 Q. And the tricky thing about drug convictions is
5 when you get caught with drugs and convicted, the next
6 time you get caught with drugs you are subject to what
7 are called drug enhancements, right?

8 A. Yep.

9 Q. That means the penalties get involved after each
10 conviction?

11 A. Yeah.

12 Q. You expose yourself to more time every time you
13 get caught with drugs; is that right?

14 A. Yeah.

15 Q. And you've been caught with drugs a number of
16 times.

17 A. Yeah.

18 Q. Most of the time you've been caught with drugs
19 it's been with the Charleston Police Department?

20 A. Yeah.

21 Q. And prosecuted by the Ninth Circuit Solicitor's
22 Office?

23 A. Yep.

24 Q. 1993, you were convicted of possession of cocaine.
25 Do you remember that?

1 A. Yep.

2 Q. '94, you were --

3 MR. WARING: Objection, Your Honor. May we
4 approach?

5 (A bench conference was held off the record
6 at 2:18 p.m.)

7 (Back on the record at 2:19 p.m.)

8 BY MR. KOZELSKI:

9 Q. So in 1994, you were also convicted of possession
10 with intent to distribute cocaine and possession of
11 crack?

12 A. In 1994?

13 Q. 1994.

14 A. I don't know. I don't recall that.

15 Q. All right. But it wouldn't surprise you if you
16 had a conviction for 1994 for possession with intent to
17 distribute?

18 A. Yeah. It would surprise me because I know it
19 all -- at one -- that's the same charge. The original
20 charge was possession with intent to distribute, and I
21 pled guilty to possession.

22 Q. Okay.

23 A. And then I violated my probation in 1994, but that
24 was a whole other charge.

25 Q. In 1999 you were charged with trafficking cocaine,

1 PWID crack, possession of heroin, right?

2 A. Yeah.

3 Q. You were given a mandatory minimum 25-year
4 sentence?

5 A. Yes.

6 Q. But that conviction was overturned on appeal?

7 A. Yeah.

8 Q. You were released from prison?

9 A. Yeah.

10 Q. And in 2003 you were convicted of possession of
11 cocaine, second offense?

12 A. Yeah.

13 Q. And you had a little break there for a bit where
14 you didn't get any convictions, but you had a close call
15 with CPD on March 4th, right, 2015?

16 A. Yeah, yeah.

17 Q. You were able to flush the drugs down the toilet
18 before the CPD came in the room?

19 A. Yeah.

20 Q. You cooperated with them?

21 A. Cooperated with them?

22 Q. Talked with them?

23 A. Oh, yeah, I talked with them.

24 Q. And they didn't charge you with anything?

25 A. No. They didn't catch me with nothing.

1 Q. But eight months later, in November of 2015, you
2 were stopped by the CPD --

3 A. Yeah.

4 Q. -- Charleston Police Department in a car with
5 Anthony Holsberg?

6 A. Yeah.

7 Q. And CPD searched your car?

8 A. Uh-huh.

9 Q. And they found a trafficking weight of heroin on
10 your person.

11 A. Yeah.

12 Q. And you were arrested and charged with trafficking
13 heroin?

14 A. Yes.

15 Q. And it's certainly not your first drug offense?

16 A. Uh-huh.

17 Q. And that charge was prosecuted by the Ninth
18 Circuit solicitor's office, right?

19 A. Yep.

20 Q. And the charge of trafficking heroin second or
21 subsequent offense only has one penalty, right?

22 A. Yeah, I think so.

23 Q. That's 25 years in the department of corrections.

24 A. Yep.

25 Q. It's not a zero to twenty-five; it's not a five to

1 twenty-five; it is twenty-five years.

2 A. Twenty-five mandatory, yeah.

3 Q. And that's a non-parolable offense?

4 A. Uh-huh.

5 Q. That means you have to do 85 percent of that 25
6 years?

7 A. Yeah.

8 Q. And that's a little over 21 years of time?

9 A. Yeah.

10 Q. But obviously you are not in prison today.

11 A. Today?

12 Q. Yeah.

13 A. No, no, because the search that they did was
14 illegal. They pulled me over for a traffic stop, and
15 they was in -- I was in my underwear, and they was in my
16 butt crack, looking for drugs, and we had a suppression
17 hearing. I was about to go to trial, and we had a
18 suppression hearing and they ruled against us, but the
19 prosecutor had already offered me a five-year plea on --
20 to reduce the charge to distribution.

21 Q. Okay. So the solicitor's office allowed you to
22 plea to what's called a lesser included offense?

23 A. Yeah.

24 Q. Instead of trafficking heroin, they allowed you to
25 plead to possession with intent to distribute heroin,

1 second offense?

2 A. Possession instead of distribution.

3 Q. And that carries a minimum of five years in prison
4 and up to 30 years in prison?

5 A. Uh-huh.

6 Q. And they agreed to let you serve the minimum
7 sentence of five years?

8 A. Five years.

9 Q. And, of course, you didn't do five years in
10 prison.

11 A. No.

12 Q. You did a little over a year-and-a-half?

13 A. Yeah, got paroled out.

14 Q. You got paroled; right?

15 A. Yeah.

16 Q. Not everybody gets paroled, right?

17 A. No, not everybody.

18 Q. That means you got out of prison early?

19 A. Uh-huh.

20 Q. You're allowed to stay out of prison as long as
21 you do what the State tells you to do?

22 A. Yeah. Well, I mean as long as I obey the law.

23 Q. And do what they tell you --

24 A. Don't get caught, yeah.

25 Q. Otherwise you got to go back to prison.

1 A. Yeah.

2 Q. And you don't want to go back to prison?

3 A. No, huh-uh. I don't want to go to prison.

4 Q. You testified that you've known Silvester for a
5 number of years, right?

6 A. Yeah.

7 Q. You grew up knowing a lot of the same people?

8 A. Yeah.

9 Q. Same neighborhood, same people, right?

10 A. Yeah. We didn't hang out together when we was
11 younger, but --

12 Q. But it's the same area of Charleston, correct?

13 A. Yeah.

14 Q. And you're not close close, but you both struggle
15 with a heroin addiction?

16 A. Yeah.

17 Q. And if the town is dry, meaning you can't find
18 anything, you might call Silvester to see if he could
19 hook it up, right?

20 A. Right.

21 Q. And vice versa; he might call you?

22 A. Right.

23 Q. And you can make a lot of money selling heroin?

24 A. Yeah.

25 Q. I mean, that's no surprise. You could -- I mean,

1 you made a lot of money selling heroin, right?

2 A. I mean, yeah, I made a good bit of money, but I
3 was using a lot of it. Basically, most of the time I was
4 just hustling, just taking care of my habit and being
5 able to get more heroin for the next day, but there was
6 times that I made money.

7 Q. And Silvester had a regular job, right?

8 A. Yeah, he got a regular job.

9 Q. You knew he helped build Gaillard Auditorium,
10 right?

11 A. Yeah.

12 Q. And finding heroin for other people was more like
13 a side hustle for him?

14 A. Yep.

15 Q. Because he knew a lot of people who did it; he
16 knew how to get it, right?

17 A. Right.

18 Q. And it's an easy way to support your habit, right?

19 A. Yeah.

20 Q. Is that a yes?

21 A. Yes.

22 Q. But, like I said, it's also a way you can make a
23 little bit of extra easy money?

24 A. Yeah.

25 Q. And when you spoke to the police on March 4, 2015,

1 you had over \$4,000?

2 A. Yeah.

3 Q. And they took that out of your pocket when they
4 got you out of your hotel room, and they put it on the
5 dashboard of their police car, right?

6 A. Yeah.

7 Q. You answer their questions, and they give you that
8 money back.

9 A. Well, no. That ain't the way it went. They gave
10 me back the money before they asked me any questions.

11 Q. Okay. But they gave you your money back. They
12 didn't seize it?

13 A. No, they didn't take it. They didn't have a
14 reason to seize my money.

15 Q. You don't think the police knew that you were
16 selling drugs?

17 A. Huh?

18 Q. You don't think the police knew you were selling
19 drugs?

20 A. Yeah, but that doesn't mean they could take my
21 money. They probably look at my record and think that's
22 probably where the money came from, but they never catch
23 me with no drugs.

24 Q. And you've never had your money seized by the
25 police?

1 A. Yeah, I have. I've had money sized by the police.

2 Q. But they didn't seize it this time?

3 A. No, no.

4 Q. While they're searching you, you have your
5 cellphone in your hand, right?

6 A. Yep.

7 Q. You do a hard reset on the phone?

8 A. Uh-huh.

9 Q. You delete everything out of your phone?

10 A. Yep.

11 Q. All the numbers were gone, right?

12 A. Yeah, went back to factory settings.

13 Q. All the text messages were gone?

14 A. Yes.

15 Q. The call history, deleted?

16 A. Yep.

17 Q. The entire time that you're in the interview room
18 with Detective Brown, you're playing with your phone,
19 trying to get the numbers back?

20 A. Yeah.

21 Q. And that's because she's asking you about
22 Silvester's number?

23 A. Yeah. Well, that's because when the police -- the
24 police took my phone out of my hand when they first
25 brought me in, and they saw Silvester's name in the phone

1 and the call log, and so -- I mean, like I said, but they
2 gave me the phone back, so, like, I didn't know what was
3 going on so I just -- I erased the phone.

4 You know, I said I didn't know what was going on,
5 and I erased the phone, so they were, like, try to get
6 the numbers back, so --

7 Q. And they were asking you for Silvester's number,
8 right?

9 A. Yeah.

10 Q. But you don't have his number memorized?

11 A. No, no.

12 Q. You don't even really remember what your number
13 was?

14 A. No.

15 Q. The only number that you were able to give to
16 Detective Brown was your girlfriend's, Mercedes
17 Williams's phone number, right?

18 A. Yep.

19 Q. And you were not too sure about that one, right?

20 A. No, that's right.

21 Q. And part of the reason why it's hard to remember
22 numbers, phone numbers, is because people that you know
23 change their numbers a lot?

24 A. Yeah.

25 Q. It's not uncommon for people to get different

1 phones?

2 A. No.

3 Q. And that's especially true for people who are
4 messing around, selling drugs, right?

5 A. Yeah.

6 Q. It's not uncommon for people to use other people's
7 phones while conducting drug transactions, right?

8 A. No.

9 Q. Or use what are called burner phones?

10 A. No.

11 Q. You've heard of those before, right?

12 A. Yeah.

13 Q. Those are just prepaid phones anybody can buy?

14 A. Uh-huh.

15 Q. Yes?

16 A. Yes. You don't have to register your name to them
17 or nothing.

18 Q. You just use them until the minutes run out, and
19 then you throw them away, right?

20 A. I get more minutes, but you throw them away
21 whenever you're finished using them, yeah.

22 Q. Phones were a little bit different four years ago
23 than they are today probably, especially now than they
24 were back in 2015, right?

25 A. Yeah, a little bit.

1 Q. But back then and to a certain degree today, a lot
2 of people that are in the drug game use multiple phones?

3 A. Yeah.

4 Q. Or, like I said, just borrow somebody else's
5 phone.

6 A. Yeah, that's true.

7 Q. And that's true for the phone number that you
8 called for Silvester, right?

9 A. Yeah. He had two phones.

10 Q. Well, not every time that you called Silvester was
11 Silvester the one that was picking up the phone, right?

12 A. No, no, no. On that day, no. Somebody else did
13 answer the phone once and told me to call him on the
14 other number.

15 Q. Because you called him several times that day?

16 A. Yeah.

17 Q. And the fact that somebody else picked up the
18 phone, you didn't tell that to Detective Brown, did you?

19 A. No. Like I said, I wasn't trying to involve
20 nobody else in this. Like I said, I still didn't know
21 exactly what was going on, and, like I said, I had -- I
22 don't know. I don't know what was going on, and I knew
23 they had the other guy in the interview room, so I was
24 trying to stick as close to the truth as I could.

25 That way they wouldn't suspect me of doing

1 something wrong and try to get through that, because,
2 like I said, I didn't know what was going on, but I
3 didn't voluntarily bring anybody else into it.

4 Q. I got you. Well, kind of the same way people use
5 phones in the drug game, people often do kind of the same
6 things with cars, right? In the world you live in,
7 filled with drug addicts, it's not uncommon for people to
8 loan out their cars for drugs, right?

9 A. No.

10 Q. And it's not uncommon for other people to borrow
11 other people's cars to conduct drug transactions, right?

12 A. No.

13 Q. Like you said, if you're going into a neighborhood
14 to do a drug transaction, you might not want to take your
15 car in there. Police might recognize it, right?

16 A. Right.

17 Q. And every time you get stopped by the police,
18 pretty much, you can guarantee you're going to get
19 searched, right?

20 A. Yep.

21 Q. A.J. was one of those people who loaned out his
22 car to people?

23 A. Yeah; yeah, he did. He loaned out his car for
24 drugs.

25 Q. Yeah. He would rent out his car and try to get

1 drugs?

2 A. Yeah.

3 Q. And A.J. did not know Silvester, right?

4 A. He just knew the name because that morning when he
5 came there, I told him to open the door for Vess, so he
6 knew the name, you know.

7 Q. But you told police that A.J. let Silvester borrow
8 his car to go get drugs?

9 A. Yeah.

10 Q. And when you originally told the police this, you
11 told them that Silvester was by himself?

12 A. Yeah.

13 Q. Okay. And later you told the solicitor that
14 Silvester wasn't alone, right?

15 A. Yeah. That -- no, that was when he came back in.

16 Q. That was a man named William Drayton that we're
17 hearing about, right?

18 A. Yeah.

19 Q. So you lied about who Silvester was with?

20 A. Yep.

21 Q. And you never saw Silvester get into A.J.'s car?

22 A. No, no.

23 Q. Because you were in the motel room, right?

24 A. Yeah.

25 Q. You were laying down on the bed, right?

1 A. Yeah.

2 Q. High on heroin?

3 A. No. I was sick. I was sick wanting some heroin
4 at that time.

5 Q. Well, let's talk about that. Back then you were
6 pretty much high all the time?

7 A. Yeah, yeah. I was doing a lot of heroin.

8 Q. You were doing about two grams a day?

9 A. Yeah, two to three grams a day.

10 Q. You break down two grams, you put that into, what,
11 30 bags of heroin?

12 A. Yeah, about 30, 35 bags.

13 Q. Okay. At \$20 a bag, that's about 600, \$700 a day?

14 A. Yeah.

15 Q. And that's how much you were using?

16 A. Yeah, but I wasn't buying it by the bag.

17 Q. You were buying it in bulk, right?

18 A. Yeah, buying is in bulk.

19 Q. And selling bags to other people?

20 A. Yep.

21 Q. At some point during the day, you got to get up
22 out of your bed and go pay your hotel bill, right?

23 A. Well, he was gone so long I already had somebody
24 else come and bring me something.

25 Q. I'm not talking about that.

1 A. Oh, okay.

2 Q. I'm talking about you getting up out of your bed.

3 A. Yeah.

4 Q. And going to pay the bill, right?

5 A. Yep.

6 Q. And when you go to the front of the hotel or
7 motel, you see this William Drayton fellow?

8 A. Yeah.

9 Q. Okay. And he's standing a little bit away from
10 A.J.'s car?

11 A. Well, no. When I went around the corner, the car
12 was on the curb, and then I went on up and paid the bill.
13 When I was coming back on the other side, he was standing
14 on the other side of the hotel, and I knew him.

15 Q. But Silvester was not there or anywhere around
16 this car, not that you could see?

17 A. No.

18 Q. And you tell William Drayton to come wait with you
19 in the room?

20 A. Yeah. I asked him what he was doing over there,
21 and he said he was waiting on Silvester. He said
22 Silvester told him to meet him over there.

23 Q. But he's waiting in your room with him?

24 A. Yeah. I told him to come in the room. I was
25 waiting on him too.

1 Q. And then 10, 15 minutes later, he gets a call.
2 You don't know who it's from. He gets a call, right?

3 A. Yep.

4 Q. And then he leaves?

5 A. Yeah, for a minute.

6 Q. And you don't tell the police this either, do you?

7 A. No. I didn't tell them nothing about him.

8 Q. And, again, you don't see -- the next time you see
9 Mr. Drayton, he is with Silvester, right?

10 A. Yeah. They were both at the door.

11 Q. But you don't see him drive up because you're in
12 your motel room, right?

13 A. No.

14 Q. And, again, you don't see Silvester in A.J.'s car?

15 A. No.

16 Q. When Silvester does come into your room, he tells
17 you that his guy didn't come through?

18 A. Yep.

19 Q. Which is not uncommon in your world, right?

20 A. Yeah. Well, really, Drayton said -- Drayton, was,
21 like -- he said that -- he said that that -- man, he
22 ain't get the stuff. And then Drayton was, like, well,
23 man, quit answering the phone, man.

24 Q. But, I mean, sometimes you score, sometimes you
25 don't?

1 A. Yeah.

2 Q. You've seen William Drayton since this incident,
3 right?

4 A. Yeah, yeah. I saw him all the time after that.

5 Q. I mean, you got to be pretty upset with him,
6 right?

7 A. Well, I mean, yeah -- not -- I wasn't upset with
8 him because, like I say, I didn't know what was going on
9 about -- you said -- when I saw him, I just asked him
10 about it. I said, man, why you ain't told me you did
11 something in the car, you know?

12 Q. He didn't tell you that Silvester had anything to
13 do with the car?

14 A. No, no, I ain't -- no. I just asked him, I said,
15 why didn't you tell me you did something in the car, you
16 know? And he's, like, man, I thought you knew, man, but,
17 you know, I wanted to say something, and I was like, man,
18 I don't want to hear no more about that.

19 Q. Okay.

20 A. I told him I don't want to hear no more.

21 Q. But he didn't tell you anything that Silvester had
22 anything to do with it, whatever he had going on?

23 A. No.

24 Q. And you didn't tell the police this?

25 A. No. I ain't told the police nothing about it.

1 Q. Now, when you were talking to Detective Brown --
2 and they showed that clip of you; that's a little later
3 on in your interview, but when Detective Brown asked you
4 what Silvester was wearing that day, you told her it was
5 an orange shirt or a red shirt, right?

6 A. Yep.

7 Q. And she kept asking you about the red striped
8 shirt?

9 A. Yep.

10 Q. Showing you pictures of people in a blue jumpsuit
11 and a red striped shirt?

12 A. Yeah. After I had already said what he had on,
13 then she showed me a picture.

14 Q. And you couldn't identify the person in the blue
15 jumpsuit?

16 A. No.

17 Q. And you never saw Silvester wearing a dark blue
18 jumpsuit?

19 A. No.

20 Q. You never saw him wearing any type of a cap that
21 day?

22 A. No.

23 Q. You never saw him with a pair of white gloves?

24 A. No.

25 Q. You never saw him with dust masks?

1 A. No.

2 Q. Never saw him with a bag of money?

3 A. No.

4 Q. Because he had money when he came to see you
5 earlier that day, right?

6 A. Yeah, because I was trying to give him the money
7 for the heroin up front, and he said no he'd get it, and
8 just give him the money when I came back -- when he came
9 back.

10 Q. So he never even asked you for money because he
11 had money?

12 A. Yeah.

13 Q. You never saw Silvester with a gun?

14 A. No.

15 Q. And in the entire time you've known Silvester,
16 you've never seen him with a gun, right?

17 A. No, no.

18 Q. But you had a gun that day?

19 A. Huh?

20 Q. You had a gun that day?

21 A. No. I'm a convicted felon. I ain't allowed to
22 have guns.

23 Q. I know you aren't allowed to have a gun, but you
24 did have a gun that day, right?

25 A. I'll take the Fifth on that.

1 Q. When you were selling dope and carrying around
2 thousands of dollars in your pocket, you got to be able
3 to protect yourself, right?

4 A. Some people. Some people do, but, like I said,
5 I'm a convicted felon, so I ain't got one on me.

6 Q. People might try to rob you?

7 A. Yeah, people might try to rob you.

8 Q. And, like you said, you're prohibited from owning
9 a firearm? You're a convicted felon. You can't own a
10 firearm; is that correct?

11 A. Yeah, that's correct.

12 Q. If you get caught with a gun, you're going to go
13 to prison?

14 A. Yeah.

15 Q. And not just state prison, you could go to federal
16 prison?

17 A. Yeah.

18 Q. And the police didn't find your gun when they
19 searched your room, right?

20 A. I ain't -- I ain't have no gun. I ain't saying I
21 have no gun.

22 Q. Do you remember I believe it was in November of
23 last year talking with me and my investigator in my
24 office?

25 A. Yeah, uh-huh.

1 Q. And do you remember when you were talking to me
2 and my investigator, Harry Long in that office, you told
3 us that you had a gun in that room?

4 A. No, I don't remember -- I don't recall that. I
5 don't know. I might have said that, but I don't recall
6 it, but I know I didn't have no gun.

7 Q. You didn't have a gun on you. You had it in your
8 hotel room, motel room?

9 A. Huh?

10 Q. There was a gun in your motel room, whether it was
11 yours or not, right?

12 A. I don't know. I don't know.

13 Q. Okay. But the police didn't really search your
14 room, right?

15 A. No. I mean, they searched it a little bit, but
16 they didn't -- I guess they didn't search, like, real
17 good.

18 Q. So you got \$4,000 in your pocket, you may or may
19 not have a gun in your room, and you're right outside the
20 suspected getaway car. That doesn't look good for you,
21 does it?

22 A. Huh?

23 Q. That doesn't look good for you?

24 A. Like I say, I didn't know nothing -- I didn't know
25 nothing about no getaway car or anything. I didn't know

1 nothing about no robbery or none of that. I didn't know
2 nothing happened in that car.

3 Q. You told Detective Brown in your interview that if
4 you had been stopped in that car, you would be in prison
5 for the rest of your life, right?

6 A. Yeah.

7 MR. KOZELSKI: No further questions.

8 THE COURT: Redirect?

9 MR. WARING: Thank you, Your Honor.

10 REDIRECT EXAMINATION BY MR. WARING:

11 Q. Mr. Green, have you ever been prosecuted, to your
12 memory, by myself?

13 A. No.

14 Q. What about Mr. Osborne over here?

15 A. No. Who?

16 Q. Mr. Osborne?

17 A. No, I have been prosecuted by Mr. Osborne, but not
18 him.

19 Q. Not this Mr. Osborne?

20 A. No.

21 Q. Now, there's been some testimony that you're
22 essentially being bought here today for your testimony.
23 Have we offered you anything --

24 A. No, no.

25 Q. -- for your testimony?

1 A. No. I ain't got no pending charges or none of
2 that. I don't cooperate with no -- no snitching for no
3 deal or none of that.

4 Q. Have we strong armed you in any way for your
5 testimony today?

6 A. No, no, no. I mean, there was a little threat as
7 far as your investigator going to my parole officer, but,
8 I mean --

9 Q. You're under subpoena; is that right?

10 A. Yeah, yeah.

11 Q. So other than us trying to educate you that you
12 have to show up for court, have we threatened you in any
13 way?

14 A. No.

15 Q. Okay. Now, talking about your phone, they were
16 talking about the deleted phone that you did. You
17 testified when I was asking you questions that you were
18 actively trying to find the defendant's phone number,
19 right?

20 A. Yeah. I was trying to bring my contacts back up.

21 Q. Okay. And you also testified that when at some
22 point the police talked to you they saw the defendant's
23 name in your phone; isn't that right?

24 A. Yep. When they first pulled me out of the hotel
25 room, they took my phone. He took my phone. He said --

1 you told me not to say what the police said, but --

2 Q. And they saw that contact in your phone, right?

3 A. They saw the name on my call log.

4 Q. Okay. Now, you testified that if your parole gets
5 violated -- that happens if you break the law, right?

6 A. Yeah.

7 Q. Now, are you also saying that if you don't testify
8 the way you think we want you to that we are going to
9 have anything to do with that?

10 A. Oh, no, no, because I ain't breaking the law. I
11 ain't lying. I didn't commit no perjury or nothing. I'm
12 going to tell the truth.

13 Q. There was some talk of William Drayton. Can you
14 describe him, as far as his age, older, younger?

15 A. He's older. Yeah, he was older. I mean, he's in
16 his late 50's.

17 Q. Now, is Mr. Drayton alive?

18 A. No. He died. He died about a couple months back.
19 He had an overdose.

20 Q. Did that have anything to do with your willingness
21 to tell us about his existence?

22 A. About naming him? Well, last year, last year when
23 I talked to the solicitor, I believe it was in about
24 January of last year, they subpoenaed me and called me
25 in, and there was another solicitor prosecuting the case,

1 and I told him about the other guy, but I told him I
2 didn't know who it was because he was still alive.

3 Like I said, I wasn't going to just tell on him
4 like that, you know, but that's the reason why I did come
5 forward with his name, because he died, you know.

6 Q. Now, another question about Mr. William Drayton.
7 You testified at one point that that individual said that
8 he and the defendant had been doing something and you
9 didn't want any part of it. Isn't that what you said?

10 A. Huh?

11 Q. Didn't you say that William Drayton had said he
12 and the defendant had been doing something and you didn't
13 want any part of that?

14 A. No, no. This was after he was locked up, and I
15 saw William Drayton. I said, man, why didn't you tell me
16 that something was up with that car? Because I knew that
17 he was the one in the car -- I knew he was in the car,
18 and so he was, like, man, oh, man, I wanted to tell you,
19 man, and he had started going into whatever he had done,
20 and I said, man, I don't want to hear nothing else about
21 that, man.

22 Q. But he wasn't suggesting that he was the only one?

23 A. Huh?

24 Q. He wasn't suggesting that he was the only one
25 involved?

1 A. Well, I mean, he ain't -- like I said, I told
2 him -- I stopped him before he even really got started,
3 and I told him I didn't want to know nothing about it. I
4 didn't know why he just didn't tell me something.

5 Q. Okay. We played your statement where you said the
6 defendant was wearing a red and white striped shirt when
7 he got back, right?

8 A. Yep.

9 Q. When you told Detective Brown that the defendant
10 had taken the keys and wanted to swap cars with A.J.,
11 Anthony Holsberg, and take that Dodge Charger, did you
12 have any pending charges at that time?

13 A. No.

14 MR. WARING: May I approach the witness, Your
15 Honor?

16 THE COURT: Yes.

17 BY MR. WARING:

18 Q. All right. Mr. Green, just for identification
19 purposes, is that the individual we're talking about?

20 A. Yeah.

21 Q. And who is that?

22 A. William Drayton.

23 Q. Okay. And to your knowledge, about how old is
24 that person?

25 A. I guess he's about -- well, I mean, looking right

1 here, it says he's 61.

2 Q. Now, there was some talk about this cash that you
3 had. How much cash was it?

4 A. I was thinking it was, like, about \$3,500, but
5 evidently he said it was 40 something, 40 something
6 hundred dollars, man.

7 Q. Where did you get the cash?

8 A. Selling drugs, basically.

9 Q. Now, in your interview, the police took your
10 money, right?

11 A. Not in the interview, no.

12 Q. I mean, when I say took, they held on to it while
13 you were essentially at the station; is that right?

14 A. Yeah. They gave it back to me.

15 Q. Now, when you got that cash back, did you count
16 it?

17 A. No, I don't think so. I don't -- I can't remember
18 whether I counted the money or not. That was four years
19 ago. I can't remember.

20 Q. You didn't want to count that as soon as you got
21 it back?

22 A. I mean, I don't know. Like I say, I can't
23 remember. I can't remember four years ago if I counted
24 the money or not.

25 Q. Okay.

1 A. I know at some point I probably counted it -- I
2 counted it, but I don't recall whether I counted it then
3 or not.

4 Q. Now, as an individual in the drug game, there was
5 probably more denominations other than just hundreds; is
6 that correct?

7 A. Oh, yeah.

8 Q. Did you have small denominations too?

9 A. Yeah, probably mostly 20s.

10 Q. So, in other words, would it have been a large wad
11 of cash?

12 A. Yeah, yeah. I mean, it was -- I mean, 4,000 ain't
13 that big, but, yeah. It was -- I guess you could call it
14 a big wad of cash.

15 MR. WARING: Court's indulgence.

16 BY MR. WARING:

17 Q. I want to speak briefly again, ask you a couple
18 questions about William Drayton.

19 Now, who was William Drayton with? This deceased
20 person, who was he with when he was with the silver Dodge
21 Charger?

22 A. There was nobody. I mean, I didn't even actually
23 see him in the Charger. I know that the Charger was
24 there when I saw him on the other side of the hotel.

25 Q. Okay. Do you not recall telling myself and

1 Investigator Hall back in February in the solicitor's
2 office that when you did reveal the existence of this
3 individual that you said the defendant dropped him off?

4 A. No, I didn't tell you that. I told you he said he
5 was waiting on the defendant.

6 Q. So he was waiting on the defendant?

7 A. Yeah. He was supposed to meet him there.

8 Q. I see. Now, was Mr. Drayton wearing a red and
9 white striped shirt on that day?

10 A. I don't recall. I couldn't tell you --

11 Q. But you testified earlier in your statement, you
12 said that the defendant was wearing a red and white
13 striped shirt, right?

14 A. Yep.

15 Q. All right.

16 A. I mean, I didn't remember that, but if you play
17 the tape back to me, then I would --

18 Q. So it's your testimony today that the defendant
19 was wearing a red and white striped shirt that day?

20 A. Yeah. When I originally told her that, I said
21 orange and white, or red and white.

22 Q. Or red and white?

23 A. Yeah.

24 Q. Now, when you were talking about that person, are
25 you talking about the defendant who's sitting in here?

1 A. Yes.

2 Q. And not Mr. Drayton?

3 A. Yeah. I don't -- I don't remember what
4 Mr. Drayton was wearing. Like I said, I didn't bring him
5 up.

6 Q. Okay.

7 MR. WARING: Please answer the questions the
8 defense has.

9 THE COURT: Recross?

10 RE CROSS-EXAMINATION BY MR. KOZELSKI:

11 Q. I just want to be clear with something, Mr. Green:
12 When you were speaking with William Drayton after this
13 incident, he is admitting that he had something to do
14 with this?

15 A. Well, I mean, he was trying to tell me something,
16 but I told him I didn't want to hear it, you know? I
17 mean, I kind of guessed that he had knowledge about it
18 because I asked him about it. Then when he said, well, I
19 wanted to tell you, man, you know, and then I just cut
20 him off. I stopped him. I mean, I pretty much figured
21 he was getting ready to tell me something, but I told him
22 I didn't want to know about it.

23 Q. But he didn't tell you that Silvester was involved
24 in any way?

25 A. No. And, like I said, no, I cut him off, no. He

1 didn't tell me -- he didn't get to say anything else. He
2 wanted to tell me. He wanted to say something, man.

3 He --

4 Q. He didn't tell you that he didn't want Silvester
5 to know about the car?

6 A. No, no. I mean, like I said, he just told me that
7 he didn't want to tell me.

8 Q. Okay.

9 A. But, like I said, he wanted to tell me, but I
10 don't know why when -- I mean, I don't understand -- I
11 think that would have made a lot of sense, though, you
12 take the car and do something with it and not tell me.

13 Q. Do you remember talking to me on a previous
14 occasion over the phone about this conversation that you
15 had with William Drayton?

16 A. Yeah. When I first told you about it? Yeah.

17 Q. Yes, and when you talked about it then, you said
18 William Drayton told you that Silvester wasn't involved,
19 right?

20 A. No, he didn't -- I mean, he didn't specifically
21 say that, but, I mean, just like I said, he was just
22 telling me something about -- he was trying to tell me
23 something about something he did, and I didn't want to
24 hear it, that's all.

25 Q. And you didn't tell the police this, right?

1 A. No, no.

2 Q. You didn't tell the solicitor's office this?

3 A. No.

4 Q. And when I asked you about it, you told me that he
5 wasn't involved.

6 A. Huh?

7 Q. You told me that he told you Silvester wasn't
8 involved. Do you remember telling me that?

9 A. No, no. He said that he didn't want Silvester to
10 know.

11 Q. Okay. He didn't want Silvester to know that he
12 had done something with the car?

13 A. I mean, I don't know if he was saying -- I don't
14 know what he was saying. He said he didn't want him to
15 know, though. I don't know what he was saying -- I don't
16 know if he was saying -- I don't know what he was saying.
17 Like I said, I stopped him. I cut him off.

18 MR. KOZELSKI: Beg the Court's indulgence.

19 THE COURT: All right. You can step down.

20 Okay, folks. Let's take a break here for
21 about 15 minutes or so, let you stretch your legs and use
22 the restroom, and we'll have you back shortly. Again,
23 don't discuss the case or begin deliberations.

24 (The jury left the courtroom at 2:56 p.m.)

