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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2022-000160

The State, ...Respondent,

v.

Johnathan Olin Batchelor, ...Appellant.

RECORD ON APPEAL – VOLUME I OF II

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ~~FIFTEENTH~~ JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	<i>Seventh</i>
Jonathan Olin Batchelor,	)	Case No.: 2018-CP-42-04276
S.C.D.C. No. 375028,	)	
	)	
Applicant,	)	
	)	CONSENT ORDER GRANTING
v.	)	POST-CONVICTION RELIEF
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief filed December 13, 2018. Respondent, in its Return dated March 22, 2019, consents to granting Applicant post-conviction relief on the grounds that the sentence imposed is illegal under S.C. Code Ann. § 16-3-29, and State v. Johnson, 343 S.C. 693, 541 S.E.2d 855 (2001). Applicant has subsequently confirmed his desire that his plea and sentence be vacated, and this matter remanded to General Sessions for a new trial, as evidenced by the signatures below.

IT IS THEREFORE ORDERED that this application for post-conviction relief is granted. Applicant's plea and conviction are hereby vacated, and this matter is remanded to the Spartanburg County Court of General Sessions for a new trial.

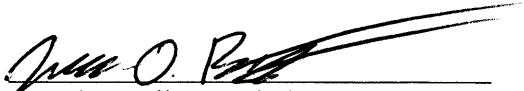
IT IS SO ORDERED.

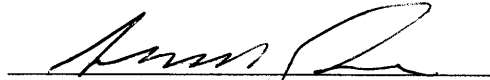


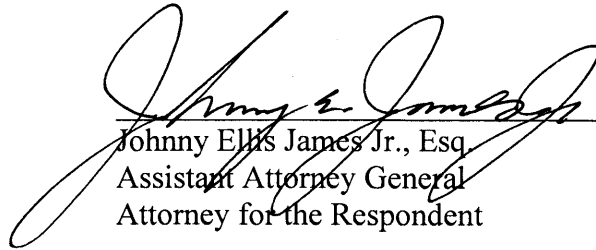
 GRACE GILCHIRST KNIE
 Chief Judge for Common Pleas
 Seventh Judicial Circuit

4 / 18 /, 2019
Spartanburg, South Carolina.

WE CONSENT:


Jonathan Olin Batchelor
Applicant


Susannah C. Ross, Esquire
Attorney for the Applicant


Johnny Ellis James Jr., Esq.
Assistant Attorney General
Attorney for the Respondent

CLERK OF COURT
SPARTANBURG COUNTY
2019 APR 18 PM 4:52

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Spartanburg)Johnathan olin Batchelor)

Full name and prison number (if any) of Applicant.)

SCDC # 375028)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2018 CP 42 04276

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

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SPARTANBURG COUNTY
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MARCO BLANCKLEY

1. Place of detention Kirkland Correctional Institute
2. Name and location of Court which imposed sentence County of Spartanburg
General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016GS4201345 Attempted Murder
 - (b) N/A
 - (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 5, 2018, 30 years, suspended to 18 years, 5 years Probation
 - (b) N/A

- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere ✓ north carolina v. Alfred
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Did not know I could
- (b) Counsel never talked about appeal or reasons for
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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M. HOPE BLACKLEY

- (a) See attached pages of issues, facts and arguments
- (b) See attached pages of issues, facts and arguments
- (c) See attached pages of issues, facts and arguments
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached pages of issues, facts and arguments
- (b) See attached pages of issues, facts and arguments
- (c) See attached pages of issues, facts and arguments
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

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- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Did not know of the failure to investigate - IAC claim
- (b) Did not motion against evidence or mitigate - IAC claim
- (c) Did not prepare for trial - no strategy - IAC claim
17. Were you represented by an attorney at any time during the course of:

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- (a) your arraignment and plea? yes
- (b) your trial, if any? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Stephen Wilson, 302 S. Pine St. Spartanburg, SC 29304
- ii. Travis Moore 240 Magnolia St. Spartanburg, SC 29306
- iii. N/A
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment - Bond
- ii. Bond - plea - sentencing
- iii. N/A
19. State clearly the relief you seek in filing this application:
Reversal of plea / sentence, new trial
20. Are you now under sentence from any other court that you have not challenged?
no

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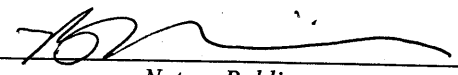
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Sohrathan Batchelor
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

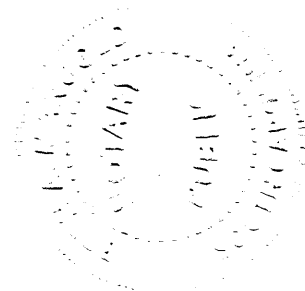
SWORN or affirmed to and subscribed before me this
13th day of November, 2018.


Notary Public

BETH A. MANGOLD

Notary Public, State of South Carolina
My Commission Expires 8/10/2028

My Commission Expires: _____



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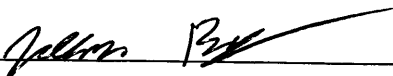
STATE OF SOUTH CAROLINA)

County of **Spartanburg**)

VERIFICATION

Johathan Batchelor

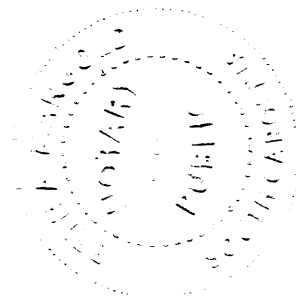
I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 13th
day of November, 2018.

 (L.S.)
Notary Public

My Commission Expires: _____
BETH A. MANGOLD
Notary Public, State of South Carolina
My Commission Expires 8/10/2028



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Reference Material

Issues, facts, and arguments (Pages 1-11)

Sentencing sheet (1 page)

Investigator: Tom Clark (1 page, front side, "30 of 51")

Investigator: M. Walsh (1 page, back side, "34 of 51")

DNA Lab report: Kaitlin Appel; non-human DNA (2 pages)

Investigator: M. Walsh (2 pages, "6-17 of 51")

Investigator: D. Baird (2 pages, "10-11" of 51")

Investigator: C. Ingle (1 page, "12 of 51")

Investigator: K. Bowen (1 page, "14 of 51")

Reidville Fire Dept.: Travis Wood (1 page, "357 of 397")

Investigator: M. Walsh (2 pages, "21-22 of 51")

Investigator: Gary (1 page, "55 of 58")

Investigator: Haysed (1 page, "48 of 51")

Report: "Fox Carolina 21 Public assist request"

Investigator: W.R. Foster (2 pages, "35-36 of 51")

Affidavit - search warrant - Investigator Walsh (2 pages, "390-391 of 397")

Forensic Report, SLED: Gunshot Residue Testing Results (2 pages)

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Defendant respectfully requests that this honorable court assess the circumstances of the case, appoint effective counsel and grant this application for Post Conviction Relief.

Here within, please find the following issues, and factual arguments, that are the basis for Post Conviction Relief. The defendant states the following in support of his Post Conviction Relief application.

Defendant's representing counsel was ineffective on an array of issues in the case. Defendant believes that he also has additional claims for post conviction relief, but does not yet have collateral counsel, access to the discovery process or funds for expert services to investigate these claims. See Civ. R. 15, where leave to amend "shall be freely given when justice so requires."

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Counsel for the Defendant prejudiced the Defendant, erroneously advised the Defendant to take a plea bargain that was only recommended by the State, and was not favorable to the Defendant. Based from the State's own evidence, where if the Defendant had actual effective counsel, and counsel had fulfilled counsel's duty as advocate to properly represent his client under ABA standards for criminal justice: 4-1.1 through 4-8.1, 2nd ed. 1980 (updated 2018), the result of the proceedings would have been different and the Defendant would have proceeded to trial. ①

Hill v. Lockhart, 474 U.S. 52, 59 (1985), Thompson v. State 340 S.C. 112 (2000). The 6th Amendment of the U.S. Constitution requires effective assistance of counsel at critical stages of criminal proceedings, not simply to protect the defendant at trial. Defendant has the right to effective assistance of counsel at every stage of the court process. This includes counsel's collection and analysis of communications records, reports, test results, lab reports, and forensic reports that are intended for use as evidence by the prosecution at any point in the proceedings leading up to trial; as well as any information, or material evidence which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit, or contradict the testimony of any witness the State may call to any proceeding, including any witness the State may call to control or induce plea negotiations. Giles v. Maryland 380 U.S. 66 (1967); Napue v. Illinois, 360 U.S. 264 (1959); Gigley v. US 405 U.S. 105 (1972), Kyles v. Whitley 514 U.S. 419 (1995).

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All "inconsistent" statements made by a particular witness, or statements made between witnesses, whether written or oral, that is known to the solicitor's office or any other law enforcement agency, including statements or other evidence that raise questions about reliability or credibility of a particular witness or the investigation. Kyles v. Whitley 514 U.S. 419 (1995) - Supr. Defendant's counsel was ineffective in addressing the victim's inconsistent statements.

The defendant argues the State created prejudice and bias by not fully investigating the case to follow leads provided by witness to law enforcement of possible suspects fleeing the area of the victim's vehicle (1.5 miles from the scene of the crime) and other possible suspects almost wrecking into witness vehicle. See Investigator: Tom Clark (1 page, "30 of 51").

Additionally, specific DNA evidence was collected from the victim's wrecked vehicle after it was found 1.5 miles from the crime scene. DNA evidence from steering wheel of the victim's vehicle contained the victim's blood and the DNA of another donor/suspect, not the Defendant, clearly indicating that the donor/suspect stole the vehicle, wrecked it after fleeing the crime scene, and actually committed the crime against the victim, not the defendant.

See DNA Lab report: Kaitlin Appel (2 pages). Furthermore, where officers of the Reidville Fire Department and police officers conducted a K9 track and trace to locate any possible suspects connected to the victim's vehicle, all reports state that no track or trace was found to even suggest the defendant's presence at the victim's vehicle. See Investigator: D. Baird (Page 10), Investigator: C. Ingle (Page 12), and Voluntary Statement of Travis Wood.

Lab technicians for the state Forensics Lab took samples from the hands of both the victim and the defendant

and their clothes. GSR (gun shot residue) was only found on the victim's hand and the victim's clothes. No gunshot residue was found on the Defendant's hands or clothes. See Forensic Report, SLED Gunshot Residue Testing Results (2 pages).

Where prejudicial character statements were made by the victim's father to investigators about the defendant. Where the Father provides that, even though the victim (his daughter) stated repeatedly to police for the course of a week after the crime that the person who attacked and shot her was not her husband (the defendant), the father insisted differently. Where the father stated to police that he never liked the Defendant and then offered to the police that the Defendant was having an affair, in an attempt to create motive for investigators. Where the father then used this information of an affair to aggravate and manipulate his daughter/the victim, who in her hospitalized condition, could do nothing about the events. Thus, the father's manipulation and information of the Defendant's affair stimulated the victim to make a completely contradictory statement to investigators, suggesting the Defendant as a suspect only after the father's interference. The victim's new statement remains unsupported by any factual or physical evidence of the case, yet constitutes the entirety of the State's argument for a case. See Investigator

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M. Walsh (2 pages, "16-17 of 51"). Where police confirmed the affair and presented it to the victim for the purpose of encouraging the victim to produce an altered statement of events including the defendant as a suspect. Based off of this altered statement alone, investigators charged the defendant, instead of investigating any other leads, suspects, or evidence. Where the victim was coherent upon officer's first arrival on scene and remained so until later entering surgery at the hospital; the victim was able to give officers and EMTs specific, detailed, and concise information regarding events and the suspect, stating after inquiry that the suspect was not the Defendant. See Investigator: Gary (1 page, "55 of 58"), Investigator: M. Walsh (2 pages, "62 of 51"), Investigator: Hopsed (1 page, "48 of 51"). This is a error in the case because the issue is not why the victim failed to tell the truth, but rather, why the solicitor knew the altered statement to be false, failed to correct it. Riddle v. Ozmint 631 S.E. 2d 70 (S.C. 2006).

Where none of the evidence gathered in the investigation supports the victim's altered statement and where the victim only altered her statement under the persuasion of her father and the emotional instability he caused the victim with the knowledge of the affair. The failure to correct false evidence is as reprehensible as its presentation. From these facts, the Defendant should be granted relief

in the form of a new trial despite his guilty plea. Where state's evidence suggests the victim's initial statement to be true and the circumstances surrounding the victim's altered statement suggest it to be fabricated, the defendant and counsel would think the witness would be impeached. Where the father's and investigator's statements to the victim prompted the victim to change her statement of events. Gibson v. State 514 S.E. 2d 320 (1999). Additionally victim admitted to investigator Walsh on 1-25-2016 that she had been told different versions of events that others believed happened, referring to her father's version of events. The victim, in changing her statement of events and contradicting her first statement, is guilty of criminal obstruction of justice either in lying on her initial statement or her second altered statement of events, because both could be true; a fact that state investigators overlooked or ignored because the victim's second statement was the foundation for their case. Defendant's counsel failed to present this fact and address it.

Defense counsel's performance was deficient under American Bar Associations rules for effectiveness; Edwards v. State 710 S.E. 2d 60 (2011), for having no trial strategy, not filing any motions to restrict, challenge or limit any of the alleged evidence. Further, counsel failed to fully investigate the case and build any type of defense. As

evidenced by court record, where defendant's counsel was scheduled to present at trial 5 separate times: 10-3-2016, 1-23-2017, 6-5-2017, 9-11-2017, and 1-2-2018. Instead of compiling any defensive strategy, defendant's counsel advocated only for a plea, where further investigation of the facts would have supported a defensive strategy and the defendant's innocence. Therefore defendant's counsel was ineffective for failing to investigate the facts of physical evidence in the case and establish a defensive strategy from that investigation.

Where an appropriate investigation by effective counsel would have yielded the following factual evidence about the case:

No GSR was found on defendant's hands or clothes, no blood found on the defendant's "Dodge" work clothes, where the victim's altered statement claimed he was wearing, and no blood was found on the defendant's work boots.

An unknown donor/suspect's DNA was found mixed with the victim's blood on the steering wheel of the victim's car.

No evidence suggested the defendant was in the victim's vehicle found 1.5 miles away, after a K9 track and trace team attempted to trace the defendant back to the crime scene from the vehicle.

No human DNA was found on garage door, only animal. The victim's altered statement claimed she was shot near the garage door, which was an area inaccessible to a vehicle

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due to a clutter of boxes and items occupying most of the area. See Investigator: W.R. Foster (2 pages, "35-36 of 51").

No follow up on the lead of possible suspects fleeing the scene. See Investigator: Tom Clark (1 page, "30 of 50")

No follow up on witness that believed another vehicle was behind the victim's vehicle when she looked out her window at the victim's driveway. See Investigator: R. Foster (2 pages, "35-36 of 51")

Defendant's counsel was therefore deficient in the investigation of the defendant's case and ineffective in building a defense where any analysis of the evidence in custody of the State would have led to the following conclusions:

If defendant had taken the victim's vehicle after committing the alleged crime, then a K9 trace would have suggested the defendant was in the vehicle, blood would have been found on the clothes the victim alleged he was wearing, GSR would have been found on the defendant's hands and clothes, and the defendant's DNA would have been found mixed with the victim's blood on the steering wheel of the victim's car, not an unknown donor/suspect.

The physical and factual evidence simply do not support any of the above situations. If the shooting had occurred next to the garage door, as the victim's altered statement

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claimed, then the victim's blood would have been found on the garage door as well as other items in the area. The only blood DNA found on the garage door was animal, not the victims.

Strategic choices made by counsel after an incomplete investigation are reasonable only to the extent that reasonable professional judgement supports the limitations on the investigation. Even the limited information and evidence obtained, however, should have notified effective counsel that additional investigation could potentially yield powerful mitigating evidence. Not only did counsel fail in investigating all possible leads, such as other similar crimes being committed in the area within weeks of one (see: "Fox Carolina 21 Public Assist Request"), but counsel failed to investigate many leads that could have included mitigating evidence for the defendant. Therefore, the court cannot say, beyond a reasonable doubt, that any undiscovered evidence taken as a whole, would not have resulted in a different outcome of the case.

Defendant argues that the cumulative effect of counsel's deficient performance created a level of prejudice to warrant relief under Strickland, and because of the defense counsel's unprofessional errors, the result would have been different and the defendant would have proceeded to trial. Echavarras

V. State 710 S.E. 2d 60 (2011)

The State of South Carolina and the prosecutors of record did intentionally recommend to the defendant's counsel, a split sentence. Counsel was especially ineffective for allowing defendant to accept a plea offer that agreed to an illegal sentence recommendation. Under S.C. code of laws, language for attempted murder 16-3-29 provides "A person who violates this section is guilty of a felony, and upon conviction, must be imprisoned for not more than thirty years. A sentence imposed pursuant to this section may not be suspended nor may probation be granted."

State v. Johnson 541 S.E. 2d 855 (2001). Under law, his possible sentence is 0-30 years and the Defendant has no prior criminal history and was a productive member of society. Counsel accepted for the Defendant, a recommended plea of 30 years, suspended to 18 years with 5 years probation. The statutory language is clear, prohibiting suspension or probation and, as such, the Defendant has been sentenced to an illegal sentence. "Purely a matter of prerogative; and the legislature's judgment will not be disturbed," State v. Dehaene 302 S.C. 13, 16, 393 S.E. 2d 184, 186 (1990) (Quoting Rummel v. Estelle 445 U.S. 263, 274, 100 1133, 63 L. Ed 382 (1980)). "Judicial discretion in sentencing, in suspending sentences, and in designating that sentences run concurrent or consecutive is subject to statutory

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restriction." State v. Taub 519 S.E. 2d 797, 800 (1999). Prosecution should have never offered the illegal sentence and defense counsel should never have agreed to accept it.

The prejudice created by the state and the defendant's counsel at sentencing phase of plea is a due process violation caused by the defense counsel's ineffectiveness. Therefore, the defendant should be allowed to withdraw his guilty plea and proceed to a new trial under the 4th, 6th, and 14th amendments.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Jonathan Olin Batchelor,	)	Case No.: 2018-CP-42-04276
S.C.D.C. No. 375028,	)	
	)	
Applicant,	)	
	)	RETURN AND
v.	)	CONSENT TO POST-CONVICTION RELIEF
	)	(Counsel Appointed)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the application for post-conviction relief filed by Jonathan Olin Batchelor (Applicant) on December 13, 2018, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the March 2016 term of the Spartanburg County Grand Jury for attempted murder (2016-GS-42-01345). Travis A. Moore, Esq. represented Applicant, and Jennifer Elizabeth Wells, Esq., of the Seventh Circuit Solicitor's Office, prosecuted the case. On January 5, 2018, Applicant pled as indicted pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Consistent with the State's recommendation, the Honorable J. Derham Cole sentenced Applicant to imprisonment for a term of 30 years, provided that upon service of 18 years, the balance would be suspended upon probation for 5 years. Applicant did not appeal his plea or his sentence.

II. STATEMENT OF THE FACTS

The underlying facts of the crime(s) for which Applicant is incarcerated were articulated by the State during the plea proceeding. On January 7, 2016, Spartanburg County Sheriff's

Office deputies responded to 5811 Reidville Road in reference to a shooting. (Tr. 13, ll. 10-13).

Responding officers were flagged down by Applicant, who led them to victim S [REDACTED] [REDACTED] ("Victim"). (Tr. 13, ll. 14-19). Victim was responsive, identified herself, indicated she felt as though she had been shot, and asked who did it. (Tr. 13-14). Applicant gave a statement that he had been in the shower, that Victim had been on her way home from work, and that he discovered her on the lawn with her 2010 Ford Explorer missing. (Tr. 14, ll. 6-16). Law enforcement located the vehicle down the road from the residence on an embankment near a bridge, still running. (Tr. 14, ll. 13-19). Missing was the .38 caliber revolver Victim was known to carry on her person at all times. (Tr. 14, ll. 20-22). The trauma team at Spartanburg Regional confirmed Victim had been shot multiple times in the head and body. (Tr. 14, ll. 23-25). Prior to losing consciousness, Victim gave a description of a suspect that matched Applicant, but did not accuse Applicant at that point in time. (Tr. 14, ll. 2-7). Victim thereafter lost consciousness and was expected to perish. (Tr. 14, ll. 8-10).

Subsequent investigation revealed Applicant was engaged in an affair with a coworker, and Applicant admitted to the affair. (Tr. 15, ll. 11-17). The mistress appeared at Spartanburg Regional and waited with Applicant as Victim fought for her life. (Tr. 15, ll. 17-19). Applicant maintained he did not shoot Victim, and Victim initially denied that Applicant shot her. (Tr. 15-16). After Victim regained consciousness, however, Victim told law enforcement that Applicant attacked her with a dead-blow hammer when she returned home and knocked her unconscious. (Tr. 16, ll. 4-15). Victim came to as Applicant dragged her across the ground. (Tr. 16, ll. 15-17). Applicant stood over her, pulled out a weapon, and she heard gunshots ring out. (Tr. 16, ll. 18-23). The weapon was never recovered. (Tr. 16-17).

Prosecutors, after being contacted by the defense attorney for an incarcerated individual, learned Applicant told another inmate at the Spartanburg County Jail that he did, in fact, shoot his wife out of fear that she would leave him and take the children. (Tr. 17, ll. 7-18). Applicant denied ever having any such conversation, and asserted the jailhouse informant was a liar, but nonetheless entered his Alford plea. (Tr. 18-19). Counsel informed the plea court that their intentions had been to proceed to trial until they were notified about the jailhouse informant, at which time Applicant decided to accept the State's recommendation. (Tr. 19-20). Counsel acknowledged Applicant and the informant were in the same pod at the same facility during the time claimed by the State. (Tr. 20-21).

III. CURRENT APPLICATION

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons (excerpted verbatim):

1. Ineffective assistance of counsel, in that:
 - a. "Counsel for the Defendant prejudiced the Defendant, erroneously advised the Defendant to take a plea bargain that was only recommended by the State, and was not favorable to the Defendant. Based on the State's own evidence, where if the Defendant."
 - b. "Defendant's counsel was ineffective in addressing the victim's inconsistent statements."
 - c. "Defense counsel's performance was deficient . . . for having no trial strategy, not filing any motions to restrict, challenge or limit any of the alleged evidence."
 - d. "Further, counsel failed to fully investigate the case and build any type of defense. . . . Instead of compiling any defensive strategy, defendant's counsel advocated only for a plea, where further investigation of the facts would have supported a defensive strategy and the defendant's innocence." Applicant thereafter asserts additional investigation would have revealed:
 - i. "No GSR was found on defendants hands or clothes no blood found on the defendant's "Dodge" work clothes, which the victim's altered statement claimed he was wearing, and no blood was found on the defendant's work boots."

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- ii. "An unknown donor/suspect's DNA was found mixed with the victim's blood on the steering wheel of the victim's car. No evidence suggested the defendant was in the victim's vehicle found 1.5 miles away, after a k9 track and trace team attempted to trace the defendant back to the crime scene from the vehicle."
 - iii. "No human DNA was found on garage door, only animal. The victim's altered statement claimed she was shot near the garage door, which was an area inaccessible to a vehicle due to a clutter of boxes and items occupying most of the area."
 - iv. "No follow up on the lead of possible suspects fleeing the scene. No follow up on witness that believed another vehicle was behind the victim's vehicle when she looked out her window at the victim's driveway."
 - e. "Counsel was especially ineffective for allowing defendant to accept a plea offer that agreed to an illegal sentence recommendation." Applicant thereafter notes S.C. Code Ann. § 16-3-29 prohibits suspending any part of a sentence for attempted murder.
2. Inadequate prosecutorial investigation and actual innocence, in that:
- a. "The defendant argues the State credited prejudice and bias by not fully investigating the case to follow leads provided by witness to law enforcement of possible suspects fleeing the area of the victims vehicle (1.5 miles from the scene of the crime) and other possible suspects almost wrecking into witness vehicle."
 - b. "Additionally, specific DNA evidence was collected from the victim's wrecked vehicle after it was found 1.5 miles from the crime scene. DNA evidence from steering wheel of the victim's vehicle contained the victim's blood and the DNA of another donor/suspect, not the Defendant, clearly indicating that the donor/suspect stole the vehicle, wrecked it after fleeing the crime scene, and actually committed the crime against the victim, not the defendant."
 - c. "Furthermore, where officers of the Reidville Fire Department and police officers conducted a K9 track and trace to locate any possible suspects connected to the victim's vehicle, all reports state that no track or trace was found to even suggest the defendant's presence at the victim's vehicle."
 - d. "Lab technicians for the state forensics lab took samples from the hands of both the victim and the defendant and their clothes. GSR (gun shot residue) was only found on the victim's hand and the victim's clothes. No gunshot residue was found on the Defendant's hands or clothes."

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- e. "Where prejudicial character statements were made by the victim's father to investigators about the defendant. Where the Father provides that, even though the victim (his daughter) stated repeatedly to police for the course of a week after the crime that the person who attacked and shot her was not her husband (the defendant), the father insisted differently. Where the father stated to police that he never liked the Defendant and then offered to the police that the Defendant was having an affair, in an attempt to create motive for investigators. Where the father then used this information of an affair to aggravate and manipulate his daughter/the victim, who in her hospitalized condition, could do nothing about the events. Thus, the father's manipulation and information of the Defendant's affair stimulated the victim to make a completely contradictory statement to investigators, suggesting the Defendant as a suspect only after the fathers interference. The victim's new statement remains unsupported by any factual or physical evidence of the case, yet constitutes the entirety of the State's argument for a case."
- f. "If defendant had taken the victim's vehicle after committing the alleged crime, then a K9 trace would have suggested the defendant was in the vehicle, blood would have been found on the clothes the victim alleged he was wearing, GSR would have been found on the defendant's hands and clothes, and the defendant's DNA would have been found mixed with the victim's blood on the steering wheel of the victim's car, not an unknown donor/suspects. The physical and factual evidence simply [does] not support any of the above situations. If the shooting had occurred next to the garage door as the victim's altered statement claimed, then the victim's blood would have been found on the garage door as well as other items in the area. The only blood DNA found on the garage door was animal, not the victims."

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Applicant requests relief as follows:

- "Reversal of plea/sentence, new trial"

Attached to and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

IV. CONSENT TO GRANT OF POST-CONVICTION RELIEF

Though framed in the context of ineffective assistance of counsel, Applicant contends that he was improperly permitted to plead guilty in exchange for an illegal sentence. An allegation that the sentence imposed exceeds the maximum authorized by law is a cognizable claim under the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-20. A person who pleads guilty to or is convicted of attempted murder “must be imprisoned for not more than thirty years.” S.C. Code Ann. § 16-3-29. Additionally, “[a] sentence imposed pursuant to this section may not be suspended nor may probation be granted.” *Id.* Such language in a statute disallows a split sentence. State v. Johnson, 343 S.C. 693, 541 S.E.2d 855 (2001).

The Court undeniably imposed an improper split sentence on Applicant. Accordingly, the State can perceive no valid defense to the allegation that Applicant is subjected to an illegal sentence. Accordingly, the State consents to a grant of post-conviction relief *solely* on the ground that the sentence exceeds the parameters of the attempted murder statute.

V. GENERAL DENIAL

Respondent denies each allegation not expressly admitted, qualified, or explained. Further response is unnecessary in light of the single ground for relief conceded above.

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[Conclusion and signature on following page]

VI. CONCLUSION

WHEREFORE, Respondent consents to Applicant's demand for post-conviction relief for the reasons set forth in Section IV, above. Respondent requests Applicant confirm his desire for the relief consented to—vacation of the plea and sentence with a remand for a new trial—in writing before an order granting relief is issued.¹

Respectfully submitted,

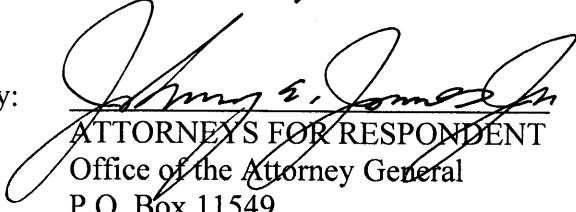
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

22 March 2019

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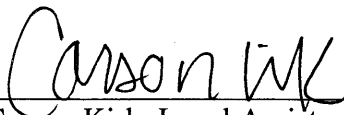
¹ A proposed consent order granting post-conviction relief is prepared and submitted to Applicant's counsel concurrent with this return.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2018-CP-42-4276
	)	
JONATHAN OLIN BATCHELOR,	)	
#375028,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville, South Carolina 29601

DATED this the 22th day of March, 2019.


 Carson Kirk, Legal Assistant
 For Respondent

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THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Indictment No. 2016-GS-42-01345
THE STATE	)	
	)	Jonathan Batchelor's
	)	Pre-Trial Brief
vs.	)	
	)	
Jonathan Batchelor	)	
_____	)	

To: The Honorable R. Keith Kelly, Presiding Judge, Seventh Judicial Circuit

The State charges Johnathan Batchelor with attempted murder. He submits the following brief to address pre-trial motions and other legal matters likely to arise during his jury trial.

I. PRE-TRIAL MATTERS.

A. Jury Selection.

The Court qualified and selected jurors on October 25, 2021. Mr. Batchelor proffers his request for *voir dire*. Ex. A. At a sidebar during jury selection, Mr. Batchelor expressly requested this Court ask questions 3, 4, 5, and 6. This Court asked questions 3 and 5 but not 4 and 6.

At another sidebar during jury selection, Mr. Batchelor moved to strike Juror Nos. 78, 112, and 282 for cause. This Court granted the motion as to Juror No. 282 but denied the motion as to Jurors No. 78 and 112. Juror No. 78 is discussed in Subsection B below. Juror No. 112 is a former law enforcement officer, current volunteer chaplain for the Spartanburg County Sheriff's Office, knows many of the law enforcement officers involved in this prosecution, and has a son who works for the South Carolina Law Enforcement Division. Mr. Batchelor pointed out Juror 112 was more forthcoming with his current connection to the Sheriff's Office during jury selection in the civil trial earlier in the day.

B. Accommodating the Hearing Impaired Juror.

During juror qualifications by the Honorable Grace Gilchrist Knie on Monday, October 25, 2021, Juror No. 78 informed the Court he is tone deaf and cannot hear unless the speaker is looking directly at him. At the conclusion of juror qualifications, Mr. Batchelor objected to Juror No. 78 as not qualified because of his hearing impairment. Judge Knie denied that motion and suggested Mr. Batchelor raise the issue as a motion to strike for cause at the time his jurors are selected.

This Court selected jurors for Mr. Batchelor's case on the afternoon of Monday, October 25th. At a sidebar, Mr. Batchelor moved to strike Juror No. 78 for cause because of his hearing impairment. The State opposed the motion. This Court denied the motion and agreed with the State that Juror No. 78's hearing impairments can be accommodated.

When Juror No. 78 was drawn as a potential juror, Mr. Batchelor had already used three of preemptory challenges and was saving his remaining two preemptory challenges for Juror Nos. 112 and 494.¹ Juror No. 78's hearing impairment notwithstanding, this juror was less objectionable than these other two jurors. Mr. Batchelor, accordingly, did not want to use a preemptory challenge on Juror No. 78, and he relies on this Court's assurance that Juror No. 78's hearing impairment can be accommodated.

Mr. Batchelor has a right to twelve jurors. S.C. Const. Art. V, § 22. Due process requires "that a defendant be tried by a "competent jury, which means a jury capable of rendering an impartial verdict, based on the evidence and the law." *Bryant v. Stephan*, 998 F.3d 128, 140 (4th

¹ Juror No. 494 is a former Highway Patrol Officer and knows most of the Spartanburg County Sheriff Deputies involved in this prosecution.

Cir.) (internal quotations omitted), *reh'g en banc granted*, 851 F. App'x 402 (4th Cir. 2021).² In *Bryant*, “the trial judge was aware of” the jurors hearing impairment, was “actively involved in ensuring” the juror “could understand the proceedings” and questioned the juror “several times as to her ability to hear.” *Id.*, at 137-38.

Mr. Batchelor, therefore, moves this Court to convene a hearing, outside the presence of the other jurors, to inquire of Juror No. 78 what accommodations he needs in order to serve as a constitutionally competent juror.

C. Motion to Dismiss.

On June 17, 2021, Mr. Batchelor moved “this Court for an order dismissing this case based on law enforcement’s destruction of all of the physical evidence in this case,” citing *State v. Cheeseboro*, 346 S.C. 526, 538-39, 552 S.E.2d 300, 307 (2001). Mr. Batchelor also calls this Court’s attention to *Arizona v. Youngblood*, 488 U.S. 51 (1988).

D. Rule 404(b), SCRE.

Pursuant to Rule 404(a) an (b), SCRE, Mr. Batchelor moves to exclude evidence of his marital infidelity as improper character evidence.

E. Mr. Batchelor’s Statements.

If the State intends to introduce evidence of any of Mr. Batchelor’s statements, then this Court should convene a hearing pursuant to *Jackson v. Denno*, 378 U.S. 368 (1964).

II. POTENTIAL EVIDENTIARY ISSUES.

A. Use of Body Worn Cameras and Dash Cameras.

Based on the discovery, it appears the State intends to introduce videotape from the body

² The Fourth Circuit convened rehearing *en banc* on October 26, 2021. <https://www.ca4.uscourts.gov/cal/internetcalOct262021ric.pdf> (last viewed Oct. 27, 2021).

worn cameras of some of the law enforcement officers who responded to this incident. Mr. Batchelor moves to exclude the statements of third parties on contained on the videotapes. If these third parties do not testify, then evidence of their statements would violate the confrontation clauses of the Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution. *Davis v. Washington*, 547 U.S. 813 (2006); *Crawford v. Washington*, 541 U.S. 36 (2004). If those witnesses testify, then the use of those statements would be limited by the South Carolina Rules of Evidence. *See Crawford*, at 59, fn. 9 (“when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements”).