25 THE COURT: We had a 613(b) issue on a

1 sidebar. Mr. Kozelski, he objected to Mr. Green's being
2 impeached for -- by extrinsic evidence. I told the
3 solicitor he had to give the witness the opportunity to
4 be told the date, time, place of the statement, and if he
5 didn't admit it, that could be proven by extrinsic
6 evidence. He asked that question, gave him the time,
7 place, date.

8 Again, Mr. Kozelski objected on 613 that he
9 did not deny it, and, as I recall, that was his
10 objection, that he did not deny it. And I said, well,
11 613(b) says if a witness does not admit that he made the
12 inconsistent statement, extrinsic evidence of such
13 statement is admissible. It's not required that he deny
14 it, it's only required that he not admit it. So based on
15 that, I allowed the extrinsic evidence to be played that
16 was played ultimately which he admitted, or he told one
17 officer, that the gentleman had on a red shirt.

18 Anybody want to add anything to that?

19 MR. WARING: No, Your Honor.

20 MR. KOZELSKI: No.

21 THE COURT: Okay. See y'all in 15 minutes.

22 (A recess was taken at 2:58 p.m.)

23 THE COURT: All right. Let the record
24 reflect the defendant's in the courtroom.

25 (The jury came back into the courtroom at

1 3:20 p.m., and the following proceedings were
2 had in the presence of the jury.)

3 THE COURT: All right. We'll resume now with
4 the State calling their next witness.

5 MR. WARING: Thank you, Your Honor. The
6 State calls Agent Tyner.

7 JOHN KIRKLAND TYNER
8 having been called as a witness for the State at
9 3:21 p.m., was sworn and testified as follows:

10 DIRECT EXAMINATION BY MR. WARING:

11 Q. Good afternoon, Agent Tyner.

12 A. Good afternoon, sir.

13 Q. How are you doing today?

14 A. Fine.

15 Q. So Agent Tyner, can you tell the jury where you
16 work?

17 A. I work for the State Law Enforcement Division.

18 Q. Is that also known as SLED?

19 A. Yes.

20 Q. And what do you do for SLED?

21 A. Work in the vehicle crimes unit.

22 Q. And what does the vehicle crimes unit do?

23 A. The vehicle crime unit investigates any crime
24 related to traffic crime, DMV title fraud to
25 investigating employees for embezzlement; also

1 investigate auto theft and chop shops.

2 Q. Have you had any experience with that unit looking
3 at surveillance photos of vehicles and otherwise trying
4 to analyze or identify their features?

5 A. Yes. Also, we will be contacted by our fusion
6 center, which assists local agencies with BOLOs and other
7 intelligence printouts and whatnot where -- maybe armed
8 robbery or some kind of abduction where they have
9 vehicles that they cannot identify a vehicle from
10 surveillance footage or whatnot and they'll request our
11 assistance in trying to find out what vehicle it is if
12 they can't regularly identify it.

13 Q. Have you had to undergo any training for that?

14 A. Not for that, per se, but as far as the vehicle
15 identification and auto theft investigation, yeah. I've
16 had several training classes throughout the country.

17 Q. Throughout the country?

18 A. Yes, Texas Department of Public Safety Auto Test
19 Investigator School. The
20 International Society of Auto Theft Investigators runs
21 conferences yearly. I've been to several in Tennessee
22 and Spartanburg, South Carolina.

23 Q. Now, before working for SLED, do you have any
24 other law enforcement background?

25 A. Yes, sir. I worked in local law enforcement for

1 five years between Mount Pleasant Police Department,
2 Summerville Police Department and the Harleyville Police
3 Department before joining the highway patrol in 2006,
4 which I worked until 2013, and I was assigned to
5 Charleston and Berkeley County and Dorchester and
6 Colleton.

7 Q. And what did you do for those agencies?

8 A. I worked patrol work in local law enforcement;
9 just answer calls for service and traffic enforcement
10 sort of thing. At the highway patrol, I worked
11 collision, investigation, and just traffic enforcement.

12 Q. In your experience as a police officer, did you
13 ever specifically come into contact with Dodge Chargers?

14 A. Yes, sir. I've stopped numerous ones. We also
15 were issued Dodge Chargers, so I'm familiar with the body
16 style.

17 Q. Now, in preparation for trial, have you had a
18 chance to look at some photos?

19 A. Yes, sir, I have.

20 Q. All right. I'm going to put some on the overhead
21 for you now.

22 All right. So for starters, I'm going to put
23 on State's Exhibit 16. What can you tell us about this
24 vehicle?

25 A. That vehicle in the picture is a Dodge Charger

1 between the year 2006 and 2010 model. The wheels appear
2 to be aftermarket model, not stock that comes with the
3 vehicle. The vehicle also has appears to have a black
4 roof.

5 Q. What about --

6 A. Oh, I'm sorry, and also a spoiler on the back of
7 it which appears to be a stock model spoiler.

8 Q. And can you tell me anything about the windows?

9 A. The windows appear to be tinted, not from the car
10 lot, aftermarket addition.

11 Q. I'm going to show you a couple other photos if you
12 hit the button until top right and hit that button that
13 will disappear. Starting with Exhibit 50, what can you
14 tell me about that car?

15 A. That car has the same body style as the Dodge
16 Charger between the years as the previous picture, 2008,
17 2010 Dodge Charger with a black roof and it appeared to
18 be aftermarket wheels.

19 Q. What about Exhibit 55?

20 A. The vehicle still appears to be a silver in color
21 Dodge Charger. Has black tinted windows. The rear
22 taillights appear to be black in color. It's like an
23 aftermarket tinting of the rear headlights. They should
24 be red in color.

25 Q. All right. Now, I want to switch gears slightly

1 again and show you State's Exhibit 36. What can you tell
2 me about this car?

3 A. This car is a Dodge Charger, between the years of
4 2006 and 2010 model with black tinted windows, spoiler on
5 the rear, aftermarket wheels, and a black roof.

6 Same car as before. The rear taillights appear to
7 be tinted, an aftermarket addition to the car, and it has
8 a rear spoiler in the back similar to the other picture
9 of the car that you showed earlier.

10 MR. WARING: For the record, that's
11 Exhibit 39.

12 Court's indulgence. Please answer any
13 questions the defense has.

14 THE WITNESS: Yes, sir.

15 CROSS-EXAMINATION BY MR. KOZELSKI:

16 Q. I'm going to ask this because they forgot. Have
17 you manufactured any evidence in this case?

18 A. No, sir, I have not.

19 Q. But you were contacted about this case, what, two
20 weeks ago?

21 A. Yes, Your Honor -- yes, sir.

22 Q. You first met with Mr. Waring over here on
23 March 1st?

24 A. Yes, sir.

25 Q. Okay. And that's when you started talking to him

1 about the car?

2 A. Yes, sir.

3 Q. I want to talk to you just a little bit about what
4 you do, and I want to talk about one specific thing,
5 resource that you have at SLED, or really all law
6 enforcement officers have at their fingertips, and that
7 is ALPR. You know what that stands for, right?

8 A. Yes, Automatic License Plate Reader.

9 Q. And that is basically a system of high speed
10 cameras that are mounted on utility poles police cars.
11 They're all over the place on the roadways, right?

12 A. Yes, sir.

13 Q. And that's throughout the county and throughout
14 the state?

15 A. Well, there's certain locations throughout the
16 county and whatnot.

17 Q. And basically these high speed cameras take
18 pictures of the front and back of cars as they come and
19 go?

20 A. I would say so. I'm not an expert on that, but
21 yeah, they take a picture of the rear of the car.

22 Q. Basically there's a computer algorithm that
23 captures these and stores them in a database?

24 A. Yes, for specific license plates.

25 Q. So people may not know this, but if you're going

1 to go over the Ravenel Bridge, you're going to get hit by
2 an ALPR and it's going to be stored in a database?

3 A. Correct.

4 Q. So it's able to, essentially, track cars where go,
5 correct?

6 A. If they go on routes where the cameras are.

7 Q. And it can alert you to stolen vehicles, right?

8 A. If it's entered in NCIC, yes, they will show if
9 there's any vehicle reported stolen.

10 Q. It will alert you if you have a suspended tag or
11 anything like that?

12 A. Correct.

13 Q. But it can track the movements of a car, a certain
14 car, right?

15 A. If the car is going to locations where ALPR
16 cameras are posted.

17 Q. And that information is stored in a database for a
18 long time, right?

19 A. Yes, at least a year, maybe longer. In my
20 experience it's been, when I've run it, at least a year.

21 Q. In the case that you use ALPR, you've been able to
22 go back and look at cars' locations for a
23 year-and-a-half, maybe two years?

24 A. I can't say that for certain because I can't
25 remember if it's been that far, but I have had some at

1 least a year that I can say that. I think as long as the
2 car moves and it's in a location where the camera moves.

3 Q. And these camera systems, camera systems, ALPR has
4 been around for years, right?

5 A. Yes, sir.

6 Q. And you have access to it through SLED, right?

7 A. I go through the fusion center to get access to
8 it. I used to have my own, but when I switched agencies
9 I didn't.

10 Q. But law enforcement --

11 A. Yes, yes.

12 Q. -- primarily --

13 A. Correct.

14 Q. -- has access to these ALPR readings?

15 A. Yes.

16 MR. KOZELSKI: No further questions.

17 THE COURT: Redirect?

18 MR. WARING: Just one question, Your Honor.

19 REDIRECT EXAMINATION BY MR. WARING:

20 Q. Are you familiar with where every single
21 ALPR camera is in Charleston County?

22 A. No. I can't say where every camera is, no.

23 MR. WARING: No further questions.

24 THE COURT: Any recross?

25 MR. KOZELSKI: No.

1 THE COURT: You can step down. Thank you.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Next witness.

4 MR. OSBORNE: State calls Sara Tuuk.

5 SARA TUUK

6 having been called as a witness for the State at

7 3:32 p.m., was sworn and testified as follows:

8 DIRECT EXAMINATION BY MR. OSBORNE:

9 Q. Good afternoon, Ms. Tuuk.

10 A. Good afternoon.

11 Q. Where do you work now?

12 A. I currently work at Charleston County coroner's
13 office.

14 Q. How long have you worked there?

15 A. Three-and-a-half years.

16 Q. And what is your position there?

17 A. I'm a deputy coroner.

18 Q. And what are some of your duties and
19 responsibility as a deputy coroner?

20 A. We determine cause and manner of death.

21 Q. And that's not why you're here today, though, is
22 it?

23 A. No, sir.

24 Q. Back on March the 6th of 2015, where did you work?

25 A. The City of Charleston Police Department.

1 Q. In what capacity?

2 A. I was a crime scene technician.

3 Q. We've already heard a crime scene technician
4 testify, so we'll pass the duties and responsibilities,
5 but did you become involved in this investigation?

6 A. I did.

7 Q. And how did that come about?

8 A. I was asked to help execute a search warrant at a
9 residence.

10 Q. And do you recall the address?

11 A. If I may refer to my report, it was [REDACTED] English
12 Street.

13 Q. When you were a crime scene technician and you
14 assisted with executing a search warrant at a residence,
15 just explain to the jury, what are some of the processes
16 you go through in collecting evidence and documenting it?

17 A. Yeah. We take pictures, photos of the exterior of
18 the residence, the interior of the residence, different
19 rooms, and then in reference to what they're asking for
20 in the search warrant, we help search for those items,
21 document where they're at, and then also collect those
22 items.

23 MR. OSBORNE: Your Honor, may I approach?

24 THE COURT: You may.

25 BY MR. OSBORNE:

1 Q. Showing you State's 83 through 95, can you tell me
2 if you recognize these?

3 A. These are the photos I took executing that warrant
4 at that address.

5 MR. OSBORNE: At this time, we seek to admit
6 State's 83 through 95 into evidence.

7 THE COURT: Without objection, admitted.

8 (State's Exhibit 83 through 95 were marked
9 for identification and admitted into
10 evidence.)

11 BY MR. OSBORNE:

12 Q. We're just going to go through them for a second.
13 83, what are we looking at here?

14 A. The exterior of the residence.

15 Q. State's 84?

16 A. The front door of the exterior of the residence.

17 Q. And I believe this is showing the address here,
18 ?

19 A. Yes, sir.

20 Q. What was the street again?

21 A. English Street.

22 Q. Okay. State's 85?

23 A. Inside the residence.

24 Q. 86?

25 A. Also inside the residence.

1 Q. 87?

2 A. Another one of the inside of the residence.

3 Q. Okay. And then 88, are we moving into a bedroom?

4 A. Yes, sir.

5 Q. Is 89 the same bedroom?

6 A. It appears so, yes, sir.

7 Q. 90?

8 A. Closer of the photo, previous photo.

9 Q. Okay. And 91?

10 A. The closer photo of what we captured in the
11 previous photo.

12 Q. And it looks like a pair of shoes you're trying to
13 emphasize here?

14 A. Yes, sir.

15 Q. Is this in the same bedroom, State's 92?

16 A. Yes, sir.

17 Q. Watch?

18 A. Yes, sir.

19 Q. 93, this is the same watch, you're just holding
20 it, I suppose?

21 A. Correct.

22 Q. 94, are we in the same bedroom?

23 A. I don't believe so, no, sir.

24 Q. What were you trying to photograph here?

25 A. Just documenting what is in that residence at the

1 time I arrived and where items were at.

2 Q. Okay. And 95?

3 A. This shirt was on the bed in that bedroom.

4 Q. Okay.

5 MR. OSBORNE: Your Honor, may I approach?

6 THE COURT: You may.

7 BY

8 BY MR. OSBORNE:

9 Q. I'm showing you State's 96, 97, 98, and 99. Can
10 you take a look at those and tell me if you recognize
11 those?

12 A. Yes. These are the items that I packaged and
13 collected from the scene.

14 Q. And let's go through them individually.
15 State's 96, what is that?

16 A. This was the left shoe that I collected from the
17 scene.

18 Q. And without showing it to the jury quite yet,
19 State's 97?

20 A. Sorry. This is the right shoe that I collected on
21 scene.

22 Q. And 98?

23 A. Was the watch that I documented and collected.

24 Q. And 99?

25 A. The red shirt from the bedroom on the bed that I

1 collected.

2 MR. OSBORNE: Your Honor at this time we seek
3 to admit 96 through 99 into evidence.

4 MR. KOZELSKI: No objection.

5 THE COURT: Admitted.

6 (State's Exhibits 96, 97, 98 and 99 were
7 marked for identification and admitted into
8 evidence.)

9 MR. OSBORNE: Now you can show the jury.

10 THE WITNESS: This is the left shoe that was
11 collected.

12 BY MR. OSBORN:

13 Q. That was 96?

14 A. Yes. 97, the right shoe that I collected; 98, the
15 watch that was collected; and 99 is the red and white
16 striped polo that I collected.

17 Q. And this is what we're looking at in 95?

18 A. Yes, sir.

19 Q. Did you put that there? Did you plant that there?

20 A. I did not, no, sir.

21 Q. Did you take any -- or did you collect any
22 currency from the residence?

23 A. I did, yes, sir.

24 Q. And how much currency was collected?

25 A. I collected approximately \$1,430 in U.S. currency.

1 Q. Is it or is it not fair to say when you're
2 collecting evidence you don't know at that time if it
3 holds any evidentiary value later on?

4 A. Correct.

5 Q. And if it does hold any evidentiary value, that
6 decision is usually made by a case agent, usually
7 somebody like Detective Brown?

8 A. Correct.

9 Q. Did you have the occasion to become involved in
10 processing a vehicle as a result of what happened out
11 there on English Street?

12 A. Yes, sir, I did.

13 Q. And what kind of vehicle was it?

14 A. I processed a Ford Fusion.

15 Q. Okay. Do you know whose home it was?

16 A. I do not. It was in the warrant, but not --

17 Q. I didn't ask you, what's the brand on the shoes?
18 Sorry.

19 A. That's all right. Looks like a Thom McAn,
20 T-h-o-m, M-c-A-n.

21 Q. Are those boat shoes?

22 A. They appear to be, yes, sir.

23 MR. OSBORNE: Okay. No further questions.

24 THE COURT: Cross?

25 CROSS-EXAMINATION BY MR. KOZELSKI:

1 Q. Good afternoon.

2 A. Good afternoon.

3 Q. You're no longer a crime scene tech, at CPD?

4 A. Correct.

5 Q. But you were back in March of 2015?

6 A. Yes, sir.

7 Q. And you became involved in this case by processing
8 two scenes, correct?

9 A. Yes, sir.

10 Q. One was the house on English Street?

11 A. Yes, sir.

12 Q. And the Ford Fusion?

13 A. Yes, sir.

14 Q. And you were called out to photograph and collect
15 evidence after CPD conducted a search warrant, correct?

16 A. Correct.

17 Q. And a few hours later, you executed the search
18 warrant on Silvester's Ford Fusion?

19 A. A Ford Fusion, yes, sir.

20 Q. And you wrote two supplemental reports about your
21 involvement in this case?

22 A. Correct.

23 Q. When you were called out to [REDACTED] English Street,
24 you were called out by Sergeant Stanley; is that correct?

25 A. Yes, sir.

1 Q. And when you went out there, you were met by
2 Sergeant Stanley, Detective Tuttle and Detective
3 Mallette?

4 A. Yes, sir.

5 Q. And they had already executed the search warrant?

6 A. Yeah, I believe so.

7 Q. Okay. And they were directing you to take photos
8 of what specific items that they had found.

9 A. Correct.

10 Q. So you weren't there when they found the items,
11 they were directing you as to --

12 A. I don't recall when, you know, but I was there at
13 that time.

14 Q. Okay. But they had already gone into the house
15 and pulled out what they thought was evidence, right?

16 A. I don't believe anything had been moved. I'm not
17 sure, because I just photograph as I walk in.

18 Q. Right.

19 A. So I'm not sure.

20 Q. But they had already executed the search warrant,
21 correct?

22 A. Define execute.

23 Q. They had already been in the house --

24 A. I don't recall who went in at what time. I just
25 know I was there to document what was found.

1 Q. Let me ask you this: When you were working back
2 in CPD as a crime scene investigator, you were familiar
3 with the policies and manuals you have as far as crime
4 scene management, right?

5 A. Yes, sir.

6 Q. And the golden rule in crime scene management is
7 to basically not touch anything until crime scene gets
8 there, right?

9 A. Correct.

10 Q. That's in quotes, the golden rule: Don't touch
11 anything until crime scene gets there, right?

12 A. Yes, sir.

13 Q. That way they can photograph everything as it was
14 when you get there. They haven't touched anything,
15 right?

16 A. Yes, sir.

17 Q. Once you move something, you can't put it back,
18 correct?

19 A. Correct.

20 Q. And that's in your manual?

21 A. That's in my manual.

22 Q. And so ideally, you want to get there before the
23 scene gets disturbed, right?

24 A. Correct.

25 Q. You take a pair of shoes with no laces, right?

1 Take a photo of that?

2 A. Yes, sir.

3 Q. And you don't know where they're located before
4 you took the photo of them, right?

5 A. No.

6 Q. This is State's 89. Okay. So you're coming in
7 the house, and you're taking a photo of this as you see
8 them, right?

9 A. Correct.

10 Q. You don't know if somebody has moved these shoes
11 before you got there?

12 A. Correct.

13 Q. So, for instance, you don't know if Detective
14 Tuttle, for instance, found these shoes underneath the
15 bed, right?

16 A. Correct.

17 Q. Those were just the way that they were when you
18 got there.

19 A. Correct.

20 Q. And the same for the shirt.

21 A. Correct.

22 Q. The shirt was already laid out on the bed.

23 A. Yes, sir.

24 Q. And you don't know if one of these detectives or
25 one of these officers had found that shirt and laid it

1 out on the bed for you.

2 A. Correct.

3 Q. Now, there were a number of things that were
4 listed in the search warrant that you guys were looking
5 for, correct?

6 A. Correct.

7 Q. And I want to just talk to you a bit about what
8 you didn't find. You didn't correct a blue one-piece
9 jumpsuit?

10 A. No.

11 Q. Any white paper dust mask?

12 A. No.

13 Q. No burgundy yellow cap?

14 A. No.

15 Q. Gun?

16 A. No, sir.

17 Q. Ammo?

18 A. No, sir.

19 Q. Documents planning a robbery or a getaway?

20 A. No, sir.

21 Q. First Palmetto Savings Bank paperwork?

22 A. No, sir.

23 Q. You didn't photograph or collect anything like
24 that?

25 A. No, sir.

1 Q. You then searched the Ford Fusion shortly after
2 leaving the house on English Street, right?

3 A. Yes, sir.

4 Q. It was also in a secure location?

5 A. Yes, sir.

6 Q. No one is supposed to get into that car before
7 you, correct?

8 A. No.

9 Q. And you were looking for the same items that
10 you're looking for in the house?

11 A. Correct.

12 Q. And you didn't find any of those items in the car?

13 A. I don't believe so; no, sir, I did not.

14 Q. Interior of the car is fairly clean?

15 A. I don't recall, but --

16 Q. Okay. You do also search through a TomTom and a
17 Garmin to see if there is, you know, 5 Sumar Street or
18 anything in there?

19 A. Yes, sir.

20 Q. And you don't find anything like that?

21 A. No, sir.

22 Q. You collect two lifts of prints.

23 A. Yes, sir.

24 Q. And you also collect a number of touch DNA, saliva
25 DNA swabs out of the car?

1 A. Yes, sir.

2 Q. And you submitted the swabs and the lifts into
3 evidence?

4 A. Correct.

5 Q. And that's your job?

6 A. That's my job.

7 Q. That's where it ends?

8 A. Yes, sir.

9 Q. Thank you.

10 MR. KOZELSKI: No further questions.

11 THE COURT: Redirect?

12 MR. OSBORNE: Just briefly, Your Honor.

13 REDIRECT EXAMINATION BY MR. OSBORNE:

14 Q. So back then when you were a crime scene
15 technician, were you armed?

16 A. No, sir.

17 Q. So -- and this search warrant was for -- and the
18 execution of the search warrant was in reference to an
19 armed bank robbery investigation, correct?

20 A. Correct.

21 Q. So let's -- have you ever been in a stack when a
22 search warrant is being executed? Have you ever been one
23 of those initial officers who go right in on those type
24 of search warrants?

25 A. No, sir.

1 Q. So other officers do that?

2 A. Yes.

3 Q. Not a crime scene technician?

4 A. No.

5 Q. So for you to have been there at that moment is
6 really impossible?

7 A. Correct.

8 Q. You would never be there?

9 A. No.

10 Q. There is always going to be officers that go in
11 first in an armed situation?

12 A. Yes, sir.

13 Q. Whether the guy was in jail or not?

14 A. Yes.

15 Q. Was it common practice for you to actually get in
16 there and get your hands dirty and search for evidence
17 when y'all were searching in houses?

18 A. Not usually. At times we're an extra pair of
19 eyes, so it can be very helpful when we know what they're
20 looking for, but usually there's officers, detectives
21 there that are -- during the day game.

22 Q. And is it fair to say the reason for that is
23 because you haven't interviewed any of the witnesses?

24 A. Correct, yeah.

25 Q. You're not familiar with the evidence that led to

1 the detectives being in that house, searching for
2 evidence?

3 A. Correct.

4 Q. The people that are familiar with that would be
5 the detectives?

6 A. Yes.

7 Q. So is it fair to say if they do find evidence,
8 though, they direct you to collect it?

9 A. Yes.

10 MR. OSBORNE: No further questions.

11 THE COURT: Any recross?

12 MR. KOZELSKI: Just briefly, Your Honor.

13 RECROSS-EXAMINATION BY MR. KOZELSKI:

14 Q. So as a crime scene investigator, as your -- you
15 know, your job to go in and photograph stuff before
16 people touch it. Obviously, you can do what's called a
17 protective sweep, right?

18 A. Yes, sir.

19 Q. And that's what Mr. Osborne is talking about, is
20 to make sure there is nobody in there that can do you
21 harm, right?

22 A. Right.

23 Q. But in a protective sweep, you're not supposed to
24 be rummaging through drawers or anything like that,
25 correct?

1 A. Correct.

2 Q. Because nobody is going to jump out of a drawer
3 and shoot you. That's the point of the crime scene
4 investigator to go do that, right?

5 A. Correct.

6 Q. And if a detective or an officer does move things
7 in a scene that you're responding to, your protocol says
8 that they're supposed to let you know, correct?

9 A. Correct.

10 Q. And as you just testified earlier on
11 cross-examination, you don't know if these shoes were
12 moved?

13 A. Correct.

14 Q. Nobody told you that they had moved them from some
15 other place?

16 A. Correct.

17 Q. Or where they found them?

18 A. Correct.

19 Q. And the same goes for the shirt?

20 A. Yes.

21 MR. KOZELSKI: Okay. Thank you. No further
22 questions.

23 THE COURT: All right. You may step down.
24 Next witness.

25 MR. WARING: The State calls Detective

1 Broadwater.

2 CORY BROADWATER

3 having been called as a witness for the State at
4 3:51 p.m., was sworn and testified as follows:

5 DIRECT EXAMINATION BY MR. WARING:

6 Q. Good afternoon, Detective. Can you tell the jury
7 where you work.

8 A. City of Charleston Police Department.

9 Q. And what do you do for the city of Charleston?

10 A. I'm currently a detective assigned to the warrants
11 division.

12 Q. Were you involved with this case?

13 A. Yes, I was.

14 Q. And how did you initially get brought into this
15 case?

16 A. On the date and time in question, I was the
17 midnight shift detective. We've had some success with
18 finding offenders at hotels, things of that nature, so I
19 was just checking the hotels in the area when we came
20 upon the defendant's vehicle.

21 Q. Now, Detective, do you mind speaking a little
22 closer to the microphone? And where did y'all respond?

23 A. It's the Evergreen Motel on Savannah Highway.

24 Q. Is that in Charleston County?

25 A. It is.

1 Q. And what happened once you got there?

2 A. Once we got there, we spoke with the gentleman
3 that worked in the office there and also made contact
4 with some other guests there on the property to confirm,
5 to establish, that the defendant was actually staying at
6 the motel.

7 Q. All right. Did you attempt to get the defendant
8 out of his room?

9 A. That's correct.

10 Q. And what happened with that?

11 A. Once we made notification to the sheriff's office,
12 due to the fact that it was their jurisdiction, they came
13 on scene, and we utilized one of their patrol -- marked
14 vehicle's PA systems to conduct call-outs.

15 Q. Did the defendant come out?

16 A. He did. After some time he came out, yes.

17 Q. So he didn't come out immediately?

18 A. No, he did not.

19 Q. And was he taken into custody?

20 A. He was.

21 Q. Did y'all do anything with his room at that point?

22 A. We made it safe, which we basically go and make
23 sure there's no other individuals in there, and we waited
24 until we actually got a search warrant to do a further
25 search of the room.

1 Q. Was anything found on his person?

2 A. It's my recollection, yes. There was some cash
3 that he had, yes.

4 MR. WARING: May I approach the witness, Your
5 Honor?

6 THE COURT: Yes.

7 BY MR. WARING:

8 Q. All right. Detective, I'm showing you what has
9 been marked for identification purposes as State's
10 Exhibit 100. Do you recognize that?

11 A. Yes, sir.

12 Q. Can you tell the jury what you're looking at?

13 A. It's U.S. currency with my signature on it, my
14 initials.

15 Q. Is that the cash you collected?

16 A. Yes. This is what I packaged, that's correct.

17 Q. Do you know how much cash is in there?

18 A. No, I couldn't tell you. I don't recall.

19 Q. Would it assist you to refresh your memory if I
20 showed you a copy of your report?

21 A. Sure. He's in possession of \$635 in U.S.
22 currency?

23 Q. Do you know what kind of denominations were in
24 there?

25 A. There's five \$100 bills, six \$20 bills, one \$10

1 bill, and one \$5 bill.

2 Q. Now, does Exhibit 100 fairly and accurately depict
3 the cash, the 635 bucks you found on the defendant?

4 A. Yes.

5 Q. Is it in otherwise substantially the same
6 condition?

7 A. Yes, correct.

8 MR. WARING: Your Honor, at this point the
9 State moves to have Exhibit 100 admitted into evidence.

10 MR. KOZELSKI: No objection.

11 THE COURT: Admitted.

12 (State's Exhibit 100 was marked for
13 identification and admitted into evidence.)

14 BY MR. WARING:

15 Q. Now, while executing the search warrant, did you
16 find any phones?

17 A. Yes, that's correct.

18 Q. How many phones?

19 A. Two.

20 Q. Now, showing you what been marked for
21 identification purposes as State's 101 and 102, do you
22 recognize those? And if you need to, you can open them
23 up.

24 A. Two Cricket cellphones yes, sir.

25 Q. Did you collect those phones?

1 A. I did.

2 Q. Did you turn them into the evidence department per
3 Charleston Police Department policy?

4 A. Yes, sir, I did.

5 Q. Could you tell the jury what the make, model, and
6 serial numbers are for each one of those phones.

7 A. The first one here is a Cricket, an LG Cricket
8 flip phone. Looks like the model is LGB460, LGB460, and
9 the serial number looks like 409CYXM177258.

10 Second LG Cricket flip phone, model number LG3460,
11 serial number is 409CYBD177845.

12 Q. All right. And do both of those phones fairly and
13 accurately depict two phones of the defendant's that you
14 found in his motel room?

15 A. Yes, sir.

16 Q. And are they otherwise in substantially the same
17 condition?

18 A. I would say so, yes.

19 MR. WARING: Your Honor, at this point the
20 State moves to have Exhibits 101 and 102 admitted.

21 MR. KOZELSKI: No objection.

22 THE COURT: Admitted.

23 (State's Exhibits 101 and 102 were marked for
24 identification and admitted into evidence.)

25 Thank you. Please answer any questions the

1 defense has.

2 CROSS-EXAMINATION BY MR. KOZELSKI:

3 Q. Detective Broadwater, you said you went to
4 Evergreen Hotel Room 115 with Detective Parker and
5 members of the Charleston Sheriff's Department to serve
6 an arrest warrant, basically on Mr. Scott; is that
7 correct?

8 A. If that's the room number.

9 Q. And you did this at 4:00 in the morning?

10 A. I don't really recall, but I know I was the
11 midnight shift detective.

12 Q. Do you have your report with you?

13 A. I do.

14 Q. Okay. And --

15 A. Correct, at approximately 0400 hours, correct.

16 Q. So you said Mr. Scott took a little minute to come
17 outside, right?

18 A. That's correct.

19 Q. Could have been sleeping, right? I don't know too
20 many people that are awake at 4:00, in the morning but he
21 could have been sleeping.

22 A. Fair enough.

23 Q. And you don't write anything in your report about
24 it taking a long time for him to come out, right?

25 A. No, I don't believe -- no, sir.

1 Q. So he was arrested without any sort of incident or
2 anything like that?

3 A. That's correct.

4 Q. And after you get him out of the room, you do
5 what's called a protective sweep?

6 A. Well, once the offender is detained, we make sure
7 there's no weapons on that individual, and then also, the
8 room, we make it safe, just meaning make sure there are
9 no other parties in there.

10 Q. You want to secure the room until you have a
11 search warrant arrive on scene?

12 A. Correct.

13 Q. Because, I mean, essentially you have a crime
14 scene here. You're arresting somebody for an armed
15 robbery, right?

16 A. Correct.

17 Q. And you could find evidence of that armed robbery
18 there in that room, right?

19 A. Correct.

20 Q. And this jury has heard a lot about CPD policies
21 and crime scene management. I talked about the golden
22 rule a lot: Don't touch anything until crime scene gets
23 there, right?

24 A. In some cases, correct, yes.

25 Q. Well, the exceptions are unless somebody's going

1 to get hurt, right? That's an exception. You could move
2 stuff around that you think is going to hurt somebody,
3 right?

4 A. Correct.

5 Q. Or if an item can be destroyed, if it's going to
6 go down the toilet or something like that, you could move
7 the item out of the toilet, right?

8 A. Correct.

9 Q. But other than that, the rule is don't touch
10 anything until crime scene gets there?

11 A. That's not necessarily the rule, but, you know --

12 Q. That is specifically the golden rule in your crime
13 scene management manual, is it not?

14 A. Not necessarily.

15 Q. Okay. You're familiar with your crime scene
16 management manual?

17 A. I am.

18 Q. And you're familiar with what they refer to as the
19 golden rule?

20 A. Well, yes. You wouldn't want to touch anything
21 that's going to maybe destroy the case or anything of
22 that matter, yes.

23 Q. Because once something is moved, you can't ever
24 put it back in the original position, right?

25 A. That's correct.

1 Q. So you limit people going in and out of the room,
2 right?

3 A. Correct.

4 Q. You prevent people from moving, altering, or
5 destroying anything that's in the room, right?

6 A. Correct.

7 Q. You document anything people say at the scene
8 while you're there, right?

9 A. For the most part, yes.

10 Q. If Silvester had told you something on the way out
11 the door, you would have documented that in your report,
12 right?