B. Snitch Testimony.

Although not listed on its witness list, the State provided in discovery a two-page summary of an interview of a jailhouse informant, Dustin Tiller, and represented to the Court during a WebEx status conference on October 27, 2021 that Mr. Tiller will be a witness in Mr. Batchelor’s trial.

On March 17, 2017, Mr. Tiller entered into a plea agreement with the United States Attorney to plead guilty to one count of conspiring “to Possess with the Intent to Distribute 500 grams or more of” methamphetamine. Ex. B. Based on the offense and his criminal history, Mr. Tiller faced “a mandatory term of life imprisonment, no probation, no parole, a fine of \$20,000,000, plus a special assessment of \$100.” *Id.*, at 2. Mr. Tiller entered his guilty plea on March 23, 2017 (Ex. C), and his sentencing hearing was delayed fifteen months until June 26, 2021 (Ex. D, at 1).

Based on Mr. Tiller’s cooperation, the government moved for a downward departure and planned to recommend a sentence of 240 months. Ex. D, at 16. But, as Mr. Tiller’s attorney

candidly stated, “[T]ime creates new situations and puts new stuff into play. And that’s exactly what happened here.” *Id.*, at 26. “[B]ecause of the information that he provided related to Ms. Wells’s state case” involving Mr. Batchelor, the United States Attorney “thought it was important to go a bit lower” and recommended the United States District Court sentence Mr. Tiller to 220 months. *Id.*, at 16. Indeed, Ms. Wells appeared in the District Court and spoke on Mr. Tiller’s behalf. *Id.*, at 5-9. Based on his participation in an investigation involving drug trafficking and corruption in the South Carolina Department of Corrections, Mr. Tiller hopes the government will bring a motion under Rule 35 of the Federal Rules of Criminal procedure to further reduced his sentence. *Id.*, at 32, 34, 49, 50, 54, 55.

A wealth of research documents due process concerns surrounding jailhouse informant testimony that results in wrongful convictions. *See, e.g.*, Brandon L. Garrett, *Judging Innocence*, 108 Colum. L. Rev. 55 (2008); Alexandra Natapoff, *Beyond Unreliable: How Snitches Contribute to Wrongful Convictions*, 37 Golden Gate U. L. Rev. 107, 112 (2006); Alexandra Natapoff, *Snitching: The Institutional and Communal Consequences*, 73 U. Cin. L. Rev. 645 (2004); Ian Weinstein, *Regulating the Market for Snitches*, 47 Buff. L. Rev. 563, 577 (1999). The innocence project recommends:

At minimum, before allowing for the admissibility of jailhouse informant testimony at trial, the court should make a finding relating to reliability and consider the following factors:

- Complete criminal history of the jailhouse informant.
- Any deal, promise, inducement or benefit that the offering party has or will make in the future to the jailhouse informant.
- Time, place and substance of the accused’s statements allegedly heard by the jailhouse informant, time and place of their disclosure to law enforcement, and the names of all people who were present when the statements were made.

- Whether at any time the jailhouse informant recanted his or her statements and details of the recantation.
- Other cases in which the jailhouse informant provided testimony or information on other inmates and any benefits provided in those cases.
- Other information relevant to credibility.

Ex. E.

Mr. Batchelor, accordingly, moves for this Court to convene a hearing regarding the reliability and admissibility of Mr. Tiller's testimony and to issue an order excluding this testimony.

III. REQUEST TO CHARGE.

Mr. Batchelor will submit his requested jury instructions by separate pleading; however, he will address the following legal considerations regarding jury instructions that he anticipates will arise at trial.

A. Criminal Intent.

As will be discussed in more detail below, criminal intent will be one of the central issues for the jurors to determine. Many trial courts provide the following objectionable, jury instruction:

In order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the state for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the state beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty. There is no way medical science can dissect a person's brain and determine what the person had in mind, so the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring intent was present. It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case.

Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the defendant intended to do based on the circumstances shown to

have existed.

Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness, or an indifference to duty or to consequences that is considered by the law to be the equivalent of criminal intent.

General Sessions Jury Instructions, S.C. Judicial Branch, 2015, 47-48. This instruction is objectionable for two reasons. First, this instruction reduces the State’s burden of proof by allowing a conviction based on negligence, recklessness, or indifference. As will be discussed in Subsection B, the specific intent to kill is an element of attempted murder. Second, this jury charge instructs the jurors how to resolve questions of fact. As will be discussed in Subsection D, Mr. Batchelor objection to any jury charge that instructs the jurors how to resolve questions of fact—whether by inference or otherwise.

B. Attempted Murder is a Specific Intent Crime and Requires Express Malice.

Attempted murder “includes a ‘specific intent to kill’ as an element” of the crime.” *State v. King*, 422 S.C. 47, 63-64, 810 S.E.2d 18, 26-27 (2017). In reaching this holding, our Supreme Court looked to the Supreme Court of Nevada’s opinion in *Keys v. State*, 104 Nev. 736, 766 P.2d 270 (1988), which “distinguish[ed] the crime of attempted murder from murder by analogizing express malice to a specific intent to kill.” *King*, 422 S.C. at 56-57, 810 S.E.2d at 23. *King* adopted the following reasoning set forth by *Keys*:

Attempted murder can be committed only when the accused's acts are accompanied by *express malice*, malice in fact. One cannot attempt to kill another with implied malice because there “is no such criminal offense as an attempt to achieve an unintended result.” An attempt, by nature, is a failure to accomplish what one *intended* to do. Attempt means to try; it means an effort to bring about a desired result. Thus one cannot *attempt* to be negligent or *attempt* to have the general malignant recklessness contemplated by the legal concept, “implied malice.” One cannot be guilty of attempted murder by implied malice because implied malice does not encompass the essential specific intent to kill.

An attempt to kill with express malice is, on the other hand, completely consistent with the specific intent requirement of the crime of attempt. Express malice is the

“deliberate intention unlawfully” to kill a human. Attempted murder, then, is the attempt to kill a person with express malice, or more completely defined: Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate intention unlawfully to kill.

King, 422 S.C. at 57, 810 S.E.2d at 23 (quoting *Keys*, 766 P.2d at 273) (citations omitted) (second emphasis supplied by *King*). Our Court of Appeals reached conflicting conclusions regarding whether attempted murder requires express malice. *Compare State v. Shands*, 424 S.C. 106, 130-131, 817 S.E.2d 524, 536-537 (Ct. App. 2018) (“malice can never be implied in an attempted murder case” and “[i]n light of our supreme court's discussion in *King*, we find the State needed to prove Shands acted with express malice *and* the specific intent to kill in order to be found guilty of attempted murder.”) with *State v. Taylor*, No. 2018-000341, 2021 WL 3889977, at *2 (S.C. Ct. App. Sept. 1, 2021) (upholding implied malice instruction and stating, “When our supreme court spoke of implied malice in *King*, it was speaking of malice implied by operation of law, not of the jury's ability to infer malice based on its view of certain facts.”); however, *Taylor* recognized, If ‘implied malice’ is used to describe mere ‘malignant recklessness,’ *King* plainly holds implied malice is inconsistent with and falls short of the bar for attempted murder.” *Taylor*, at 3.

C. Circumstantial Evidence.

Mr. Batchelor requests this Court provide the circumstantial evidence instruction required by *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013). *See also State v. Herndon*, 430 S.C. 367, 845 S.E.2d 499 (2020) (failure to provide *Logan* charge required reversal); *State v. Dent*, No. 2018-001257, 2021 WL 3641728 (S.C. Ct. App. Aug. 18, 2021) (same). As discussed elsewhere in this brief, a proper circumstantial evidence instruction eliminates the need to instruct the jurors regarding inferences and other ways to resolve questions of fact.

D. Objection to Jury Charges that Instruct Jurors How to Resolve Questions of Fact.

For over a decade, our Supreme Court has prohibited trial courts from instructing jurors how to resolve legal issues. *State v. Stewart*, 433 S.C. 382, 858 S.E.2d 808 (2021) (jury may not be instructed that it may infer defendant’s knowledge or possession of drugs found on property under defendant’s control); *State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016) (instructing the jury on statute, providing that testimony of the victim need not be corroborated in prosecutions for criminal sexual conduct, was an impermissible charge on the facts and, therefore, unconstitutional); *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019) (regardless of the evidence presented at trial, a trial court shall not instruct the jury that it may infer the existence of malice when the deed was done with a deadly weapon); *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009) (jury charge instructing that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse or justify the homicide) holding extended by *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019). *See also* S.C. Const. Art. V, § 21 (“Judges shall not charge juries in respect to matters of fact, but shall declare the law.”). Given the issues involving criminal intent, Mr. Batchelor respectfully requests this Court refrain from instructing the jurors what inferences they can draw from certain evidence.

E. Spoilation of Evidence.

If this Court denies Mr. Batchelor’s motion to dismiss, then he will request an instruction on spoilation of evidence.

F. Snitch Testimony.

This Innocence Project recommends:

Jurors should be instructed to give closer scrutiny to jailhouse informant testimony and to consider specific factors that may have influenced their testimony such as:

benefits offered or provided to them, their criminal history, and their previous jailhouse informant activity.

Ex. *. Mr. Batchelor, accordingly, will request the jurors be instructed about jailhouse informant testimony, if this Court allows the State to present the testimony of Dustin Tiller. *See, e.g., Youngblood*, 488 U.S. at 59-60 (“[T]rial judge instructed the jury: ‘If you find that the State has ... allowed to be destroyed or lost any evidence whose content or quality are in issue, you may infer that the true fact is against the State's interest.’”).

IV. CONCLUSION.

For the foregoing reasons, this Court should exercise its gatekeeping function in order to ensure Johnathon Batchelor’s right to a fair trial.

IT IS SO MOVED.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.
S.C. Bar Number 66063
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Attorney for Jonathon Batchelor

October 28, 2021
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Indictment No. 2016-GS-42-01345
THE STATE	)	
	)	
	)	
vs.	)	
	)	
	)	
Jonathan Batchelor	)	
_____	)	

I certify that I have served a copy of this pleading on the State of South Carolina, pursuant to South Carolina Supreme Court Order No. 2021-08-27-01, Section (e), by emailing at copy to counsel, at counsel's AIS email address, as reflected below:

Jennifer Elizabeth Wells, Esquire
Spartanburg County
180 Magnolia Street
Spartanburg, SC 29304
jwells@spartanburgcounty.org

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

October 28, 2021
Greenwood, South Carolina

Exhibit A

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Indictment No. 2016-GS-42-01345
THE STATE	)	
	)	Jonathan Batchelor’s Request for Voir Dire
	)	
vs.	)	
	)	
Jonathan Batchelor	)	
_____	)	

Pursuant to the Sixth Amendment of the United States Constitution, Article I, Section 14 of the South Carolina Constitution, and S.C. Code Ann. § 14-7-1020, Johnathon Batchelor requests that the jurors be placed on their oath and asked questions to determine whether any potential juror “has any interest in the cause, has expressed or formed any opinion, or is sensible to any bias or prejudice.” Courts have long recognized the tricky nature of analyzing jurors’ bias. *See Smith v. Phillips*, 455 U.S. 209, 221-2 (1982) (O’Connor, J., concurring) (recognizing that jurors may be incapable of acknowledging their own bias); *Crawford v. United States*, 212 U.S. 183, 196 (1909) (“Bias or prejudice is . . . an elusive condition of the mind . . . and it might exist in the mind of one . . . who was quite positive that he had no bias, and said that he was perfectly able to decide the question wholly uninfluenced by anything but the evidence”); *United States v. Burr*, 25 F. Cas. 49, 50 (D.Va.1807) (a person under the influence of personal prejudice “is presumed to have a bias on his mind which will prevent an impartial decision of the case, according to the testimony” for such person may declare that “notwithstanding these prejudices he is determined to listen to the evidence, and be governed by it; but the law will not trust him”).

This Court’s *voir dire* should be guided by *Skilling v. United States*, 561 U.S. 358 (2010), where the District Court’s *voir dire* included questions to determine whether the prospective jurors had formed any opinions about the accused and issues involved in the case. The Court individually

questioned all jurors providing affirmative responses. The Court allowed counsel for the parties to ask follow up questions.

Mr. Batchelor respectfully submits the following proposed *voir dire*:

1) Has anyone read or heard anything at all about this case, whether it was prior to today or while you have been at the courthouse for jury duty? This includes but is not limited to television, newspapers, and Internet news sources. It also includes social media such as Facebook, Instagram, Twitter, TikTok, and Snapchat.

a) If so, please come forward and inform the Court about what you read or heard.

b) Based on your knowledge of the case, have you formed an opinion about the facts of this case?

2) You have heard allegations that Mr. Batchelor is charged with attempted murder. Does anyone suspect Mr. Batchelor is guilty of these crimes just because he is accused of it? If so, please come forward and explain.

3) You will hear testimony about a person being shot at her home. Would hearing that testimony so affect you that you would not be able to remain fair and impartial? If so, please come forward and explain.

4) You will hear testimony and may see evidence of serious bodily injuries. Is there anything about the nature of serious bodily injuries that would so affect you that you would not be able to remain fair and impartial? If so, please come forward and explain.

5) You may hear testimony about marital infidelity. Do you have such strong beliefs about marital infidelity that you would not be able to remain fair and impartial? If so, please come forward and explain.

6) You may see and hear audiotape and videotape that uses profanity. Is there anything

about the nature of profanity that would so affect you that you would not be able to remain fair and impartial? If so, please come forward and explain.

7) After reading the names of the state's potential witnesses and the potential witnesses listed on the attached witness list, please ask the potential jurors the following question:

a) Does any potential juror otherwise know any of the potential witnesses in this case, or do you know of any of the potential witnesses through your involvement in the community?¹

b) If so, then please explain.

c) Based upon your relationship, has that caused you to form an opinion regarding their potential testimony? If so, please explain.

d) Does any potential juror know anyone that works for the Seventh's Circuit Solicitor's Office including but not limited to the lawyers trying this case?

i) If so, then please explain.

ii) Based upon your relationship, has that caused you to form an opinion regarding their credibility or involvement in this case? If so, please explain.

8) There are some crimes that make people so angry that just because a person is accused of the crime, they believe he is guilty. Would you agree with that? If so, please come forward and explain.

¹ In *State v. Guillebeaux*, 362 S.C. 270, 607 S.E.2d 99 (2004), after the jury trial, the defendant learned of evidence that there was a relationship between one of the jurors and the state's most important witness, who was the confidential informant claiming to have purchased drugs from the defendant. While the nature of the relationship was disputed, the juror admitted that she knew the informant well enough to say "hi" in passing on the street, that she had attended high school worked at his brother's filling station, which is across the street from her hairdresser." *Id.* 607 S.E.2d at 101. This information is the type of information that would influence the decision to exercise a preemptory strike. The Court of Appeals, however, reasoned "juror was not asked during voir dire if she knew of any of the witnesses, she was asked if she had any type of social relationship with Smith." *Id.* 607 S.E.2d t 102.

9) Has anyone, a member of your family, or a close friend ever been a victim of a crime of violence, including but not limited to murder, attempted murder, any degree of assault and battery, domestic violence, child abuse, sexual assault, kidnapping, robbery? This question applies regardless of whether the incident was reported to law enforcement. If so, please come forward and explain.

10) Is there anything about your home, workplace, or anywhere you spend a lot of time that causes you to fear for your safety? If so, please come forward and explain.

11) Is anyone a member of an organization or ever donated money to an organization that promotes awareness of law enforcement, sexual assault, child abuse, or domestic violence, or victims' rights? Such organizations include but are not limited to MADD, SADD, DARE, CAVE, the South Carolina Trooper Association, the County Sheriffs Association, the South Carolina Law Enforcement Officers Association, and the Fraternal Order of Police. If so, please come forward and explain.

12) Has any member of the jury panel attended any other advocacy meetings concerning promotion of law enforcement or awareness of sexual assault, child abuse, or domestic violence or donated to any such group? If so, please come forward and explain.

13) Has any potential juror, member of your family, or close friend ever been a civilian or military law enforcement officer? If so, please come forward and explain.

14) Have you ever applied for a job with any Solicitor's Office or law enforcement agency? If so, please come forward and explain.

15) Do you know anyone who works for any law enforcement agency in the Seventh Judicial Circuit, which includes Spartanburg and Cherokee Counties? If so, please stand.

16) Has anyone ever campaigned for or made a political contribution to Barry Barnette

or Chuck Wright? If so, please come forward and explain.

17) Has anyone ever “liked” or followed a Facebook page, Twitter feed, or other social media of any law enforcement organization. If so, please come forward and explain.

18) Would you be inclined to give more weight to the testimony of a police officer merely because the witness is a police officer? If so, please come forward and explain.

19) If a witness cried in his or her testimony, would you be able to set aside you own emotion or sympathy in order to make a decision based on the evidence presented during the trial of this case? If not, please come forward and explain.

20) There are some crimes that make people so angry that just because a person is accused of the crime, they believe he is guilty. Does that statement apply to you? If so, please come forward and explain.

21) Who among you just don’t like lawyers, particularly lawyers who represent people accused of a crime in cases like this? If so, please come forward and explain.

IT IS SO MOVED.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.
S.C. Bar Number 66063
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Attorney for Jonathon Batchelor

October 25, 2021
Greenwood, South Carolina

Exhibit B

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UNITED STATES OF AMERICA

Criminal No: 6:16-707

v.

PLEA AGREEMENT

DUSTIN TILLER

General Provisions

This PLEA AGREEMENT is made this 17th day of March, 2017, between the United States of America, as represented by United States Attorney Beth Drake, Assistant United States Attorney Andrew B. Moorman, Sr.; the Defendant, Dustin Tiller, and Defendant's Attorney, James Bannister, Esquire.

IN CONSIDERATION of the mutual promises made herein, the parties agree as follows:

1. The Defendant agrees to plead guilty to Count 1 of the Indictment now pending.

a. Count 1 charges that beginning at a time unknown to the Grand Jury, but beginning at least in 2015, within the District of South Carolina and elsewhere, the Defendant and others conspired to Possess with the Intent to Distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, a schedule

II controlled substance, in violation of Title 21, United States Code, Section 841(a), (b)(1)(A), and 846.

In order to sustain its burden of proof as to Count 1, the Government is required to prove the following:

- ONE: The conspiracy described in the indictment was willfully formed and was existing at or on about the alleged time; and,
- TWO: The accused willfully became a member of the conspiracy.

Possible Penalties Pursuant to Count 1- in a case involving 500 grams or more of mixture or substance containing methamphetamine and two or more prior felony drug convictions - a mandatory term of life imprisonment, no probation, no parole, a fine of \$20,000,000, plus a special assessment of \$100.

2. The Defendant understands and agrees that monetary penalties [i.e., special assessments, restitution, fines and other payments required under the sentence] imposed by the Court are due immediately and subject to enforcement by the United States as civil judgments, pursuant to 18 USC § 3613. The Defendant also understands that payments made in accordance with installment schedules set by the Court are minimum payments only and do not preclude the government from seeking to enforce the judgment against other assets

of the defendant at any time, as provided in 18 USC §§ 3612, 3613 and 3664(m).

The Defendant further agrees to enter into the Bureau of Prisons Inmate Financial Responsibility Program if sentenced to a term of incarceration with an unsatisfied monetary penalty. The Defendant further understands that any monetary penalty imposed is not dischargeable in bankruptcy.

- A. Special Assessment: Pursuant to 18 U.S.C. §3013, the Defendant must pay a special assessment of \$100.00 for each felony count for which he is convicted. This special assessment must be paid at or before the time of the guilty plea hearing.
- B. Restitution: The Defendant agrees to make full restitution under 18 U.S.C. § 3556 in an amount to be determined by the Court at the time of sentencing, which amount is not limited to the count(s) to which the Defendant pled guilty, but will include restitution to each and every identifiable victim who may have been harmed by scheme or pattern of criminal activity, pursuant to 18 U.S.C. § 3663. The Defendant agrees to cooperate fully with the Government in identifying all victims.

C. Fines: The Defendant understands that the Court may impose a fine pursuant to 18 U.S.C. §§ 3571 and 3572.

3. Provided the Defendant complies with all the terms of this Agreement, the United States agrees to move to dismiss the remaining counts of the Indictment [and any other indictments under this number] at sentencing. The Defendant understands that the Court may consider these dismissed counts as relevant conduct pursuant to §1B1.3 of the United States Sentencing Guidelines.
4. The Defendant understands that the obligations of the Government within the Plea Agreement are expressly contingent upon the Defendant's abiding by federal and state laws and complying with any bond executed in this case. In the event that the Defendant fails to comply with any of the provisions of this Agreement, either express or implied, the Government will have the right, at its sole election, to void all of its obligations under this Agreement and the Defendant will not have any right to withdraw plea of guilty to the offense(s) enumerated herein.

5. The Defendant understands that the matter of sentencing is within the sole discretion of the Court and that the sentence applicable to Defendant's case will be imposed after the Court considers as advisory the United States Sentencing Commission Guidelines, Application Notes and Policy Statements, as well as the factors set forth in Title 18, United States Code, Section 3553(a). The Defendant also understands that Defendant's sentence has not yet been determined by the court, and that any estimate of a probable sentencing range Defendant may have received from Defendant's attorney, the Government or the United States Probation Office is only a prediction, not a promise, and is not binding on the Government, the Probation Office or the Court. The Defendant further understands that the Government retains the right to inform the Court of any relevant facts, to address the Court with respect to the nature of the offense, to respond to questions raised by the Court, to correct any inaccuracies or inadequacies in the presentence report, to respond to any statements made to the Court by or on behalf of the Defendant and to summarize all evidence which would have been presented at trial to establish a factual basis for the plea.

6. The Defendant agrees that all facts that determine his offense level under the Guidelines and pursuant to any mandatory minimum (including facts that support any specific offense characteristic or other enhancement or adjustment) can be found by the court at sentencing by a preponderance of the evidence standard and the court may consider any reliable evidence, including hearsay. By executing this Agreement, the Defendant understands that he waives any argument that facts that determine his offense level under the Guidelines and pursuant to any mandatory minimum should be alleged in an indictment and found by a jury beyond a reasonable doubt.

Cooperation and Forfeiture

7. The Defendant agrees to be fully truthful and forthright with federal, state and local law enforcement agencies by providing full, complete and truthful information about all criminal activities about which he has knowledge. The Defendant must provide full, complete and truthful debriefings about these unlawful activities and must fully disclose and provide truthful information to the Government including any books, papers, or documents or any other items of evidentiary value to the investigation. The Defendant must also testify fully and truthfully before any

grand juries and at any trials or other proceedings if called upon to do so by the Government, subject to prosecution for perjury for not testifying truthfully. The failure of the Defendant to be fully truthful and forthright at any stage will, at the sole election of the Government, cause the obligations of the Government within this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the Government within this Agreement become null and void due to the lack of truthfulness on the part of the Defendant, the Defendant understands that:

- a. the Defendant will not be permitted to withdraw plea of guilty to the offenses described above;
- b. all additional charges known to the Government may be filed in the appropriate district;
- c. the Government will argue for a maximum sentence for the offense to which the Defendant has pleaded guilty; and
- d. the Government will use any and all information and testimony provided by the Defendant pursuant to this Agreement, or any prior proffer agreements, in the prosecution of the Defendant of all charges.

8. The Defendant agrees to submit to such polygraph examinations as may be requested by the Government and agrees that any such examinations shall be performed by a polygraph examiner selected by the Government. Defendant further agrees that refusal to take or failure to pass any such polygraph examination to the Government's satisfaction will result, at the Government's sole discretion, in the obligations of the Government within the Agreement becoming null and void.
9. The Government agrees that any self-incriminating information provided by the Defendant as a result of the cooperation required by the terms of this Agreement, although available to the Court, will not be used against the Defendant in determining the Defendant's applicable guideline range for sentencing pursuant to the U.S. Sentencing Commission Guidelines. The provisions of this paragraph shall not be applied to restrict any such information:
- a. known to the Government prior to the date of this Agreement;
 - b. concerning the existence of prior convictions and sentences;

- c. in a prosecution for perjury or giving a false statement; or
- d. in the event the Defendant breaches any of the terms of the Plea Agreement.

10. Provided the Defendant cooperates pursuant to the provisions of this Plea Agreement, and that cooperation is deemed by the Government as providing substantial assistance in the investigation or prosecution of another person who has committed an offense, the Government agrees to, at the Defendant's selection, EITHER:

- (1) move the Court for a downward departure or reduction of sentence pursuant to United States Sentencing Guidelines §5K1.1, Title 18, United States Code, § 3553(e) or Federal Rule of Criminal Procedure 35(b). The Defendant understands that any such motion by the Government is not binding upon the Court, and should the Court sentence the Defendant within the Guidelines, to the maximum penalty prescribed by law or refuse to reduce the sentence imposed, the Defendant will have no right to withdraw his plea; OR
- (2) withdraw at sentencing one enhancement(s) contained in the Information previously filed pursuant to 21 U.S.C. § 851 seeking an enhanced minimum penalty

based on two prior felony drug conviction(s), such that the Defendant should be held accountable for one prior felony drug conviction(s) described in that Information.

11. The Defendant agrees to voluntarily surrender to, and not to contest the forfeiture by, the United States of America of any and all assets and property, or portions thereof, owned or purchased by the Defendant which are subject to the forfeiture pursuant to any provision of law and which are in the possession or control of the Defendant or Defendant's nominees. The Defendant further agrees to prevent the disbursement, relocation or encumbrance of any such assets and agrees to fully assist the government in the recovery and return to the United States of any assets, or portions thereof, as described above, wherever located. The Defendant further agrees to make a full and complete disclosure of all assets over which Defendant exercises control and those which are held or controlled by nominees. The Defendant further agrees to submit to a polygraph examination on the issue of assets if it is deemed necessary by the United States.

12. The Defendant agrees to forfeit all interests in the properties as described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title and the signing of any other documents necessary to effectuate such transfers. The Defendant agrees not to object to any civil forfeiture proceedings brought against these properties pursuant to any provision of law and the Defendant further understands that any such civil proceedings may properly be brought at any time before or after acceptance of Defendant's guilty plea in this matter and agrees to waive any double jeopardy claims he may have as a result of the forfeiture of these properties as provided for by this Agreement.

Merger and Other Provisions

13. The Defendant stipulates and agrees that he has two prior felony drug conviction(s) that has/have become final and that the Attorneys for the Government have filed an Information pursuant to 21 U.S.C. § 851 which subjects him to a mandatory minimum term of imprisonment of life on Count 1 . The Defendant further stipulates and agrees that this paragraph and the Information that has been filed pursuant thereto fulfills the requirements of § 851,

including service, and constitutes adequate and sufficient notice of a prior felony drug conviction for purposes of that statute. The Defendant agrees to not contest the Information that has been filed pursuant to 21 U.S.C. § 851 in accordance with this paragraph.

14. The Defendant represents to the court that he has met with his attorney on a sufficient number of occasions and for a sufficient period of time to discuss the Defendant's case and receive advice; that the Defendant has been truthful with his attorney and related all information of which the Defendant is aware pertaining to the case; that the Defendant and his attorney have discussed possible defenses, if any, to the charges in the Indictment including the existence of any exculpatory or favorable evidence or witnesses, discussed the Defendant's right to a public trial by jury or by the Court, the right to the assistance of counsel throughout the proceedings, the right to call witnesses in the Defendant's behalf and compel their attendance at trial by subpoena, the right to confront and cross-examine the government's witnesses, the Defendant's right to testify in own behalf, or to remain silent and have no adverse inferences drawn from silence; and that the Defendant, with the advice of counsel, has

weighed the relative benefits of a trial by jury or by the Court versus a plea of guilty pursuant to this Agreement, and has entered this Agreement as a matter of the Defendant's free and voluntary choice, and not as a result of pressure or intimidation by any person.

15. The Defendant is aware that 18 U.S.C. § 3742 and 28 U.S.C. § 2255 afford every defendant certain rights to contest a conviction and/or sentence. Acknowledging those rights, the Defendant, in exchange for the concessions made by the Government in this Plea Agreement, waives the right to contest either the conviction or the sentence in any direct appeal or other post-conviction action, including any proceedings under 28 U.S.C. § 2255. (This waiver does not apply to claims of ineffective assistance of counsel or prosecutorial misconduct raised pursuant to 28 U.S.C. § 2255, or future changes in the law that affect the defendant's sentence.) This Agreement does not affect the rights or obligations of the Government as set forth in 18 U.S.C. § 3742(b). Nor does it limit the Government in its comments in or responses to any post-sentencing matters.

16. The Defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.
17. The parties hereby agree that this Plea Agreement contains the entire agreement of the parties; that this Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement shall not be binding on any party until the Defendant tenders a plea of guilty to the court having jurisdiction over this matter; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements, whether made prior to, contemporaneous with or after this Agreement, are null and void.

3/16/17
Date


DUSTIN TILLER, DEFENDANT


JAMES BANNISTER, ESQUIRE,
ATTORNEY FOR DEFENDANT

R. 62

3/23/17
Date

BETH DRAKE
UNITED STATES ATTORNEY

Andrew B. Moorman, Sr.
ANDREW B. MOORMAN, SR. (#10013)
ASSISTANT UNITED STATES ATTORNEY

Exhibit C

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

UNITED STATES OF AMERICA

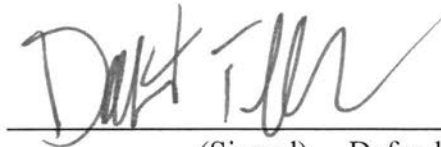
vs.

CASE NO. 6:16-707-JMC-1

DUSTIN TILLER

PLEA

The Defendant, DUSTIN TILLER, acknowledges receipt of a copy of the indictment and after arraignment pleads guilty in open court to count 1.

A handwritten signature in black ink, appearing to read "Dustin Tiller", is written over a horizontal line.

(Signed) Defendant

Greenville, South Carolina
March 23, 2017

Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UNITED STATES OF AMERICA,	)	
	)	June 26, 2018
	)	
- versus -	)	Greenville, SC
	)	
DUSTIN TILLER,	)	6:16-707-1
	)	
Defendant.	)	

TRANSCRIPT OF SENTENCING

BEFORE THE HONORABLE J. MICHELLE CHILDS
UNITED STATES DISTRICT JUDGE, presiding

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

For the Government: ANDREW B. MOORMAN, AUSA
US Attorney's Office
55 Beattie Place, Ste. 700
Greenville, SC 29601

For the Defendant: JAMES W. BANNISTER, ESQ.
Bannister and Wyatt
PO Box 10007
Greenville, SC 29603

Court Reporter: KAREN E. MARTIN, RMR, CRR
PO Box 835
Charleston, SC 29402

Proceedings reported by stenographic court reporter.
Transcript produced with computer-aided transcription
software.

Karen E. Martin, RMR, CRR
US District Court
District of South Carolina

1 Tuesday, June 26, 2018

2 (WHEREUPON, court was called to order at 1:30 p.m.)

3 THE COURT: Government, you may call your case.

4 MR. MOORMAN: May it please the Court, Your
5 Honor? This is Case No. 6:16-707, The United States of
6 America vs. Dustin Allen Tiller. Representing Mr. Tiller
7 is Mr. Jim Bannister.

8 THE COURT: Okay.

9 Madam Clerk, please have Mr. Tiller sworn in.

10 THE CLERK: Mr. Tiller, please raise your right
11 hand to be sworn. Please state your full name for the
12 record.

13 THE DEFENDANT: Dustin Allen Tiller.

14 (WHEREUPON, the defendant was sworn.)

15 THE DEFENDANT: Yes, ma'am.

16 THE CLERK: Thank you.

17 THE COURT: Okay. We are here for Mr. Tiller's
18 sentencing.

19 And Mr. Tiller, have you had the opportunity to
20 go over your Presentence Investigation Report with your
21 attorney?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Okay. And so you pled guilty to
24 Count 1 of the indictment in March of 2017 pursuant to a
25 written plea agreement. And that count was a single count

1 for conspiracy to possess with intent to distribute
2 methamphetamine, correct?

3 **THE DEFENDANT:** Yes, ma'am.

4 **THE COURT:** Okay. And I'm aware that the
5 Government has filed a motion for downward departure and
6 that your attorney has filed a sentencing memorandum as
7 well. Other than that, are there going to be any
8 objections to the Presentence Investigation?

9 **MR. BANNISTER:** No, Your Honor, there will not.

10 **THE COURT:** Okay. All right. And then that
11 having been stated, I'll adopt it in full.

12 Your Base Offense Level, then, a 36. Four
13 levels were added because you were an organizer or leader
14 of criminal activity that involved five or more
15 participants or was otherwise extensive. And then two
16 levels were given back to you for accepting
17 responsibility, followed by an additional level for a
18 timely guilty plea and leading to a Total Offense Level of
19 37. Is that what you understand?

20 **THE DEFENDANT:** Yes, ma'am.

21 **THE COURT:** Okay. And then with respect to your
22 calculations, I'll remind you that under the statute you
23 would be facing a life imprisonment sentence because you
24 had an 851 enhancement; followed by supervised release of
25 at least ten years; not eligible for probation; a

1 \$20 million fine, again, per the 851 enhancement; and a
2 special assessment fee of \$100.

3 Based on the guideline provisions your Total
4 Offense Level was 37. You have a Criminal History
5 Category of VI. Being designated as a career offender,
6 probation still not eligible, but the guideline would also
7 still recommend life imprisonment based on the statute,
8 followed by ten years of supervised release. No fine
9 calculated due to your inability to pay. Restitution is
10 not owed. And then you would have a hundred dollar
11 special assessment fee.

12 Is that what you understand?

13 **THE DEFENDANT:** Yes, ma'am.

14 **THE COURT:** Okay. All right. You can have a
15 seat right now. I'm going to hear from the Government
16 first, you know, just generally with respect to the case,
17 sentencing factors, and its motion.

18 **MR. MOORMAN:** Thank you, Your Honor.