13 A. Possibly.

14 Q. And you're attempting to secure and control the
15 scene, right?

16 A. Correct.

17 Q. That's what's called scene integrity?

18 A. Okay.

19 Q. And because you were dealing with a serious crime
20 like armed robbery, your policy, your department policy,
21 dictates that a crime scene investigator should respond,
22 right?

23 A. Yes, fair enough, yes.

24 Q. And you have to remain on scene until you're
25 released by those crime scene investigators?

1 A. Or someone else, correct.

2 Q. And you're supposed to help those crime scene
3 investigators in any way that you can?

4 A. Yes.

5 Q. You can brief them on any observations that you've
6 had since you've been there, right?

7 A. Uh-huh.

8 Q. And you let them photograph and document the crime
9 scene?

10 A. If there's something there that's -- you know,
11 needs their attention, yes.

12 Q. But you didn't call the crime scene investigation
13 out there, right?

14 A. I didn't.

15 Q. So this scene was never properly photographed?

16 A. Well, there was nothing there for them to actually
17 respond to that with immediate attention other than the
18 cellphones.

19 Q. You collected evidence, did you not?

20 A. I collected cellphones, yes.

21 Q. Okay. And you collected the money that was there?

22 A. That was on his person.

23 Q. Okay. So you got a search warrant. You went in
24 there; you collected evidence, right?

25 A. I collected cellphones yes.

1 Q. But you didn't call crime scene to the scene to
2 photograph what you got, correct?

3 A. There were cellphones.

4 Q. You didn't call crime scene?

5 A. To take pictures of cellphones, no, I did not.

6 Q. Of the room or anything that was in there?

7 A. No, I did not.

8 Q. Okay. You do get the search warrant about two
9 hours after you arrived there, so probably about 6:00 in
10 the morning?

11 A. Roughly, yes.

12 Q. And in that search warrant, you list a number of
13 items that you're looking for?

14 A. More than likely, yes.

15 Q. And you testified that you found some money and
16 two cellphones, right?

17 A. Correct.

18 Q. You didn't find a blue one-piece jumpsuit?

19 A. I don't believe so.

20 Q. You didn't find any white paper dust masks?

21 A. I didn't, no.

22 Q. You didn't find a burgundy or yellow cap?

23 A. No, I did not.

24 Q. Dark-colored shoes with white soles?

25 A. I did not.

1 Q. A handgun?

2 A. I did not.

3 Q. Ammunition?

4 A. I did not.

5 Q. Any documents containing planning of a robbery or
6 get away?

7 A. I did not.

8 Q. No paperwork from First Palmetto Savings Bank?

9 A. No, sir.

10 Q. And, of course, no forensics were done at that
11 scene?

12 A. No, sir.

13 MR. KOZELSKI: No further questions.

14 THE COURT: Redirect?

15 MR. WARING: Thank you, Your Honor.

16 REDIRECT EXAMINATION BY MR. WARING:

17 Q. Detective Broadwater, the motel where the
18 defendant was apprehended, was that technically a crime
19 scene?

20 A. I wouldn't classify it as being a crime scene. It
21 was just the location he was located at.

22 Q. After a search warrant execution?

23 A. I'm sorry?

24 Q. I mean, essentially contemporaneous with a search
25 warrant execution?

1 A. Prior to execution of the search warrant, it was
2 the location where the defendant was found at.

3 Q. Did you or anybody else to your knowledge go there
4 and plant evidence?

5 A. Absolutely not.

6 Q. Did you plant the phones?

7 A. Absolutely not.

8 Q. Cash on him?

9 A. Absolutely not.

10 Q. But were the phones, in fact, the two phones of
11 the defendant's, found in his motel room?

12 A. They were, yes.

13 Q. And was that 635 in cash with the 500 bills found
14 on his person?

15 A. Yes, it was.

16 Q. So, Detective, for this case, for this armed
17 robbery, this bank robbery situation, did that occur in
18 the motel room?

19 A. Did the robbery occur?

20 Q. Yes, in the motel room?

21 A. No, it did not.

22 Q. So was that the crime scene for this case?

23 A. No, it was not.

24 MR. WARING: No further questions, Your
25 Honor.

1 THE COURT: Any recross?

2 RECROSS-EXAMINATION BY MR. KOZELSKI:

3 Q. You got a search warrant in this case.

4 A. Yes.

5 Q. To search for evidence of a crime?

6 A. Correct.

7 Q. And you said this was Silvester's room. Are you
8 aware of whose room it was --

9 A. This is the location that he was located.

10 Q. Okay. Thank you.

11 MR. KOZELSKI: No further questions.

12 THE COURT: You may step down.

13 THE WITNESS: Thank you, sir.

14 THE COURT: Let me see the lawyers up here a
15 second.

16 (A bench conference was held off the record
17 at 4:08 p.m.)

18 (Back on the record at 4:08 p.m.)

19 THE COURT: All right, folks. We'll go ahead
20 and break here for today then.

21 Let me send you home with the instructions
22 not to talk to anybody about the case, including other
23 members of the jury panel, family members, et cetera,
24 that sort of thing. Don't post anything on social media.
25 Don't talk about the case in any way or try to find out

1 anything about the case.

2 Sometimes when people get on a jury they, get
3 invested in it and want to start, you know, going to the
4 crime scene or looking up stuff on Google, all sorts of
5 things that sound a little bit silly, but, you know,
6 people do it, so I'm telling you, don't do it. Anything
7 you need to know about this case we will tell you about
8 in this courtroom. All right?

9 So go home, come back tomorrow morning, and
10 be in the jury room by 9:30 and we should get started
11 shortly thereafter. Thank you.

12 (The jury left the courtroom at 4:09 p.m.)

13 (The court recessed at 4:09 p.m. and
14 reconvened on Wednesday, March 13, 2019.)

15

16

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON 2015-GS-10-4003

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
 -VS-)
) March 11-13, 2019
SILVESTER D. SCOTT,)
) Charleston, South Carolina
 Defendant.)

VOLUME III - March 13, 2019

B E F O R E:

The Honorable Roger M. Young, Sr., Judge, and a Jury.

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

For the State:
Thomas Richard Waring, II, Assistant Solicitor
David Osborne, Assistant Solicitor

For the Defendant:
John Joseph Kozelski, III, Attorney
Susannah Knox, Attorney

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

I N D E X

PAGE

STATE WITNESSES

JACK WEISS

Direct Examination By Mr. Osborne	310
Cross-Examination By Mr. Kozelski	326
Redirect Examination By Mr. Osborne	330

MELISSA BRYANT

Direct Examination By Mr. Osborne	332
Cross-Examination By Mr. Kozelski	336
Redirect Examination By Mr. Osborne	336

ERIC TUTTLE

Direct Examination By Mr. Waring	337
Cross-Examination By Mr. Kozelski	352
Redirect Examination By Mr. Waring	373

WILLIAM JERRY ROBERTS, JR.

Direct Examination By Mr. Waring	376
Cross-Examination By Mr. Kozelski	391
Redirect Examination By Mr. Waring	395

YOLANDA BROWN

Direct Examination By Mr. Waring	396
Cross-Examination By Mr. Kozelski	411
Redirect Examination By Mr. Waring	428
Recross-Examination By Mr. Kozelski	431

EDDIE TUDOR

Direct Examination By Mr. Waring	439
Cross-Examination By Mr. Kozelski	443
Redirect Examination By Mr. Waring	446

ROBERT CLAYTON SIMMONDS

Direct Examination By Mr. Waring	447
Cross-Examination By Mr. Kozelski	467
Redirect Examination By Mr. Waring	480
Recross-Examination By Mr. Kozelski	484

NADA KERSTEIN

Direct Examination By Mr. Kozlowski	494
Cross-Examination By Mr. Osborne	499

CATHERINE LEISY

Direct Examination By Mr. Kozelski	500
Cross-Examination By Mr. Osborne	505

ANDREA SIMMONS

Direct Examination By Mr. Kozelski	509

HARRIET CORDERO

Direct Examination By Ms. Knox	513
Cross-Examination By Mr. Osborne	518
Redirect Examination By Ms. Knox	522

STATEEXHIBITS

No.	DESCRIPTION	MARKED	RECEIVED
103	Phone Records	348	348

104	Subscriber information for phone records	348	348
105	 for	348	348
106	Record from DMV	334	334
107	Record from DMV	334	334
108	Record from DMV	334	334
109	Record from DMV	334	334
110	SIM extraction Report	385	385
111	Photograph	388	388
112	Copy of Text Messages	391	391
113	Signed Miranda Card	402	402
114	Interview of Defendant	404	404
115	Clips of Interview of Defendant	404	404
116	PowerPoint Presentation	458	458
118	Video of Interview	321	321
119	Payment History for Vehicle	440	440

DEFENSEEXHIBITS

No.	DESCRIPTION	MARKED	RECEIVED
3	Receipts for Car Payments	445	445
4	Receipt	423	423
5	Report of Nada Kerstein	498	498
6	CODIS Hit Notification	512	512

1 P R O C E E D I N G S

2 (Wednesday, March 13, 2019. Court resumed
3 session in the case of State of South
4 Carolina vs. Silvester D. Smith at 9:42 a.m.
5 and the following proceedings were had in the
6 presence of the jury.)

7 THE COURT: All right, folks. We are now
8 going to resume with the State calling their next
9 witness.

10 MR. OSBORNE: State calls Captain Jack Weiss.

11 JACK WEISS

12 having been called as a witness for the State at
13 9:42 a.m., was sworn and testified as follows:

14 DIRECT EXAMINATION BY MR. OSBORNE:

15 Q. Captain Weiss, where do you work?

16 A. Charleston Police Department.

17 Q. And for how long?

18 A. I've been there 21 years.

19 Q. I know it's been a while, so could you briefly
20 list for the jury some of your various assignments during
21 that time.

22 A. I worked in the uniform patrol division. I was a
23 patrol training officer. I worked in the Safe Streets
24 Unit, which was a street crimes unit that dealt mostly
25 with street level narcotics violations, robbery suspects.

1 I was the burglary sergeant over the burglary division
2 for two years. I was a patrol sergeant for two years. I
3 also became the lieutenant over central investigations
4 persons crimes, and I was the bomb squad commander for
5 ten years to the FBI, and I also now am currently the
6 captain over central investigations.

7 Q. Okay. Let's go back to March the 4th, going into
8 the early morning hours of March the 5th of 2015. Were
9 you working then?

10 A. Yes.

11 Q. And in what capacity?

12 A. I was the lieutenant over central investigations.
13 I was the person assigned at that time, which encompasses
14 homicide, violent crimes, robbery, and the Special
15 Victims Unit.

16 Q. And bank robbery, that would have been a violent
17 crime?

18 A. Yes.

19 Q. So you would have supervised the detectives that
20 investigated that crime, or a crime like that?

21 A. Yes.

22 Q. Did you have occasion that night to respond to the
23 Quality Inn at 2237 Savannah Highway?

24 A. Yes, I did.

25 Q. And for what purpose?

1 A. On that night -- we had had a bank robbery earlier
2 in the day. We put out some pictures, BOLOs, to
3 uniformed patrol officers. We asked that they check some
4 of the various hotels on Savannah Highway in the event
5 that the individual who committed the crime had gone to
6 stay at one of the hotels.

7 We were notified by Team 4 patrol they believed
8 they located a vehicle similar to the one that we had
9 broadcast to them at the hotel, so at that time myself
10 and a couple of detectives responded to the area, not
11 directly to the hotel at first. We staged over at the
12 laundromat directly across the street from the hotel
13 while uniformed patrol put together a plan to make
14 contact with the hotel room.

15 Q. And just a couple things, Team 4, that being West
16 Ashley?

17 A. Yes.

18 Q. So when you distributed information to West
19 Ashley, is it fair to say that CPD was on the lookout,
20 trying to find this car?

21 A. Yes.

22 Q. Okay. All right. So you left off, you said that
23 you had staged at the laundromat, had some other
24 personnel with you -- and when you said staged, what do
25 you mean by that?

1 A. We went to a location near but not in the parking
2 lot of the hotel for safety reasons. We're dealing with
3 an armed robbery investigation to a bank. We knew the
4 vehicle was there. We got information that the people
5 that vehicle was tied to a specific room, so we had
6 uniformed patrol officers respond so they would be in
7 full police uniform so there would be no question who was
8 knocking on the door of the hotel room to make contact
9 with the occupants to further the investigation.

10 Q. Okay. And so they would know who was knocking.
11 You weren't working at that time; you responded from
12 home?

13 A. No, I was actually still out. We had been out all
14 day with the robbery. We were back at the office. We
15 were still reviewing additional video, trying to get
16 video from adjacent businesses to further the
17 investigation, and they let us know that they had the
18 vehicle, so we stopped what we were doing in the office
19 and went out there.

20 Q. Okay. Active investigation going on throughout
21 the day?

22 A. Yes.

23 Q. All hands on deck?

24 A. Yes.

25 Q. So your staging officers are making contact with

1 the room, 117. What happens then?

2 A. They advised us that basically the room was
3 secured, meaning that they made contact, and detained
4 three individuals. At that time we then drove across the
5 street and approached the area.

6 Q. And we've heard some testimony earlier, Alonzo
7 Green, Anthony Holsberg, and Charles Thompson, were those
8 the three individuals that were detained?

9 A. Yes, they were.

10 Q. Now, at a certain point was Alonzo Green
11 transported to the station?

12 A. Yes, he was.

13 Q. And was anyone else transported to the case?

14 A. Yes, Anthony Holsberg.

15 Q. And you were the supervisor out there. Why wasn't
16 Thompson transported to the station?

17 A. We had no real direct link at that time for
18 Charles Thompson to the vehicle or the room. He was
19 65 years old. He didn't fit the description of the
20 suspect either.

21 Q. And I suppose it's obvious. Green and Holsberg
22 were transported to the station to be interviewed?

23 A. Yes, they were.

24 Q. Did they drive themselves or were they transported
25 by officers?

1 A. No, they were escorted by officers.

2 Q. Would that have been uniformed officers?

3 A. It could have been detectives at that point
4 because they had already been patted down for weapons and
5 cleared.

6 Q. Okay. But you're not exactly sure who
7 transported --

8 A. I can't remember who transported them.

9 Q. Now, is it standard practice and just for safety
10 purposes, I suppose, to search an individual prior to
11 putting them in a vehicle and transporting them to a
12 location?

13 A. Yes. They would be patted down for weapons and
14 searched.

15 Q. Is that especially prevalent or true when you're
16 dealing with an armed incident?

17 A. Yes.

18 Q. When an officer or detective searches an individual
19 prior to transporting them, what do they do with all this
20 property?

21 A. A lot of our patrol officers have evidence bags,
22 not the clear plastic ones that they seal evidence in.
23 They're brown paper bags, almost like a school lunch bag
24 they'll put somebody's property in. When they get to the
25 station, they'll place that property either on a desk or

1 we have bins outside the door so the individual's
2 property is right there where they can get to it once
3 they're released.

4 Q. As opposed to just holding it or putting it in an
5 officer's pockets, they can put it in brown bags?

6 A. Right. That way there's no confusion. The
7 individual can look in the bag and make sure they have
8 their own stuff.

9 Q. And so without getting into what they said, but
10 were Alonzo Green and Anthony Holsberg interviewed at the
11 station?

12 A. Yes, they were.

13 Q. And were they released?

14 A. Yes, they both were.

15 Q. And specifically regarding Alonzo Green, prior to
16 him being released did you return anything to him?

17 A. Yes, I did.

18 Q. And what did you return to him?

19 A. The two brown paper bags that were in the mailbox
20 that belonged to him.

21 Q. And do you know which officers actually put
22 Green's property into the bags?

23 A. No, I do not.

24 Q. And do you have any idea what was in the bags?

25 A. No. I mean, I know from -- he had two phones

1 because I know he went through his phones with us, but I
2 did not completely inventory the bags or search the bags.

3 Q. Okay. Would you know, or do you know, if there
4 was a gun in the bag?

5 A. No, there was not a gun in the bag. They wouldn't
6 place a weapon in the bag.

7 Q. How about -- do you have any knowledge as to, say,
8 whether there was \$4,000 worth of 50s and 100s in the
9 bag?

10 A. No.

11 Q. And you had mentioned earlier it was all hands on
12 deck.

13 A. Yes.

14 Q. Everyone knew you were dealing with a bank
15 robbery?

16 A. Correct.

17 Q. From information that was being disseminated?

18 A. Yes. That was the reason for searching for the
19 vehicle.

20 Q. And some officer put that property, Green's
21 property, into the bag?

22 A. Yes, they did.

23 Q. Let me just ask you about policies and procedures
24 then. If you're transporting a witness to the station
25 and you end up putting their property into a bag, is it

1 policy and procedure to document insignificant items that
2 you're returning to them later?

3 A. No. They don't have to document, really, anything
4 they put in a bag that belongs to a witness.

5 Q. Change?

6 A. No.

7 Q. Phones?

8 A. No.

9 Q. Just keep it for safekeeping and give it back to
10 them?

11 A. Correct.

12 Q. Would a gun have been significant in this
13 investigation?

14 A. Yes, it would have.

15 Q. Would, more importantly, \$4,000 in crisp \$100
16 bills been significant in this investigation?

17 A. Yes, it would.

18 Q. You mentioned you worked on the Safe Streets Unit.
19 You mentioned briefly what you did there, and I think you
20 might have mentioned this: Did you have occasion to
21 arrest drug dealers with the Safe Streets Unit?

22 A. Yes.

23 Q. That was a proactive unit, correct?

24 A. Yes. That was our main objective, to target
25 communities that had been affected by violent crime, open

1 drug dealing, things like that.

2 Q. And during that time, you said you had to arrest
3 drug dealers. Have you ever had through your work
4 experience to confiscate currency that was in the
5 possession of drug dealers?

6 A. Yes.

7 Q. Describe to the jury what a drug dealer's currency
8 might like look.

9 A. Usually it's going to be a folded band of bills,
10 anywhere from 1s, 5s 10s, 20s, whatever a drug abuser is
11 going to use to purchase their narcotics. It's not
12 going -- it's almost going to be like a wad in somebody's
13 pocket when it's crumpled and things, even loose change.
14 Unfortunately, sometimes people will gather that up to
15 buy narcotics.

16 Q. Not the type of currency that you might typically
17 expect to get from a bank?

18 A. No.

19 Q. Crisp currency, 100s and 50s?

20 A. No.

21 Q. Dealers usually deal with small denominations?

22 A. Correct.

23 MR. KOZELSKI: Objection. Leading.

24 THE COURT: Please don't lead anymore.

25 Rephrase the question.

1 BY MR. OSBORNE:

2 Q. Describe the denominations.

3 A. Singles, fives, tens; twenties at the most. An
4 average crack rock is going to be \$5 to \$10 average
5 bindle of heroin might be \$20 for some people, \$10 for
6 others; a nickel bag could be \$5, \$10. Talk about people
7 selling kilos where they have bundles of crisp clean
8 money coming back and forth --

9 Q. Movie stuff?

10 A. Yes.

11 Q. I'm showing you State's 118. Can you look at that
12 and tell me if you recognize that?

13 A. Yes. It's a video that I initialed.

14 Q. And what does the video show?

15 A. It shows a snippet of me taking two brown paper
16 bags, setting them on the table in front of Mr. Green,
17 ask him to make sure all of his property is in the two
18 bags, and then he requests where his girlfriend's at,
19 Mercedes, advised that she's back at the hotel, and they
20 he also asked me to charge his phone, so it could be
21 charged when he leaves the interview room.

22 Q. So it's not the entire interview?

23 A. No.

24 Q. All right.

25 MR. OSBORNE: Your Honor, at this time we

1 would seek to admit State's 118 into evidence.

2 MR. KOZELSKI: No objection.

3 THE COURT: Admitted.

4 (State's Exhibit 118 was marked for
5 identification and admitted into evidence.)

6 (Video played.)

7 MR. OSBORNE: I'm just going to fast forward
8 to the end here.

9 (Video paused.)

10 BY MR. OSBORNE:

11 Q. And then what happened to Mr. Green after that?

12 A. He was taken back to the hotel.

13 Q. Okay. Now I want to change gears just a bit here
14 now that I've got you here. Now, you've said that you
15 are a captain with CPD; is that correct?

16 A. Yes, I am.

17 Q. And that's a senior command staff member?

18 A. Correct.

19 Q. And what role, if any, do you play in disciplinary
20 actions against officers?

21 A. I have to review internal investigations against
22 officers after the lieutenant, who's usually -- or a
23 sergeant has handled an investigation on an officer, they
24 bring all the facts to me. I have to review the folder,
25 and then once I review the folder to look if there's a

1 policy violation, how severe it is, and then I pass that
2 on to the deputy chief and then finally to the chief of
3 police.

4 Q. In that role, have you ever been involved in
5 disciplinary actions against officers for failure to
6 comply with evidence collection and handling procedures
7 established by the department?

8 A. Yes, I have.

9 Q. So I'm not asking you if you've memorized all of
10 the policies, but is it least fair to say you are
11 somewhat familiar with them?

12 A. Yes, I am.

13 Q. Let's start with a crime scene. What is a crime
14 scene?

15 A. Crime scene is a location where a crime has
16 occurred, or a location where evidence of the crime has
17 occurred is located.

18 Q. Okay. Is -- let me ask you this: Is a crime
19 scene investigator required to be called out to all crime
20 scenes?

21 A. No, they are not.

22 Q. What type of crime scenes are crime scene
23 investigators typically called out to?

24 A. Major scenes: Like in this case, the bank
25 robbery, they came and processed the location; homicide;

1 incidents in a street or in a residence; burglaries,
2 going out to process the scene of a burglary that had
3 occurred earlier; significant assaults, shootings
4 stabbings, sexual assaults, going out to collect evidence
5 in those situations.

6 Q. So let's just say a shoplifting incident. Would
7 an officer typically call out a crime scene investigator
8 for a shoplifting incident?

9 A. No, they are not.

10 Q. But an officer does collect evidence in a
11 shoplifting crime?

12 MR. KOZELSKI: Objection, Your Honor. I
13 would ask him to stop leading.

14 BY MR. OSBORNE:

15 Q. Does an officer collect evidence in a shoplifting
16 incident?

17 A. Yes, they do.

18 Q. Or can they?

19 A. Yes, they do.

20 Q. Okay. Now, you being involved in disciplinary
21 actions within the department, would you take
22 disciplinary action upon an officer for a policy
23 violation if they searched a car after a traffic stop
24 without calling a crime scene investigator?

25 A. No, I would not. It happens every single day.

1 Q. Now, what if they were to find dope or a gun in a
2 car which would end up being evidence of a crime and they
3 did still did not call out a crime scene investigator?

4 A. They would not call crime scene to those scenes.

5 Q. Even though they collected evidence?

6 A. No. They would handle that themselves. They even
7 have fingerprint kits in our patrol units that handle
8 minor things on vehicles.

9 Q. And is that also true for detectives collecting
10 evidence and not calling out crime scene investigators?

11 A. That is correct, collect evidence at numerous
12 locations.

13 Q. And what are some examples of a detective
14 collecting evidence in which they would not call out a
15 crime scene investigator and that would not be a policy
16 violation?

17 A. Many times detectives will respond to a prison or
18 property, Charleston County Detention Center, when
19 they'll realize an individual is arrested who had
20 evidence of a crime when he was booked in, such as
21 cellphones, clothing; may need to get DNA swabs from that
22 individual. They're trained in doing that. They would
23 respond out there without crime scene. They would
24 collect the DNA samples, place them in evidence.

25 They would also collect the cellphone with the

1 search warrant to be analyzed, second search warrant
2 later on, and collect that clothing and then document it,
3 bring it back to the station, and place it directly into
4 evidence.

5 Q. And what about the narcotics unit? Do they
6 typically call out crime scene when they're executing
7 search warrants?

8 A. No. They rarely call out crime scene. They're a
9 plainclothes unit. Usually they're going to make contact
10 at a location, they're going to execute a search warrant
11 and process everything themselves, more or less not to
12 shed a lot of light on the incident location to protect
13 the investigation they're involved in at that time.

14 Q. So there's nothing improper, or is there something
15 improper, about a detective collecting evidence himself?

16 A. No, there is not.

17 Q. Okay. So is it within departmental policy for a
18 detective to, say, search a hotel room either by consent
19 or a search warrant, and find evidence and collect that
20 evidence without calling out a crime scene investigator?

21 A. Yes. That is allowed.

22 Q. That's allowed. What about searching a home,
23 finding evidence, maybe, say, under a bed, and then
24 taking that evidence out and putting it in another
25 location and photographing it? Would that be a

1 departmental violation?

2 A. No. The circumstances surrounding it, if you
3 can't tell what you have until you remove it -- I mean, I
4 myself have searched houses, taking things out of coat
5 pockets, when I got it out, realized it was drugs or
6 realized it was money, realized it was other pieces of
7 evidence that you're actually looking for but you don't
8 know what's hanging in a closet or in a dark place, empty
9 clothes hamper, somebody put something in a clothes
10 hamper that we were looking for after going through the
11 clothes hamper, things like that.

12 Q. So you yourself have searched for evidence, found
13 it in a location, and then removed it and then noticed it
14 was evidence?

15 A. Yes.

16 Q. So it wasn't apparent to be evidence at the time
17 you first saw it; you had to move it --

18 A. Correct.

19 Q. -- to be able -- and that's proper?

20 A. Yes. Looking for clothes within dirty laundry,
21 you don't know if it's sweatpants, T-shirts, what,
22 balled, up so you get it all.

23 MR. OSBORNE: No further questions.

24 THE COURT: Cross?

25 CROSS-EXAMINATION BY MR. KOZELSKI:

1 Q. Captain Weiss, you said you were involved in this
2 armed robbery from the very beginning?

3 A. Yes.

4 Q. All hands on deck?

5 A. Yes, sir.

6 Q. And you are attempting to review all the video
7 surveillance from the bank and surrounding businesses,
8 right?

9 A. I wasn't directed, but the other detectives were,
10 and I was helping to assist in orchestrating the canvass;
11 meaning the search for video, possible exits,
12 throw-aways, and reviewing BOLOs where they are pushed
13 out.

14 Q. And at that point in the investigation, you did
15 not know how many people were involved in this crime,
16 correct?

17 A. We knew one entered. We weren't sure if there
18 could have been a second person in the vehicle or not.

19 Q. Right. There could have been a getaway driver?

20 A. There could have been.

21 Q. And you have absolutely no descriptions of what
22 that getaway driver could have been, right?

23 A. Correct.

24 Q. He could have been 65 years old?

25 A. Correct.

1 Q. Could have been 85 years old?

2 A. Could have been.

3 Q. Could have been black?

4 A. Yes.

5 Q. Could have been white?

6 A. Yes, sir.

7 Q. So when you say that Mr. Thompson didn't match the
8 description of anybody at the crime, you don't know that
9 for sure?

10 A. No. I said he didn't match the description of the
11 person who entered and robbed that bank, and he had no
12 tie to that room or to that vehicle at that time. He had
13 simply walked over to the room from an adjacent room.

14 Q. You're not saying he was located in the room?

15 A. No, he was located in the room. He was observed
16 there.

17 Q. So he was tied with the room?

18 A. Not by the registration, but yes, he was there.

19 Q. Okay. So he wasn't registered to the room, but he
20 was in the room?

21 A. Correct.

22 Q. He was in the room with Alonzo Green?

23 A. Yes.

24 Q. And Anthony --

25 A. Holsberg.

1 Q. And y'all just let him go?

2 A. Yes, we did.

3 Q. Now, I almost said Detective Osborne. I meant
4 Solicitor Osborne just talked to you about crime scenes,
5 and you described a crime scene as being anywhere where
6 the is scene of a crime occurred, right?

7 A. Correct.

8 Q. Or evidence of a crime could be recovered?

9 A. Correct.

10 Q. So when you are conducting a search warrant of a
11 place, a person, place or thing where you believe that
12 there could be evidence, you follow these certain
13 policies in your manual, right?

14 A. Correct, as I described it.

15 Q. As part of those policies, you call out crime
16 scene investigation, right?

17 A. For certain crime scenes.

18 Q. And those are serious crime scenes?

19 A. Correct.

20 Q. You're going to find evidence of the crime for
21 bank robbery or armed robbery; that is a serious crime?

22 A. Correct.

23 Q. If you believe that you are going to find evidence
24 at a house of an armed robbery, you want to make sure
25 that that scene is secure, right?

1 A. Yes.

2 Q. And have crime scene investigation come back?

3 A. Yes.

4 Q. And if detectives do go in and do a protective
5 sweep of that residence -- which they're supposed to do,
6 right?

7 A. Yes.

8 Q. And if they move anything during that search
9 warrant, they are supposed to document that, correct?

10 A. They are.

11 Q. And they're supposed to tell the crime scene
12 investigator when they get there, hey, we didn't know
13 what we would find. We're looking for a gun, but we
14 pulled this stuff out, and it wasn't like this when we
15 got here?

16 A. Yes.

17 Q. Okay.

18 MR. KOZELSKI: No further questions.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION BY MR. OSBORNE:

21 Q. I think we may be conflating two issues here.

22 So what Mr. Kozelski was asking you, and correct
23 me if I'm wrong, he was asking you regarding policies and
24 procedures when investigating a crime scene?

25 A. Yes.

1 Q. If a detective were to go search a house or and/or
2 a hotel, is that a crime scene?

3 A. It could be. It could be a place where evidence
4 could be located.

5 Q. Or could it be a place where a crime had occurred?

6 A. Yes.

7 Q. And so really when the policy deals with -- and
8 correct me if I'm wrong -- deals with evidence
9 preservation, is it really more talking about a crime
10 scene?

11 A. Yes. Talking about shell casings in a street, I
12 mean, really, it points to homicide, scenes that is going
13 to be detrimental -- especially in public areas, if it's
14 moved, firearms moved, shell casings moved, it's really
15 going to be detrimental to that specific scene. That is
16 why you do not have to have crime scene process a known
17 location with known occupants, such as vehicles,
18 somebody's residence, things like that.

19 Q. Typically speaking, is it not true that a crime
20 scene is the starting point of the investigation?

21 A. Yes.

22 MR. OSBORNE: No further questions.

23 THE COURT: Any recross?

24 MR. KOZELSKI: No.

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

1 Next witness.

2 MR. WARING: Thank you, Your Honor. State
3 calls Sergeant Tuttle.

4 (Pause in proceedings.)

5 MR. OSBORNE: State calls Melissa Bryant.

6 MELISSA BRYANT

7 having been called as a witness for the State at
8 10:10 a.m., was sworn and testified as follows:

9 DIRECT EXAMINATION BY MR. OSBORNE:

10 Q. Good morning, Ms. Bryant.

11 A. Good morning.

12 Q. Where do you work?

13 A. South Carolina Department of Motor Vehicles.

14 Q. How long have you worked there?

15 A. For 14 years.

16 Q. What is your job there now?

17 A. I'm the branch manager.

18 Q. Which branch?

19 A. Ladson.

20 Q. And can you describe some of your duties and
21 responsibilities as a branch manager?

22 A. I supervise 30 employees along with making sure
23 that information is kept in our database, and we keep all
24 PII information, as we call it, personal identifiable
25 information, but with security measures, I have to make

1 sure it's secured safely.

2 Q. So in dealing with that, I suppose, some of the
3 PII is driving reports?

4 A. Yes, sir.

5 Q. And what is some of the other information that's
6 kept there at the DMV?

7 A. Anything registering vehicles, any suspensions,
8 traffic tickets.

9 Q. Do you also maintain registered owners for driver
10 histories?

11 A. Yes, sir.

12 Q. And you also keep -- I think you might have said
13 this, driver records for an individual?

14 A. Yes, sir.

15 Q. And that driver record might contain what kind of
16 information?

17 A. Height, weight, name, address, any address
18 changes, any tickets that the person has received.

19 Q. Okay. And do you sometimes receive subpoenas or
20 requests for that type of information for law enforcement
21 agencies like myself?

22 A. Yes, sir.

23 Q. And this information that you mentioned, is it
24 kept in the normal course of business by DMV?

25 A. Yes, sir.

1 Q. And is that information entered at or near the
2 time of the information being related to the DMV
3 custodian?

4 A. Yes, sir.

5 BY MR. OSBORNE:

6 Q. I'm showing you State's 106 through 109. Just
7 take a look at those and see if you recognize it.

8 A. Yes, sir. This is a three-year driving record,
9 also a ten-year driving record, and a title history
10 report.

11 Q. Okay.

12 MR. OSBORNE: Your Honor, at this time I'd
13 seek to admit State's 106 through 109 into evidence.

14 MR. KOZELSKI: No objection.

15 THE COURT: Admitted.

16 (State's Exhibits 106 through 109 were marked
17 for identification and admitted into evidence.)