19 Your Honor, the Government has filed a motion
20 for downward departure pursuant to 5K1.1 and 18 USC
21 Section 3553(e). Your Honor, Mr. Tiller has served on
22 Special Assistant US Attorney Jenny Wells a subpoena for
23 the purpose of relaying to Your Honor information that
24 Mr. Tiller provided in the context of a state prosecution
25 she was handling. If Your Honor would permit me, I would

1 like to defer to Ms. Wells or allow Mr. Bannister to ask
2 her any questions he would like about that cooperation.
3 It matters not to me.

4 **MR. BANNISTER:** Yes, we'd like Ms. Wells to go
5 ahead and go forward since she's got a sick child and
6 we've got her here against her wishes at this point.

7 **THE COURT:** Okay. Thank you.

8 **MR. BANNISTER:** So we'd like to get her in and
9 then release her from the subpoena if that's okay with the
10 Court.

11 **THE COURT:** Okay.

12 Ms. Wells?

13 **MS. WELLS:** Thank you, Your Honor. May it
14 please the Court? Can I just talk from here?

15 **THE COURT:** Yes, that's fine.

16 **MS. WELLS:** Your Honor, I -- as the Court well
17 knows -- has handled cases in both the federal and the
18 state system. And I handle cases in the state system in
19 the Seventh Judicial Circuit, Solicitor Barry Barnette's
20 circuit.

21 I handled a case -- was it -- when I started in
22 the office back in August of 2016, I was assigned the case
23 of State of South Carolina vs. Johnathan Batchelor.
24 Mr. Batchelor had been charged with attempted murder in
25 relation to a domestic assault of his wife. His wife

1 was -- Mr. Batchelor claimed his wife had been found in
2 their side yard of their residence and that he found her
3 there after he'd taken a shower. That she had been shot
4 and he didn't know anything about it.

5 Ms. Batchelor -- when the Spartanburg County
6 Sheriff's Office arrived, Ms. Batchelor had been shot
7 multiple times to include being shot in the head and in
8 the -- in the face and the head. She was -- she was alert
9 and speaking at the time that officers arrived. They
10 asked her who did it. Mr. Batchelor was standing right
11 there. She said, I don't know.

12 She was transported to the hospital. And at
13 that time, her brain swelling became so significant that
14 she had to be intubated and placed into ICU. Her parents
15 were told at that point that she would not survive but she
16 did.

17 And later she was able to identify Mr. Batchelor
18 as the person who shot her. However, Mr. Batchelor
19 refused to plead guilty. Mr. Batchelor was having an
20 extramarital affair and he -- which officers discovered,
21 not only by his own admission, but also when they served a
22 search warrant at his residence and found him naked with
23 his mistress. Mr. Batchelor's defense was this, that his
24 wife Stephanie had made this up to get back at him for the
25 extramarital affair, and he refused to plead guilty. I

1 made him an offer of 30 years, suspended, I think
2 initially, to 18 years in the Department of Corrections.
3 He rejected that.

4 We were set to go to trial in September of 2017.
5 And he was unable to go to trial at that time because his
6 counsel was sent to assist on the coast of South Carolina
7 with some hurricane damage, he's part of the National
8 Guard. The case was then set for a date certain the first
9 term of General Sessions Court before Judge Derham Cole in
10 January of this year.

11 Just -- I believe it was in December of 2018,
12 Mr. Bannister -- or might have been just before that,
13 might have been Novem -- around Thanksgiving that
14 Mr. Bannister reached out to me, told me he thought he
15 might have some information that would be helpful in our
16 prosecution of Mr. Batchelor.

17 He -- we eventually scheduled an interview with
18 Mr. Tiller. Mr. Tiller and Mr. Batchelor were housed in
19 the same pod in the Spartanburg County Detention Center.
20 Mr. Tiller ran a Bible study in that pod and he -- Mr. --
21 which Mr. Batchelor attended. During the course of
22 conversations in and around that Bible study, eventually
23 Mr. Bachelor came to tell Mr. Tiller about the events of
24 that evening.

25 Mr. Tiller related those to myself and

1 Investigator William Gary with the Spartanburg County
2 Sheriff's Department, and Mr. Tiller was able to tell us
3 information that the general public would not have had
4 about the murder -- or about the attempted murder, about
5 some of the details around the scene that were not
6 published.

7 We immediately turned that information over to
8 Mr. Moore. And shortly thereafter, Mr. Batchelor -- we
9 actually went in the morning of -- believing Mr. Batchelor
10 might enter a guilty plea but not sure, but Mr. Batchelor
11 told his attorney that, based on the information
12 Mr. Tiller had provided, that he was going to enter a
13 guilty plea. And he did enter a guilty plea to attempted
14 murder before Judge Cole the morning of trial.

15 And I'm happy to answer any questions either
16 Mr. Moorman or the Court or Mr. Bannister may have.

17 **MR. MOORMAN:** Your Honor, I have no questions.

18 **MR. BANNISTER:** I -- I would say that's
19 absolutely what happened. Thank you, Your Honor.

20 **THE COURT:** Okay.

21 **MS. WELLS:** And Your Honor --

22 **MR. MOORMAN:** May Ms. Wells be excused?

23 **THE COURT:** Absolutely.

24 **MS. WELLS:** Thank you. I was just going to say
25 Mr. Tiller was willing to testify at trial. I did want to

1 add that. And we knew that -- and I do know that his
2 willingness to testify is what led to Mr. Batchelor's
3 guilty plea.

4 **THE COURT:** Okay. Thank you.

5 **MS. WELLS:** Thank you very much, Your Honor.
6 Thanks, y'all.

7 **MR. MOORMAN:** So, Your Honor, that was one part
8 of the downward departure motion or one basis for the
9 motion for downward departure. There were a couple of
10 other bases.

11 One, and this is contained in the Government's
12 motion for downward departure, on February the 24th, 2017,
13 Mr. Tiller made himself available to be debriefed by DEA
14 agents and just provided a wealth of information about
15 co-defendants in the case, co-conspirators, quantities of
16 methamphetamine that were distributed during the course of
17 the conspiracy, locations where money, drug proceeds were
18 delivered, just a lot of information about co-conspirators
19 and co-defendants and the workings of the conspiracy.
20 Much of this information made its way into Presentence
21 Reports of co-defendants.

22 The other information he provided related to a
23 companion case, a case that actually Your Honor heard
24 hearings in previously today, The United States of America
25 vs. Josh Peace, et al. There is a little bit of overlap

1 between those two cases. And as fate would have it,
2 Mr. Tiller was housed with Mr. Peace, the lead defendant
3 in that case, during the pendency of both of these cases.

4 During their housing together, I've been told,
5 and I have no reason to disagree with this, that
6 Mr. Tiller encouraged Mr. Peace to forfeit substantial
7 sums of money to the Government that constituted drug
8 proceeds. And in fact I've communicated with
9 Mr. Peace's -- and so has Mr. Bannister -- with
10 Mr. Peace's defense attorney, Mr. Beattie Ashmore. And
11 Mr. Beattie Ashmore confirmed to me that Mr. Tiller
12 encouraged very strongly Mr. Peace to forfeit proceeds.

13 Before I came over today I looked in our system.
14 Mr. Bannister said it's about \$750,000. By our count it's
15 roughly \$531,000. But there are also vehicles that are --
16 that are -- that were forfeited as a result I believe of
17 Mr. Tiller's encouragement. So we're in the same
18 ballpark, a substantial amount of money.

19 In his sentencing memorandum, Mr. Bannister
20 talks about representations that Mr. Tiller made to
21 Mr. Peace that Mr. Peace could trust the Government to do
22 the right thing. I would defer to Mr. Bannister to talk
23 more fully about whatever that advice was.

24 In addition, Mr. Tiller also provided
25 information to law enforcement that led to the seizure of

1 approximately \$40,000 that was buried at a co-defendants'
2 residence or a residence associated with that
3 co-defendant. This also -- this information also was
4 provided while Mr. Tiller was incarcerated in this case.

5 Mr. Tiller also -- and I -- I do believe that
6 this is accurate. Mr. Tiller also, I believe, strongly
7 encouraged Co-defendant Christine Wellwood to plead
8 guilty.

9 And the reason why I say that is because in
10 talking with Mr. Wise, Mr. Wise was setting up a defense
11 that Ms. Wellwood had a lack of knowledge as to the fact
12 that the conspiracy involved methamphetamine, instead it
13 involved K2. And that was a defense that I think Mr. Wise
14 was going to try to articulate at -- at a trial. The
15 Government was not really particularly concerned about
16 that defense. But in talking with Mr. Bannister, I
17 believe that Mr. Wise and Ms. Wellwood were encouraged to
18 think better of that defense or trying to assert that
19 defense at trial. And I think that that -- that advice
20 prompted Ms. Wellwood to plead guilty. Also, Mr. Tiller
21 expressed a willingness to testify should we ask him --
22 should we have asked him to do so.

23 The only other part of the cooperation,
24 there's -- there's maybe some slight difference. I
25 believe Mr. Tiller probably encouraged Mr. Peace to plead

1 guilty to mandatory life in prison. I've reached out to
2 Mr. Ashmore. He acknowledges the encouragement. I can't
3 represent to Your Honor that that was the tipping point.
4 But nonetheless, I am confident that Mr. Tiller did
5 encourage Mr. Peace to plead guilty.

6 So that would be sort of the guts of the
7 cooperation and the basis -- or the bases for the motion
8 for the downward departure.

9 Judge, very -- this is a -- this is a very
10 challenging case, especially Mr. Tiller. And the reason
11 why I mention this is that Mr. Tiller, of all the
12 defendants I've cooperated, he's among the most prolific
13 drug distributor I've prosecuted.

14 And when we -- when this case was made, Special
15 Agent Rajae and I had some pretty significant, important
16 discussions about what we do with Mr. Tiller. In other
17 words, do we encourage Mr. Tiller to cooperate? Or do we
18 say that we're not going to have any dialogue about
19 cooperation? Mr. Bannister got in the case. And his
20 cooperation -- or his participation was significant. But
21 Your Honor, we -- we -- the Government made the decision
22 to allow Mr. Tiller to cooperate as opposed to not make
23 him any offers and go to trial.

24 A big part of that decision making was, quite
25 honestly, the confidence the Government has in Your Honor,

1 having been before Your Honor in similarly -- similar
2 cases with the exposure as what it is in this case, the
3 confidence the Government has in Your Honor in fashioning
4 a sentence that is just under all the circumstances.

5 And so to help you do that, Your Honor, I want
6 to talk a little bit about Mr. Tiller, who he is.

7 In the PSR, it lays out the drug weight that's
8 assignable to Mr. Tiller. He did not object to that
9 finding. What I think is really fascinating about
10 Mr. Tiller, besides the -- you know, there's a lot
11 fascinating. And you've seen the -- you've seen the --
12 how prolific he is over a number of years, the different
13 charges, the different sentences, the conspiracy
14 convictions, just the activity is pervasive and it
15 doesn't -- it doesn't stop.

16 One thing I did, though, in preparation for the
17 sentencing hearing, I went through and I looked at
18 debriefings of co-defendants. And I thought about -- or I
19 set out to try to determine all the co-defendants who
20 Dustin Tiller recruited and/or directed personally. And
21 by that, I mean he spoke with them personally and directed
22 them. It wasn't just he knew somebody who got them to do
23 something. It's Dustin Tiller having direct communication
24 and direction.

25 We have Christine Wellwood. We have Stacy Hall.

1 We have Paul Schaefer. We have Britt Moon. We have Jimmy
2 Hallums. We have Travis Robinson. We have Tyrone Platt,
3 Annie Marie Stone, Brad Lay, Lisa Machilaski. We have --
4 we also have South Carolina Department of Corrections
5 employees who he directed.

6 By the way, Your Honor, I did not mention that,
7 he did provide information as related -- as it relates to
8 employees, guards working in the South Carolina Department
9 of Corrections. However, that information -- the fruits
10 of that information have not yet -- we can't know yet
11 because that investigation is still ongoing. So I'm not
12 including that as -- as a basis for the Government's
13 downward departure motion right now. He provided
14 information, but we don't know yet where that's going to
15 go.

16 So when you, when you think about how -- I don't
17 know how else to say it -- how talented must someone be to
18 be able, from prison, to get people, both inside and
19 outside the prison, both serving sentences in prison,
20 working for the prison, and having jobs on the outside to
21 do his bidding, that is an incredibly significant skill
22 Mr. Tiller has. And that skill allowed him to run an
23 extremely efficient drug organization.

24 That skill has also allowed him to appear before
25 Your Honor in a much more favorable setting because he was

1 able to obtain information from individuals with whom he
2 interacted. But I mention that because it is incredibly
3 important, I think.

4 If you try to look at what is the -- sort of,
5 what is Dustin Tiller's significance in the drug trade?
6 What is the -- sort of the threat he poses? It's his
7 ability to get people to do things he wants them to do.
8 Bottom line. And I think that is -- that is very
9 significant.

10 In fashioning what would be the Government's
11 recommendation, the Government initially was going to
12 recommend for Your Honor's consideration 240 months. That
13 was the initial recommendation. The Government is now
14 before Your Honor recommending 220 months.

15 Now, I want to come back to that in just a
16 second. One other thing I want to say about the -- about
17 the -- about the talent he has to get people to do what he
18 wants them to do, just one example, take -- not even going
19 into the drug trade and the distribution or gathering of
20 drug proceeds, but one example stands out.

21 Stacy Hall, in her debriefing, talks about how
22 she literally shopped for Dustin at Dustin's request,
23 bought clothes for a third party, for another female,
24 bought clothes and a ring. And while she was shopping,
25 according to Ms. Hall, she had some app that allowed

1 Dustin to see where she was in the store while he was
2 using a contraband cell phone in prison. So that
3 manipulation extends beyond sort of a business
4 transaction. I mean, we have -- we have Mr. Tiller
5 literally directing almost every facet of activity from
6 the inside to people on the outside. So I think that's a
7 good example of how -- of that sort of talent he has to
8 get people.

9 Anyway, going back to the Government's
10 recommendation, the Government is recommending 220 months.
11 This is the longest -- as far as I can remember, I've
12 never recommended this high of a sentence on a person on a
13 departure for mandatory life. I was initially going to
14 recommend 240 months. But because of the information that
15 he provided related to Ms. Wells' state case, I thought it
16 was important to go a little bit lower, because that was a
17 tremendously important piece of information that put that
18 man in jail who was clearly a danger both to his wife and
19 to society as a whole. So I think that was extremely
20 significant. And so that's why the recommendation is
21 under 220 months.

22 Mr. Bannister has made a request that that
23 sentence be backdated to October the 2nd, 2014. The
24 Government has no opposition to that whatsoever.

25 Also, the Government has no opposition should

1 Your Honor want to run it concurrently with the sentences
2 he is currently serving. He is serving a 12-year sentence
3 in the Department of Correction on a drug charge. His
4 max-out date is January 1st, 2019. He is also currently
5 serving a 119-month sentence from the previous federal
6 case in which Your Honor sentenced him. He's got -- he's
7 serving 119 months. I don't know when his max-out date is
8 on that.

9 So, Your Honor, I think that that is -- that's
10 an appropriate sentence, especially in light of some of
11 the other sentences Your Honor has given in the case. For
12 example, Your Honor gave Mr. Jimmy Hallums, who was
13 recruited by Mr. Tiller, gave Mr. Jimmy Hallums a sentence
14 of 180 months. Your Honor gave Ms. Stacy Hall, who was a
15 courier recruited by Mr. Tiller, a sentence of 100 months.
16 Your Honor gave Ms. Christine Wellwood, a courier and a
17 romantic interest of Mr. Tiller, 144 months; gave Ms. Lisa
18 Machilaski, who was also in direct contact with
19 Mr. Tiller, a sentence of 90 months; gave Mr. Schaefer a
20 sentence of 120 months.

21 But I think despite the fact that Mr. Tiller has
22 provided tremendously important cooperation, the fact that
23 he was the leader of the organization, the fact that his
24 point of departure is much higher than anyone else's
25 mandates that he receives a sentence that is higher,

1 significantly higher than Jimmy Hallums, for example, and
2 that sentence would be 220 months.

3 I'm happy to answer any questions Your Honor
4 might have, too.

5 **THE COURT:** That's it for now?

6 **MR. MOORMAN:** Thank you.

7 **THE COURT:** Thank you.

8 Okay. Mr. Bannister?

9 **MR. BANNISTER:** Thank you, Your Honor. This
10 cord's a little bit short for me. But, Judge, I think --
11 let me start with where I think Mr. Moorman and I both
12 agree; and that is, that Mr. Tiller, like a lot of us, has
13 a talent. And when he uses his talent for good, he can do
14 a lot of good. And when he uses his talent for criminal
15 activities, he causes a lot of problems.

16 This case has been unusual for a number of
17 reasons for me personally, but I'm going to try to
18 summarize. I looked back in my file -- I opened this file
19 in August of 2016. I've been talking to Mr. Moorman and
20 Mr. Tiller and running back and forth between lawyers and
21 prosecutors for two years.