18 BY MR. OSBORNE:

19 Q. Let's start out with 106. Can you see that okay?

20 A. Yes, sir.

21 Q. And what is the name of this individual?

22 A. It's Silvester Desmond Scott.

23 Q. And his address?

24 A. Address is [REDACTED] English Street in North
25 Charleston.

1 Q. Okay. And his height and weight?

2 A. His height is 5'10" and his weight is 186.

3 Q. Moving on to the next one, this is 107, who's this
4 individual?

5 A. This is Anthony Joseph Holsberg, Jr.

6 Q. Moving on now to 108, can you tell me the make and
7 model of this Charger?

8 A. This is a 2008 Dodge Charger RT.

9 Q. And on the next page, who is the owner of this
10 vehicle?

11 A. The owner is Anthony Joseph Holsberg, Jr.

12 Q. I'm now showing you 109, the name of this
13 individual?

14 A. William Junior Drayton.

15 Q. And his height and weight?

16 A. His height is 5'7" and his weight is 192 pounds.

17 Q. Just out of curiosity, why does this one, 109,
18 look different than 106 and 108?

19 A. The record that you're showing me now is inactive.
20 The other record is no longer active.

21 Q. 109 is no longer active?

22 A. That person is deceased.

23 Q. Okay.

24 Let me just point out one other thing. On 106,
25 the [REDACTED] English Street, is that the current address?

1 A. Yes, sir.

2 Q. And what is the listed previous addresses?

3 A. The previous address before that was [REDACTED] Ashley
4 Shores Drive in Charleston, and then the one prior to
5 that was [REDACTED] Jordan Street in Charleston.

6 Q. Or Gordon?

7 A. Gordon, sorry.

8 MR. OSBORNE: That's okay. No further
9 questions.

10 CROSS-EXAMINATION BY MR. KOZELSKI:

11 Q. Ms. Bryant, you weren't ever asked to look up the
12 name for Jonathan Burns, were you?

13 A. No, sir.

14 Q. Driver's license [REDACTED]?

15 A. No, sir.

16 Q. The police never asked you to do that.

17 A. No, sir.

18 Q. Solicitor's office never asked you to do that?

19 A. No, sir.

20 MR. KOZELSKI: No further questions.

21 THE COURT: Anything further?

22 MR. OSBORNE: Just one other question.

23 REDIRECT EXAMINATION BY MR. OSBORNE:

24 Q. Would you have knowledge if any law enforcement
25 agents or law enforcement officers had checked that name

1 through DMV?

2 A. No, sir.

3 MR. OSBORNE: Okay. No further questions.

4 THE COURT: Any recross?

5 MR. KOZELSKI: No.

6 THE COURT: You may step down. Thank you.

7 Next witness?

8 MR. WARING: Thank you, Your Honor. State
9 calls Sergeant Tuttle.

10 ERIC TUTTLE

11 having been called as a witness for the State at
12 10:16 a.m., was sworn and testified as follows:

13 DIRECT EXAMINATION BY MR. WARING:

14 Q. Good morning, Sergeant.

15 A. Good morning.

16 Q. Sergeant, could you tell the jury where you work.

17 A. Charleston Police Department.

18 Q. And what do you do at CPD?

19 A. I was recently promoted to sergeant over patrol
20 unit.

21 Q. Prior to becoming sergeant, what did you do at
22 CPD?

23 A. I was a detective in central investigations,
24 investigating violent crimes.

25 Q. Were you involved in this case?

1 A. Yes, I was.

2 Q. How did you get brought into this case?

3 A. Sergeant Stanley notified me that a bank robbery
4 had occurred and they had some suspect information.

5 Q. And where did that lead you further into getting
6 involved in this case?

7 A. They had identified the defendant and a place of
8 residence, so I assisted in executing a search warrant to
9 look for evidence at the defendant's house.

10 Q. Now, did you go to the defendant's actual
11 residence?

12 A. I did.

13 Q. And is that the one that was on English Street?

14 A. Yes, it was.

15 Q. Did you see anything of note there?

16 A. Walked in, I observed some new electronics and
17 appliances with the tags still on it. The house was
18 pretty orderly. There were some identifying documents
19 that belonged to the defendant, letters and stuff like
20 that, so it was plausible to believe he lived there.

21 Q. Do you recall what kinds of electronics you're
22 referring to when you talk about new appliances and
23 things like that?

24 A. I remember television, a mini fridge; something
25 like that, just sort of stuck out to me.

1 Q. Now, there's been some testimony about the red
2 shirt and shoes, watch, things of that nature. Were
3 those items found at that location?

4 A. Yes, they were.

5 Q. And specifically who found the red shirt and the
6 shoes, do you know?

7 A. I found the red shirt and the shoes.

8 Q. Now, where did you find the shoes?

9 A. In the bedroom that was kind of in the back of the
10 house. The house, you walk in. There's a living room
11 and then a kitchen and a bedroom sort of off to the side.

12 Q. All right. And do you recall specifically in the
13 bedroom where you found the shoes?

14 A. In the closet area, so typical bedroom with, like,
15 a queen, king-sized bed, a nightstand and there's a
16 closet and sliding doors.

17 Q. Would it assist you in refreshing your memory if I
18 showed you a copy of your report?

19 A. Absolutely.

20 Okay. So this the bed was raised up, and
21 underneath the bed, I observed a pair of shoes that had
22 a -- dark black shoe with a white, light-colored soles so
23 the shoe itself was black and the soles were white, and
24 they appeared consistent with what we saw in the
25 surveillance footage and the BOLO that was released.

1 Q. Did you document that in your report?

2 A. I did.

3 Q. Now, you mentioned that they looked consistent.
4 Prior to you pulling those shoes out, did you know
5 100 percent whether or not they looked consistent or not?

6 A. So they were underneath the bed. I had to pull
7 them out, and, you know, it's dark under underneath the
8 bed, and pull them out into the light of the bedroom.

9 Q. Okay. Now, Sergeant, did you bring those shoes
10 with you from wherever you came before coming to that
11 location?

12 A. No, I did not.

13 Q. Did you plant those shoes there?

14 A. No, I did not.

15 Q. Did you do anything other than just pull them out
16 so you could take a look at them?

17 A. I pulled them out to examine them and to see if
18 they were consistent with the images that we had from the
19 BOLO.

20 Q. Regarding the red shirt, where did you find that,
21 do you recall?

22 A. So, like I said, bedroom, or bed, nightstand; in
23 the closet, there was a red shirt sort of crumpled up in
24 there, into the closet. I guess somebody kind of threw
25 their laundry into the closet.

1 Q. Now, the red shirt, is that documented in your
2 report that you pulled that out?

3 A. It is not.

4 Q. Now, Sergeant, can you explain why it's not in
5 your report to the jury.

6 A. We knew this shirt was of importance. It was very
7 consistent with the one that was observed on the BOLO
8 images. So when you're a police officer, you sort of get
9 excited when you find evidence that could be corroborated
10 or linked to the crime.

11 So I had to pull it out because if you see it in
12 the closet, you're just going to look and see clothes.
13 You got to see what it was. It could have been
14 underwear. It could have been something else, so I
15 pulled it out, put it on the bed, and I documented it by
16 having it photographed and putting it into the search
17 warrant return. The return are just the items that we
18 take from the house, so that's where it was documented.

19 Q. Okay. So initially when you saw it in the closet,
20 were you able to fully study it when it was crumpled up
21 on the ground?

22 A. No, sir.

23 Q. Did you or any or officer bring that red shirt
24 from where you were to that location?

25 A. No, we did not.

1 Q. Did anybody plant that?

2 A. No, we did not.

3 Q. Now, was that -- was the defendant's house at that
4 time considered a crime scene, where an actual crime had
5 taken place?

6 A. No crime had taken place at the time of our
7 search, so this is just a place where evidence may be.
8 So it's probable to believe that where the defendant's
9 residence is there could be evidence.

10 Q. Now, you mentioned earlier that you were involved
11 with the violent crimes task force; is that right?

12 A. Violent crimes and homicide is the name of the
13 unit, and before that I worked, for the robbery unit, all
14 of which are in the persons crimes, or violent crimes
15 unit.

16 Q. Now, having experience with that unit, do you know
17 the importance of evidence preservation?

18 A. Evidence preservation is one of the vital
19 functions of police work.

20 Q. Would, for example, planting evidence be a big
21 problem for you?

22 A. That would be unethical and possibly criminal.

23 Q. Could you technically be fired for doing something
24 like that?

25 A. Or arrested.

1 Q. So it's not something you're okay with; is that
2 right?

3 A. Absolutely not.

4 Q. Now, other than a search warrant of the house on
5 English Street, did you have any other involvement in
6 this case?

7 A. Yes, sir, I did.

8 Q. To what extent?

9 A. After the arrest is made, it doesn't mean the
10 investigation is over. So I learned from the case agent,
11 Detective Brown, that a phone number was obtained that
12 was linked to the defendant, and I executed a search
13 warrant on the provider of that phone.

14 Q. All right. And do you recall what that number
15 was?

16 A. It was [REDACTED].

17 Q. Tell the jury what kind of information phone
18 records typically reveal.

19 A. So this provider is AT&T, you know; other
20 providers, Verizon and stuff, similar to those, so any
21 time you make a call or receive a call, send a text
22 message, you are corresponding with a tower that is
23 provided by the -- that is provided by the provider, and
24 there's just metadata; metadata just being those call
25 detailed records, that's what they call them, or what I

1 call them, call detail records.

2 So time, date, tower location, which is not
3 precise, but a general area of where you are, and who
4 you're calling and who you're communicating with, but not
5 the content, just the metadata, just that transferred
6 information.

7 Q. Do those records include oftentimes special
8 identifying numbers as well to the phone?

9 A. So you may have seen IMEI numbers, the SIM chip
10 that you place into your phone so you can correspond with
11 towers has unique numbers, so a lot of that information,
12 all ones and zeros, is what's transferred when you are
13 communicating with the tower.

14 Q. What about subscriber information? Is that kind
15 of information included in phone records, typically?

16 A. It is typically provided with phone records.

17 Q. And for those who perhaps are not that affiliated
18 or acclimated with phone records, what is subscriber
19 information?

20 A. So when you invest into a plan, which I'm sure
21 everybody here is, you have to provide basic billing
22 information. The phone company needs to know where
23 you're going to get your bill from, so, generally, name,
24 address, your cellphone number, and sometimes more
25 information, driver's license, place of employment.

1 Q. All right. Now, the phone records for this number
2 of [REDACTED], did those records include subscriber
3 information?

4 A. Initially, I executed a search warrant requesting
5 only call detail records, so at the time, they did not
6 include subscriber information.

7 Q. Were you ultimately able to get that information,
8 though?

9 A. Yes, I was.

10 Q. Now, do you know what a certification of
11 authenticity is?

12 A. I do. So to sort of ensure the validity of the
13 data that we're receiving, we can request a certificate
14 of authenticity, and it's basically the texts, and
15 scientists that pull this data, they're saying that the
16 data that we gave you is authentic. These records have
17 not been altered.

18 Q. And have you received throughout this case one of
19 those types of letters for this case?

20 A. I have received a certificate of authenticity for
21 the defendant's phone number.

22 Q. In preparation for trial, have you had a chance to
23 view both that letter and --

24 MR. KOZELSKI: Objection, Your Honor. May we
25 approach?

1 THE COURT: Uh-huh.

2 (A bench conference was held off the record
3 at 10:27 a.m.)

4 (Back on the record at 10:28 a.m.)

5 BY MR. WARING:

6 Q. All right, Sergeant. Now, without going into
7 detail about who the phone belongs to, that actual
8 number, in preparation for trial have you had a chance to
9 review the phone records for that number and look at the
10 certificate letter?

11 A. Yes, sir.

12 MR. WARING: May I approach the witness, Your
13 Honor?

14 THE COURT: You may.

15 BY MR. WARING:

16 Q. I'm about to hand you what is marked as State's
17 Exhibit 103 for identification purposes. Do you
18 recognize that?

19 A. Yes, sir.

20 Q. And could you tell the jury what it is.

21 A. As stated earlier, this is the certificate of
22 authenticity that I received from AT&T for the
23 defendant's phone records.

24 Q. And does that otherwise certify that it complies
25 with South Carolina rule -- the rule for business

1 records?

2 A. Well, I think it's for the federal rules, but I
3 think the South Carolina rules mirror it. But I'm not an
4 attorney, so I don't know.

5 Q. And would you kindly read subsection (a), please.

6 A. Yes. All records attached to this certificate
7 were made at or near the time of the occurrence of the
8 matter set forth by, or from, information transmitted by
9 a person with knowledgeable of those matters.

10 They were kept in the ordinary course of the
11 regularly conducted business activity of AT&T, and they
12 were made by AT&T as a regular practice.

13 Q. All right. Now I'm going to show you what's been
14 marked for identification purposes as State's Exhibit
15 104. Do you recognize this?

16 A. Yes, sir, I do.

17 Q. And could you tell the jury what that is.

18 A. This is the subscriber information for the
19 defendant's phone records.

20 MR. KOZELSKI: Objection, Your Honor. May we
21 approach, Your Honor?

22 THE COURT: Uh-huh.

23 (A bench conference was held off the record
24 at 10:31 a.m.)

25 (Back on the record at 10:31 a.m.)

1 BY MR. WARING:

2 Q. Now, Sergeant, from now, on other than mentioning
3 who actually owns or is linked up with that phone number,
4 we'll just have to talk about just the number itself but
5 not who actually has the number.

6 A. Yes, sir.

7 Q. So does that subscriber information fairly and
8 accurately depict the subscriber information for the
9 number [REDACTED].

10 A. Yes, sir, it does.

11 Q. Now, I'd like to show you what's been marked for
12 identification purposes as State's Exhibit 105. Do you
13 recognize that?

14 A. Yes, sir.

15 Q. And are those the phone records for the number
16 [REDACTED].

17 A. Yes, they are.

18 MR. WARING: Your Honor, at this point, the
19 State moves to have Exhibits 103 to 105 admitted.

20 MR. KOZELSKI: No objection.

21 THE COURT: Admitted.

22 (State's Exhibits 103 to 105 were marked for
23 identification and admitted into evidence.)

24 MR. KOZELSKI: Actually, Your Honor, subject
25 to your earlier pretrial --

1 THE COURT: Noted. It's admitted over
2 objection.

3 BY MR. WARING:

4 Q. Showing you State's Exhibit 104, and what are we
5 looking at here, Sergeant?

6 A. So as stated earlier, this is the phone that
7 identified subscriber information for the phone number.

8 Q. Who is the listed subscriber for this number of
9 [REDACTED]?

10 A. Lily Scott.

11 Q. Do you know who that is?

12 A. The defendant's mother.

13 Q. And how about the user address?

14 A. [REDACTED] Gordon Street, which is downtown Charleston,
15 near Hampton.

16 Q. How about that MSISDN active information? Can you
17 tell us when this phone appears to have been active?

18 A. That would be when the phone was paid for, which
19 is the dates November 13, 2014, through March 7th of
20 2015.

21 Q. Do you know when the defendant was arrested?

22 A. March 6th.

23 Q. Okay. So the day before when it was deactivated?

24 A. Yes.

25 Q. What about the date ranges on the phone records.

1 This is Exhibit 105. Can you tell the jury what date
2 ranges those records cover?

3 A. So the dates that were requested to review were
4 from March 2nd, 2015 through March 7th of 2015.

5 Q. All right. So what is that, about five days?

6 A. Yes.

7 Q. In that five-day time window, looking at those
8 records, are there very few calls or are there very many
9 calls?

10 A. So there's roughly 20 interactions per page, and
11 there are 43 pages of information, so about -- or there's
12 exactly 804 interactions.

13 Q. All right. Now, switching gears slightly, there's
14 been some mention throughout this trial of an individual
15 named Anthony Holsberg.

16 This is State's 107. In preparation for this
17 trial, have you attempted to locate this individual?

18 A. Yes, I did.

19 Q. And what happened with that?

20 A. After repeated attempts of speaking with his
21 mother, his grandmother, and --

22 MR. KOZELSKI: Objection, Your Honor. May we
23 approach?

24 A. -- I was unable to locate --

25 THE COURT: Hold on.

1 (A bench conference was held off the record
2 at 10:36 a.m.)

3 (Back on the record at 10:37 a.m.)

4 BY MR. WARING:

5 Q. Were you successful locating this witness?

6 A. I was not.

7 Q. Did you spend any significant period of time
8 trying to locate this witness?

9 A. I did.

10 Q. All right. I want to show you a few photos.
11 Showing you State's Exhibit 95, is that the shirt you
12 found in the defendant's house?

13 A. Yes, it was.

14 Q. Showing you State's Exhibit 34, what can you tell
15 us about that shirt?

16 A. This is from the robbery, the incident. I see
17 a --

18 MR. KOZELSKI: Objection, Your Honor.

19 (A bench conference was held off the record
20 at 10:39 a.m.)

21 (Back on the record at 10:39 a.m.)

22 BY MR. WARING:

23 Q. Sergeant?

24 A. Yes, sir.

25 Q. This shirt that the robber is wearing in this

1 video, still shot, actually, in Exhibit 34, is that
2 consistent with the T-shirt that you found?

3 A. I believe it is consistent with the shirt that was
4 found.

5 MR. WARING: Please answer any questions the
6 defense has.

7 CROSS-EXAMINATION BY MR. KOZELSKI:

8 Q. Good morning.

9 THE COURT: Just a minute. Before you do --
10 (A bench conference was held off the record
11 at 10:40 a.m.)

12 (Back on the record at 10:40 a.m.)

13 Go ahead. All right.

14 BY MR. KOZELSKI:

15 Q. Congratulations on your promotion.

16 A. Thank you, sir.

17 Q. At this time you were a detective, right, when you
18 were dealing with this case?

19 A. Yes, sir.

20 Q. And not everybody can be a detective?

21 A. Anybody can be a detective.

22 Q. Anybody can just walk off the street?

23 A. Well, they can apply.

24 Q. Nobody starts off being a detective, right?

25 A. No, sir.

1 Q. And even if you're a detective, you start off
2 being a regular police officer, right?

3 A. In our agency, yes, sir.

4 Q. And before you become a full-fledged police
5 officer, you go to the police academy?

6 A. Yes, sir.

7 Q. And while you're at the police academy, one of the
8 things they teach you how to do is write police reports,
9 right?

10 A. Yes, they do.

11 Q. That's a critical thing that you do as a detective
12 and as a police officer. No matter what you do, writing
13 reports is very important?

14 A. Yes, sir.

15 Q. And you work on a number of cases at one time?

16 A. Yes, we do.

17 Q. Sometimes you work on more than one case at a
18 time?

19 A. Yes, sir.

20 Q. And you write stuff down in your police reports so
21 you can remember it later?

22 A. Yes, sir.

23 Q. From the time that the incident occurs to the time
24 that there's a trial, you could have worked on dozens of
25 cases, right?

1 A. Yes, sir.

2 Q. And it could be years, like here, four years,
3 before you get to a trial, right?

4 A. Yes.

5 Q. So you need to be able to review those reports in
6 preparation for your testimony today?

7 A. Along with all the other evidence, yes, sir.

8 Q. And you read those reports while you're up there
9 on the stand so you can recall the testimony, right?

10 A. Yes, sir.

11 Q. That's why Mr. Waring handed you that so you could
12 ensure where those shoes were because you had it written
13 down in your report, right?

14 A. Yes, sir.

15 Q. So it's important that your report is accurate,
16 right?

17 A. Yes, sir, it is.

18 Q. It's important that it's complete?

19 A. Yes, sir.

20 Q. Your ability to testify truthfully requires that
21 you tell the complete truth, right?

22 A. Yes, it is.

23 Q. Took that oath, whole truth, nothing but the
24 truth, right?

25 A. Yes, sir.

1 Q. Information, even if truthful, if only given in
2 parts can be misleading?

3 A. I'm sorry. Say that again.

4 Q. Okay. If -- information, even if it is truthful,
5 if you only give it in parts, it can be misleading?

6 A. Sure.

7 Q. And you -- if you leave something out of your
8 initial report, you can file a supplemental report,
9 right?

10 A. Yes.

11 Q. And you also prepared these reports in
12 anticipation of being cross-examined, right?

13 A. Yes. Yes, sir.

14 Q. You want to be able to -- if I'm up here saying
15 how do you remember that, Sergeant Tuttle, you want to be
16 able to respond, well, I read it in my report, right?

17 A. Yes, sir.

18 Q. And your department has manuals for what you have
19 to do for report writing, field guides?

20 A. There are field guides, yes, sir.

21 Q. And you learn in those manuals from defense
22 attorneys's perspective and from a jury's perspective, if
23 you don't have it written down in the report, it didn't
24 happen.

25 A. Yes, sir.

1 Q. And report writing helps you communicate the facts
2 that you gather during your investigation to other
3 people, such as another detective, right?

4 A. Yes, sir.

5 Q. You communicate this back to the State, the
6 solicitor's office, right?

7 A. Yes.

8 Q. A copy of those reports comes to me through the
9 discovery process?

10 A. Yes, sir.

11 Q. So we all rely on these reports to be complete,
12 accurate, and truthful, right?

13 A. Yes, sir.

14 Q. And you wrote a number of reports in this case,
15 supplemental reports?

16 A. I did, sir.

17 Q. One of the powerful tools that you have to gather
18 evidence of a crime is what's called a search warrant.
19 We talked about these throughout the trial; is that
20 right?

21 A. Yes, sir.

22 Q. And, basically, if you believe you have probable
23 cause that there's evidence a crime exists within a
24 person, place, thing, you can write up a search warrant,
25 right?

1 A. Yes, sir.

2 Q. It could be for someone's home?

3 A. Yes, sir.

4 Q. Business?

5 A. Yes, sir.

6 Q. Computer?

7 A. Anywhere where evidence of the crime may be and
8 there's a nexus between it.

9 Q. DNA, cellphone, all those things?

10 A. Yes.

11 Q. All you need to do is describe in the search
12 warrant what you're looking for, right?

13 A. Yes, sir.

14 Q. Why you believe you'll find evidence there?

15 A. Yes, sir.

16 Q. Present it to a judge?

17 A. Yes, sir.

18 Q. Swear that the information that you put in the
19 warrant is the truth?

20 A. Yes.

21 Q. The judge signs it?

22 A. Yes, sir.

23 Q. And then you go gather the evidence.

24 A. Execute the search warrant.

25 Q. You no longer need anybody's consent to go through

1 whatever you need to do to get that evidence, right?

2 A. No, sir.

3 Q. You have a court order describing what you are
4 trying to find in the search warrant, right?

5 A. Yes, sir.

6 Q. And no one can stop you, right?

7 A. No, sir.

8 Q. And there's no limits to how you search a place to
9 find what you're looking for.

10 A. As long as it's within -- so if you're searching
11 for a large object, you can't be looking in a small
12 container, so it has to be from a reasonable perspective.

13 Q. And if it turns out that the information you put
14 in the warrant is not true, or misleading, you risk
15 losing the evidence you found in the search, right?

16 A. Yes, sir.

17 Q. Now, in March of 2015, you drafted a search
18 warrant for records pertaining to the [REDACTED],
19 right?

20 A. Yes, sir.

21 Q. That's the number you were just talking about with
22 Mr. Waring?

23 A. Yes, sir.

24 Q. And in that search warrant, you state that the
25 reason you know this is Silvester's phone is because

1 Silvester said that he owned that, that target phone,
2 correct?

3 A. That's correct.

4 Q. And you took that on March 11, 2015, to a
5 magistrate, Judge Ellen Steinberg, right?

6 A. Yes.

7 Q. And you swore to Judge Steinberg that the warrant
8 was truthful information?

9 A. Yes, I do.

10 Q. She signed the warrant?

11 A. She did.

12 Q. You got the information you were searching for?

13 A. I did.

14 Q. But on February 15th of 2019, last month, less
15 than a month ago, Mr. Waring contacted you and told you
16 that warrant is no good. You need to redo it.

17 A. He said there was an issue with the warrant, yes,
18 sir.

19 MR. WARING: Objection, Your Honor.

20 THE COURT: What is your objection?

21 MR. WARING: Can we approach, Your Honor?

22 THE COURT: Yes.

23 (A bench conference was held off the record
24 at 10:48 a.m.)

25 (Back on the record at 10:49 a.m.)

1 (discussion held at sidebar.)

2 BY MR. KOZELSKI:

3 Q. Sergeant Tuttle, you were asked to redo that
4 warrant, right?

5 A. Yes, I was.

6 Q. Because Silvester never said that was his phone
7 number?

8 A. He did not.

9 Q. And attesting to that in a search warrant was a
10 bit misleading?

11 A. Yes, it was.

12 Q. So you drafted a new search warrant.

13 A. I did.

14 Q. And you acknowledged in that new search warrant
15 the error that was made?

16 A. I took ownership of the mistake.

17 Q. And then you write that during his interview with
18 Detective Brown, Alonzo Green says he knows that number
19 was Silvester's phone.

20 A. Yeah. Alonzo was a 20-year friend, so it was
21 reasonable to believe that he communicated with the
22 defendant with the phone number.

23 Q. And then you presented the warrant to the
24 Honorable Judge Bligen?

25 A. I did.

1 Q. He made you swear to the facts presented in the
2 search warrant?

3 A. He did.

4 Q. Which you did?

5 A. I did.

6 Q. But, again, this may be a little bit misleading,
7 right?

8 A. I'm not sure what you mean, sir.

9 Q. Well, you've seen Alonzo's interview with
10 Detective Brown, correct?

11 A. I have not.

12 Q. You don't write in your report that you reviewed
13 Alonzo's video?

14 A. I wrote that I learned in a post-Miranda
15 interview -- oh, also learned that Alonzo Green provided
16 the phone number for Silvester Scott. That's what I
17 wrote.

18 Q. You said that Alonzo said he contacted the
19 defendant that day in reference to purchasing heroin
20 during his interview with Detective Brown, right?

21 A. I think we might be reading from two different
22 documents. Are you reading from the report?

23 Q. I'm reading from your report on February 16th of
24 this year. You're referencing his interview with
25 Detective Brown.

1 A. Okay. So -- I'm sorry. Can you repeat the
2 question?

3 Q. Okay. Have you seen Alonzo's interview?

4 A. I have not.

5 Q. Okay. You haven't reviewed it, so the information
6 that you gained about Alonzo telling Detective Brown that
7 this was Silvester's number during his interview you
8 gained from Detective Brown?

9 A. Detective Brown told me what Alonzo Green's phone
10 number was -- what Alonzo Green provided as the phone
11 number.

12 Q. Okay. And you're aware that Alonzo hard reset his
13 phone during that interview, or are you not aware?

14 A. I did not see the interview, sir.

15 Q. Okay. So the information that you gained to get
16 this warrant is information that you gained solely from
17 Detective Brown?

18 A. So --

19 Q. About the number. Alonzo didn't give you the
20 number?

21 A. Alonzo did not give me the number. Alonzo
22 provided the police department, Yolanda Brown, with the
23 phone number, and that information was used because
24 Alonzo and the defendant are friends of 20 years.

25 Q. Okay.

1 A. So it was reasonable to believe that was the phone
2 number.

3 Q. But, like I said, Alonzo did not give you that
4 number. When you were --

5 A. Alonzo gave the Charleston Police Department that
6 phone number, Charleston Police Department officer, so he
7 gave that to Detective Brown.

8 Q. Okay. As --

9 A. Did he give it to me? No, he didn't.

10 Q. He did not give it to you.

11 A. No, he did not.

12 Q. I want to talk briefly about this subscriber
13 information you talked about with Mr. Waring. You don't
14 know where that information came to be, where it came
15 from?

16 A. AT&T provided the subscriber information.

17 Q. But you don't know how that information was given
18 to AT&T?

19 A. The person on the subscriber information -- how --
20 I'm sorry. Can you ask that question again, if I
21 obtained it from AT&T?

22 Q. You obtained it from AT&T?

23 A. Right.

24 Q. You don't know how AT&T got it on there; you don't
25 know who gave them that information?

1 A. The subscriber gave them that information.

2 Q. You're assuming that subscriber gave them that
3 information.

4 A. Well, it says on there it's subscriber
5 information, so the subscriber would have had to give the
6 name and address.

7 Q. You don't know how that subscriber gave that
8 information?

9 MR. WARING: Objection, Your Honor. Asked
10 and answered, Your Honor.

11 THE COURT: It's cross-examination. Go
12 ahead.

13 BY MR. KOZELSKI:

14 Q. Did that person go to a store and give them that
15 information?

16 A. They could have gone to a store. They could have
17 done it over the phone. They could have done it by mail.

18 Q. They could have done it online?

19 A. They could have done it online.

20 Q. You don't know how that information was given to
21 AT&T?

22 A. The means?

23 Q. Yes, the means.

24 A. No, sir, I don't.

25 Q. And you don't know who gave that information to

1 AT&T?

2 A. The subscriber did.

3 Q. Again, you don't know who put that information and
4 gave it to AT&T?

5 A. The subscriber provided that information.

6 Q. Assuming that is the subscriber, you don't have
7 any evidence pertaining to that -- as to who this person
8 is, right?

9 A. The person who opened that phone line provided
10 that information to AT&T.

11 Q. Right. And you don't know who that is, I'm
12 saying.

13 A. It's the subscriber.

14 Q. It's only the person who pays the bill, right?

15 A. Correct.

16 Q. And this is a prepaid phone?

17 A. I don't know.

18 Q. It doesn't say on the subscriber information it's
19 a prepaid phone?

20 A. If you would like to show me the records, I can
21 refresh my memory.

22 Q. Prepaid, payment type, but does that mean that she
23 just prepaid for, like, a month? Because she's
24 continuously getting bills, right? It was open for,
25 like, a year?

1 A. I don't know. You tell me. You're the one that's
2 presenting the evidence.

3 Q. Do you know?

4 A. I don't.

5 Q. Okay. And you got that information on
6 February 16th of 2019?

7 A. I did.

8 Q. You also executed a search warrant on Silvester's
9 house, right?

10 A. I participated in executing the search warrant,
11 yes, sir.

12 Q. [REDACTED] English Street?

13 A. Yes, sir.

14 Q. And you were with Sergeant Stanley, Detective
15 Brown, Detective Mallotte, and a North Charleston police
16 officer?

17 A. I was.

18 Q. And you did not have a crime scene investigator
19 with you at the beginning?

20 A. We did not.

21 Q. And you presented the search warrant to
22 Silvester's wife, Tanya?

23 A. I did.

24 Q. And you started to search through the entire
25 house?

1 A. As a team we did, yes, sir.

2 Q. And you're going through drawers, going through
3 closets, right?

4 A. We did.

5 Q. And you can look wherever you want.

6 A. Within reason, for the size of the objects that
7 we're looking for.

8 Q. Okay. Under the bed, you testified you found some
9 old boat shoes, right?

10 A. I think they were -- I don't know that I wrote
11 down the model on here, but whenever we photographed it,
12 they were black shoes with a white or light-colored sole.

13 Q. No laces on them?

14 A. I might have to see a photograph, but it
15 doesn't -- dark blue shoe with white or light-colored
16 soles, is what I have.

17 Q. And when you took those from under the bed, you
18 put them on the floor right next to the bed, right?

19 A. I did.

20 Q. And you also said you found that red shirt bunched
21 up amongst some other clothes in the closet?

22 A. I did find that red shirt in the closet, yes, sir.

23 Q. And then you laid it neatly on the bed?

24 A. I did. Like I said, it was kind of bunched up, so
25 you don't know exactly what it is. It could be another

1 piece of clothing, so I pulled it out and examined
2 further what it was.

3 Q. And you did document where you found the shoes in
4 your report, correct?

5 A. I did.

6 Q. But you didn't document where you found the shirt,
7 right?

8 A. We photographed the shirt and documented in the
9 search warrant return about the items that we took from
10 the house.

11 Q. But in your report, you don't say anything about
12 the red shirt, do you?

13 A. I did not.

14 Q. And you never told Investigator Tuuk? I guess her
15 name at the time was Senn.

16 A. Sara Senn, Sara Tuuk now.

17 Q. You didn't tell her when she came, was called to
18 the scene, that you had moved these objects, right?

19 A. I mean, that would be -- I can't recall exactly,
20 but that would be a standard practice. We just sort of
21 confer with the crime scene investigators because she
22 wasn't on the scene so --

23 Q. Well, you tell the crime scene investigator, so
24 when she takes photographs and documents, she can later
25 document in her report these are not where I found them,

1 right?

2 A. We're having her collect the items because of the
3 seriousness of the crimes, but we're the ones searching
4 for it, so I -- she will document where we told her it
5 was, where she finds it.

6 Q. But you're supposed to tell her as a crime scene
7 investigator if you moved evidence, correct?

8 A. In a crime scene, but a search warrant is a little
9 bit different because you don't have an active crime
10 scene, so you're searching for evidence of the crime.
11 You may or may not find stuff there, so it's a different
12 practice.

13 Q. Okay. You also find money in Silvester's
14 daughter's room, right?

15 A. I did.

16 Q. It was about \$1,430, right?

17 A. \$1,430, yes, sir.

18 Q. And you lay it out, count it, and take it as
19 evidence, right?

20 A. Correct.

21 Q. And Silvester's daughter comes home when you're
22 taking her money, and she is not happy?

23 A. She is not happy.

24 Q. Understandably so, but you tell her that if she
25 can prove where it came from, she can get it back, right?

1 A. Yes.

2 Q. Which she does later get her money back, correct?

3 A. She did provide a receipt. We returned the money.

4 Q. After -- you also have the investigator take
5 pictures of new electronics?

6 A. I believe I mentioned that to her. I'd have to
7 see her report.

8 Q. Okay. But you testified on direct you thought
9 this was interesting, that somebody would have new
10 electronics with tags still on them, right?

11 A. I did think that was interesting.

12 Q. But you didn't do any investigation as to where
13 those items were purchased?

14 A. So a search warrant is very particular about what
15 you're doing. You're looking for evidence of a crime, so
16 we list out what we're looking for, and that was not on
17 the search warrant, so it's sort of outside of our
18 purview at the time.

19 Q. But you had the investigators take pictures of
20 them, right?

21 A. I did.

22 Q. You thought they were important. Those pictures
23 are in evidence, right?

24 A. Yes, sir.

25 Q. You can get UPC codes off of a television box,

1 right?

2 A. You can get what?

3 Q. You can get -- you know, where people scan these
4 electronics to see where they're purchased, how much they
5 are, right?

6 A. You can.

7 Q. You can try to track down when they were
8 purchased?

9 A. You could.

10 Q. Who purchased them? Were they purchased by credit
11 card?

12 A. Presumably.

13 Q. But you didn't do any investigation as to where
14 these things were purchased, correct?

15 A. Well, that would be outside of the scope of the
16 search warrant. We were searching for very particular
17 items related to this crime.

18 Q. Right. But you had your crime scene investigator
19 take pictures of them?

20 A. They were in plain view. As you walked into the
21 house, it was very noticeable, so we generally take
22 pictures of the house as is.

23 Q. You also did a search warrant for Meeting Street
24 Auto Sales?

25 A. In reference to this case?

1 Q. Yes.

2 A. I believe so.

3 Q. And one of the reasons you did this was a followup
4 on what Silvester told Detective Brown, that he had been
5 there that day. That was one of the reasons why you went
6 there?

7 A. Yes, sir.

8 Q. And I guess he told Detective Brown at some point
9 in the day he had gone to Meeting Street Auto Sales to
10 make a payment for his wife's car, and you went there to
11 find out if that was true, part of the reason you were
12 there?

13 A. Yes, sir.

14 Q. And you, in fact, subpoenaed or did a search
15 warrant for those records --

16 A. Yes, sir.

17 Q. -- on Meeting Street Auto Sales, and they gave you
18 a receipt as part of that search warrant?

19 A. Can you refresh my memory? I'm sorry.

20 Q. I'm going to show you what's been marked as
21 Defendant's Exhibit 3 for ID purposes. Were you given
22 that receipt as a result of your search warrant of
23 Meeting Street Auto Sales?

24 A. Yes, sir.

25 Q. And --

1 MR. KOZELSKI: No further questions.

2 THE COURT: Redirect?

3 MR. WARING: Court's indulgence, Your Honor.

4 REDIRECT EXAMINATION BY MR. WARING:

5 Q. Just a few questions, Sergeant.

6 A. Yes, sir.

7 Q. Do you know how far from the defendant's house on
8 English Street the Family Dollar is, approximately?

9 A. About a mile.

10 Q. About a mile?

11 A. Yes.

12 Q. All right. Now, back on the topic of the red
13 shirt, red and white striped shirt at the defendant's
14 house, did you, in fact, find that there?

15 A. Yes, sir.

16 Q. Does your not mentioning that in your report mean
17 that it didn't happen?

18 A. No, sir. I documented -- I had crime scene
19 document and take photographs, and I also documented on
20 the search warrant return, again, the items that we take
21 from the residence that we were looking for.

22 Q. And did you plant that?

23 A. No, sir, I did not.

24 Q. Now, regarding your old search warrant, the new
25 search warrant, that whole issue, can you tell the jury

1 what happened.

2 A. So when an investigation's going on, it's very
3 fluid. There are a lot of things going on, and, as
4 Mr. Kozelski said, oftentimes other cases, I was a
5 violent crime detective, so -- but we do our best to do
6 teamwork, and I was under the impression that it was the
7 phone number; instead, it was the phones that the
8 defendant was claiming. So it wasn't the phone number,
9 it was some phones that were seized after his arrest, so
10 I misspoke.

11 I screwed up, but I took ownership of that when we
12 realized the mistake and drafted a new search warrant.

13 Q. Sergeant, were you intentionally misleading?

14 A. I was not.

15 Q. So, essentially, you said in the warrant that the
16 defendant admitted the phone number was his, but in
17 reality, he had merely admitted the physical phone was
18 his; is that right?

19 A. Again, at the time of his arrest, there was two
20 cellphones, I believe, seized, and that's what he was
21 claiming ownership of.

22 Q. Now, I just want to make sure I clarify one thing.
23 State's Exhibit 91, I think earlier you had mentioned you
24 found some black shoes. Are these the shoes you found?

25 A. Yes, they are.

1 Q. And are they two-toned in color --

2 A. They are.

3 Q. -- more or less? Now, regarding the money that
4 was found at the defendant's house, did y'all give that
5 back?

6 A. Yes, we did, upon I believe it was his daughter
7 providing an ATM receipt that corresponded with the
8 amount that was seized.

9 Q. All right. So despite that information, you
10 didn't take that and still try to pin that on the
11 defendant?

12 A. No, sir, tried to make a wrong right.

13 Q. I think the defense just submitted a receipt. I'm
14 going to show you what's been marked just for ID purposes
15 as State's Exhibit 119. Is that the other part of the
16 receipt, payment history you received from the search
17 warrant at Meeting Street motors?

18 A. Yes, sir.

19 Q. And I'd like to direct your attention down to the
20 dates at the bottom. What does it say as far as payment
21 history on the bottom line?

22 MR. KOZELSKI: Judge, objection.

23 MR. WARING: Court's indulgence, Your Honor.
24 Please answer any questions the defense has.

25 THE COURT: Recross?

1 MR. KOZELSKI: No further questions.

2 THE COURT: You may step down.

3 THE WITNESS: Thank you, sir.

4 THE COURT: All right, folks. We're going to
5 go ahead and take about a 10, 15-minute break, let you
6 stretch your legs, use the restroom. Again, don't begin
7 any deliberations or discussions about the case, and
8 we'll see you in about 10 or 15 minutes.

9 (A recess was taken at 11:10 a.m.)

10 (The jury came back into the courtroom at
11 11:33 a.m., and the following proceedings
12 were had in the presence of the jury.)

13 THE COURT: All right. We'll proceed with
14 the State calling their next witness.

15 MR. WARING: Thank you, Your Honor. We call
16 Jerry Roberts.

17 WILLIAM JERRY ROBERTS, JR.
18 having been called as a witness for the State at
19 11:33 a.m., was sworn and testified as follows:

20 DIRECT EXAMINATION BY MR. WARING:

21 Q. Good morning, Jerry.

22 A. Good morning.

23 Q. How are you doing today?

24 A. All right. How are you?

25 Q. Good. Jerry, please tell the jury where you work.

1 A. City of Charleston Police Department.

2 Q. And what do you do for CPD?

3 A. Currently I'm the director, and I'm an analyst of
4 the computer forensic laboratory there.

5 Q. All right. Can you tell us about your previous
6 work experience.

7 A. Yeah. I've been with the City of Charleston going
8 on 30 years, the last 16 or so in computer forensics. I
9 created the lab there and also work inside as well.

10 Q. Could you tell us a little bit more about which
11 agencies throughout the past 30 years and what exactly
12 you've done for those agencies?

13 A. Yeah. I've done a multitude of work for federal
14 agencies, all state and local. At one time we served 42
15 different agencies here in the Lowcountry until computer
16 forensics got to be more in vogue. We were doing it for
17 a lot of the smaller agencies, and we still do for those
18 who can't have the expertise or afford the equipment to
19 do it with.

20 Q. Do you have any specific training in digital
21 evidence?

22 A. Yes, sir, I do.

23 Q. And have you testified previously in a court?

24 A. Yes, sir.

25 Q. Have you ever been declared an expert before?

1 A. Yes, sir.

2 Q. In what field?

3 A. In digital multimedia evidence.

4 Q. I think you mentioned a lab. What is the lab you
5 work with?

6 A. We have an international accrediting laboratory,
7 and that's accredited by ANAB, which is an accrediting
8 body for multi-jurisdictional laboratories across the
9 world, actually, and we are internationally accredited,
10 which means that our work is accepted both here and
11 abroad as quality work and adhering to a certain set of
12 standards and quality.

13 Q. So you deal with digital evidence?

14 A. Yes, sir.

15 Q. And what exactly is digital evidence?

16 A. Digital evidence is anything of a probative value
17 that is transmitted digitally: Could be a picture, text
18 message, SMS message, a video that is deemed to have some
19 evidentiary value.

20 MR. WARING: Your Honor, at this time the
21 State moves to have the expert declared a witness in the
22 field of digital evidence.

23 MR. KOZELSKI: No objection.

24 THE COURT: Folks, this witness has now been
25 qualified as an expert in the filed of digital evidence.

1 Remember I told you at the first part of the
2 trial -- maybe yesterday, I lose track of days here --
3 witnesses are only allowed to get up and tell you what
4 they heard, saw, touched, felt, smelt, and they're not
5 allowed to give you their opinion about the evidence.

6 The law says, however, that when somebody
7 because of education or specialized training or
8 experience in some field rises to the level of expertise,
9 they are allowed to come into court, be qualified as an
10 expert, and tell you their opinion about some particular
11 evidence and give you the basis for their opinion.

12 This witness has now been qualified as an
13 expert in the field of digital evidence and will be
14 allowed to give you his opinion in that field. You are
15 not required to give any expert's testimony any
16 particular extra credibility simply because they were
17 qualified as an expert. That determination on how much
18 weight to give an opinion, or give to any witness, expert
19 or not, is solely within your purview. You decide how
20 much weight to give this witness's testimony based on all
21 of the evidence that you hear throughout the trial.

22 Go ahead.

23 MR. WARING: Thank you, Judge.

24 BY MR. WARING:

25 Q. All right. Jerry, were you asked to look at some

1 phones in this case?

2 A. Yes, sir.

3 Q. All right. And did you do some reports for those
4 phones?

5 A. Yes, sir.

6 Q. Can you explain what exactly you do for a report
7 for a phone.

8 A. Yeah. Basically, depending upon the type of
9 device it is, the carrier, things like that, we do what's
10 known as a phone dump through a forensically tested and
11 verified tool. We use UFED, which is from Cellebrite,
12 which is an internationally known forensic provider of
13 equipment, and basically what you do is that you follow a
14 set of steps and you extract the device, extract the data
15 from the device.

16 Depending upon, again, the type of device it is,
17 that really dictates how much data you get back and how
18 much is pulled from the phone. Once that's pulled from
19 the phone, it's then cataloged by the software and
20 available for our analyses.

21 MR. WARING: May I approach, Your Honor.

22 THE COURT: Yes.

23 BY MR. WARING:

24 Q. I'm showing you what has already been admitted as
25 State's Exhibits 101 and 102. Were those the phones you

1 were given and processed?

2 A. Yes, sir.

3 Q. Can you tell the jury what kind of phone each one
4 of them is?

5 A. Yeah. These are two LG flip phones, and they are
6 just your basic text data, picture taking telephones, not
7 considered the smartphones we have today, just a basic
8 flip phone dial, text messages, pictures; things like
9 that.

10 Q. Were those two phones able to be processed?

11 A. Yes, they were.

12 Q. And did you generate a report for each one of
13 them?

14 A. Yes. These were processed what's known as a
15 logical dump, because that's all that's supported because
16 of the age of the phone and the technology that the phone
17 has, and basically what a logical dump is, that's what
18 the date -- or the images you can see on the device. So
19 that's what's extracted and put into digital format for
20 us to look at, and in this case, a logical extraction was
21 taken, and also the SIM card from the device was removed
22 and extracted.

23 Q. And for each one of those reports, are they
24 generated in the normal course of business?

25 A. Yes, sir.

1 Q. Is it a regularly conducted business activity to
2 generate those report?

3 A. Yes, sir. After the extraction is done and the
4 data is compiled, the report is completed.

5 Q. And are they generated at or near the time of the
6 extraction?

7 A. Yes.

8 Q. Now, also in your involvement with this case, were
9 you asked to take a look at some phone records?

10 A. Yes, sir.

11 Q. I'm going to refer you to page 21 of Exhibit 105.
12 Now, are you able to tell -- and if you need me to zoom
13 around or move the page around, just let me know. Are
14 you able to tell by looking at this what cellphone number
15 these records correspond to?

16 A. Yes, sir.

17 Q. And can you tell the jury which number?

18 A. If you look in the upper left-hand corner, my
19 left, which is your left, you'll see the number voice
20 usage four, and you'll see the phone number

21 [REDACTED], so AT&T has verified that all of these
22 records are accurate to that phone number.

23 Q. If you don't mind, you can actually -- these are
24 digital screens. You can actually use your finger to
25 point to where you're talking about.

1 A. Right there.

2 Q. Okay. That number right there?

3 A. Yes.

4 Q. All right. Jerry, now I'd like to shift your
5 attention to this right here. What is IMSI?

6 A. IMSI is International Mobile Subscriber Identity
7 number. Basically what that is, is that is a number that
8 authenticates the user to this network. That number is
9 taken from the SIM card that is located within the
10 device.

11 Q. All right. And is an IMSI number a unique number?

12 A. Yes, it is.

13 Q. So, in other words, can two different people share
14 the same IMSI number?

15 A. No, they can't.

16 Q. Now, this page 21 of the phone records here, the
17 page that's up now, does that list this target cellphone
18 numbers IMSI number?

19 A. Yes, it does.

20 Q. Can you point out on that page where it is?

21 A. Right here (indicating).

22 Q. Okay.

23 A. And there. Wherever you see that number, that's
24 the phone number.

25 Q. Would you mind reading off that number for the

1 jury?

2 A. It's 310150800826435.

3 Q. All right. Now, briefly, I want to put up what's
4 already been admitted as State's Exhibit 104, and, if you
5 don't mind, if you hit that arrow at the top of the
6 screen, you can hit that arrow and that will clear the
7 lines.

8 Can you tell us what we're looking at here.

9 A. Yeah. This is from Cricket Mobile, and it looks
10 like it's the subscriber information that's the user
11 information for this IMSI number.

12 Q. All right. So for this listed cellphone number of
13 [REDACTED], on the subscriber information page, does
14 it list the IMSI number?

15 A. Yes, it does.

16 Q. And could you refer us to it?

17 A. That it's right here, referring to that number.

18 Q. Is that the same number that we just looked at on
19 the actual phone records?

20 A. Yes.

21 Q. For the number [REDACTED]?

22 A. Yes, sir.

23 Q. Court's indulgence.

24 All right. Jerry, I'm now showing you what's been
25 marked for identification as State's Exhibit 110. Do you

1 recognize that?

2 A. Yes, sir.

3 Q. And what is it?

4 A. That is a SIM extraction report generated from our
5 Cellebrite machine.

6 Q. All right. And is that for a specific phone that
7 you were given in this case?

8 A. Yes. It was for the -- this one was for item
9 14-1.

10 Q. All right. And is that one of the phones --

11 A. Yes, sir, it is.

12 Q. All right. Now, does that report specifically
13 list the IMSI number for that particular cellphone of the
14 defendant's?

15 A. Yes, it does. It lists the IMEI and IMSI number.

16 Q. Does that extraction report fairly and accurately
17 depict the extraction for that particular cellphone?

18 A. Yes, it does.

19 MR. WARING: Your Honor, at this point the
20 State moves to have Exhibit 110 admitted into evidence.

21 MR. KOZELSKI: No objection.

22 THE COURT: Admitted.

23 (State's Exhibit 110 was marked for
24 identification and admitted into evidence.)

25 BY MR. WARING:

1 Q. Now, Jerry, I'm going to refer you to Exhibit 110,
2 the cell extraction report for that phone. Can you point
3 out on there where the IMSI number is?

4 A. The IMSI number is here.

5 Q. Okay. Now, is that the IMSI number as was on both
6 the subscriber information page for that, [REDACTED],
7 and the actual cellphone records for that same number?

8 A. Yes.

9 Q. I'm going to switch gears slightly, and I want to
10 put back page 21 of Exhibit 105 up on the overhead. Now,
11 I'd like to ask you what that means, IMEI?

12 A. This is known as the international mobile
13 equipment identification number. Basically, what this
14 number is, it's the serial number to the device. It's
15 listed actually on the device itself, generally behind
16 the battery of these smaller phones, and if your phone is
17 one of the newer phones, you can use a key code. I
18 believe it's star dash 06 star. It will bring it up on
19 there, and that's the serial number to the device itself.

20 Q. When you say it's on the device, is it physically
21 on the device?

22 A. Yes.

23 Q. All right.

24 A. On the back. And, also, if you can't physically
25 see it, it's embedded in the device, in the firmware of

1 the device.

2 Q. Okay. Now, like an IMSI number over here, these
3 numbers, these IMEI numbers, are they unique?

4 A. Yes. They are unique to the device on the
5 network, being used on the network.

6 Q. Do the phone records we're looking at here,
7 Exhibit 105 for this number of [REDACTED], does it
8 list the IMEI number?

9 A. Yes, it does.

10 Q. Would you mind telling the jury what that is.

11 A. Yes. It's 0141090017725801, reporting back to an
12 LGB460 as the model.

13 Q. All right. Now, I'm going to refer you back to
14 Exhibit 110, cell extraction report for one of the phones
15 that you processed. Does this report list the
16 IMEI number?

17 A. Yes, it matches.

18 Q. I'm sorry. Did you say it matches?

19 A. Yes, it matches.

20 Q. So it matches the cell phone records?

21 A. Yes.

22 Q. What about -- now, Jerry, in preparation for
23 trial, did you put together any photos or exhibits?

24 A. Yes, sir, I did.

25 Q. Now showing you what's been marked as State's

1 Exhibit 111, do you recognize that?

2 A. Yes.

3 Q. And could you tell the jury what that is.

4 A. That's a picture taken in the lab of item 15-1
5 showing the -- under the battery, showing the IMEI number
6 and matching the IMEI number from the call records; also
7 even the make and model, LGB460, LGB460. This number
8 matches the number embedded on the device. This is the
9 device nomenclature.

10 Q. Now, is that an exhibit that you put together in
11 preparation for trial?

12 A. Yes, sir.

13 Q. Okay.

14 MR. WARING: Your Honor, at this point State
15 moves to have Exhibit 111 admitted.

16 MR. KOZELSKI: No objection.

17 THE COURT: Admitted.

18 (State's Exhibit 111 was marked for
19 identification and admitted into evidence.)

20 BY MR. WARING:

21 Q. All right. Jerry, I think you were talking about
22 it a minute ago, but this is Exhibit 111. Can you tell
23 us what is going on here, what we're looking at here?

24 A. Yeah. We're looking at the IMEI number here going
25 to this device, and the make and model number that AT&T

1 picked up is going to the make and model of this device.

2 Q. Now, in the background here, this document that's
3 back here, is that part of the same phone records that we
4 were looking at earlier for that number [REDACTED]?

5 A. Yes, sir.

6 Q. All right. And you're saying that this is,
7 essentially, that number on the phone record?

8 A. Yes.

9 Q. All right. Now, are the IMEI numbers the same on
10 the phone records for [REDACTED], the cellphone
11 extraction report for the physical phone that was
12 collected and the back of the actual phone itself?

13 A. Yes, sir, it is.

14 Q. Now, Jerry, I want to ask you the question: All
15 these weird, confusing numbers, what does this boil down
16 to as far as linking the number [REDACTED] to that
17 physical cellphone?

18 A. What it boils down to is that when you connect to
19 a cellular service, a cellular service requires you to
20 have two things to authenticate yourself: The IMEI
21 number and the MC number. We call it IMSI number.

22 Those two numbers are what's required for the
23 cellular service to let you on their network. If either
24 of those two numbers don't match, you're not able to make
25 a call; you're not able to send text messages; you're not

1 able to use the network. They are actually used so much,
2 other information other than those two numbers, so those
3 are the authenticators to get you into the network.

4 Q. So, in other words, is that number, that cellphone
5 number I mentioned, linked to this phone?

6 A. Yes.

7 Q. And to what extent? Did it make those phone calls
8 that are referenced in the phone records?

9 A. Yes.

10 Q. Is there any wiggle room there or is that a fact?

11 A. That's a fact as AT&T certifies it.

12 Q. All right, Jerry. Now, I want to show you what's
13 been marked as State's Exhibit 112. Do you recognize
14 that?

15 A. Yes.

16 Q. Can you tell the jury what that is.

17 A. Yes. That's also an extraction, an SMS
18 extraction, which is, in essence, a text message
19 extraction from one of these devices.

20 Q. So that's a text message from one of the phones
21 that you processed?

22 A. Yes, yes.

23 Q. And does that fairly and accurately depict that
24 message?

25 A. Yes, it does.

1 MR. WARING: Your Honor, at this point State
2 moves to have Exhibit 112 admitted into evidence.

3 MR. KOZELSKI: No objection.

4 THE COURT: Admitted.

5 (State's Exhibit 112 was marked for
6 identification and admitted into evidence.)

7 BY MR. WARING:

8 Q. All right, Jerry. This is Exhibit 112. Can you
9 tell the jury what the recipient phone number is, where
10 this message is going to.

11 A. Yeah. It's going to this number here.

12 Q. Okay. And do you mind telling the jury what that
13 is?

14 A. [REDACTED].

15 Q. All right. And how about the content, the actual
16 message itself?

17 A. Actual message is right here, where it says
18 message. Here it says this is Ves.

19 Q. Okay.

20 MR. WARING: Please answer any questions
21 defense has.

22 CROSS-EXAMINATION BY MR. KOZELSKI:

23 Q. You extract a lot of phone data from phones these
24 days, I imagine.

25 A. Yeah.

1 Q. It's gotten a lot more popular over the last
2 couple years, with police departments?

3 A. Certainly has.

4 Q. Almost any crime police can link a phone to,
5 they're going to ask you to do a dump for, right?

6 A. Yes.

7 Q. And when you get these dumps, or these logical
8 dumps that you get, sometimes they do have identifying
9 features within them; pictures of people inside of them
10 and text messages?

11 A. Yes.

12 Q. And you did a couple of extractions in this case,
13 right?

14 A. Yes, these two phones.

15 Q. You did them back in April of 2015, you did an
16 extraction, right?

17 A. That was original extraction in 2015. At that
18 time they were not supported by the forensic hardware.

19 Q. So you tried. You hooked those phones up to the
20 hardware?

21 A. The only thing it would support at that time were
22 the SIM card, which were provided that he showed earlier,
23 and those reports are based upon the SIM cell extraction
24 report.

25 Q. So you weren't able to get anything from that

1 first extraction?

2 A. No, sir.

3 Q. And the phone itself was not activated, right?

4 A. No.

5 Q. So nobody could, you know, turn on the phone and
6 call another number to see what number pops up for that
7 phone, right?

8 A. The phone number, when I receive it, was
9 deactivated, was returned back to the SIM.

10 Q. So you couldn't have made a call from that phone,
11 right? I guess you could replace the SIM card that was
12 in there with another SIM card and --

13 A. Active SIM card.

14 Q. -- active SIM card and make a call, but you're
15 going to get a different number, right?

16 A. Yes.

17 Q. So the only way to tell that this phone matches
18 this number is when you got these reports last month?

19 A. Say that again?

20 Q. I mean, you got these call detail records last
21 month, right?

22 A. Right.

23 Q. That's when you were able to make this
24 determination?

25 A. Determination --

1 Q. That this was the phone number for this physical
2 phone?

3 A. No. The physical phone, once the extraction was
4 supported, the new extraction was supported, was listed
5 in that report the two identifiers, which is the MC and
6 the IMEI. The call record report listed those two
7 numbers, and they referred back to the actual cellphone
8 number that the reports were listed on.

9 Q. Right. And you did this knew extraction last
10 month, right?

11 A. I believe so.

12 Q. Okay. And then used what you got from the cell
13 extraction report to match it to the call detail records
14 you got last month, right?

15 A. That and the actual device itself.

16 Q. Right. To the device itself?

17 A. From the device itself to the call records. I
18 didn't have access to the call records.

19 Q. Yeah. You got the call records last month?

20 A. Yes.

21 Q. And you were able to make that determination for
22 the solicitor's office?

23 A. Yes.

24 Q. At no time before that were you able to link that
25 phone to any sort of phone number, right?

1 A. No.

2 Q. And with all this information that you have from
3 extraction and call detail records, none of that
4 information tells you who was actually using the phone,
5 right?

6 A. You mean who actually dialled the number?

7 Q. Yeah.

8 A. No, it doesn't have a camera.

9 Q. Yeah, whoever is texting or --

10 A. Yeah.

11 Q. -- you don't know that.

12 A. No.

13 MR. KOZELSKI: No further questions.

14 THE COURT: Redirect?

15 MR. WARING: Thank you, Judge.

16 REDIRECT EXAMINATION BY MR. WARING:

17 Q. Jerry, does the timing of when you physically get
18 the report, does that make a difference as far as your
19 testimony or your findings?

20 A. No. The only thing that would make a difference
21 is if additional information is supported by the
22 equipment that we use, and that happened because of
23 changing technology. Technologies change quicker than
24 the device manufacturers can keep up, and as vendors as
25 well, so it's not uncommon for a device not to be

1 supported, say, 30 days ago, for instance, an Iphone and
2 this the current iteration it now supports taking
3 Facebook messages.

4 Q. So it can include new information?

5 A. Yes.

6 Q. Okay. But, say hypothetically you had the phone
7 records back then, but you didn't process them until now.
8 Would your findings still be the same, more or less?

9 A. It would be the same.

10 MR. WARING: No further questions, Your
11 Honor.

12 THE COURT: Anything else?

13 MR. KOZELSKI: No recross.

14 THE COURT: You can step down.

15 THE WITNESS: Thank you.

16 THE COURT: Next witness?

17 MR. WARING: Yes, Your Honor. State calls
18 Detective Brown.

19 YOLANDA BROWN

20 having been called as a witness for the State at
21 11:59 a.m., was sworn and testified as follows:

22 DIRECT EXAMINATION BY MR. WARING:

23 Q. Good morning, Detective. How are you?

24 A. Good morning. Good.

25 Q. Detective, please tell the jury where you work?

1 A. Charleston Police Department.

2 Q. What do you do there?

3 A. I'm a detective currently assigned to the robbery
4 assault unit.

5 Q. All right. For this specific case, are you what's
6 called a case agent?

7 A. Yes. I was the case agent.

8 Q. And what is a case agent?

9 A. Case agent is basically the lead detective in an
10 investigation or incident. All information and leads
11 usually come through me.

12 Q. All right. How did you get brought into this
13 case?

14 A. I was dispatched on the radio to the bank robbery.

15 Q. Did you actually respond to the physical bank?

16 A. Yes, I did.

17 Q. And where is that?

18 A. The First Palmetto Bank located on Sumar Street.

19 Q. Is that in Charleston County?

20 A. Yes.

21 Q. What happened once you got there?

22 A. I interviewed a witness employee, Mitchell Burns,
23 and I also watched the surveillance footage.

24 Q. After watching the video, what was your
25 understanding of the description of the suspect you were

1 looking for?

2 A. After watching the video, I observed it was a
3 black male, slightly tall, wearing a dark blue or a blue
4 all-in-one type coverall work-type suit. I could see
5 there was, like, a shirt underneath, like red and white;
6 also wearing white gloves, armed with what appeared to be
7 a silver revolver. Also having, like, a bag in his hand.
8 I think that's all at that time.

9 Q. Around the time you responded to the bank, were
10 other units otherwise looking for the suspect's vehicle?

11 A. Shortly after arriving, the pictures were sent
12 back to the detectives at the office. What we created --
13 they created what they call a BOLO, be on the lookout
14 flyer, that was sent out to all the Charleston police
15 warrant officers.

16 Q. Was that vehicle or something similar to that
17 description located?

18 A. Yes. Later on in the night, it was located. A
19 vehicle similar to the one that was observed in the bank
20 surveillance was located at the Quality Inn, formerly
21 known as the Econolodge, in West Ashley.

22 Q. Did you respond to that location?

23 A. I did.

24 Q. What happens once you got there?

25 A. Once I got there, I spoke with some of the

1 individuals there.

2 Q. All right. And who were the individuals you saw?

3 A. I saw Mr. Anthony Holsberg and also Alonzo Green.

4 Q. All right. Can you describe what Anthony Holsberg
5 looks like?

6 A. Anthony Holsberg is a white male, short, bald,
7 wore glasses, kind of heavy.

8 Q. What about Alonzo Green?

9 A. Black male, I believe bald head, slim build and
10 seemed to be a little sluggish.

11 Q. At that time or around that time was Anthony
12 Holsberg considered to be a suspect?

13 A. No.

14 Q. Why not?

15 A. Because he was a white male, and I knew from the
16 video surveillance that we were looking for a black male.

17 Q. What about Green?

18 A. He was not at the time.

19 Q. Okay. Can you tell us why he was not considered a
20 suspect at that time?

21 A. Mr. Green did not match the more muscular build of
22 the man seen in the bank robbery. He seemed more
23 slimmer.

24 Q. Was there any evidence at that time that Green was
25 involved in the robbery?

1 A. No, there wasn't.

2 Q. Did you end up speaking with any of these
3 individuals?

4 A. Yes.

5 Q. And who did you speak with?

6 A. Alonzo Green. I interviewed him at headquarters.

7 Q. All right. And now he testified that he couldn't
8 recall what his own cellphone number was at that time.
9 Do you recall him giving the cellphone number of [REDACTED]
10 as his number?

11 A. I believe that's correct.

12 Q. All right. Now, he also testified that he didn't
13 remember or couldn't recall exactly providing the
14 defendant's number of [REDACTED]. Did he provide
15 that number?

16 A. Yes.

17 Q. Now, there was some testimony about a photo that
18 Alonzo Green used to identify the defendant as somebody
19 he had known for, he said, over ten years. Did you
20 suggest in any way who that person was in that photo?

21 A. I did not.

22 Q. Okay. Now, after the defendant was arrested, was
23 an interview conducted?

24 A. Yes.

25 Q. Who conducted that interview?

1 A. I did.

2 Q. Any idea how old the defendant was at the time of
3 the interview?

4 A. I believe mid 40's.

5 Q. All right. To your knowledge, did he have any
6 education?

7 A. He was a high school graduate.

8 Q. What about physical or mental defects, anything
9 that you knew about?

10 A. None that I know of.

11 Q. Did he, in fact, answer your questions coherently?

12 A. Yes, he did.

13 Q. Approximately how long was the interview?

14 A. It was a few hours.

15 Q. Did you make any misrepresentations to him?

16 A. No, I did not.

17 Q. Did you threaten him?

18 A. I did not.

19 Q. Did you promise him any leniency or a deal or
20 anything if he talked?

21 A. No, I did not.

22 Q. What about Miranda rights? Did you read him his
23 rights?

24 A. I did.

25 Q. And how did you do that? Did you do that with a

1 card?

2 A. Yes. I read him Miranda warnings from the
3 preprinted card.

4 Q. All right, Detective. I'm showing you what has
5 been marked for ID purposes as State's Exhibit 113. Do
6 you recognize that?

7 A. Yes. It's the preprinted Miranda card that I read
8 from that's signed by myself and the defendant.

9 MR. WARING: Okay. At this point the State
10 moves to have Exhibit 113 admitted.

11 MR. KOZELSKI: No objection.

12 THE COURT: Admitted.

13 (State's Exhibit 113 was marked for
14 identification and admitted into evidence.)