22 And trying to put that into a concise form with
23 all the relevant issues that go to the ultimate sentence
24 has been a bit of a challenge for me. I tried to do that
25 in my memorandum to the best I could. And I think one of

1 the problems I've had from the start is, you know, how do
2 you logically deal with a case where, you know, sort of
3 the expectations of where we were in the beginning, and
4 what I've called step one kind of changed with the
5 proffer, and us getting to a point where we kind of
6 expected a motion for downward departure.

7 We expected to hear 240 months as a
8 recommendation, back date it because, you know, let's just
9 be honest, 20 years in jail is a long time for anybody.
10 Concurrent with his old sentence.

11 And then we -- that was -- so March 23rd, 2017,
12 you know, I was expecting to argue something around 180
13 months to 240 months and we'd see where we'd fall. I
14 mean, I begged like crazy to see if I could get
15 Mr. Moorman just to agree to a number so we wouldn't have
16 such a -- maybe an in-depth sentencing because I just
17 prefer, I'm a little risk averse personally. But, you
18 know, every day's precious for Mr. Tiller that he's
19 potentially in jail or potentially out of jail. So
20 anyway, we didn't get there. And so that's why, I think,
21 I suggested that we look at that first and then look at,
22 okay, what's step three, which is this cooperation that's
23 happened post-plea.

24 But this case from the start, maybe it's a
25 little unusual in the sense that the sentencing presented

1 a challenge. But it -- it was like most other drug cases
2 I'm involved in, which was everybody was looking for a
3 resolution that wasn't going to require trial. You know,
4 I kept saying, hey, look, the premise seems to be from the
5 Government at the outset was that Dustin Tiller has been
6 arrested twice, he's been to jail twice, and he won't quit
7 selling methamphetamine. You know, I got involved a
8 little bit deeper in the case, and I came back and said,
9 look, I think your premise is wrong, and thus the
10 conclusion that only jail time is going to solve the
11 Dustin Tiller problem, if you will.

12 The problem here is that after the first federal
13 case, Dustin had a significant drug debt that he owed to
14 the cartel that he had been dealing with. Now, look,
15 that's nobody's problem but Dustin's. He put himself in
16 that position and that's all on him. So I'm not -- I
17 don't want anybody to hear us saying on our side that
18 somehow he ought to be -- we ought to be sympathetic to
19 him.

20 But I do want to say that one of the things that
21 struck me in this case that I have not seen before was --
22 so he gets back to SCDC after the initial sentence. He
23 was approached almost within the first couple of weeks by
24 an inmate in SCDC that says, hey, look, you're going to
25 get a phone call from Nicanor Perez, who, if you'll

1 recall, Judge, was sort of the connection to the cartel
2 from the first round with Mr. Tiller. Subsequent to that,
3 when he's -- finally gets put on the yard of -- I think I
4 want to say it was Evans -- or --

5 **THE DEFENDANT:** Allendale.

6 **MR. BANNISTER:** It was Allendale. He gets put
7 on the yard in Allendale. He's approached by some of the
8 Hispanic gang members who say, look, you better take the
9 call from Nicanor. And by the way, you're going to start
10 again or we're coming after your family for this drug
11 debt. You, too.

12 So he ends up with -- now, how in the world they
13 figure this out is -- is -- I didn't get quite this deep,
14 but somehow Nicanor gets Dustin's cell phone number and
15 they have a conversation. And Nicanor says, look, they've
16 got your family's names. They know the addresses. Your
17 brother's testified against them. They know where
18 everybody is. And they're going to get my family, too.
19 We owe them too much money. They're willing to let you
20 get back involved, save your family -- not save your
21 family -- we're not going to target your family if you'll
22 sell dope at -- we'll sell it to you for a higher price
23 than you would otherwise have to buy it on the street.

24 So at that point, you know, maybe if you're
25 listening to this you buy into that or not. But Annie

1 Marie Stone is involved. And Tiller arranges for Annie
2 Marie Stone, through Ken Gibson, to approach the DEA and
3 the attorney who had prosecuted the original Tiller case.
4 And that was going to solve three problems. One, it was
5 going to mean that -- that Dustin might potentially avoid
6 any criminal repercussions for this second conspiracy.
7 Two, while he was, in his mind, working undercover so to
8 speak, he's also not at -- in a position where his -- his
9 family or himself are under any threat from the cartel
10 because they think he's working with them. And number
11 three, and this is so Dustin Tiller, is maybe I can put
12 myself in a position for a downward departure by virtue of
13 this second conspiracy and get some of my time cut off.

14 Ultimately, Mr. Gibson's offer of that
15 information was rejected by the Government. I don't know
16 whether they had any sources at that point in time, but I
17 do know that nobody had been arrested up to that point,
18 which to me makes a little bit of a difference. It makes
19 the idea that he was looking -- that Tiller was looking
20 for some way other than engaging yet again in this
21 conspiracy to solve the problem that he had.

22 And so really, the premise for let's get back
23 into this another time has got more to do with the
24 equation that he's making in his mind, which is, if I
25 don't get involved, I'm potentially putting my family at

1 risk, family members that have nothing to do with this, my
2 children. And I am -- and these are the words he used to
3 me, he said, Jim, I'm -- I'm a deadbeat dad. I am in
4 prison. My kids get asked at school, where is your daddy?
5 They have to tell them I'm in prison. And he said, do you
6 think I want to add to that that they get hurt on the
7 outside because of something I did? He said, you know,
8 they're just -- I only had one choice.

9 Now, I don't know that there really is another
10 choice. I sat there and I thought, all right, well, what
11 would you do? I mean, I know enough about how the
12 Government gets involved in undercover cases to know that
13 working somebody with his record from prison on contraband
14 cell phones is probably in violation of about two or three
15 different guidelines that the DEA has. I mean, it just
16 doesn't -- I don't think it would have worked. And
17 there -- so the option then he's got legally is to say I
18 withdraw from the conspiracy. At that point he's right
19 back in the same boat he was in, which is, I still owe the
20 money to them and my family's still under threat.

21 You know, I wonder what would have happened had
22 he been in the BOP. Because I'll tell you, the Department
23 of Corrections is like a sieve. I mean, they're sort of
24 past shanks and homemade stuff down there. I mean, they
25 have real tools. Like, I read an article, involved

1 somebody actually got shot with a gun that got smuggled
2 into SCDC. I mean, it's just crazy what -- what gets
3 inside the prisons. And that's the environment he was put
4 back into.

5 Again, I'm not saying this as a way of saying
6 he's got any excuse for getting involved again. But the
7 reality of the situation he found himself in is a little
8 more mitigating than just I ain't going to quit because I
9 like it.

10 So, I don't know, maybe I -- I was able to
11 persuade Mr. Moorman that -- that there was some small
12 nugget of redemption that might be in -- in Mr. Tiller.
13 Or maybe he just felt sorry for me. Or maybe I just
14 bothered him enough he finally -- we got kind of a process
15 set in place where I thought Mr. Tiller had a lot of
16 information that they would be very interested in. I
17 don't think I oversold myself.

18 I was dealing with a confidence -- I was dealing
19 with a problem with -- the Government believed he is an
20 unrepentant drug dealer and Mr. Tiller had very little
21 trust for the Government. Right or wrong, that was based
22 in part on the initial sentence he ended up with in the
23 first go round, which I want to say was 179 months. He
24 was expecting a much bigger cut. I've talked to his prior
25 attorney about that. They both were in that position.

1 Ultimately, Your Honor brought his sentence back
2 down to 119 months. And I don't mind telling you, you're
3 the only person he trusts in this courtroom, maybe even
4 including me. I hope maybe I've earned his trust at this
5 point. But if it hadn't been for Your Honor being the
6 sentencing judge, and so I reiterate what Mr. Moorman
7 said, I don't think we would have gotten here. Because he
8 didn't -- anyway, it was a, it was a mountain to climb to
9 build ourselves back to a point where we could get to a
10 proffer, have it verified, then get back to what the
11 recommendation at that point was going to be.

12 So you can understand how we feel like it is a
13 fair consideration to look at what Mr. Tiller did in this
14 case, the one he's getting sentenced for, and the -- the
15 information that he put forward and how he helped resolve
16 a number of the different side issues that were going on
17 and say, okay, we should have been arguing between 180 and
18 240 months at that point.

19 So it seems unfair that we do something of the
20 significance that I feel like the Batchelor case was, add
21 to that maybe the -- the icing on the top with Mr. Peace's
22 case, which I'll get into in a second because that's
23 just -- that was an interesting situation. But in any
24 event, while we're sort of saying, look, the logic
25 inherent in this should be when you're going to consider

1 the matrix of the sentences with the other co-defendants,
2 if we had been in there arguing between 180 and 240
3 months, that fits right within what the other
4 co-defendants are getting. I mean, I agree with
5 Mr. Moorman. Mr. Hallums is at 180. And Mr. Tiller would
6 have been -- his expectation and mine certainly was -- is
7 that he would have been over 180 at that point. I was
8 hoping that we'd be somewhere in between 240 and 180. I
9 mean, that was the plan. I was going to argue for less.
10 He was going to argue for the 240. And when I say he, I
11 mean Mr. Moorman, obviously.

12 So I'm not sure -- I'm sure there are valid
13 reasons why there was another 15 months between March 23rd
14 and where we are today. But time creates new situations
15 and puts new stuff into play. And that's exactly what
16 happened here.

17 Josh Peace sort of happened initially. You
18 know, Dustin was in -- they were in the same pod. They
19 were talking. They were in the same boat. Both of them
20 were looking at life. Dustin, I think by this point,
21 obviously, had already pled.

22 But there were two holdups that -- that
23 Mr. Peace had that were causing some problems for
24 Mr. Ashmore. One was money. The other was whether or not
25 he could trust Mr. Moorman to follow through on a downward

1 departure if that's where they ended up.

2 You know, it's -- it's hard to explain to
3 anybody who hadn't been there, when you're trying to tell
4 your client, hey, look, I've got this great deal for you.
5 You're going to plead to life without parole, but the
6 Government's going to come back and get you a little bit
7 of time off. I mean, that is a hard sell. I mean, they
8 barely -- they certainly don't trust the Government. And
9 they barely trust their lawyer. It's something you have
10 to earn over time sometimes. But that is -- that's a hard
11 place to go.

12 And so in some respects, Mr. Ashmore and I
13 started talking, because I felt like if -- if Josh Peace
14 ended up pleading, which would have been in his best
15 interests, and in particular if he gave up the money,
16 which also I thought was in his best interests, that that
17 was going to benefit both of us. One, Mr. Tiller gets
18 some credit for that. And two, Mr. Peace doesn't do
19 something to really light himself up potentially with a
20 mandatory life sentence.

21 So this weird dynamic started happening, which
22 was Dustin was talking to Josh relaying the information to
23 me. I was relaying it to Mr. Moorman. I was relaying it
24 to Mr. Ashmore and saying, look, we've got to all get
25 together to get Josh in a position where he understands

1 that he needs to turn over the money.

2 I will never forget, there was a duffel bag --
3 not a duffel bag -- it was a camouflage backpack shows up
4 in my office, \$154,000 in cash. And I'm like, don't leave
5 this here. I don't -- I've got nothing to do with this.
6 And it was like, nope, and then he's gone. So Josh had
7 had his dad, I guess, deliver that stuff to me. And I
8 mean, you want to talk about your textbook, like, ethics
9 issue. I mean, I'm over there. I'm calling Desa Ballard
10 down in Columbia. I'm like, I don't know what to do. I
11 don't want to go to jail. This is not good. This is not
12 where I need to be.

13 So, eventually, we get another lawyer involved
14 to come take it and -- and get me out of this mess. But
15 that was like round one. And then Dustin's telling me,
16 that's not all the money. He's still got more up here. I
17 know he does. He's got it. I can tell. I can tell. So
18 like two more rounds later, we finally got -- the money
19 gets out of Josh. And we got -- I wanted, I thought it
20 was like 300 and -- and another 400. But anyway, I --
21 I'll trust the Government on what money actually got
22 turned over in the case, because I -- I really didn't want
23 much to do with keeping up with that, frankly.

24 But it's -- it's no -- I don't think that Josh
25 would have turned it over but for Dustin's involvement. I

1 know Mr. Ashmore's confirmed that with me. And then,
2 ultimately, Mr. -- Mr. Tiller convinced Mr. Peace that you
3 could trust Andy and he would do what he said he was going
4 to do. And he has.

5 I mean, let me just say right now, Mr. Moorman
6 has -- he and I have been aboveboard talking about all
7 this stuff. And he's done everything he said he was going
8 to do. So I feel like that's absolutely been the case.

9 The Johnathan Batchelor thing is interesting to
10 me for -- for two reasons. One is, you know, how does
11 Dustin end up being the guy that Batchelor comes and talks
12 to and confides in or more, I think, to the point, kind of
13 unburdens himself.

14 So since January of 2017, Tiller -- Dustin has
15 been running a Bible study. I've confirmed that with the
16 law enforcement officers up there. I've confirmed that
17 with some of the other inmates.

18 And more importantly, Mr. Moore, who was
19 Mr. Batchelor's defense attorney, when he got the report
20 that indicated what Dustin had -- that basically the
21 confession from Mr. Batchelor, he had his -- he had some
22 clients of his in Pod 3 that were not Mr. Batchelor. And
23 he was talking to them about what kind of guy is
24 Mr. Tiller? And they were all like, oh, yeah, he's
25 straight up. I mean, if he's saying it, it's the truth.

1 You know, he's -- so to the same extent he
2 was -- he's in a position where he's got this personality
3 that is -- is a strong personality, let's say, but also
4 one that is -- is convincing and -- and can be
5 influential. That actually was to his credit at that
6 point. Because Mr. Moore was willing to take his other
7 client's perception that Mr. Tiller was likely telling the
8 truth about his client and the confession and decide not
9 to push it to trial and attack him as a jailhouse snitch,
10 which I thought was getting ready to happen personally.

11 When Ms. Wellwood was looking at, you know, was
12 she going to plead or not, and I was having conversations
13 with Mr. Wise, I was trying to find out what she was
14 looking at. Because they -- they have a relationship,
15 have had a relationship. And I could just see a lot of
16 ways that that could be problematic for everybody if
17 Ms. Wellwood went to trial.

18 So -- so I was talking to Mr. Wise. And at the
19 time, he believed, and -- and I conveyed that to
20 Mr. Tiller that we're -- he would -- that Christine was
21 looking at a sentence of maybe double what she had gotten
22 before, somewhere in the six-to-eight-year range is what
23 we were kind of hearing. And I talked with Dustin. And
24 so, again, a -- sort of a strange dynamic. Christine is
25 listening to Dustin. Rauch's talking to me about wanting

1 to go to -- Mr. Wise was talking to me about wanting to go
2 to trial.

3 And ultimately, he had -- Mr. Wise had one of
4 his clients, who was in Pod 3, kind of check Dustin out,
5 see if he was for real. And he got back the same thing
6 that Mr. Moore had gotten back, which is, you know, look,
7 you can't really ever know a man's heart, but you can see
8 what he's been doing since January of 2017. And he is --
9 he's -- he is acting just like he's talking and he's got a
10 dynamic Bible study that's going on.

11 One of the detention center guards told me
12 that -- I guess their deputy sheriffs up there told me
13 that this started out as probably about three, maybe four
14 people that were coming to this Bible study. They
15 regularly have 30. And it's every day. I mean, he's
16 preaching the gospel and he is as -- should deserve some
17 credit for a number of conversions there in the jailhouse
18 with some of these young men that are coming in and going
19 out. I mean, he's kind of a -- the old guy who's been in
20 there for a while because he's been there for over two
21 years.

22 So -- so I just -- I would encourage Your Honor
23 to consider that together with what the Batchelor case
24 meant as a -- as kind of a separate piece that -- that
25 should get its own consideration. And I understand

1 Mr. Moorman's logic. And we just agree to disagree about
2 that. We've -- we've talked to each other until we're
3 both blue in the face about where all this should end up.

4 I think in -- in fairness to the Court, and not
5 to sandbag anybody, that was one of the reasons we
6 wanted -- both of us wanted Your Honor to know that we've
7 got a Rule 35 coming. I believe that's probably in the
8 90 percent likelihood. And that's because I was at the
9 proffer. I was there. The information was specific. It
10 named individuals.

11 You know, I mention in there some of the stuff,
12 the ways they got this stuff back in to the jail is just
13 scarily fascinating. I mean, the -- taking the
14 contraband, duct taping it into a ball that looks like a
15 medicine ball, and then they would -- people from the
16 outside would throw it over the fence, coordinate with
17 someone on the inside, they'd come get it.

18 This is not -- this is not just Mr. Tiller. I
19 don't even know if he -- he did that. But this is how a
20 lot of it gets back in there.

21 And then the contraband officer takes it into
22 evidence and then inventories it -- I'm doing quotation
23 marks with my fingers. And some of it makes it into the
24 inventory of evidence and some of it gets delivered to the
25 inmates it's supposed to get delivered to. Or they leave

1 this duct tape, they call it a ball, on the outside of the
2 jail and the contraband officer -- or -- or an officer
3 picks it up and then it gets back in the same way.