15 BY MR. WARING:

16 Q. Okay, Detective. Could you please read for the
17 jury what's seen on there.

18 A. It says you have the right to remain silent.
19 Anything you say can and will be used against you in a
20 court of law. You have the right to talk with a lawyer
21 and have him present during any questioning. If you
22 cannot afford to hire a lawyer, one will be appointed to
23 represent you before any questioning if you wish one. If
24 you decide to answer questions without a lawyer present,
25 you have the right to stop answering questions at any

1 time you so choose.

2 Q. Is that what you read to the defendant?

3 A. Yes, sir.

4 Q. How about on this side?

5 A. Yes. Do you understand your rights? Signed with
6 yes. It says I understand all of my rights as read to
7 me, and it's dated and signed by myself and the
8 defendant.

9 Q. So who wrote that yes?

10 A. He would have wrote that.

11 Q. The defendant?

12 A. Yes.

13 Q. Okay. Is that the defendant's signature?

14 A. Yes.

15 Q. To your knowledge, did he voluntarily and
16 willingly waive those rights before speaking with you?

17 A. Yes. He continued to speak.

18 Q. Was the statement recorded?

19 A. It was video, audio recorded.

20 Q. Now, showing you what's been marked for
21 identification purposes as State's Exhibit 114 and 115,
22 do you recognize those?

23 A. Yes. 114 is the video of the actual interview
24 with my initials, and 115 is the clips with my initials
25 on them as well.

1 Q. So 114 is essentially the full interview, and 115
2 is some clips from that interview?

3 A. Yes.

4 MR. WARING: At this time, the State moves to
5 have State's Exhibits 114 and 115 admitted.

6 MR. KOZELSKI: No objection.

7 (State's Exhibits 114 and 115 were marked for
8 identification and admitted into evidence.)

9 (Video played.)

10 BY MR. WARING:

11 Q. Detective, do you know what day of the week this
12 incident occurred on?

13 A. I believe it was a Wednesday.

14 Q. And did he just say he thought it was a Wednesday
15 when he had last seen this individual?

16 A. Yes.

17 MR. WARING: For this last clip, we would ask
18 to be able to pass out a transcript to the jurors.

19 THE COURT: All right.

20 Folks, the transcript here is provided to you
21 as an aid to assist you in hearing what is being said.

22 It is not a transcript that was done by a certified court
23 reporter. It was done by an employee at the solicitor's
24 office, and you are not required to treat it as a
25 verbatim transcript. If you think you hear something

1 other than what is written down there, then whatever you
2 think you hear, you certainly should feel free to believe
3 that over what you see written in front of you, but it's
4 simply to aid you while you're listening to this.

5 (Video played.)

6 BY MR. WARING:

7 Q. So, Detective, what we were just watching there,
8 the number that Jerry Roberts just tied to the
9 defendant's physical cellphone of [REDACTED], did the
10 defendant give you that number?

11 A. He did not.

12 Q. Now, what date was the bank robbery again?

13 A. March 4, 2015.

14 Q. And when was that interview just then?

15 A. The early morning hours of March 6, 2015.

16 Q. So a couple days later?

17 A. Yes.

18 Q. And at any point during that interview that lasted
19 a few hours, did you ask the defendant at any point if
20 there was anybody who would vouch for his whereabouts at
21 the time of this incident?

22 A. I did.

23 Q. At any point did he ever mention the name of
24 Harriet Cordero?

25 A. He did not.

1 Q. At any point did he ever mention fixing a moped
2 for her during the time of the incident?

3 A. He did not.

4 Q. I'd like to refer you to Exhibit 112. Now, what
5 nickname did the defendant just give on his interview as
6 being his nickname on the streets?

7 A. Double.

8 Q. And who is this number he's texting right here?

9 A. It says Boogie L at [REDACTED].

10 Q. But whose number is that?

11 A. I believe that's the number for Alonzo Green.

12 Q. All right. And what does the message say?

13 A. This Ves.

14 Q. So is that a different name than the defendant
15 gave you as being his nickname?

16 A. Yes, it is a different name.

17 Q. I refer you to page 21 of Exhibit 105, which is
18 the phone records.

19 All right. Well, first of all, Detective, on
20 these phone records, are these in eastern standard time
21 or UTC time?

22 A. As you can see up here at the top, it says that
23 AT&T has queried for the records used in eastern standard
24 times, but the records are produced at UTC time.

25 Q. Are you familiar with what the time difference is

1 between UTC time and eastern standard time?

2 A. It just depends on daylight savings. I believe
3 it's four to six hours, something like that.

4 Q. Is five hours accurate?

5 A. Yeah. I knew it was somewhere between four and
6 six.

7 Q. I'm sorry?

8 A. Yes.

9 Q. Now, looking at the records, were there any
10 communications between Alonzo Green and the defendant?

11 A. If you look at line 381, that's dated for
12 March 4th of 2015, UTC time is 20:23:24 which is going to
13 be 1500 military time, and realtime would be 3:23:24 p.m.
14 It says that [REDACTED] was the originating phone
15 number for [REDACTED].

16 Q. So what does that mean?

17 A. That means that the originating number called the
18 terminating number.

19 Q. Okay. So right here, is this Alonzo Green's
20 number?

21 A. That's the same number. It looks like they're
22 just a few seconds apart.

23 Q. And is this the defendant's number?

24 A. Yes.

25 Q. All right. Now, over here, we're looking at I

1 guess what you said the normal time would be 3:23:24, and
2 the other one is 3:23:39.

3 A. That's right.

4 Q. What time did the bank robbery happen?

5 A. Approximately 3:30.

6 Q. And then how about farther down here?

7 A. At line 392, it says [REDACTED] under the
8 originating line, again, contacting [REDACTED], and
9 that's at UTC time of 20:55:39. Realtime would be
10 3:55:39.

11 Q. Okay. So would that be before or after the bank
12 robbery?

13 A. That would be after.

14 Q. There's some testimony by Alonzo Green that he
15 tried to call the defendant a few times and that he
16 didn't get through. Can you tell us what this column
17 means over here where it says E.T.?

18 A. That's the estimated time that the call would have
19 taken place, and it looks like it was 00, which was not
20 connected.

21 Q. So these phone calls didn't go through?

22 A. No.

23 Q. All right. One name that has come up throughout
24 this trial is William Drayton, a person who is -- has
25 been deemed to be deceased. Was this person ever

1 considered a suspect?

2 A. No, because I've never heard of the name.

3 Q. Well, referencing his DMV report, Exhibit 109,
4 what can you tell us about this individual as far as
5 height?

6 A. States he's five-seven.

7 Q. And what was the description of the suspect as far
8 as height?

9 A. Approximately six foot.

10 Q. All right. So is this individual shorter than the
11 suspect description's height?

12 A. Correct.

13 Q. All right. What about birth, date of birth?

14 A. It looked like he was born in 1957. It would have
15 made him around late 50's, 60.

16 Q. And, again, is that consistent with the
17 description of the suspect?

18 A. No, sir.

19 Q. Okay. Why, because he's older or younger?

20 A. This person would have been older.

21 Q. Now, switching gears slightly, in preparation for
22 this trial, were you tasked with performing a timed
23 drive?

24 A. Yes, I was.

25 Q. From which location to which location?

1 A. I drove from the base of the on-ramp/off-ramp for
2 I-26, across the Cosgrove Bridge to the off side of West
3 Ashley where the North Park Bridge park begins, or the
4 entrance is, so I drove from the base of North Charleston
5 to the base of the bridge of West Ashley.

6 Q. Over the Cosgrove Bridge?

7 A. Over the Cosgrove Bridge, I'm sorry.

8 Q. All right. About what time of day did you do
9 this?

10 A. About 3:20 p.m.

11 Q. In the afternoon?

12 A. Yes.

13 Q. All right. Did you time yourself?

14 A. I did time myself.

15 Q. Approximately how fast were you going?

16 A. About 50 -- speed limit is 50 miles an hour.

17 Q. Are you sure you weren't speeding?

18 A. I was not.

19 Q. How long did it take you to drive that distance?

20 A. About 50 seconds.

21 Q. Okay. Now, switching gears again slightly, about
22 how far apart in time were the Family Dollar dust masks
23 purchased and the robbery?

24 A. About 15 minutes.

25 Q. Are either of those locations located near the

1 Cosgrove Bridge?

2 A. Yes. They were close proximity.

3 MR. WARING: Please answer any questions the
4 defense has.

5 CROSS-EXAMINATION BY MR. KOZELSKI:

6 Q. Good afternoon, Detective Brown.

7 A. Hello.

8 Q. You talked about being the lead case agent earlier
9 in your testimony, and that just means you're in charge
10 of directing the investigation?

11 A. Yes.

12 Q. If something needs looking into, you can either
13 check it out yourself or you can send somebody out to go
14 do it for you, correct?

15 A. Correct.

16 Q. You got other detectives that you can send, right?

17 A. Right.

18 Q. Patrol officers?

19 A. Sometimes, yes, sir.

20 Q. Depending on what the task is, right?

21 A. Correct.

22 Q. You got crime scene investigators you could send
23 out to a place?

24 A. Normally if they're sent out, I guess I would
25 assist, if it's something I'm requesting.

1 Q. You also have SLED agents at your disposal if you
2 need them for something?

3 A. Right.

4 Q. So you're running the show, and you have a lot of
5 resources at your disposal?

6 A. That's correct.

7 Q. You know, when someone is involved in a crime and
8 you're trying to figure out the culprit, you may want to
9 get this person, whether it be a witness or a suspect,
10 into the interrogation room at CPD, right?

11 A. Yes. To conduct an interview, yes.

12 Q. And at CPD, this interrogation room is a pretty
13 small room; we just kind of saw a little bit of it,
14 right?

15 A. Yes.

16 Q. It's no windows, just a cinderblock room?

17 A. Yes.

18 Q. Got a small table in there?

19 A. Correct.

20 Q. It's just enough room for just a couple people to
21 sit, right?

22 A. Correct.

23 Q. And there are cameras in the corners of the
24 ceiling that shoot down?

25 A. Somewhere in there.

1 Q. They're audio and video recording everything,
2 right?

3 A. Yes, sir.

4 Q. And juries like video recordings, right?

5 A. Yeah -- I guess. I don't know. I can't answer
6 that.

7 Q. That's why you have them in there. You want to
8 make sure that you get down everything. If it later
9 comes down to it, you can play clips like that at trial,
10 right? And no matter who you're talking to in that
11 interrogation room, whether they're guilty or not, a lot
12 of people that you talk to start off lying, right?

13 A. I can't always say that.

14 Q. A lot of people might minimize what they saw or
15 heard, talking to you?

16 A. It's possible.

17 Q. And people have their own reasons for not being
18 honest with the police, right?

19 A. Yes.

20 Q. It's pretty normal for people to lie in the
21 interrogation room?

22 A. I guess you can say it's normal.

23 Q. Your ultimate goal when you're interrogating a
24 suspect is to try to get them to confess to what you're
25 talking to them about, right?

1 A. My ultimate goal is to get the truth.

2 Q. Right. And whether that be a confession -- you
3 want to get that confession. That's, I mean, worth its
4 weight in gold, right, as a detective?

5 A. Yes. I always want the truth.

6 Q. And you're also trying to corroborate certain
7 evidence that you already know, right?

8 A. Yes.

9 Q. But, like I said, once somebody confesses to
10 something, it's pretty hard for them to walk back on
11 that, right?

12 A. I guess so.

13 Q. I guess you might refer to that as breaking a
14 subject, or breaking a suspect in the interrogation room;
15 you get them to confess, right?

16 A. Just a confession.

17 Q. Okay. And you're trained in several techniques in
18 order to try to get people to confess to crimes that they
19 committed, right?

20 A. I wouldn't necessarily say I'm trained in several
21 techniques. I conduct most of my interviews the same.

22 Q. But there are different techniques that you can
23 use?

24 A. There are.

25 Q. They're some of the old school ones, like the good

1 cop/bad cop you can use, right?

2 A. Right.

3 Q. Have somebody come in and yell at the suspect, and
4 then you come in and you're sort of an arm to cry on, and
5 they confess to you that way. That might be one
6 technique you can use, right?

7 A. It is.

8 Q. You can try to build a rapport with a suspect,
9 which seems to be more your style, correct?

10 A. Correct.

11 Q. You can't beat on anybody, obviously, right?

12 A. I would not.

13 Q. But you can straight up lie to them about, you
14 know, evidence that you found or, you know, what you have
15 in your investigation, right?

16 A. You can.

17 Q. So, I mean, in a way, lying is part of your job in
18 the interrogation room?

19 A. Yeah. If need be, it could.

20 Q. I want to talk to you a little bit about Alonzo
21 Green. Alonzo, like you said, he was never treated as a
22 suspect.

23 A. No, he wasn't.

24 Q. He was never handcuffed?

25 A. Not to my knowledge.

1 Q. When you went to the hotel that he was staying in,
2 I guess you guys did a knock-and-talk, so you knocked on
3 the door, right?

4 A. I did not participate in that part of it.

5 Q. You weren't there when they did a knock-and-talk?

6 A. I was not there when they initiated the
7 knock-and-talk. I was across the street.

8 Q. Okay. So you weren't able to hear him flushing
9 drugs down the toilet?

10 A. Because I was not there.

11 Q. Okay. And the money that was taken from him, we
12 just saw in the video earlier this morning, y'all gave
13 that to him, right?

14 A. Correct.

15 Q. And y'all could have seized that money?

16 A. Yes, I suppose.

17 Q. You've been in investigations before where people
18 get their money seized, right?

19 A. Yes.

20 Q. And the way that seizure process works is
21 CPD takes the money, and then in order to get it back,
22 the person has to prove that they got those gains
23 legally, right?

24 A. That's correct.

25 Q. Alonzo obviously wouldn't have been able to do

1 that, right?

2 A. I don't know, sir.

3 Q. You also didn't take Alonzo's phone.

4 A. I did not.

5 Q. Okay. And this allowed him to do a hard reset on
6 that phone?

7 A. He explained that he did the reset initially when
8 police came on scene. He was able to bring the phone
9 back during our interview time frame to provide me with
10 the telephone numbers.

11 Q. Okay. Let's talk about that interview. You
12 eventually do get him down to the interview room, right?

13 A. Yes.

14 Q. And that's in one of those interrogation rooms
15 which is being audio and video recorded; right?

16 A. Yes, sir.

17 Q. And he's in there for hours.

18 A. Yes, sir.

19 Q. And you allow him to hold on to that phone the
20 entire time he's in there, right?

21 A. Yes, sir.

22 Q. And just to be clear, you would never allow a
23 suspect access to their cellphone while they're in the
24 interrogation room, right?

25 A. More likely no, sir, unless they were providing

1 with me some information that they voluntarily wanted to
2 give me.

3 Q. And while Alonzo's in there, he's trying to get
4 these numbers back, right?

5 A. Yes.

6 Q. And that's because he wants to tell you what
7 number he called Silvester on?

8 A. Correct.

9 Q. And you don't really need his help to get that
10 number, do you?

11 A. I do need his help.

12 Q. You can take the phone from him, can't you?

13 A. I could if I needed to, yes.

14 Q. You tell him a lot of times I don't want to have
15 to take your phone.

16 A. Right.

17 Q. So you could have taken his phone, right?

18 A. Right.

19 Q. But you don't take his phone?

20 A. I did not.

21 Q. You could have gotten a search warrant for the
22 physical phone itself?

23 A. Correct.

24 Q. But you don't do that?

25 A. I did not.

1 Q. You could have gotten a search warrant for his
2 phone numbers through this cell provider, which we've
3 been looking at today, right?

4 A. That's correct.

5 Q. And you didn't do that.

6 A. I did not.

7 Q. You even let him go to the bathroom at one point
8 during the interview and take his phone with him.

9 A. I don't remember if he took the phone with him,
10 but you are allowed bathroom breaks.

11 Q. Okay. And in the video, he does take his phone
12 with him, right?

13 A. I guess. I would have to watch to remember.

14 Q. Okay. But you don't know what he's doing in the
15 bathroom with the phone when he's in there, right?

16 A. No. I'm not watching him in the bathroom.

17 Q. And at no point during this interview that is
18 audio and video recorded does Alonzo Green give you a
19 number for Silvester Scott?

20 A. He provided the number off camera when he came to
21 my desk to use my computer to reset his Google account.
22 He was having difficulty getting the number from the
23 screen because the screen was cracked. Also, I think his
24 phone was going dead at some point because he asked us to
25 charge it.

1 Q. Getting a number from Alonzo Green seems like that
2 would be an important thing, right? It's an important
3 thing in this case?

4 A. Yes.

5 Q. So you would want to put that in a report?

6 A. I suppose.

7 Q. And is there anywhere in any of your reports that
8 said Alonzo Green gave you that number?

9 A. It is not documented in my report, but it is
10 documented in my coworker's report, Sergeant Tuttle.

11 Q. And Sergeant Tuttle wasn't there, right?

12 A. He was not.

13 Q. And you don't have this written in your report?

14 A. I did not.

15 Q. And it's nowhere in the interview does Alonzo give
16 you that number?

17 A. No, because it was done off camera.

18 Q. And, again, you did not document that off-camera
19 meeting?

20 A. I did not document it.

21 Q. You spoke to Anthony Holsberg at one point, I
22 guess it was at the motel?

23 A. I did.

24 Q. And he tells you --

25 MR. WARING: Objection, Your Honor. Hearsay.

1 MR. KOZELSKI: I'm not offering it for the
2 truth, Your Honor.

3 THE COURT: Why are you offering it?

4 MR. KOZELSKI: I'm offering it to show that
5 he lied to them.

6 THE COURT: Well, that would be to prove the
7 truth of the matter asserted, whatever it may be.

8 MR. KOZELSKI: May we approach, Your Honor?

9 (A bench conference was held off the record
10 at 12:43 p.m.)

11 (Back on the record at 12:44 p.m.)

12 BY MR. KOZELSKI:

13 Q. Anthony Holsberg wasn't honest with you?

14 A. He wasn't honest with me initially, no.

15 Q. And you never put him in handcuffs?

16 A. I did not.

17 Q. Never took his phone?

18 A. I didn't take his phone.

19 Q. Okay. And you don't know if anybody -- you didn't
20 direct anybody to take his phone?

21 A. I did not. Someone else conducted a followup
22 interview with him.

23 Q. I want to talk to you about when Silvester was
24 arrested. He was arrested at the Evergreen Motel?

25 A. Correct.

1 Q. And that's in West Ashley, right?

2 A. Correct.

3 Q. And the room that Silvester was arrested in was
4 registered to a Jonathan Burns?

5 A. I believe that's the name.

6 Q. Okay. You recovered the receipt from that hotel
7 room?

8 A. I did, I did.

9 Q. Do you remember -- I'm going to show you what's
10 been marked as Defense Exhibit 4. Are those your
11 signatures on the back, are those your initials?

12 A. Yes, sir.

13 Q. Okay. And can you tell me what is in there?

14 A. It's a receipt from the Evergreen Motel.

15 Q. And that's the receipt that you recovered from the
16 hotel room that Silvester was inside of when he was
17 arrested?

18 A. Yes, sir.

19 MR. KOZELSKI: Your Honor, at this point I
20 would enter Defense Exhibit 4 into evidence.

21 MR. WARING: Objection, Your Honor. Proper
22 foundation.

23 THE COURT: She recovered from the hotel room
24 Silvester was in when he was arrested.

25 Overruled.

1 (Defendant's Exhibit 4 was marked for
2 identification and admitted into evidence.)

3 BY MR. KOZELSKI:

4 Q. Okay. So that's the receipt you recovered from
5 the hotel room?

6 A. Yes. This is the receipt I got from the hotel.

7 Q. So there it says on the receipt that it's
8 registered to Jonathan Burns, correct?

9 A. Correct.

10 Q. It's got a South Carolina driver license number
11 provided there at the bottom?

12 A. That's correct.

13 Q. [REDACTED]?

14 A. Yes, sir.

15 Q. Okay. It's got a date of birth?

16 A. Yes.

17 Q. It's [REDACTED] 1956?

18 A. Yes.

19 Q. And an address that is [REDACTED] Dulsey Road,
20 Charleston, South Carolina, right?

21 A. That's correct.

22 Q. Also says there are two people, or two occupants,
23 right?

24 A. Correct.

25 Q. And there's a signature for Jonathan Burns on that

1 receipt?

2 A. Yes.

3 Q. You never spoke to Mr. Burns?

4 A. I don't believe contact was made.

5 Q. And you don't know if he used or owned one of the
6 phones in that room?

7 A. No, I'm not aware of that.

8 Q. All right. And you never sent anyone out to
9 Mr. Burns's address?

10 A. I don't recall if I may have attempted or not.
11 I'm not sure.

12 Q. But that's not in any of your reports?

13 A. No.

14 Q. Now, on February 1, 2019, you asked that they do a
15 second digital evidence search warrant.

16 A. That's correct.

17 Q. For those phones that were found in the Evergreen?

18 A. That's correct.

19 Q. And the purpose of this was trying to extract any
20 additional evidence with upgraded hardware we talked
21 about?

22 A. That's correct.

23 Q. The first search didn't find anything, so you
24 thought you would search it again?

25 A. Yes, because we had a newer system. We had a more

1 upgraded system.

2 Q. In your report on March 1, 2019, you said the
3 second search didn't reveal any additional evidence of
4 that.

5 A. No, I don't believe it did.

6 Q. That's not what you put on your March 1st of this
7 year report?

8 A. I don't have it in front of me. Yes, that's what
9 I wrote.

10 Q. So the results did not reveal any additional
11 evidence of value, right?

12 A. No.

13 Q. I want to talk to you about Silvester in the
14 interrogation room. Like I say, he talked to you for
15 hours in there, right?

16 A. Correct.

17 Q. He was polite, well-mannered?

18 A. For the most part, yes.

19 Q. I mean, he called you Ms. Brown?

20 A. Yeah.

21 Q. He waived his right to a lawyer.

22 A. Correct.

23 Q. And he talked to you about using and selling
24 drugs, right?

25 A. Correct.

1 Q. And that most of his day consisted of getting high
2 and going and getting drugs for other people.

3 A. Yes, sir.

4 Q. And selling drugs is a crime, right?

5 A. It is.

6 Q. So he's on video confessing to being a drug
7 dealer.

8 A. Yes, sir.

9 Q. And you just talk a little bit about his nickname,
10 what his nickname is. You know people on the streets can
11 have different nicknames from different people, right?

12 A. That's correct.

13 Q. It's not uncommon to have more than one nickname,
14 depending on who you're hanging out with, right?

15 A. No, it's not.

16 Q. And at some point, he basically says -- he tries
17 to recall what he's doing on that Wednesday, right?

18 A. Yes.

19 Q. Because that's what you're trying to hammer into
20 him, what are you doing on Wednesday, right?

21 A. Yes.

22 Q. And he tells you at some point he went to Meeting
23 Street Auto Sales at one point?

24 A. Yes.

25 Q. He went to make a payment for his wife's car?

1 A. Yes.

2 Q. And he had a receipt.

3 A. Yes.

4 Q. You told him that you would check into that.

5 A. Yes.

6 Q. Because that's part of what you do, is you're
7 trying to corroborate what he's saying.

8 A. Yes. That's what I told him.

9 Q. And you sent Detective Tuttle to the Meeting
10 Street Auto Sales to get that receipt?

11 A. I went there also.

12 Q. You went there with Detective Tuttle?

13 A. I went there on my own as well.

14 Q. And I'm going to show you what has been marked as
15 Defense Exhibit 3 for ID purposes. That's the receipt
16 you recovered for Meeting Street Auto Sales, right?

17 A. Correct.

18 Q. For the date of the robbery?

19 A. Yes.

20 Q. So you're able to corroborate something of what
21 Silvester said in that interrogation room?

22 A. It shows he was there, but it doesn't have a time.

23 Q. It doesn't have a time on there, but it
24 corroborated something about where he was on that day?

25 A. Yes, right.

1 Q. And he tells you categorically he did not rob a
2 bank.

3 A. Throughout the interview, yes.

4 Q. There's no confession, though, of him being at the
5 bank, anywhere at or around that bank, right?

6 A. That's correct.

7 MR. KOZELSKI: No further questions, Your
8 Honor.

9 THE COURT: Redirect?

10 MR. WARING: Thank you, Your Honor.

11 REDIRECT EXAMINATION BY MR. WARING:

12 Q. Detective, did you lie to the defendant?

13 A. I did not.

14 Q. Did Alonzo Green, in fact, give you the
15 defendant's number?

16 A. He did.

17 Q. Now, on his interview video, is there a time where
18 it can be seen where you're asking him to come out to the
19 computer?

20 A. Yes.

21 Q. And for the purpose of retrieving the number?

22 A. Yes, to assist with retrieving the numbers.

23 Q. And that's on camera?

24 A. Yes.

25 Q. Is it referenced in the report as a whole that

1 that number was obtained?

2 A. In my report or --

3 Q. In the overall report. Is it mentioned anywhere?

4 A. Yes, in Sergeant -- at the time Detective Tuttle's
5 report.

6 Q. What I'm getting at, did that number just pop out
7 of thin air?

8 A. No.

9 Q. Okay. Now, I know there was some discussion with
10 Mr. Kozelski about some folks that may have been lying
11 and were they arrested or not arrested. Was the
12 defendant arrested for lying or for armed robbery?

13 A. He was arrested for armed robbery.

14 Q. Now, who admitted ownership of the two phones in
15 the Evergreen Motel room?

16 A. Mr. Scott did.

17 Q. The defendant?

18 A. Yes.

19 Q. Was there any reason after he claimed ownership of
20 those two phones to go seek out this Jonathan Burns to
21 ask him whether he owned the phones?

22 A. Not really, no. Because the defendant stated he
23 provided one phone number, and the second he stated he
24 didn't know the number. I asked him if that was the
25 phone that he got calls on. He said yeah, but he just

1 didn't give me the number.

2 Q. But he did claim those two phones?

3 A. Yes.

4 Q. He didn't mention in his interview or did he
5 mention in his interview that Jonathan Burns had borrowed
6 his phone at any point?

7 A. No.

8 Q. Did he mention that William Drayton borrowed his
9 phone?

10 A. He did not.

11 Q. Did he mention that Alonzo Green borrowed his
12 phone?

13 A. He did not.

14 Q. Did he mention that anybody else had borrowed his
15 phone?

16 A. No.

17 Q. Now, Mr. Kozelski was asking you about your search
18 warrant and how you didn't put any new information or in
19 your report that any new information was obtained from
20 the new phone dump. Are you an expert in digital
21 evidence?

22 A. I'm not.

23 Q. Do you deal with IMEI and IMSI numbers on a
24 regular basis?

25 A. No, only when need be, and I usually have to get

1 some assistance.

2 MR. WARING: No further questions.

3 THE COURT: Recross?

4 MR. KOZELSKI: Beg the Court's indulgence.

5 RECROSS-EXAMINATION BY MR. KOZELSKI:

6 Q. I just want to clarify one thing, Detective Brown.
7 He doesn't say yeah, that's my phone, like you just said.

8 A. He asked for his phones, yes.

9 Q. You said do people call you on that phone, and he
10 said sometimes, right?

11 A. Yes, yes.

12 Q. He didn't say yeah, that's my phone?

13 A. No, but --

14 Q. He didn't know the number for it, right?

15 A. No, but he said he received calls on it.

16 Q. He said he received calls on it sometimes?

17 A. Correct.

18 Q. And you heard Alonzo Green testify, right?

19 A. Right.

20 Q. And you heard him talk about how people pass
21 around these phones when they're doing drug transactions,
22 right?

23 A. I'm not sure if that's what he said. Maybe. I
24 don't recall everything he stated up here.

25 Q. He said it's not uncommon for people to use other

1 people's phones or use phones when doing --

2 MR. WARING: Objection, Your Honor. Beyond
3 the scope.

4 THE COURT: Overruled.

5 BY MR. KOZELSKI:

6 Q. He said it's not uncommon for people to use
7 phones, other people's phones, burner phones, when you're
8 conducting drug transactions, right?

9 A. I think he might have said something similar in
10 his testimony.

11 Q. And so that phone is a burner phone?

12 A. That's unknown to me.

13 Q. Okay.

14 MR. KOZELSKI: No further questions.

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

16 Okay, folks. We're going to break for lunch
17 now. I understand your lunch is here. You got
18 sandwiches. They come in boxes. You can eat them back
19 in the jury room, or you can take them outside, eat them.
20 There's a nice park across the street, which I guess that
21 would be King Street. So Meeting Street is back across
22 that way. Washington Park is a real nice area to eat a
23 picnic if you want to take your lunch over there and eat.

24 You can go to lunch with anybody that you
25 want to, if you want to, on the jury. Just don't talk

1 about the case with anyone. Don't discuss witness
2 demeanor or post anything on social media, and if anybody
3 does approach you about the case, please report that when
4 you come back.

5 Let's see. It's almost 1:00 now, so if you
6 would be back in the jury room, we'll start back at 2:30.
7 Enjoy your lunch.

8 (The jury left the courtroom at 12:58 p.m.)

9 THE COURT: So you got one more witness?

10 MR. WARING: We've got two fairly short
11 witnesses.

12 THE COURT: Okay. All right. Let's do this:
13 How about you all meet me back here at 2:00, all right?

14 MR. WARING: Thank you, Judge.

15 (A recess was taken at 12:59 p.m.)

16 A F T E R N O O N S E S S I O N

17 (Court resumed session at 12:48 p.m.)

18 MR. KOZELSKI: I think the only matter that
19 we need to address is the State, in talking with our
20 negotiations, did not agree with 15 but came back with
21 20. Mr. Osborne said that he would like for Mr. Scott to
22 reject that on the record, that it was offered to him and
23 he's rejecting it, so I don't know if you want --

24 THE COURT: All right. Well, so the offer
25 for him at this point is what?

1 MR. WARING: Twenty, Your Honor.

2 THE COURT: Straight up, and that's for this
3 case and the other pending charges?

4 MR. WARING: Negotiated 20, yes, Your Honor.

5 THE COURT: Negotiated 20 on an armed
6 robbery, and you understand that is your final offer from
7 the State to a negotiated plea of 20 years, and that
8 would include this Charger and the two that are
9 outstanding?

10 MR. WARING: Your Honor, we would probably
11 just dump those two.

12 THE COURT: Now, as I told you on Monday, I
13 guess, that you're facing life without parole. If you
14 get convicted, well, that's what the sentence will be
15 because of the prior strike offenses that you have.
16 Twenty years is a long time, but, you know, depends on
17 how long you live as to whether or not life would be
18 longer, but that's what the final offer is, and I want
19 the record to reflect that you have been told that.

20 You still want to go forward with your trial?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Well, we will continue
23 then.

24 All right. You got your next witness ready?

25 MR. WARING: Yes, Your Honor.

1 MR. OSBORNE: We do, Your Honor. We just
2 have just one little issue. I predict we're probably
3 going to move pretty fast from this point to moving into
4 the defense's case. It's my understanding they want to
5 call an alibi witness by the name of Harriet Cordero. We
6 had been provided with alibi notice I think on March the
7 7th, I think, which we don't have any issues with the
8 time element.

9 The only issue that we do have is that when
10 we sent our investigator to go speak to Mrs. Cordero, she
11 stated that when she was interviewed by the investigator,
12 she provided a written statement to them. We've asked
13 for that written statement, and I understand they're not
14 obligated to give it to us now, but we would ask,
15 pursuant to Rule 613(a), that they provide us with that
16 written statement after she testifies on direct.

17 THE COURT: All right.

18 MS. KNOX: Your Honor, I believe Rule 5 is
19 pretty clear that the State may be subject to such a
20 disclosure obligation in certain circumstances, but it
21 doesn't have a similar obligation for defense witnesses,
22 for written statements given by defense witnesses.

23 The -- I recognize Mr. Osborne is relying on
24 a different rule, an evidentiary rule, 613(a). That rule
25 is entitled examining witness concerning prior

1 statements, and it says that in examining a witness
2 concerning a prior statement made by a witness, whether
3 written or not, the statement may not be shown, nor its
4 contents disclosed to the witness at that time, but on
5 request, the same shall be shown or disclosed to opposing
6 counsel. I believe that rule refers to when -- if, for
7 example, we were to ask the witness questions about the
8 prior statement, so I don't believe it's applicable.

9 THE COURT: Well, there is nothing that says
10 it is only upon an examination by the party that calls
11 the witness, so if they ask about a prior statement, then
12 that would certainly follow under 613(a).

13 MS. KNOX: Well --

14 THE COURT: You might not bring it up in your
15 direct, but they brought it up in cross, and that
16 would --

17 MS. KNOX: If they bring it up in cross,
18 they're entitled to something they're not otherwise
19 entitled to?

20 THE COURT: I don't see any limitation in 613
21 to only statements that are referred to during direct
22 examination.

23 MS. KNOX: Well, it says in examining a
24 witness concerning a prior statement made by the witness,
25 I just don't think it's that clear. I mean, the fact

1 that they may intend to examine her on a prior statement,
2 I don't think it's clear that that gives rise to an
3 obligation on behalf of the opposing party.

4 THE COURT: Well, I can't say that I know of
5 a case on point, but to the extent that I can make it
6 clearer for you, I'm ordering that you do. Okay?

7 MS. KNOX: Okay.

8 THE COURT: Anything else?

9 MR. OSBORNE: No, Your Honor.

10 MS. KNOX: Your Honor, the statement that we
11 have -- and I went back and forth on whether this could
12 be considered attorney work product, because it's written
13 in the hand of our investigator as well, but it contains
14 character evidence, and we don't believe -- you know, we
15 don't intend to elicit any character evidence from this
16 witness, and we don't want the State to be able to
17 essentially open the door.

18 MR. OSBORNE: I would not seek to question
19 their witness concerning the character of the defense
20 unless they do that. I mean, I assume this is not a
21 character witness, so I wouldn't be asking her about
22 character. We're only talking about alibi.

23 THE COURT: Whose character is being impugned
24 in this case?

25 MS. KNOX: Nobody's character is being

1 impugned, Your Honor.

2 THE COURT: Well, you just said that it
3 involved character evidence.

4 MS. KNOX: Right. It would be the type of
5 testimony that would speak highly of the defendant's
6 character that could open the door if I elicited it. It
7 could open the door to character attacks.

8 THE COURT: Well, why don't you provide me
9 with a copy of it, and I'll take a look at it and see if
10 I can't sort through the vagueness of what you're saying.

11 All right. Are you ready to go?

12 MR. OSBORNE: I think this might help your
13 ruling. This was an email that was provided from
14 Mr. Kozelski to Mr. Waring and myself, and this details
15 what the witness is going to testify to in reference to
16 the alibi, so maybe if you could compare the two, and if
17 we have all we need in here, I'm fine.

18 THE COURT: Okay.

19 All right. Bring the jury in.

20 (The jury came back into the courtroom at
21 1:56 p.m., and the following proceedings were
22 had in the presence of the jury.)

23 Let the record reflect the defendant's in the
24 courtroom.

25 Okay, folks. Welcome back. We will resume

1 now with the State calling their next witness.

2 MR. WARING: Thank you, Your Honor. The
3 State calls Eddie Tudor.

4 EDDIE TUDOR
5 having been called as a witness for the State at
6 2:58 p.m., was sworn and testified as follows:

7 DIRECT EXAMINATION BY MR. WARING:

8 Q. Good afternoon, Mr. Tudor. Please tell the jury
9 where you work.

10 A. I work at M Street Motors.

11 Q. Is that Meeting Street Motors?

12 A. It was Meeting Street Auto Sales at the time of
13 this event. It's currently now M Street Motors.

14 Q. How long have you worked there?

15 A. Fifteen years.

16 Q. And what kind of work do y'all provide?

17 A. We're an auto sales dealership.

18 Q. Okay. Are you familiar with the defendant,
19 Silvester Scott?

20 A. I am.

21 Q. And has he been a customer at your business
22 before?

23 A. He has, yes, sir.

24 Q. As part of your business, do y'all generate
25 payment history reports?

1 A. We can, yes, sir.

2 Q. Is it regular practice to generate those?

3 A. Upon request.

4 Q. And are they created at or near the time of a
5 payment history inquiry?

6 A. Normally, because the customer's in the office,
7 they may make a payment and ask for a history.

8 MR. WARING: May I approach the witness, Your
9 Honor?

10 THE COURT: You may.

11 BY MR. WARING:

12 Q. Now showing you what's been marked for ID purposes
13 as State's Exhibit 119, do you recognize that?

14 A. I do, yes, sir.

15 Q. Can you tell me what that is.

16 A. That's our payment history for Mr. Scott's
17 vehicle, for the Mazda Millenia, '02.

18 MR. WARING: State moves to have Exhibit 119
19 admitted.

20 MR. KOZELSKI: No objection.

21 THE COURT: Admitted.

22 (State's Exhibit 119 was marked for
23 identification and admitted into evidence.)

24 BY MR. WARING:

25 Q. Is this the same document we were talking about,

1 Exhibit 119?

2 A. It is.

3 Q. I want to direct your attention down to the bottom
4 of the page, starting right about there. What does this
5 signify right over here?

6 A. If it says late fee, a payment would have come in
7 a little late, and so when we received the payment, a
8 portion of the payment would have gone towards the late
9 fee.

10 Q. All right. And what's the last payment that you
11 see on this record?

12 A. 3/4/2015.

13 Q. Does it say what the fees were that were paid?

14 A. It does.

15 Q. And what are those fees?

16 A. One was 667 and one was 666.

17 Q. And is that in conjunction with the overall price
18 of the work?

19 A. Yes, sir. The payments are set up at 140 biweekly
20 and so that would have been a 140 payment.

21 Q. So how many payments were coming in on the date of
22 March 4, 2015?

23 A. Two payments were made.

24 Q. All right. So at this time, those two payments,
25 were they delinquent?

1 A. They would have been late, yes, sir.

2 Q. Okay. So how many different payments were late?

3 A. On that day?

4 Q. Yes, Your Honor -- I'm sorry. Yes, sir.

5 A. Both, yes, sir.

6 Q. Forgive me. Now, on that date, March 4, 2015, the
7 one for the final transactions there, the two payments,
8 do you remember anything about that day as far as the
9 defendant coming there?

10 A. Normal day. Mr. Scott came in, made a payment, we
11 chatted for a while.

12 Q. Do you remember when he came in?

13 A. Not specifically.

14 Q. Do you remember how long he stayed?

15 A. Probably ten minutes.

16 Q. All right. And so you're not real clear on the
17 timing, so it could have been morning, could have been
18 afternoon?

19 A. Could have been. I sense that it was earlier in
20 the day, but I'm not for sure, yes, sir.

21 Q. And you already testified that those two payments,
22 he was in arrears?

23 A. Yes, sir, they were late.

24 MR. WARING: Please answer any questions the
25 defense has.

1 CROSS-EXAMINATION BY MR. KOZELSKI:

2 Q. Mr. Tudor, you've known Silvester for quite a
3 while?

4 A. Absolutely, yes.

5 Q. He comes and bought all his cars from you?

6 A. He's bought a couple cars.

7 Q. He's not buying BMWs or Mercedes from you?

8 A. No, sir.

9 Q. He's buying regular cars?

10 A. That's correct.

11 Q. One for his wife?

12 A. That's correct.

13 Q. One for his daughter?

14 A. I don't recall his daughter, but maybe.

15 Q. And he's making payments on these cars, right?

16 A. He is.

17 Q. He's not running up to you with a big wad of cash
18 and saying here's cash for all the cars, right?

19 A. Right. We were financing the cars for him.

20 Q. And you've had this ongoing long relationship with
21 Mr. Scott. You know, was he in danger of getting his
22 cars repoed from you?

23 A. He was not at that time.

24 Q. Okay. Because he's been a consistent customer of
25 yours, right?

1 A. He has.

2 Q. And he does always pay his bills, right?

3 A. He does.

4 Q. Sometimes they might be a little late?

5 A. Correct.

6 Q. But you charge a late fee for that?

7 A. We do.

8 Q. And he pays that late fee?

9 A. Right.

10 Q. And he's never just stopped paying for his car,
11 right?

12 A. Only after 3/4/15.

13 Q. And you talked briefly just a little bit about
14 remembering this day and whether or not -- you don't
15 remember the exact time, right?

16 A. I don't recall specifically the exact time, no,
17 sir.

18 Q. But when he came to see you, he talked with you.
19 Y'all had a conversation, right?

20 A. Correct.

21 Q. He didn't just run in and run out?

22 A. Right.

23 Q. And you don't -- do you remember what you talked
24 about at all?

25 A. It was typical. Mr. Scott would come in; we would

1 talk about cars. He would look around, and we would talk
2 about the possibility down the road of trading a car in
3 and switching vehicles or something, but typically it was
4 about cars.

5 Q. Okay. And you don't remember seeing him in any
6 type of a blue jumpsuit or anything like that, do you?

7 A. I don't recall.

8 Q. Okay. And let me just -- I'm going to show you
9 what's been marked as Defense Exhibit 3.

10 A. Yes, sir.

11 Q. Are those the two receipts for the payments that
12 he made that day?

13 A. Yes, sir.

14 Q. And is that your signature on the bottom of those
15 receipts?

16 A. That's my signature, yes, sir.

17 MR. KOZELSKI: Your Honor, at this time I'd
18 offer Defense Exhibit 3 into evidence.

19 MR. WARING: No objection, Your Honor.

20 THE COURT: Admitted.

21 (Defense Exhibit 3 was marked for
22 identification and admitted into evidence.)

23 MR. KOZELSKI: Beg the Court's indulgence.

24 BY MR. KOZELSKI:

25 Q. Mr. Tudor, I'm going to show you what's been

1 marked State's Exhibit 38. You don't remember Mr. Scott
2 being in this vehicle when he came to see you, right?

3 A. I do not, no, sir.

4 Q. And you're a car guy. You sell cars for a living,
5 right?

6 A. I do.

7 Q. And that's a fairly unique car?

8 A. Yes.

9 Q. Would that catch your eye if somebody came into
10 your lot with that?

11 A. It would.

12 Q. So you would remember that, if he came into your
13 lot driving that car?

14 A. I believe so.

15 Q. And you do not remember seeing him in that car?

16 A. I do not.

17 MR. KOZELSKI: Thank you, Your Honor. No
18 further questions, Your Honor.

19 THE COURT: Redirect?

20 MR. WARING: Thank you, Your Honor.

21 REDIRECT EXAMINATION BY MR. WARING:

22 Q. Mr. Tudor, do you recall what you mean by earlier
23 in the day when you say you think he may have come by
24 earlier in the day?

25 A. Morning, morning time.

1 Q. All right. And I think you said earlier that it
2 would have been for about ten minutes or so?

3 A. Correct, yes.

4 Q. All right. Now, you didn't see that vehicle that
5 Mr. Kozelski just put up. Were you with the defendant
6 the rest of the day?

7 A. I was not, no, sir.

8 Q. Do you know whether or not he switched cars later
9 on?

10 A. I have no idea.

11 Q. And, again, was he in arrears on that date of
12 March 4, 2015?

13 A. He was late, yes, sir.

14 MR. WARING: No further questions.

15 MR. KOZELSKI: Nothing further.

16 THE COURT: You can step down.

17 MR. WARING: Thank you, Your Honor. State
18 calls Clay Simmonds.

19 ROBERT CLAYTON SIMMONDS

20 having been called as a witness for the State at
21 3:09 p.m., was sworn and testified as follows:

22 DIRECT EXAMINATION BY MR. WARING:

23 Q. Good afternoon, Clay. How are we doing today?

24 A. Good, how are you?

25 Q. Good. Please tell the jury where you work.

1 A. I'm a special agent with the FBI here in South
2 Carolina.

3 Q. How long have you worked with the FBI?

4 A. In May it will be 17 years.

5 Q. All right. What's your educational background?

6 A. I was a business and accounting major here at the
7 College of Charleston. Afterwards I was a police officer
8 with the City of Charleston Police Department for five
9 years. I left for about a year and went to graduate
10 school for a year at Clemson, and then the bureau hired
11 me and I've been with the FBI ever since.

12 Q. What is your job title with the FBI?

13 A. Special agent. I'm assigned here to the
14 Charleston area, which covers Dorchester, Colleton,
15 Charleston County and Beaufort -- Berkeley County,
16 Berkeley County. I am assigned to work violent crime,
17 gang matters. I also have a collateral duty called CAST,
18 which stands Cellular Analysis Survey Team. We basically
19 look at historical cellphone records and analyze those
20 records and then basically draw a depiction of what those
21 records would look like on a map for investigators and
22 for trials.

23 Q. All right. Now, can you take the jury through
24 your work history and experience dealing with those
25 matters.

1 A. Sure. I've worked violent crime my entire career
2 within the FBI. I did so in the city when I was first
3 assigned. I started looking at cellphone records during
4 my time in Oklahoma City, taking our initial what we call
5 project pinpoint class, our first CAST class before we
6 are certified. It's just basically learning how to get
7 call detail records from the service providers, what
8 information is there, how to analyze it, how to place the
9 towers on the map and then draw out these maps to show
10 the general area where the phone was at any particular
11 time.

12 I later continued doing that and was transferred
13 to FBI headquarters where I was a supervisor. I worked
14 for the assistant director of the criminal program for a
15 short period of time, and then the CAST unit was
16 officially started at FBI headquarters, and I became a
17 supervisor over at the CAST unit.

18 I was responsible for training, selecting, help
19 teach the class, advised the other supervisors and
20 superiors about who was taking the CAST classes, who was
21 certified, where they were located. During that time
22 while I was at headquarters I started the CAST
23 certification to be a certified CAST agent.

24 It was just a continuation of the first class that
25 I took, and then we eventually took what we call an

1 advanced project pinpoint class. That class was
2 approximately a week long. We got records from each one
3 of the cellphone providers, plotted them on a map.
4 They'd have some abnormalities to them or something
5 unusual to the records that we would have to try to
6 figure out what it was, such as AT&T and T-Mobile provide
7 their reports and UTC or GMT time so folks that were in
8 the military.

9 After that, I eventually took an instructor
10 development course because being a CAST person, we'd have
11 to -- we're required to teach our techniques to other law
12 enforcement agencies so they can use it. I also went to
13 Florida, and we did a cellphone tracking course for two
14 weeks where we track cellphones every day, all day,
15 during that two-week time.

16 We eventually got into our CAST certification
17 phase, which are two two-week periods. The first
18 two-week session we learn about radiofrequency theory,
19 how cellphones work, how they interact with the network,
20 what records are available from each one of the service
21 providers, how do we obtain those records, how can we
22 utilize those records and place them on the map.

23 Every service provider in the United States comes
24 in and provides training to us to include the law
25 enforcement personnel who we request records from and

1 also the engineers who design each one of the networks.
2 Also during that phase of training we go out and tour
3 what they call the switch, or, basically, once the
4 cellphone talks to the tower, the tower puts it back to
5 the switch where everything gets processed to alert those
6 that are using their particular services at that time.

7 We go out and take a look at a tower and see how
8 big the antennas are on it, and then the second two-week
9 phase is they give us a case, we plot that case, make our
10 presentation like y'all do here a little bit later today.
11 We are trained on expert witness testimony. Then we have
12 attorneys come throughout the country and put us through
13 moot court where we present our case. We have an
14 attorney playing a prosecutor, one playing the defense
15 attorney, one playing the role of a judge, and goes
16 through the wringer, for lack of a better term, of going
17 through moot court.

18 Afterwards we serve a year of probation, having
19 more senior CAST guys, supervisors, make sure that we're
20 doing our analysis correct, and then after that, you're
21 fully certified and continue on with it. So through each
22 phase of training through the first day of the basic CAST
23 class all the way through certification, we have to pass
24 a test that's administered at the end of each phase.

25 Q. You kind of mentioned it a little bit. Can you

1 explain exactly what historical cell site analysis is?

2 Is that the same as cell mapping?

3 A. It's very similar. So basically historical cell
4 cite analysis, we receive what they call detail records.
5 In our industry, it's call detail records. Call detail
6 records are very similar to anybody who gets a phone bill
7 or used to get sent a phone bill at the infancy of
8 cellphone back then and give you the date, the time, the
9 duration that you're on a call and probably maybe the
10 city and state that you made that particular call in.

11 The call detail records give us a little bit more
12 information in addition to what I just explained. They
13 also tell us the switch that was used and the tower and
14 sector in that network that was used. So cellphones,
15 when they're not in use, they're constantly sending out
16 radiofrequency signals and getting information back.
17 They're always looking for the tower that's providing the
18 cleanest, strongest signal to it, so if you want to make
19 a call or text or today time frame get on the Internet,
20 Google maps, whatever, the phone reaches out to the tower
21 that it sees with its clearest, strongest signal and asks
22 for resources.

23 So when those resources are granted by the
24 network, that's when that information of the switch and
25 the tower and sector is implanted on those call detail

1 records, and we use that information to basically give a
2 visual depiction of where the phone generally was at the
3 time of those transactions.

4 Q. Approximately how many times would you say you've
5 done that kind of analysis?

6 A. Thousands of times. I look at cellphone records
7 every day, almost every day.

8 Q. In terms of which agents are involved with CAST,
9 who can request those kinds of services?

10 A. Anybody can request them. I've done it for state,
11 local, federal law enforcement agencies; tribal agencies.
12 I've had private attorneys call, whether it was for a
13 client or just general information, about cellphone
14 records. They'll call, me so anybody can request CAST
15 services.

16 Q. Have you ever testified as an expert before?

17 A. Yes, sir, numerous times here in Charleston; Horry
18 County, South Carolina; Berkeley County, South Carolina;
19 Aiken, South Carolina; Washington D.C., in superior court
20 there. I've testified about cellphone records in the
21 Eastern District of Tennessee, which is federal, and then
22 most recently down in Jacksonville, Florida.

23 Q. What field do you typically testify in?

24 A. The location -- the general location of the
25 cellphone and the analysis of the call detail records

1 that we use to draw our depiction on the slides and maps
2 that are used for analysis.

3 MR. WARING: Your Honor, at this point the
4 State moves to have the witness declared an expert in the
5 field of historical cell site analysis.

6 THE COURT: Any objection or do you wish to
7 voir dire?

8 MR. KOZELSKI: No, I'll pass.

9 THE COURT: Folks, the same instructions I
10 gave you earlier today on expert witnesses apply to this
11 witness as well who has now been qualified as an expert
12 within his field of historical cellphone cell site
13 analysis. You decide how much weight to give his
14 testimony based on how much -- or on all the evidence
15 that you hear throughout the trial. You're not
16 necessarily required to give his testimony any greater
17 weight or less weight simply because he's qualified as an
18 expert. It's totally within your discretion as to how
19 much weight to give his testimony.

20 Go ahead.

21 MR. WARING: Thank you, Your Honor.

22 BY MR. WARING:

23 Q. All right. Agent Simmonds, I'm going to put up
24 Exhibit 105 for you, which are the cellphone records.
25 Are these the records you were given to take a look at

1 in preparation for trial?

2 A. Yes, sir. It's the physical copy, or the paper
3 copy, of the records that were provided to me in
4 electronic format.

5 Q. And I can zoom in wherever necessary. Do you see
6 where the target cellphone number is for these records?

7 A. Yes. It's up here at the top, highlighted in
8 yellow, [REDACTED].

9 Q. All right. And what carrier are these records
10 for?

11 A. Well, this is an AT&T -- it's a Cricket phone.
12 It's a phone that Cricket is a reseller for AT&T
13 services, so when you buy a Cricket phone, you're using
14 the AT&T network with AT&T services for this phone.

15 Q. Now, in order to perform your analysis of
16 historical cell site analysis, are these records -- are
17 phone records required?

18 A. These are the example of call detail records which
19 I talked about earlier. So these call detail records,
20 along with the tower list that's provided by each service
21 provider, I need those two to marry them up to know where
22 the location of the towers are and to determine the
23 location of those towers when the phone use service is
24 established.

25 Q. So, for example, in this case, after being

1 provided with these records, what did you do next?

2 A. So I obtained information about the case: What
3 relevant locations were important, time of the crime,
4 location of the crime that took place, and anything other
5 that may be relevant to it. I used the latitude and
6 longitude of each of those significant locations, placed
7 those locations on a map.

8 I took the cell tower records that are provided
9 and plotted, every cellphone tower within the Charleston
10 metro area that is on AT&T's network by latitude and
11 longitude and then looked at these records along with the
12 tower records and drew a general location of where the
13 phone was when it used a particular tower and sector
14 within the Charleston area.

15 Q. Now, you mentioned relevant time periods. Do you
16 recall or would it refresh your memory if I showed you a
17 copy of your report what the relevant time periods were
18 for this?

19 A. I know the relevant date of this; one, because
20 it's my son's birthday, but it's [REDACTED] of 2015.

21 Q. All right. And were you, in fact, able to
22 identify specific cellphone towers that were used by the
23 target cellphone number during those relevant time
24 periods?

25 A. Yes, sir.

1 Q. How were you able to identify those towers?

2 A. So, again, if you look at these records that are
3 here in front of us, over here you have, in this box that
4 I've drawn out, cell site, or cell location. So the
5 first number that I'm underlining here that's basically
6 blocked out, the first number there is what is called
7 LAC. That's Location Area Code. So you think of that
8 sort of like a group of towers that cover a particular
9 area.

10 So I kind of equate it to your ZIP code. You may
11 live at 123 Main Street, South Carolina 29401. Well,
12 29401 are a group of towers within the Charleston metro
13 area, and so that tells me what towers we're looking at.
14 We're looking at towers within Charleston. The number on
15 the other side of that, the 100063 is the tower and the
16 sector combined together of the actual location of that
17 tower and sector. So when you have a LAC group with a
18 tower and sector, you will not find that anywhere else on
19 AT&T's network. It's unique, kind of like a fingerprint
20 to them.

21 So based on that, I'm able to determine that this
22 phone on this particular date and time used LAC 8990
23 tower and sector 10063 with the last digit in the 10063
24 being the sector of that particular tower. AT&T is kind
25 enough to give us the latitude and longitude in reverse

1 order, so you got latitude here and then your longitude,
2 and that is the latitude and longitude of that particular
3 tower, but the latitude and longitude is also found on
4 the tower that they supplied to us.

5 Q. Now, in preparation for this trial, did you indeed
6 put together a presentation report and a PowerPoint?

7 A. Yes, sir.

8 Q. Now showing you what has been marked for
9 identification as State's Exhibit 116, do you recognize
10 that?

11 A. Yes, sir. It's a presentation I put together at
12 the request of your office.

13 Q. And would it assist you in communicating with the
14 jury if you used that PowerPoint?

15 A. Most definitely, yes, sir.

16 MR. WARING: Your Honor, at this point State
17 moves to have Exhibit 116 admitted.

18 MR. KOZELSKI: No objection.

19 THE COURT: Admitted.

20 (State's Exhibit 116 was marked for
21 identification and admitted into evidence.)

22 BY MR. WARING:

23 Q. All right. Mr. Simmonds --

24 MR. KOZELSKI: Your Honor, I just want to put
25 this on the record, just subject to our earlier pretrial

1 rulings.

2 THE COURT: Noted.

3 BY MR. WARING:

4 Q. All right. Agent Simmonds, I'm going to turn it
5 over to you, for the most part, and let you do your
6 thing. So can you start us off and tell us what this
7 report is all about.

8 A. So yeah. This is a PowerPoint presentation that I
9 put together after analyzing the phone records and the
10 relevant time frame related to this particular case.
11 This first page is just who I am, what organization I
12 work for, the number that I analyzed, which is
13 [REDACTED], and the date that the analysis was
14 completed.

15 Q. You may have to point it over here.

16 A. I was wondering where it was.

17 Q. And, if need be, I can correct it for you.

18 A. It helps if you turn it on.

19 So this is the background page and methodology of
20 what I did, kind of what I explained to you earlier. I
21 was asked by the solicitor's office to analyze phone
22 records of a particular number, [REDACTED], for
23 March 4, 2015, from approximately 1:00 p.m. to 8:00 p.m.

24 Methodology, again, is I obtained call detail
25 records, tower list, merged those two together to show

1 where the towers were located and what towers and sectors
2 the phone used over the particular relevant times I was
3 asked to analyze, and then basically at the very end, my
4 conclusions will be on the following pages.

5 So this slide here is just to show you an example
6 of a three-sector tower that we commonly see here in
7 Charleston and throughout South Carolina. Generally
8 towers are designed, for three-sector towers, each sector
9 covering approximately 120 degrees, to give us a
10 360-degree coverage on that particular tower. The
11 engineers when they design this, they usually will label
12 their sectors either sector one, sector two, and sector
13 three, or some of them will use the Greek alphabet of
14 alpha, beta, gamma. Sector one would be the first sector
15 and then two and three, each one of them generally
16 divided up in 120-degree sectors.

17 So when we get the tower list and it tells us
18 where the location of the towers and how many sectors are
19 on that particular tower, we have to know what angle that
20 these sectors are oriented to. So there's a little box
21 within the tower records that say either orientation or
22 azimuth. Azimuth is just the location of that particular
23 sector and where the radiofrequency is shooting off the
24 strongest from that.

25 So in this example here, if we have a tower that

1 says the orientation of sector one is at zero degrees,
2 that is basically at 12:00 on a clock, and every hour on
3 the clock is approximately 30 degrees. So we go and draw
4 out the sector for sector 1 from 12:00, go to 6 degrees
5 to the right, 6 degrees to the left to give us a
6 120-degree sector, which would be at 10 and 2, and then
7 we'd go to the next sector and do the same thing. So
8 sector 2 is at 1:20. We go 2 to 6, and then sector 3 is
9 at 240, we go 6 to 10. That way we got 360-degree
10 coverage on that tower.

11 This slide is placed in the presentation to not
12 confuse y'all. The point of this is that when I draw out
13 the sectors on the map, we're going approximately
14 120 degrees and that this area here is showing you the
15 energy that's coming off -- the radiofrequency that's
16 coming off that sector and what direction it's going to.
17 I'm not telling you that the phone has to be in that
18 shaded region, but it could be anywhere, you know, in
19 that area between the two arms of that particular sector.
20 The whole highlighted section of that is just to show you
21 the radiofrequency where the phone is sending out a
22 signal to the towers coming from that direction.

23 This is the relevant information that was provided
24 to me, the relevant locations where they were located on
25 the map, and then a picture of the cell towers that are

1 located within the Charleston market for AT&T back in
2 March of 2015. So the window box that I have marked as
3 CS is the crime scene, which is the First Palmetto Bank
4 located at 5 Sumar Street in Charleston; the second one
5 is the Family Dollar located on Rivers Avenue. The third
6 one, the orange box, is the residence for Silvester Scott
7 at [REDACTED] English Street in North Charleston, and then the
8 last three are hotels that are located on Savannah
9 Highway: The Evergreen hotel, Quality Inn hotel, and the
10 Best Western hotel.

11 So this first slide is our first use of the phone
12 using cellphone towers within the AT&T network on
13 March 4, 2015, between the times of 1:18 and 2:52 that
14 afternoon. So originally this phone started off down
15 here in the south area near the Best Western hotel, and
16 then it eventually, as it got closer to 2:30, moved
17 northwards covering this tower here which provides
18 service to the Scott residence.

19 Again, this is our next slide showing towers that
20 were utilized from 3:14 in the afternoon to 4:00 p.m. in
21 the afternoon on March 4th, 2015. Again, the phone
22 initially started off at this tower. It provides service
23 to the Family Dollar and appears to provide service to
24 the Scott residence. Eventually moves down southward,
25 providing -- getting service from this tower, which is

1 just north of the crime scene, and then the phone
2 eventually goes back up north, returning to the tower
3 that provides service both back to the Family Dollar and
4 to the Scott residence.

5 So this is, again, basically the same thing, the
6 phone using towers between 4:10 to 5:51 p.m. on
7 March 4th. Again, the phone started off using a tower up
8 here by the Family Dollar and the Scott residence,
9 eventually traveling back down south and then finally
10 using this tower here at 5:51, which appeared to be just
11 off of the Savannah Highway.

12 From 6:07 to 7:47 p.m., the phone stays down here
13 on the area of the Savannah Highway, using these two
14 towers, providing service to the Evergreen hotel and the
15 Best Western hotel. Eventually the phone starts
16 traveling back north and picks up service using the tower
17 that covers the Family Dollar and the Scott residence
18 beginning at 7:43 that evening.

19 That's it.

20 Q. Now, Agent Simmonds, what I want to do is just
21 kind of briefly ask you a couple questions about your
22 testimony. So does this cell mapping, does it map
23 incomplete calls or if somebody doesn't make a call?

24 A. If there's no tower data to be mapped, there's
25 nothing for me -- I don't know where the phone was at

1 that particular time. It only maps calls that has tower
2 information associated with that call.

3 Q. Okay. So, for example, I guess -- so, for
4 example, the lead for 3:14 p.m. to 4 p.m., this is
5 Exhibit 16, if I zoom in -- now, again CS stands for
6 what?

7 A. Crime scene of the bank.

8 Q. All right. So does this necessarily mean that an
9 individual with this cellphone couldn't have gone down
10 this way?

11 A. Well, it shows me that the phone is just north of
12 that crime scene at that particular time. So I basically
13 have an 11-minute window, from 3:23 to 3:34,
14 approximately, that I don't know where the phone is.

15 Q. Okay. Now, one question I had was -- so up here,
16 I think you testified that the phone is in the area for
17 these time periods, in the area of the Family Dollar
18 region over here. There's a phone call that's at
19 3:21 p.m.

20 A. Yes, sir.

21 Q. Now, there's also a phone call down here that's at
22 3:23 p.m.

23 A. Sure.

24 Q. All the way across town?

25 A. Sure.

1 Q. Is it possible that at 3:21 p.m. the person was on
2 the outskirts of the perimeter here, and then at 3:23
3 here was on the outskirts of the perimeter of this
4 cellphone tower?

5 A. Yeah. So I noticed that when I was doing my
6 analysis and also check the height of each one of these
7 cell towers. So the tower down here, furthest south, is
8 the tallest cell tower of these three that are
9 highlighted, so it's going to provide service a little
10 bit further, further out because it's a little bit
11 taller, can get over some of the obstructions that may be
12 in its way while this one here by the Family Dollar is
13 the shortest one of the two.

14 Yes, most definitely the phone at 3:21 saw this
15 tower as its clearest, strongest signal, and then at 3:23
16 saw the one at the south, so in my opinion, it had to be
17 on the outskirts, transitioning from the tower in the
18 north down to the tower in the south.

19 Q. Now, just to go over it one more time, so over
20 here at approximately 3:17 p.m., where is the phone?

21 A. Using this tower sector in this general area here.

22 Q. Okay.

23 A. Again, it can be anywhere in that area, not
24 necessarily in that highlighted area.

25 Q. So it could be here or it could be anywhere in

1 here?

2 A. Yes, sir.

3 Q. Okay. And then fast forwarding to in between --
4 or approximately 3:23 p.m., 3:34 p.m., where is the phone
5 here?

6 A. Well, 3:23, it's somewhere in this general area
7 here. My best estimate is it's going to be on Highway 7,
8 traveling from up here down towards this way, and then
9 after 3:23, I don't know where the phone is for
10 11 minutes because there's no cell tower activity for me
11 to map, and then at 3:34, the phone returns back to the
12 service area, this phone, and eventually, because it uses
13 services later on at 3:41, it uses services on this tower
14 here, more particularly this particular sector at 3:41.

15 Q. All right. And earlier in the day, after
16 1:00 p.m., where is the phone again?

17 A. Again, it's using services with this tower, you
18 know, somewhere in this general area here. Based on
19 information that I -- if I had -- if I was looking for
20 this individual and the only thing that I had was the
21 person might have been at the Best Western, that's where
22 I would have started.

23 MR. WARING: Please answer any questions the
24 defense has.

25 THE COURT: Cross?

1 MR. KOZELSKI: Thank you, Your Honor.

2 CROSS-EXAMINATION BY MR. KOZELSKI:

3 Q. Agent Simmonds, you just recently became involved
4 in this case; is that correct?

5 A. I knew about the case back in 2015, but yes, to
6 look at the cellphone records was in February.

7 Q. Last month?

8 A. Yeah, it's March. Yes, sir.

9 Q. And the presentation you just showed us was
10 created from AT&T data that you received last month,
11 right?

12 A. Correct.

13 Q. And you were never asked to do mapping for any
14 other numbers in this case?

15 A. That's the only number that I was provided records
16 for.

17 Q. So you didn't do any mapping for [REDACTED]?

18 A. No, sir.

19 Q. You didn't do mapping for [REDACTED]?

20 A. No, sir.

21 Q. And, to be clear, and I think you made this clear,
22 this is not an exact science, right?

23 A. Well, the tower sectors and locations don't
24 provide me an exact location where the phone is, it just
25 tells me what tower and sector is used at that particular

1 time, and it can be anywhere within the footprint of that
2 tower and sector at that time.

3 Q. When you're talking about tracking cellphones, the
4 most accurate way to do that would be through GPS?

5 A. If it's available.

6 Q. And that's just satellites tracking through the
7 headset, right?

8 A. Well, yes. A lot of phone companies don't do
9 that. They provide signalling information and try and
10 try and triangulate it in that nature.