4 So, anyway, there was a lot of information that
5 Mr. Tiller gave on the SCDC stuff. I can't imagine that's
6 not going to result in a -- in a -- in a conviction at
7 some point down the road, whether that's six months, 12
8 months, 18 months or 24. I don't know whether Mr. Tiller
9 gets to testify or not. I don't know that either.

10 But I will say to Your Honor that during the
11 time period that all that is pending, Mr. Moorman and I
12 know that Mr. Tiller is likely going to spend some amount
13 of time in SCDC. We have worked as best we can to try to
14 figure out a way that -- that the Bureau of Prisons could
15 just keep custody of him. We think we've got a solution.
16 We don't know how quickly that can happen. I'll tell you
17 nobody moves fast for a defense attorney asking for help
18 from prison bureaucrats for a defendant. But I'm -- I'm
19 willing to give it as -- as much effort as I can because I
20 really think Mr. Tiller's safety dictates that, that we do
21 that.

22 But he's looking at retaliation, potentially,
23 from other corrections officers, inmates that he named in
24 his -- in the contraband conspiracy. And then -- I think
25 we're out from under the -- the cloud of the cartel. I

1 want to say that we got -- the debt is off of him at this
2 point. So we hadn't heard anything further from -- from
3 anybody. Of course, we've been -- he's been in
4 Spartanburg, so that's a little tighter facility,
5 obviously.

6 When we get back on the Rule 35, you'll have the
7 opportunity to do two things. One is you can assess the
8 amount of risk that Mr. Tiller put himself under in giving
9 the information not only relating to the contraband but
10 also to Mr. Bachelor, who is currently serving 18 years in
11 SCDC.

12 But two, you can also have a chance to see what
13 kind of track record has he had at that point. He can't
14 do anything except act in a way that would indicate that
15 he's had a change of heart. And I think it's fair to view
16 that with skepticism. But I also think it's fair to look
17 at the evidence that's out there that we've got to look at
18 at this point. I feel a little stronger with, you know,
19 15 months or really 18 months of watching what he's been
20 doing up there in Spartanburg and saying that I certainly
21 see a different person than the one that was involved in
22 the conspiracy to begin with. I think I understand a
23 little bit better how he got himself in that position.

24 But regardless of what your sentence is, Judge,
25 you know, we -- we also believe that you'll be fair.

1 And -- and thank you for listening to the length of this.
2 I apologize.

3 THE COURT: Not at all.

4 Mr. Tiller?

5 THE DEFENDANT: Well, first and foremost,
6 Ms. Childs, I want to apologize for coming back in front
7 of you again like this. But, um, you know, Your Honor,
8 when I left up here last time, I left, I went back to
9 prison. I went down there. I was down there a couple
10 months. I got in the Character-Based Unit. I was down
11 there, my mind wasn't even nowhere near about no drugs.
12 It ain't even crossed my mind. I ain't reach out to
13 Nicanor. I ain't reach out to nobody.

14 So I get down there. Next thing you know, it
15 was Britt Moon who called and said, look, from Tony
16 Grayson said, you need to talk to Nicanor. And so I was
17 like, what's going on? And then Britt was like, they
18 saying something about a drug debt.

19 And so my mind went right there, my young -- my
20 younger brother Josh set up them two Mexicans. Randall
21 came and testified against Daniel Rodriguez. I know it's
22 over a quarter million dollars owed to these people. So I
23 already knew that was a potential threat.

24 So I called Nicanor. He said, man, look, man,
25 we've got a problem. I said, what's going on? He said,

1 man, they want their money. I said, man, I ain't got no
2 money. He said, man, we got to do something, man. They
3 got my family and your family. And so I was like, I was
4 like, yeah? And I said, man, I ain't got nobody. And so
5 I ain't even have nobody to even contact to with the
6 drugs.

7 There was a man I met behind in prison that
8 introduced to Schaefer. And so -- because I went to him,
9 I was like, man, this is the situation. He said, man, I
10 got somebody out there that's doing something. I said,
11 well, try to do something.

12 So I called Nicanor. I said, I found somebody.
13 So it started going. Within the first month, I was like,
14 man, there's no way I'm back involved with this again.

15 So I tell Marie, I said, look, take -- call
16 Kenneth Gibson and take him 1500. Ask him what he'll
17 charge to go and talk to the Government so I can tell them
18 what's going on. So she goes up there. A couple days
19 later, she says, Ken said they ain't -- they ain't doing
20 nothing. So I was like -- in my mind, I'm like, what else
21 am I supposed to do but go to the correction officer and
22 tell them, oh, I'm in threat for my life? That's signing
23 a death sentence yourself right there.

24 It's more corruption in prison than it is on the
25 street. I mean, it's so organized crime back there. I

1 mean, so -- and it just ain't no little plastic knives
2 back there. Man, there's real butcher knives back there.
3 There's knives back there. There's guns back there. If
4 you sit back and see somebody get stabbed and lose their
5 life from here to that table several different times
6 throughout my incarceration, you would know how serious it
7 is back there.

8 You know, when I first came to prison, I went to
9 McCormick. Then I went to Perry. Then I went to Broad
10 River. All level-three yards. I seen many people lose
11 their lives back there for a 60-cent soup. I mean, more
12 or less a quarter million dollars. So I know the
13 seriousness of what is going on right now.

14 And so after I try to get in contact with Ken
15 and all that, what else was I supposed to do? I mean --
16 so it kept going.

17 And so the drug -- the debt didn't get paid, but
18 every time now it's, oh, man, we need to do something.
19 This. Now in my mind is this, my brother testified. My
20 little brother set them up. I'm back here caged in with
21 these wolves. So as soon as I say, man, huh-uh, then I'm
22 looking over my shoulder from now on. All there is --
23 your life back there in -- in the South Carolina
24 Department of Correction is one phone call away. Somebody
25 make a call on you, it's over.

1 Man, it is run by gangs back there. There's
2 nothing but gangs in the prison. This -- I mean, in
3 society now, the younger generation thinking gang banging
4 is what's cool. And it's not. I mean, and they just back
5 there getting pushed around by somebody who's up top and
6 they just using them for pawns.

7 And so, now here it is all this is going on. I
8 mean, I ain't even going to sit here and lie, Your Honor.
9 I'm glad I'm standing in front of you right now because I
10 ain't got to go back down there. If I do, it's for a
11 month. You know, I ain't got to be involved with that.
12 It's been on my heart to change since that last case.
13 When you sit back and you watching your family go to
14 prison and things like that, man, that hurts, especially
15 when you know you're the cause of it.

16 And so, not only that, you know, I got two kids
17 on the street. I left when they was babies. I mean, Your
18 Honor, I can't even express the feeling of that, because
19 I'm not a deadbeat dad. But decisions I made have made me
20 a deadbeat dad, you know. So I made the choice, I want to
21 do right. I don't want to do no more wrong. I'm not
22 going to do no more wrong.

23 That's why on my PSI, when Mr. Bannister was
24 like, with Christine, I said, man, I want to get it
25 confirmed through the court, because I don't want to do no

1 more wrong. I don't want to have to put myself in no
2 position to do nothing wrong no more. I done did enough
3 wrong with my life. I want to do right. I don't want to
4 go out there and get violated for talking to her. No, I
5 want to do right by all means around the board. It's not
6 that I want to try to manipulate the system and try to
7 beat the system. That ain't what I want to do.

8 You know, and Your Honor, like, you know, when I
9 went to Spartanburg, you know what's so crazy, I was on
10 lockup at Evans. And I got on my knees, I cried out to
11 God. I said, God, please just take this from me. And
12 then the feds came and picked me up two days later. I
13 know that was a blessing from God.

14 And like, you know, by no means I expect you to
15 take me as a changed person because I know I made a
16 mistake out my life. I got to clean it up. I understand
17 that. I can't change how my life began. But I can change
18 how it ends. You know, that's why I been making decisions
19 I'm making now. I leading by example.

20 These younger generations coming through,
21 they're lost. They thinking a Glock .40 with a 30-round
22 clip is cool. They out there killing each other. They --
23 just doing foolish. They giving they life away for a
24 little of nothing. And that's not right. I got a son
25 that's out there that's 11 years old. I can only imagine

1 my son putting hisself in that situation.

2 But I'm back here, it's early, doing this right
3 here. And now I'm up here facing -- Mr. Moorman wants 220
4 months from me, you know. And, you know, Your Honor, not
5 only that, you know, like when all this went down with the
6 cooperation with Batchelor, you know, I jeopardized my
7 life for that. I asked Mr. Bannister, I said, what's it
8 worth? He said, any other case, it would be a 50 percent
9 cut. He said, so we should at least be at ten years.

10 So here it is. All this go down. He come with
11 a recommendation of 220 months. What's the point of even
12 doing it? I risked my life for nothing? 'Cause from the
13 beginning, like I told Mr. Bannister, I said, to be honest
14 with you, man, I don't trust you and I don't trust
15 Mr. Moorman. There ain't nothing but one woman I trust
16 and that's Judge Childs. I seen the type woman she is. I
17 know this is a good woman right here. I told him the only
18 way I would plead guilty is if y'all go to Ms. Childs and
19 she agree upon what y'all come up with. Mr. Bannister
20 said, well, I went to Ms. Childs. She said 15 -- I can
21 argue for 15. Won't give you no more than 20, backdated
22 to your October 2014. I said, Ms. Childs said that? He
23 said, she said that. So I said, well, if she said it,
24 then I'm good with that. So I went forward. And so
25 that's how I end up pleading guilty, coming to that point.

1 But, Your Honor, since I been back there, you
2 know, like, I can just say this. God is good. And God
3 can -- you'll be surprised how God can use you. You know,
4 one thing, I used to sit back and wonder why my life
5 turned out the way it did. But one thing I know, God
6 molds us to be what he wants us to be for him so we can
7 touch different people, so we can reach out and save
8 lives.

9 This world is bigger than us. It's about our
10 brothers. It's about our sisters. It's about trying to
11 lead somebody right. It's not about trying to get no
12 money. What does money do? You can gain the whole world
13 but you lose your soul at the end of it. What's the
14 point? There's nothing there. It's the empty life. I
15 lived a life to -- all the way to the point until I was 17
16 for nothing, with no purpose. I live a life with a
17 purpose now.

18 And, Your Honor, like, all I want to say
19 Ms. Childs, you know, I apologize for coming in front of
20 you. And thank you.

21 **THE COURT:** Thank you.

22 Government?

23 **MR. MOORMAN:** Just a few comments Your Honor.
24 First, I want to bring the court up to speed as to
25 conversations I've had with the Department of Corrections

1 to try to create an environment in which Mr. Tiller is --
2 is protected the best we can.

3 So I had a communication -- or I had multiple
4 communications in the last day or two with a person named
5 Brian Bolches (phonetic) who is -- works in the
6 Enforcement Wing of the Department of Corrections.
7 Mr. Bolches has given me the name of an individual within
8 the Department of Corrections who is in charge of intake
9 and outtake. I have forwarded that information to
10 Mr. Bannister.

11 I've also spoken to a woman in the Bureau of
12 Prisons whose name is Willette Smithers (phonetic).
13 Ms. Smithers works in the corresponding or the similar
14 division of the Bureau of Prisons.

15 What I have been told by the Bureau of Prisons
16 is that if they are given documentation that the
17 Department of Corrections releases Mr. Tiller into the
18 custody of the Bureau of Prisons, then they can then,
19 working with the Marshals Service, get custody of
20 Mr. Tiller and have him put in the Bureau of Prisons.

21 I asked Mr. Bolches what sort of documentation
22 that could be generated to make this happen, that's when
23 he directed me to the person in the Department of
24 Corrections. So what the hope is -- and I've told
25 Mr. Bannister I will be happy to work with him any way I

1 can -- is to put Ms. Smithers in touch with the contact
2 person in intake and outtake from the Department of
3 Corrections to get the documentation transferred or
4 transmitted from SCDC to the Bureau of Prisons that they
5 relinquish custody of Mr. Tiller to the Bureau of Prisons.

6 Just for Your Honor's information, I also talked
7 to another person in the Bureau of Prisons whose name
8 escaped me -- talked to him last week. And I asked the
9 question, if the Court were to order that Mr. Tiller be
10 taken into the custody of the Bureau of Prisons, what
11 effect, if any, would that have? And I was told that the
12 Bureau of Prisons would not -- that would not -- the
13 Bureau of Prisons would not interpret that in such a way
14 that that would be accomplished. I just tell you that
15 because I don't think there's any way Your Honor can
16 fashion a sentence to accomplish that goal.

17 **THE COURT:** I have long learned that the Bureau
18 of Prisons trumped me.

19 **MR. MOORMAN:** But -- but we're working to get
20 Mr. Tiller transferred to the Bureau of Prisons as soon as
21 possible.

22 Last thing on this. I would also tell Your
23 Honor that Mr. Bolches -- I told him that I would talk to
24 him after the hearing today, let him know what happened.
25 Mr. Bolches has represented to me that they can have

1 Mr. Tiller placed in protective custody --

2 THE COURT: Okay.

3 MR. MOORMAN: -- while we do our best to have
4 him transferred to the Bureau of Prisons.

5 THE COURT: And when -- that would be protective
6 custody at what facility?

7 MR. MOORMAN: That I do not know.

8 THE COURT: Okay.

9 MR. MOORMAN: Because I do think there's going
10 to be a process where Mr. Tiller is returned to the
11 Department of Corrections. And there may be some -- some
12 R and E component to that so I don't know.

13 THE COURT: But I do understand that with your
14 communications you are providing specific names, things of
15 that nature, so that you know that he's not placed
16 anywhere with respect to --

17 MR. MOORMAN: So and I'll -- let me tell you
18 what I've done on that front. So I've reviewed his
19 debriefing. I pulled from the debriefing the names of the
20 employees against whom he provided information. I
21 forwarded that to Mr. Bolches. Mr. Bolches has confirmed
22 with me that it is his belief that all of those
23 individuals have been terminated.

24 THE COURT: But are any of the co-defendants
25 within the guard case, if you will, incarcerated so that

1 those names need to be forwarded as well?

2 MR. MOORMAN: Any of the SCDC employees?

3 THE COURT: Yes, employees, yes.

4 MR. MOORMAN: Not that I'm aware of.

5 THE COURT: Okay. Because I'm just saying that
6 some of them, if they didn't make bond for some reason and
7 they're incarcerated, then that list needs to be over
8 there, too.

9 MR. MOORMAN: So -- and that may change. To
10 Mr. Bannister's point though, as -- the best of my ability
11 I've tried to track down what's come of the information he
12 provided. And it's my understanding that no one has yet
13 been charged based on the information he has provided.
14 Not to say that won't happen. But as for now, it's my
15 understanding that no one has been charged.

16 THE COURT: But I guess what I'm getting at is
17 to take it a little broader. If anybody thinks he's
18 talking, they don't necessarily know who he's talking
19 about.

20 MR. MOORMAN: Right.

21 THE COURT: And so you kind of have to paint a
22 little more broadly and include the entire list.

23 MR. MOORMAN: And that's right, Your Honor. The
24 problem, though, is that that is such a pervasive element.

25 THE COURT: Okay.

1 **MR. MOORMAN:** I mean, I can think of a few
2 people in this case right now, and in Mr. Peace's case,
3 who are going to be sent back to the Department of
4 Corrections. And I would imagine, despite our best
5 efforts, I think it's going to be widely known that they
6 cooperated. So what we try to do is identify specific
7 threats we perceive, communicate that to the Department of
8 Corrections --

9 **THE COURT:** Okay.

10 **MR. MOORMAN:** -- and have them in protective
11 custody. But -- and I'm open to suggestions, Your Honor,
12 if you --

13 **THE COURT:** Well, I just didn't know, for
14 example, even if you had to go to a county facility in a
15 country town, if you will, in South Carolina, that makes
16 it a little less obvious or something. I'm not sure. But
17 I also don't know what the inmates have access to, if
18 they're tracking where his whereabouts are, too, because
19 that's all online.

20 **MR. BANNISTER:** Right.

21 **MR. MOORMAN:** Well, you have to balance that
22 with the Government's capability to dictate to the
23 Department of Corrections where to house him, the best
24 place.

25 **THE COURT:** Sure, sure.

1 **MR. MOORMAN:** But I just wanted to bring the
2 Court up to speed that we are taking steps to try to
3 safeguard his person.

4 **THE COURT:** Right.

5 **MR. MOORMAN:** The only other big picture comment
6 I would make is this, you know -- and Mr. Bannister said
7 that he -- that this is -- this is just -- these are facts
8 and they're not excuses. And I totally understand
9 Mr. Bannister's argument and I agree with that.

10 Mr. Tiller stood and said, basically, the
11 picture he painted was he had to repay a debt. He tried
12 to get out, but the Government wouldn't listen. The
13 Government wouldn't let Ms. Marie Stone sit down so
14 somehow he was trapped in this vice grip that required him
15 to engage in an incredibly prolific drug trafficking
16 organization -- not only engage in it, but lead it.