11 Q. Right. You can also triangulate -- like you said,
12 you can do that in live time, right?

13 A. Yes, sir.

14 Q. And that's just you have three different towers,
15 all pinging at the same time?

16 A. Yeah.

17 Q. Sort of hone in?

18 A. And the providers give you an estimated range from
19 each one of those towers and try and give you a latitude,
20 longitude, so we try to go into that general area.

21 Q. It's kind of like a Venn diagram, where they
22 overlap?

23 A. A little bit.

24 Q. And AT&T can also give you NEOS data that can give
25 you a better estimate of where somebody's phone --

1 A. As policy, the FBI CAST, we don't testify to NEOS
2 data in there because sometimes the area radius can be
3 10,000 meters, but yes, NEOS data is a service that AT&T
4 provides.

5 Q. And you've used that data before, right?

6 A. I've used it, sure.

7 Q. And if you don't have GPS or triangulation, the
8 data that you have is going to be far less accurate than
9 what those provide you, right?

10 A. Again, like I said, when you're using the ZIP code
11 and the cell tower sector and the tower information, you
12 can only say that the phone utilized services on that
13 tower and sector at that particular time, and, again, it
14 can be anywhere within the footprint of that tower and
15 sector.

16 Q. And you don't have any GPS or NEOS data in this
17 case?

18 A. I wasn't provided with any, no, sir.

19 Q. You talked about this briefly. Well, I think you
20 talked about this. When you turn on your phone, your
21 phone is going to be looking for the cleanest, strongest
22 signal, right?

23 A. Correct.

24 Q. An unobstructed cellphone signal can go on for a
25 while; like, if you're in a rural area, it can travel for

1 some miles, right?

2 A. Yeah, depends on what's there, the capacity that
3 is there. So the exact law that is used is that
4 generally speaking, here in the Charleston area, towers
5 are placed anywhere from three quarters of a mile to a
6 mile apart, while in New York City you might have them
7 every block, while in rural areas of, say, Berkeley
8 County or somewhere in the Upstate where there's not a
9 lot of traffic, a lot of demand, they may be placed
10 three, four, five miles apart.

11 Q. So more densely populated area is probably the
12 more accurate you can be with this?

13 A. Right. To a degree, it's all about demand, so
14 cellphone companies set up their network to provide you
15 with the best possible service, because once you quit
16 using their services, they don't make any money. So they
17 design towers to cover the area where they have the most
18 demand for the services.

19 Towers are expensive to erect. Towers are
20 expensive to maintain, so the fewer they can do, put up
21 there, they would rather do so, but they also want to
22 provide the best possible service, so they put up as many
23 as is demanded of them to provide the customer with the
24 best possible service, and towers are kind of set up like
25 a sprinkler system. They don't want you to have dead

1 spots.

2 So they put a tower here and a tower there so they
3 overlap, so when you go from one tower to another tower,
4 you don't drop the phone call. Your text goes through,
5 whatever, and makes you a happy customer, and they keep
6 providing service. The same concept with sprinklers.
7 You shoot water to each other so you don't have a dead
8 spot right in the middle of your yard.

9 Q. And in theory, you would think that the strongest
10 signal is going to come from the closest tower, right?

11 A. The phone's always looking for the tower with the
12 strongest, clearest signal, which is usually the closest
13 tower, but that may not always be the case because of the
14 way the network is set up or what's in the way.

15 Q. There's a host of different factors that could
16 affect the network loading and balancing, right?

17 A. Sure.

18 Q. There could be environmental factors, storms,
19 something like that?

20 A. No. They usually have -- only way a storm is
21 really going to affect the network they're provided with,
22 if you use your cellphone during thunderstorms,
23 hurricanes, things of that nature is if the storm caused
24 the cellphone tower to completely go down.

25 Q. If they're doing repairs on something, that might

1 affect what tower you're going to be doing it on?

2 A. Well, usually in those situations, you'll get a
3 fast busy signal. Your phone call is just not going to
4 go through if the tower is down at that particular
5 moment. The good thing with the records that we receive
6 is that we know the tower was activated at that
7 particular time because it's reflected in the records
8 that were provided.

9 Q. Okay. And this being an AT&T device, it's on a
10 GSM-based network?

11 A. Yeah. I think all the calls were GSM, or three G,
12 three G network, UNTS.

13 Q. And in a GSM-based network, these phones keep a
14 list of towers and sectors that they should use and
15 prioritizes them based on signal strength, right?

16 A. Every phone does that. It's always looking for
17 the tower that has the strongest, clearest signal so when
18 you press a button to send your text, make your phone
19 call, or whatever it is you're doing, you get service.

20 Q. So it doesn't prioritize them based on proximity,
21 is basically what I'm saying.

22 A. Yeah. It's based on which tower is providing the
23 strongest, clearest signal, and, again, most of the time
24 it's going to be the one that's closest to you, but not
25 always.

1 Q. You don't always know it's the closest tower,
2 right?

3 A. You'll never know if it's the closest tower.
4 You'll just know the phone worked.

5 Q. In this case -- I'm going to talk to you a little
6 bit about testing validation. You didn't do any testing
7 to determine the coverage areas of towers that you
8 testified covered the incident locations, did you?

9 A. No because the first time I was asked to look at
10 things is five years later. I don't know if the network
11 has changed -- or four years later. It's from 2015 to
12 2019 so no, I did not.

13 Q. And you didn't review any historical data that the
14 FBI may have collected to help you understand the
15 coverage in these areas, right?

16 A. I didn't have any data to review.

17 Q. The FBI doesn't keep historical data on these cell
18 towers?

19 A. Coverage area?

20 Q. Coverage area, yeah.

21 A. Coverage area, no, mainly because I don't have the
22 drive test.

23 Q. And I'll talk to you about that. The FBI does
24 have capabilities of determining of the coverage of a
25 tower, right?

1 A. Sure, yeah. I'm certified to use drive testing
2 equipment to determine the location of towers, or
3 determine the coverage area of towers.

4 Q. You have several pieces of survey equipment that
5 you can measure and map cell coverage?

6 A. Right.

7 Q. And that's what you're calling the drive test?

8 A. That's correct.

9 Q. And you can determine the likely kind of shape of
10 the coverage?

11 A. Yes. Again, I was telling you folks earlier that
12 I draw out these nice common pie wedges that look all
13 pretty, but radiofrequency cell tower coverage is an
14 irregular-shaped polygon that is not necessarily that
15 perfectly shaped pie wedge.

16 Q. And FBI CAST agents can, you know, frequently
17 testify that the use of this equipment helps narrow down
18 search areas in incidents like missing persons or
19 children involving call detail records analysis, right?

20 A. Sure. In those situations, you have current
21 information that, hey, a phone used this particular tower
22 and sector and a child, person, evidence, whatever it may
23 be is last seen and we have the capability to take the
24 equipment and try to narrow down that area to see the
25 actual footprint of that particular tower that maybe

1 narrow down the area even more. Sometimes we find out
2 that the tower and sector is a lot bigger than what we
3 think, based on our initial analysis.

4 Q. Do you have the Gladiator GAR used for cell site
5 surveys?

6 A. I have it available to me, yes, sir.

7 Q. And you have training on that equipment?

8 A. Yes, sir.

9 Q. And you can use that equipment any time you need
10 to use it on cases?

11 A. As long as we have one available, and I've never
12 not had one available.

13 Q. And you can use that type of equipment to sort of
14 validate your analysis and opinions when analyzing these
15 call detail records, right?

16 A. Yeah. It will give me the actual coverage of
17 towers and sectors during that contract, or during that
18 drive test.

19 Q. And you know how to do these drive tests. You've
20 had to learn how to use these -- do these drive tests as
21 part of becoming an FBI certified CAST agent, right?

22 A. That's part of our certification, yes, sir.

23 Q. And just to be clear, you didn't do a drive test
24 for validation in this case, right?

25 A. That's correct; again, because I received records

1 four years after the fact.

2 Q. Let me talk to you about propagation a little bit.
3 Propagation is the way that energy is projected from the
4 cell tower, right?

5 A. It's the engineer's approximation of the direction
6 of the radiofrequency from those towers. They use it for
7 marketing purposes, things of that nature to get people
8 to use their services.

9 Q. You talked about this a little bit, but there are
10 certain objects that have an effect on the propagation of
11 these radiowaves, right?

12 A. Sure.

13 Q. If there's a building in the way, it could affect
14 the way that it reflects radiowaves, right?

15 A. Sure.

16 Q. Large bodies of water can have an effect on
17 radiowaves as well?

18 A. Sure.

19 Q. Water reflects radiowaves, doesn't it?

20 A. Sure it does.

21 Q. And this could cause a tower to be used that is
22 one side of the river while the phone is on the other
23 side of the river, right?

24 A. It's possible.

25 Q. And just based on the records you have, you

1 wouldn't know if that occurred, right?

2 A. Yeah, because, like I said, I don't know the
3 footprint, the exact footprint, of that particular tower.

4 Q. And I just want to go over this because you
5 addressed this in your direct examination. I show you
6 State's Exhibit 116 on page 8. You have this mapping
7 here, and you testified earlier that this particular
8 tower was the tallest tower?

9 A. Sure.

10 Q. Giving off the strongest signal?

11 A. Not necessarily the strongest signal just because
12 it's taller. It may provide a signal a little bit
13 further away than a tower that's shorter. Depends on the
14 orientation of antennas, how much of a tilt downward the
15 antennas on there are located, but, yeah, usually things
16 that are taller can see further.

17 Q. There's the Ashley River right here?

18 A. That's correct.

19 Q. So the radiowaves can definitely bounce off that
20 Ashley River, and it's possible that these calls were
21 made on this side of the river?

22 A. It's possible. Again, we'd have to see what the
23 coverage is of that particular tower and how the other
24 tower shoots off because they are the competing towers
25 with each other. Again, if it hears too much of noise,

1 the phone just will not work. If it's saying, hey, I'm
2 the clearest signal over here and the tower over here is
3 saying I'm the clearest signal over here, it just won't
4 work.

5 Q. But it's definitely possible for the phone call to
6 be picked up by the tower if it's over here, say it's on
7 26 or something like that?

8 A. By which tower?

9 Q. The one right here that you testified is the
10 tallest one, over the Ashley River, right?

11 A. In my opinion, it wouldn't pick up -- the phone
12 wouldn't be utilizing towers from here if it's on I-26.
13 I would beg somewhere in this general area, just south of
14 I-26.

15 Q. I mean, you can't be certain that the phone
16 traveled over the bridge to West Ashley from that side of
17 the bridge, on that side of that, right?

18 A. I can -- I'm certain that the phone utilized
19 services for this tower. Whether it drove all the way
20 over Highway 7 or not, I'm not able to tell because,
21 again, it could be -- at whatever tower we're talking
22 about, it could be anywhere, you know, within this
23 general area.

24 Q. It could be on the other side of river?

25 A. Could be.

1 Q. Yeah. And you don't have any data that shows that
2 the phone used the tower in sectors that covers the
3 actual crime scene, right?

4 A. No. Again, I think I testified earlier there's an
5 11-minute window where there's no cellphone tower data at
6 all.

7 Q. And you can't tell me the exact location of the
8 phone, right?

9 A. Correct.

10 Q. Even if you consider this, you know, semi-accurate
11 information, it still won't be able to tell you where a
12 person is located, right?

13 A. I'm only talking about the phone.

14 Q. Right. It can only tell you where the phone is
15 located, right?

16 A. Yeah, I can't -- correct. I don't know who's
17 using the phone.

18 Q. And the records that you get, they don't tell you
19 who's in possession of a phone at any given time?

20 A. No, just provide -- if there's subscriber
21 information, it just provides me the subscriber of the
22 phone.

23 Q. And you personally do not know whose phone this
24 is?

25 A. Who it's subscribed to?

1 Q. You don't know who's in possession of the phone or
2 has the phone?

3 A. No, I don't know --

4 Q. You can't get that from the data?

5 A. No, sir.

6 Q. Okay.

7 MR. KOZELSKI: No further questions.

8 THE COURT: Redirect?

9 MR. WARING: Thank you, Your Honor.

10 REDIRECT EXAMINATION BY MR. WARING:

11 Q. Agent Simmonds, does the timing of when you
12 perform the mapping -- say, for example, you had the
13 cellphone records back in 2015 but you didn't do the
14 report until now, or the analysis, does that matter, as
15 far as the accuracy of your analysis?

16 A. No. The records are the records. They are
17 historical. They're what took place at that particular
18 moment in time.

19 Q. All right. I briefly wanted to talk about the
20 whole drive point test. Is that more for specificity
21 when you're trying to pinpoint a specific area?

22 A. Sure. Again, it helps if we had a large area to
23 look and search for a fugitive, missing kids, whatever,
24 and we can use that equipment to narrow it down. That's
25 always helpful. You know, a lot of times it is to see

1 the location of the towers in certain situations. You
2 might be on the overlap of those two towers, and one
3 phone or one tower is providing a better signal, and it
4 looks strange. You got to go out there and figure out
5 why, maybe because there's a big building in the way or
6 some other obstruction.

7 Q. So it's not for the general location of the phone,
8 right?

9 A. No. It provides us the footprint, the actual
10 footprint, of the tower at the time that we're making
11 that drive test.

12 Q. Okay. If you were asked to do a footprint drive
13 test, would you be able to get an exact location?

14 A. No. Again, the historical call detail records
15 only give us a tower and sector that is used at that
16 particular point in time, and it still could be anywhere
17 within the footprint of that tower.

18 Q. All right. I'm going to ask you -- do you have
19 any knowledge or experience with Highway 7?

20 A. I've been driving up and down it.

21 Q. What I'm asking is, are you able to turn around
22 when you're driving over it?

23 A. No. Oh, no.

24 Q. So presumably if you're on that Highway 7, you've
25 got to go to the end before turning around?

1 A. That is correct.

2 Q. Now, I think you testified earlier that -- we
3 talked about a phone call up here that was at 3:21 p.m.
4 and then the one that was two minutes later, somewhere
5 over here at 3:21 p.m., over across the water, and what
6 was your analysis on that again?

7 A. Again, at 3:21, the phone was probably at the edge
8 of the service area for this particular tower here, and
9 at 3:23, it's moving southwards toward the crime scene
10 and then using the edge of that particular tower, 3:23.

11 Q. All right. Now, I want to flip to the 4:10 to
12 5:51 time period on this report. Which direction does
13 this phone appear to be traveling, starting, I guess,
14 around 4:10 p.m. and going all the way down here?

15 A. Sure.

16 MR. KOZELSKI: Your Honor, I'm going to
17 object. I think, first off, it's asked and answered;
18 and, second, it's outside the scope of my cross.

19 MR. WARING: May we approach, Your Honor?

20 THE COURT: Uh-huh.

21 (A bench conference was held off the record
22 at 4:00 p.m.)

23 (Back on the record at 4:00 p.m.)

24 BY MR. WARING:

25 Q. All right, Mr. Simmonds. We talked about a moment

1 ago how at 3:21 p.m. there's a phone call over here in
2 North Charleston, and 3:23 p.m., it looks like it was
3 somewhere over here in West Ashley, right?

4 A. Correct.

5 Q. Now, in this time period, from 4:10 to 5:51 p.m.,
6 which direction does this phone appear to be going at
7 this time?

8 A. It utilizes service up here by the Family Dollar
9 and Scott residence and comes down this way and moves
10 west that way.

11 Q. All right. Now, this is an obvious rhetorical
12 question, but that's not the same pathway as going on
13 Cosgrove, is it?

14 A. No, sir.

15 Q. And what is in the pathway between the Family
16 Dollar and the Best Western in between as far as
17 landmarks that you've put on there?

18 A. That would be the crime scene, of Palmetto First
19 Bank.

20 Q. Just one more question. So this tower out here --
21 so this is kind of, I guess there's 3:23 and 3:34 over
22 here, and then you've got this outlier over here at 3:35,
23 one minute later after this phone call. What can you
24 tell us about that?

25 A. So, again, this tower up here is 124 feet in the

1 air. This one is 160, this one is 164, and I obtained
2 all that data from looking at the tower records that
3 AT&T provides. Again, at some point between 3:34 and
4 3:35, the phone observed this having this tower and
5 sector right here having a clear, strong signal and
6 utilized services at 3:35, which, again, makes me believe
7 the phone is traveling back on Highway 7 towards the
8 Family Dollar and the Scott residence.

9 MR. WARING: No further questions, Your
10 Honor.

11 THE COURT: Recross?

12 RECROSS-EXAMINATION BY MR. KOZELSKI:

13 Q. Again, you're guessing about that, right?

14 A. I'm giving you my expert opinion about it.

15 Q. But that's a guess. You don't know where the
16 phone is located within those sectors?

17 A. Sure. I don't know where the phone is located
18 within those sectors, but it utilizes those services on
19 those towers and sectors at those times.

20 Q. And you can't tell me for sure whether or not that
21 highway down to West Ashley, correct?

22 A. My opinion is it went that way, but to -- that's
23 all I can tell you.

24 Q. Yeah. So the phone could have been on the other
25 side of the river, right?

1 A. At some point, yes, it was.

2 MR. KOZELSKI: No further questions.

3 THE COURT: You may step down.

4 THE WITNESS: Thank you.

5 THE COURT: Does the State have any other
6 witnesses?

7 MR. WARING: State rests, Your Honor.

8 THE COURT: Okay, folks. I need to send you
9 back to the jury room right now while we discuss a few
10 matters of law that need to take place at this point in
11 the trial. Again, don't begin deliberations or
12 discussions about the case, and we'll have you back in a
13 few minutes.

14 (The jury left the courtroom at 4:04 p.m.)
15 do you have any motions?

16 MR. KOZELSKI: At this time, we make a motion
17 for directed verdict.

18 As you know, Your Honor, this is a
19 circumstantial evidence case. There is no direct
20 evidence of Mr. Scott's involvement in this case. It is
21 based solely on circumstantial, and, as you know, the
22 case law, and I'm relying specifically on State versus
23 Odom, which is 395 SC 582. Case law says in order to
24 survive a directed verdict motion, the State has to give
25 substantial circumstantial evidence if the case is a

1 circumstantial evidence case.

2 That's what we're dealing with here. As far
3 as the evidence the State has presented has been a shirt
4 that kind of looks like the person in the -- the person
5 wearing -- in the bank robbery was wearing and shoes that
6 somewhat look like the person in the bank robbery was
7 wearing. State's also presented evidence that Silvester
8 may or may not have borrowed this car that was used as a
9 getaway car in the crime, and, lastly, they've used the
10 cellphone data in order to attempt to link Mr. Scott to
11 this bank robbery.

12 I think those are the four pieces of evidence
13 that the State is using in order to -- in order to try to
14 get a conviction here, and I don't think that would pass
15 the test of substantial circumstantial evidence,
16 especially in light of all the testimony you've heard.
17 As far as Mr. Green's testimony, I think it is definitely
18 debatable that he even gave that number to the police,
19 and that, in and of itself, I think has been a wonderment
20 to me in this case, as to how they did actually get this
21 number, and then attempting to tie that number to
22 Mr. Scott, I think, has taken quite a bit of time to do
23 over four years. And in that, I think the testimony says
24 that Alonzo Green testified that Mr. Scott, when he
25 called that number, that number that they're alleging is

1 his, or numbers that he called during the day, Mr. Scott
2 wasn't the person that always picked up the phone.

3 I think that's bolstered by the fact the
4 testimony they presented when Mr. Scott took -- was in
5 the interview room and they said is that your phone, or
6 do people call you on that, and he said sometimes. I
7 think the evidence clearly is this is a burner phone.
8 It's a phone used for drug transactions and other people
9 use that phone, so I don't think the historical cell site
10 data is substantial circumstantial evidence. Even their
11 own FBI agent that just testified said that he can't put
12 that phone at the crime scene. There's no data that he's
13 received that puts that phone at the crime scene, so I
14 don't believe that that is substantial circumstantial
15 evidence.

16 You know, the shoes and the shirt, I think
17 the Court has to take and consider all the evidence that
18 they did not find. They're making it, you know, one
19 shirt and pair of shoes as being the -- you know, I think
20 it's somewhat staged, as you can see through some of the
21 evidence that the Court heard from Detective Tuttle and
22 Crime Scene Investigator Sara Tuuk, that she believed
23 those items were there when she got there, that nobody
24 moved them when, in fact, they had been moved and set up
25 and looked to be the way that they were.

1 So I think, you know, police are taking
2 evidence and making it look more damning than it is, but
3 when, in reality, there is nobody IDing this shirt as the
4 person, you know, that was in the bank robbery, that's
5 the shirt they were wearing or the shoes. So at this
6 time I would rely on State v. Odom which is a case very
7 similar in nature where you have a defendant tied to a
8 getaway car, actually going into a person's house minutes
9 after this burglary and telling the person to lie to the
10 police about, you know, who they are and where they came
11 from.

12 And the Court there said that was not
13 substantial circumstantial evidence to survive a directed
14 verdict motion, and I think that the same is true of
15 this. I am not doubting that that car, the getaway car,
16 was, in fact, the car that they had found, but they
17 haven't presented any evidence other than the fact that
18 Alonzo Green said he may have borrowed the car to tie
19 that car to Mr. Scott. All he said was he was in the
20 hotel room. He was laying on the, bed high on heroin.
21 He didn't see Silvester in the car.

22 In fact, he did see the car later on in the
23 day, and that car was with another individual, and
24 Silvester was not around, so I think that bolsters our
25 argument that Silvester was not in the car. They didn't

1 present any evidence of fingerprints, any evidence of DNA
2 within the car to tie Mr. Scott to this car, so,
3 essentially, they are relying solely on circumstantial
4 evidence, Your Honor, and I do not believe that it is
5 substantial at all.

6 THE COURT: From the State?

7 MR. WARING: Thank you, Your Honor. Looked
8 at in the light most favorable to the State as the
9 nonmoving party, we think there is enough evidence to
10 give to the jury. I believe the standard is whether
11 there is any evidence to convict the defendant. Phones
12 were found in the defendant's motel room. He admitted
13 the two phones were his. Whether or not we have
14 Mr. Green at this point is almost not even necessary
15 because we've proven through cellphone forensic experts
16 that that target cellphone number, which was mapped out
17 in all those key locations at the right time, has proven
18 to be connected to the phone that the defendant admitted
19 is his.

20 I understand Mr. Green is not the best
21 witness, but some of the things he said were
22 corroborated. He said the defendant was wearing a red
23 and white striped shirt. That's the one that was found
24 at the house. There's no evidence that shirt was
25 planted. Even though Detective Tuttle said it was moved,

1 there's no evidence it was planted. That's the same
2 shirt that appears to be in the bank robbery video as
3 well as the Family Dollar video.

4 Green puts him in the car. Obviously, he
5 testified a little differently and said that he didn't
6 see him in the car, but he said he took the keys, and at
7 one point I think he said that William Drayton was
8 waiting for him to come back in the car. Your Honor, we
9 do believe that there is enough evidence to give to the
10 jury. We'd ask that the defense's motion be denied.

11 THE COURT: Do you want to respond?

12 MR. KOZELSKI: I just believe Mr. Waring is
13 not citing the right standard. I don't think it's the
14 any evidence standard. I think that's the standard when
15 you're dealing with a direct evidence case, but here we
16 are dealing solely with circumstantial evidence. In
17 order to get over that burden to survive a directed
18 verdict motion, the State has to put forward substantial
19 circumstantial evidence, and I don't believe that they
20 have met that burden.

21 THE COURT: Well, circumstantial evidence
22 case, you don't have any one particular thing that puts a
23 defendant at the scene or necessarily, you know, real
24 clear identification or -- there's a lot of little pieces
25 that have to get added up, and that's what makes it a

1 circumstantial evidence case as opposed to a direct
2 evidence case.

3 If you look at each individual piece that
4 comes in, nothing is a slam dunk, but when you put it all
5 together, if there is evidence, and if believed by a jury
6 would put the defendant with those phones in his
7 possession, the number that belongs to those phones was
8 near the scene of the bank robbery at the time of the
9 bank robbery, the items of clothing that looked like
10 items of clothing worn by the robber at the time. There
11 is evidence that puts somebody that matches his physical
12 characteristics buying dusk masks and other things that
13 were used in the robbery, all of which, if added up, does
14 make a substantial case, so I will -- it's a substantial
15 circumstantial evidence case. Again, it's not direct
16 evidence, which is a lot lower standard, but there's
17 enough evidence there that I think, if added all
18 together, makes it a substantial circumstantial case, so
19 I will deny that motion.

20 Now, let's see where we go from here. So
21 we're at the end of a long day, and here's what I
22 suggest: You got to make a decision as to whether or not
23 you want to testify and put up a defense witness or
24 defense. I'll give you tonight to think about how you
25 want to proceed with that. I also want you to think long

1 and hard about this offer that's been made.

2 Did you want to say something?

3 MR. KOZELSKI: I would, Your Honor, I have --
4 we only have four witnesses. One of them is a latent
5 print specialist with CPD; two of them are SLED agents
6 that have come down here from Columbia. I expect that
7 testimony to be 15 minutes, at most, all of them, and
8 then we have our alibi witness, which I also suspect
9 would be a very short, ten-minute witness.

10 Other than that, I don't -- I've talked to
11 Mr. Scott about this. I don't believe he plans on
12 testifying. If we could, I would like to go ahead and
13 get --

14 THE COURT: You want to get the others in,
15 we'll get them in today. I didn't know what your case
16 would be, but we'll go ahead and get yours in.

17 I'll give him till overnight to decide if he
18 wants to testify, but I really want him to sleep long and
19 hard on the offer. From a perspective standpoint,
20 there's a difference between what he's been offered and
21 what he -- I'm communicated he would be willing to
22 accept. If that looks like a bigger number, then you
23 might think about, when you're looking at what the
24 downside is to a conviction, which is the very real
25 possibility that if the State believes they have linked

1 up each of these parts, then life without parole is a big
2 number, and suddenly the number of months that we're
3 talking about, or the difference between the two offers,
4 is really what it boils down to, a number of months, it's
5 not quite as big as you might otherwise think. Just put
6 it in perspective for a life without parole sentence, so
7 we'll do it that way.

8 Now, I've looked at this. There's really
9 nothing in this statement that isn't in that email. I
10 would caution you on this alibi. The only thing that I
11 could see in there is what -- she might call it character
12 witness. I would not want anything elicited from this
13 witness in the context of, oh, he's not the kind of
14 person that would do that, okay? That's really what it
15 boils down to.

16 MR. KOZELSKI: And that was our main concern.

17 MR. OSBORNE: And, Your Honor, since you've
18 already read it, I would like to just keep the option
19 open to say that if she says something that's
20 inconsistent that's in the statement that we be allowed
21 then to see the statement.

22 THE COURT: I'll keep it in mind. I've
23 looked at it. There's parts of it that look like it's
24 verbatim, what's in your email, but the only real thing
25 that would concern me is opening the door by saying he's

1 just not the kind of person who could do that. That just
2 opens the floodgate. I would caution you not to have
3 that put in.

4 Let's take five minutes and get your
5 witnesses ready and use the restroom, and we'll come back
6 and the defense put their case on.

7 (A recess was taken at 4:19 p.m.)

8 (The jury came back into the courtroom at
9 4:26 p.m., and the following proceedings were
10 had in the presence of the jury.)

11 THE COURT: Okay, folks. You have now heard
12 all of the evidence that the State will present, and we
13 will now move to the defense's first witness.

14 MR. KOZELSKI: Thank you, Your Honor. The
15 defense calls Nada Kerstein to the stand.

16 NADA KERSTEIN
17 having been called as a witness for the defendant at
18 4:30 p.m., was sworn and testified as follows:

19 DIRECT EXAMINATION BY MR. KOZLOWSKI:

20 Q. Good afternoon, Ms. Kerstein.

21 A. Good afternoon.

22 Q. Can you tell this jury a little bit who are you
23 and what you do.

24 A. I work for the City of Charleston Police
25 Department. I'm a latent fingerprint examiner. I

1 examine and compare fingerprint impressions lifted from
2 crime scenes for purposes of identification and
3 elimination. I also classify and compare fingerprint ten
4 print cards.

5 Q. And how long have you been in that position?

6 A. I've worked for the police department for almost
7 18 years. I've been in the latent print division for ten
8 years.

9 Q. And did you have to get any specialized training
10 to become a latent print examiner?

11 A. Yes. I have over 400 hours of classroom training,
12 classes designed specifically for fingerprint work, and I
13 have formal training with the latent print division. It
14 was a year-and-a-half, went to certified latent print
15 examiners.

16 Q. In your job as a latent print examiner for the
17 Charleston Police Department, have you ever had to
18 testify in a trial before?

19 A. Yes.

20 Q. And when you testify in trial, most of the time it
21 is for the State, obviously.

22 A. Yes.

23 Q. And in trials have you ever been declared an
24 expert?

25 A. Yes.

1 MR. KOZELSKI: Your Honor, at this time I'd
2 ask that Ms. Kerstein be admitted as a latent print
3 expert, an expert in latent print examinations, that
4 being, I think, without objection.

5 MR. OSBORNE: None.

6 THE COURT: All right. This witness has now
7 been qualified as an expert in the field of latent
8 fingerprint examination. As I told you earlier, expert
9 witnesses, you decide how much weight to give the
10 testimony of the witness based on all of the evidence
11 that you have heard and will hear throughout the trial.

12 You may continue.

13 MR. KOZELSKI: Thank you, Your Honor.

14 BY MR. KOZELSKI:

15 Q. Ms. Kerstein, can you explain to the jury how you
16 became involved in this case.

17 A. When a crime scene tech goes to the scene, they
18 collect the fingerprints, and then when they are done
19 with their case, whatever latent print cards they have,
20 they seal, put it in an envelope. They put it in a
21 lockbox for my department, and then the evidence tech
22 will pick up the envelopes and deliver them to my office.
23 So for this case, there was, I believe, two envelopes
24 that we worked.

25 Q. I'm going to show you what's been marked and

1 entered as an exhibit, Defense Exhibit 2. Is that the
2 envelope that you're talking about?

3 A. Yes. This is the envelope that was turned in on
4 case 1503494.

5 Q. And what does that envelope contain?

6 A. There were two latent cards. One of them was
7 noncomparable. The other card had one impression that
8 was of value.

9 Q. Okay. And if you open those up, are those the
10 actual print cards that you examined?

11 A. Could I have a pair of scissors?

12 Q. Are you unsealing something?

13 A. Yes.

14 Q. And what's the purpose of that?

15 A. When we receive the latent lift cards from the
16 evidence technician, they will seal them before they put
17 them in the envelope and turn them over to us, so that
18 way we know that they were the last person to have that,
19 and then they seal it so nobody else can touch that card.

20 Then when it comes to us, we cut open that seal,
21 and then when I'm done working this case, I'm going to
22 reseal it, put it back in the envelope so the chain of
23 custody is fluid and we know who has looked at it and who
24 hasn't.

25 Q. And did you perform an examination on those latent

1 prints?

2 A. Yes, I did.

3 Q. And what type of examination did you do, a
4 comparison examination, or did you run them through a
5 database?

6 A. The 2-1 was noncomparable, so nothing was done
7 with that card. 2-2, there was one impression that was
8 of value. It was run through SLED's fingerprint
9 database. It was also run through the FBI database.

10 Q. Okay. And did you create a report in this case?

11 A. Yes, I did.

12 Q. I'm going to show you what's been premarked as
13 Defense Exhibit 5.

14 A. Yes, that's my report.

15 Q. Okay. And do you create these reports in the
16 normal course of business?

17 A. Yes, I do.

18 Q. That's what you do, basically?

19 A. Yes.

20 MR. KOZELSKI: Your Honor, at this time I
21 would ask that Defense Exhibit 5 be entered into
22 evidence.

23 MR. OSBORNE: No objection.

24 THE COURT: Admitted.

25 (Defense Exhibit 5 was marked for

1 identification and admitted into evidence.)

2 BY MR. KOZELSKI:

3 Q. And Ms. Kerstein, what is the result that you
4 found from your examinations of latent print comparisons?

5 A. When the impression was run through the two
6 databases, there was no identification made. None of the
7 contributors were deemed an identification, meaning
8 that -- the two impressions, if they are made by the same
9 contributor, then we call that an identification. So
10 after running it through the two databases, there was no
11 identification made.

12 Q. Okay. And what were your results as they pertain
13 to the comparison with Mr. Scott over here?

14 A. We were asked to compare that impression to the
15 ten-print card bearing the name Silvester Scott, and it
16 was eliminated.

17 Q. So he was not --

18 A. That's correct. I determined that the two
19 impressions were not made by the same contributor.

20 Q. Thank you, Ms. Kerstein.

21 MR. KOZELSKI: No further questions.

22 CROSS-EXAMINATION BY MR. OSBORNE:

23 Q. I didn't hear it asked. Did you know where those
24 two prints were recovered from by looking at the card?

25 A. I can tell you what's written on the card. The