17 Think about this, okay? If he was so focused on
18 the debt, why is he spending money he makes from the sales
19 of drugs on non -- on -- on items not associated with
20 repaying the debt? In other words, why is he buying
21 jewelry? Why is he buying cars with some of this drug
22 proceeds -- some of these proceeds? If he's so concerned
23 with getting that debt off his back to protect the family,
24 if that's the driving force for him reengaging, why isn't
25 every last penny he's making going back to satisfy this

1 debt? Because it's not. He's buying car -- at least one
2 car. He's buying jewelry. He's buying other things.

3 Second thing is he talks about a change of
4 heart. And Your Honor, you know Mr. Tiller's case better
5 than anybody, because I was not the first prosecutor and
6 Mr. Bannister was not his first defense attorney. But ask
7 yourself this question, do you think Mr. Tiller would have
8 stopped had he not been caught? Do you think once he paid
9 off that debt it would have been all over? Knowing
10 everything you know about Mr. Tiller, do you think he
11 would have stopped? The Government doesn't think so.

12 That's all I've got to say, Your Honor.

13 **THE COURT:** Okay.

14 Anything further?

15 **MR. BANNISTER:** Just briefly, Judge. I had
16 mentioned in my memorandum that I had some of the DEA-6
17 that were relevant to the -- the drug debt that were from
18 the first case and also these are from co-defendants. If
19 you want to take a look at those I'll pass them up. But
20 if you don't, it's -- I mean, it's in there. I don't
21 think there's really any argument that other people
22 confirmed that the debt was there.

23 **THE COURT:** Sure.

24 **MR. BANNISTER:** And -- and Mr. Tiller reminded
25 me that while I had a long windup, I forgot to pitch the

1 ball; which is, that ultimately what we're asking for is a
2 cut of a half of the 240 that we were expecting the
3 recommendation from the first -- from the first sentence,
4 which puts us pretty far apart from where the Government
5 is. And that's our ask.

6 **THE COURT:** Okay.

7 **MR. BANNISTER:** Thank you, Your Honor.

8 **THE COURT:** And just so that I'm clear, you said
9 a Rule 35 is coming but then you also indicated that you
10 were not counting something toward this 220 asked by the
11 Government.

12 **MR. MOORMAN:** So let me be perfectly clear. I
13 have not made any promises to Mr. Bannister or Mr. Tiller
14 that there will be a deeper cut. With that being said,
15 pursuant to the plea agreement, if that information is
16 useful and leads to further arrests and indictments, then
17 I think it's appropriate for me to reward Mr. Tiller for
18 that.

19 **THE COURT:** And when we say that information,
20 are you talking about -- I'll just call it the guard
21 cases?

22 **MR. MOORMAN:** That's correct.

23 **THE COURT:** Okay. And is there anything that
24 out of your -- and I was telling earlier -- when you were
25 discussing how he had provided the assistance, I was

1 telling specifically what you were including in there.
2 For example, one, Mr. Batchelor pled guilty; two would be
3 information on co-defendants and co-conspirators; three
4 would be the Josh Peace incident; four, encouragement
5 about Christine Wellwood to plead; and, five, then I had
6 SCDC employees. So just the last, number five, is not
7 included right now?

8 **MR. MOORMAN:** That's -- that's right.

9 **THE COURT:** Okay.

10 **MR. MOORMAN:** And I mentioned it so Your Honor
11 can consider it. But I can't represent to Your Honor that
12 it's given rise to substantial assistance because there's
13 been no charging.

14 **THE COURT:** Right. But that would be the basis
15 of the Rule 35 and/or anything else he might come up
16 with --

17 **MR. MOORMAN:** That's correct.

18 **THE COURT:** -- while incarcerated?

19 **MR. MOORMAN:** But I do want to be clear, again,
20 the Government has not promised --

21 **THE COURT:** No.

22 **MR. MOORMAN:** -- that we are coming back. If
23 that comes to pass, then I would imagine we would.

24 **THE COURT:** Right. And I agree, no promises,
25 because nothing has come yet. But if something

1 substantial comes, then as you always do honorably, you
2 come before me and ask for it.

3 **MR. MOORMAN:** Yes, Your Honor.

4 **THE COURT:** Okay.

5 Okay. Now -- okay. With respect to hearing all
6 that I've heard here, and Mr. Tiller having pled guilty to
7 conspiracy to possess with intent to distribute
8 methamphetamine, clearly, you were the leader of the
9 multi-defendant conspiracy of individuals that were
10 selling meth throughout the State of South Carolina. You
11 were an inmate at the South Carolina Department of
12 Corrections when the offense was committed. And that
13 being said, because you were already here before me before
14 and it was kind of the same type of crime in that even
15 while incarcerated you had your tentacles out in the
16 community to actually bring drugs into the facility. And
17 there were several people sentenced out of that first
18 conspiracy in that regard. So you were sentenced in
19 federal court for that type of conduct in October 2014,
20 which that matches up with the date that you're trying to
21 get credit back to for this particular sentence.

22 Your sentence was to run concurrently with the
23 state sentence you were, and still are, serving. And then
24 that's when you engaged in this new conspiracy here.

25 In terms of your criminal history, because you

1 are deemed to be a career offender with a Criminal History
2 Category of VI, it consists of convictions for burglary,
3 grand larceny, DUS, failure to stop, possession with
4 intent to distribute methamphetamine, trafficking
5 methamphetamine, CDVHAN, conspiracy to possess with intent
6 to distribute methamphetamine. So I do have before me the
7 Government's motion for downward departure. I'm going to
8 grant the motion and we'll discuss the sentencing in a
9 second.

10 One thing -- a few things that I've noted here
11 is that you were originally facing a life sentence, and
12 that was basically under the statute but then also under
13 the guidelines. No doubt it's a serious crime because
14 it's the same crime that you had before and that we're
15 essentially back in here for, just the general conspiracy
16 of the meth.

17 Then you were a leader. Now you're still a
18 leader. And being a leader, obviously, you have to direct
19 and control others, which then involves so many other
20 people. And all of those people are in front of the
21 Court. And in this case they have been given several
22 hundred years of time. So that just gives you some
23 definition for just how big the crime is.

24 I had already sentenced you to 119 months, but
25 that was coming down from, you know, a higher sentence

1 that you would have faced as well.

2 And, again, you were serving a sentence then.
3 So one would think, naturally, when you're serving
4 something significant, it's supposed to be a deterrence,
5 you know, for other crime.

6 You seem to have remorse. You seem to, you
7 know, engage in Bible study and doing some other things.
8 You provided the substantial assistance. And that's why
9 the Government on its own has taken you from what was a
10 life sentence down to the 240.

11 Now, I will say that in agreement with the
12 Government, it is a significant departure down when I look
13 at the other defendants who may have gotten 180 or 120 or,
14 you know, things of that nature. But they weren't facing
15 life either. So that's, you know, one thing to think
16 about.

17 And so, quite frankly, because you were facing
18 life, the Government could have gone over the 240. And,
19 quite frankly, any judge could have gone over the 240, you
20 know, as the starting place. So you all seem to be
21 arguing more from 240, in my opinion, than you are from
22 that it started at life.

23 The Government also has agreed to backdate the
24 sentence. I mean, technically, I could start the sentence
25 today because the conduct is such that your sentence that

1 you're already serving should be a deterrence. But
2 they've agreed to that, starting it today. And they've
3 also agreed, essentially, to the credit of the four years
4 because -- I'm sorry, you mean starting it on
5 October 2014 --

6 **MR. MOORMAN:** Yes, ma'am.

7 **THE COURT:** -- correct? Okay.

8 So then they are essentially giving you the
9 credit toward whatever this sentence is of four years
10 because you're already incarcerated when, technically,
11 based on the crime, it could start later or it could have
12 started today, which you wouldn't have gotten that credit
13 of four years. So, you know, you've got to think about
14 something in that regard.

15 There is a Rule 35 consideration -- I'll put it
16 that way -- because the Government has not promised you
17 anything, yet you are still attempting to cooperate in
18 that regard. And, you know, all of that is commendable,
19 too.

20 I will recommend that the Government urge the
21 department to place you in protective custody because any
22 time you're attempting to cooperate with anyone with
23 respect to crimes that are committed right around you,
24 then, you know, it does place you and your family in
25 danger. But I would also say that it would only be then

1 that I would know what the Rule 35, as it presents to me,
2 what it would be worth at that time.

3 So having calculated and considered the advisory
4 sentencing guidelines, and having also considered the
5 relevant statutory sentencing factors, Dustin Allen
6 Tiller, you're committed to the Bureau of Prisons, and I
7 have to go with the Government's recommendation of the 220
8 months based on all of the information that I've been
9 provided here today.

10 It appears you don't have the ability to pay a
11 fine, therefore the fine is waived. But you'll pay the
12 mandatory \$100 special assessment fee. I will allow the
13 credit back to the October 2014.

14 Once released from imprisonment, you'll be on
15 supervised release for ten years. You have to report in
16 custody -- report in to the Bureau of Prisons after your
17 release -- excuse me. After you leave the Bureau of
18 Prisons, within 72 hours of release from custody, you'll
19 report to the probation office to the district in which
20 you are released. And, of course, you have mandatory and
21 standard conditions of supervision, which are random drug
22 testing, suitable employment, things of that nature.

23 And I would just advise that I have calculated
24 the advisory guidelines. They've been done appropriately.
25 And I do believe that under the circumstances of this

1 particular case, that I would have come to this sentence
2 regardless in light of what the co-defendants have gotten
3 and your role in this particular offense.

4 Now, you did sign a plea agreement. You waived
5 certain rights to appeal, but that doesn't include
6 prosecutorial misconduct, ineffective assistance of
7 counsel, or the law changing. And we've had several
8 changes. I've been on this particular bench for eight
9 years and several changes on mandatory sentencing that has
10 allowed defendants to have the benefit of their time being
11 cut, and even with me just serving an order and them not
12 even having to appear in court.

13 But I do believe that, you know, as we've
14 discussed, and I do know your case very well, I do believe
15 that you are making good efforts and strides toward that.
16 But, you know, your record is your record and the offenses
17 are the offenses.

18 And thank you for your belief in me but, you
19 know, I'm just doing what I feel is appropriate.

20 Any objection to the form of the sentence?

21 **MR. MOORMAN:** None from the Government.

22 **MR. BANNISTER:** None, Your Honor, as long as
23 it's -- if you could just make sure it's clear that that's
24 an October of 2014 start date. I think --

25 **THE COURT:** Start date.

1 **MR. BANNISTER:** I think it will work better --
2 instead of trying to give credit.

3 **THE COURT:** I agree. I -- and thank you. I
4 appreciate that.

5 **MR. BANNISTER:** Thank you.

6 **THE COURT:** Ms. Aiken definitely knows that
7 distinction, as we've worked on other cases. She'll make
8 sure that's how the judgment is reflected.

9 Sir, do you understand your appeal rights
10 pursuant to your plea agreement?

11 **THE DEFENDANT:** Yes, ma'am.

12 **THE COURT:** Okay. And then if you want to
13 appeal, you have to go through your attorney. But you
14 also have to be timely, whether it's your attorney or you.
15 And it has to be through the federal criminal rules and as
16 well as criminal statutes.

17 And then with respect to the sentence, I do
18 believe it's sufficient, but not greater than necessary,
19 to achieve sentencing factors.

20 **THE PROBATION OFFICER:** Your Honor, just for
21 clarity of the record, you granted the downward departure
22 motion under 5K1.1, but any extra variance motion made by
23 the defense has been denied?

24 **THE COURT:** Yes. Thank you. Because I granted
25 the motion as indicated by the Government, sometimes I'll

1 grant the departure, but then I might also add a further
2 variance. But in this case I granted the actual motion as
3 posited by the Government and then denied the defense
4 variance, correct.

5 **THE PROBATION OFFICER:** Yes, Your Honor.

6 **THE COURT:** Thank you.

7 **THE CLERK:** And, too, just to make this clear on
8 the judgment, I need to state that this sentence not only
9 begins in October of 2014 but it's running concurrent --

10 **THE COURT:** Right.

11 **THE CLERK:** -- with his state sentence and his
12 current federal -- his other sentence as well?

13 **THE COURT:** Yes. And then recommend protective
14 custody. I would put that on there. And then put the
15 specific date for that October 2014 date.

16 **THE CLERK:** Well, protective custody is not
17 going to be BOP. That's going to be SCDC.

18 **THE COURT:** Okay. Okay. Because our judgment
19 would deal with BOP.

20 So what we're saying is that I couldn't put it
21 in here about the protective custody. But the Government
22 will be honorable. They will work through that. Okay?

23 But I did want you to put the specific October
24 date for the credit.

25 **MR. MOORMAN:** And Your Honor, I would just

1 mention this housekeeping detail. My intent is not to ask
2 the Bureau of Prisons to have him placed in protective
3 custody.

4 THE COURT: I agree. That's what we were
5 talking about.

6 MR. MOORMAN: Okay.

7 THE COURT: And that's why I can't put it in
8 this judgment.

9 MR. MOORMAN: Okay.

10 THE COURT: You're actually dealing with SCDC.

11 MR. MOORMAN: Yes, ma'am.

12 THE COURT: Right. Okay. Thank you all.

13 MR. MOORMAN: Thank you, Your Honor.

14 MR. BANNISTER: Thank you, Your Honor.

15 (WHEREUPON, court was adjourned at 2:43 p.m.)

16 ***

17 I certify that the foregoing is a correct transcript from
18 the record of proceedings in the above-entitled matter.

19 s/Karen E. Martin

7/17/2019

20 _____
Karen E. Martin, RMR, CRR

Date _____

Exhibit E

Safeguarding Against Unreliable Jailhouse Informant Testimony

Unreliable Jailhouse Informant Testimony is a Demonstrated Cause of Wrongful Convictions

Jailhouse informants have played a role in 156 proven wrongful convictions in the United States, according to the National Registry of Exonerations, which tracks both DNA and non-DNA exoneration cases.¹

A ground-breaking report on the “snitch system” published by the Center on Wrongful Convictions in 2004 found that incentivized informant witnesses were the leading cause of wrongful convictions in U.S. capital cases.²

What is a Jailhouse Informant?

In-custody or “jailhouse” informants are detained or incarcerated individuals who provide testimony—usually about how a defendant confessed to a crime— often with the expectation of receiving benefits.

Factors That Can Lead to Unreliable Jailhouse Informant Testimony

Jailhouse informants usually claim to officials that they heard their fellow inmates confess to a crime, and typically expect to be rewarded with leniency or other benefits. It is difficult to believe that people regularly confess to committing serious crimes to someone they just met in a jail cell. From a proven record of wrongful convictions involving jailhouse informants, we have seen that the real or perceived potential for benefits in exchange for testimony or information creates a strong incentive for jailhouse informants to lie.

Prosecutors may offer a jailhouse informant benefits such as:

- Reduced charges in a pending criminal case.
- Sentence reduction.
- Special inmate privileges.
- Assistance to family.
- Monetary payments.

How to Safeguard Against Unreliable Jailhouse Informant Testimony

Pre-trial reliability hearings:

At minimum, before allowing for the admissibility of jailhouse informant testimony at trial, the court should make a finding relating to reliability and consider the following factors:

- Complete criminal history of the jailhouse informant.
- Any deal, promise, inducement or benefit that the offering party has or will make in the future to the jailhouse informant.
- Time, place and substance of the accused’s statements allegedly heard by the jailhouse informant, time and place of their disclosure to law enforcement, and the names of all people who were present when the statements were made.
- Whether at any time the jailhouse informant recanted his or her statements and details of the recantation.
- Other cases in which the jailhouse informant provided testimony or information on other inmates and any benefits provided in those cases.
- Other information relevant to credibility.

Tracking & Disclosure Requirements:

Prosecutors should be required to track the use of jailhouse informant testimony and any benefits provided to them. This practice will enhance transparency and help prosecutors and law enforcement to assess the reliability and credibility of a jailhouse informant before he or she is used as a witness.

In addition, prosecutors should be required to disclose to the defense prior to relevant hearings and trial-specific impeachment information on jailhouse informant witnesses including: their complete criminal history, benefits offered or implied in exchange for testimony, history of jailhouse informant activities, and any other information related to credibility.

Jury Instructions:

Jurors should be instructed to give closer scrutiny to jailhouse informant testimony and to consider specific factors that may have influenced their testimony such as: benefits offered or provided to them, their criminal history, and their previous jailhouse informant activity.

Citations

[1] [“Exoneration Detail List.” The National Registry of Exonerations.](#)

[2] [Brandon L. Garrett, Judging Innocence. 108 Colum. L. Rev. 55, 62 \(2008\).](#)

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THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Indictment No. 2016-GS-42-01345
THE STATE	)	
	)	Motion for New Trial & Motion to
	)	Reconsider Sentence
vs.	)	
	)	
Jonathan Batchelor	)	
_____	)	

To: The Honorable R. Keith Kelly, Presiding Judge, Seventh Judicial Circuit.

Following jury selection on October 25, 2021, the State tried Jonathan Batchelor, before this Court and a jury, for attempted murder, from November 1-4, 2021. The Jurors convicted Mr. Batchelor as charged, and this Court sentenced him to thirty years imprisonment on November 4, 2021. Pursuant to Rule 29, SCRCrimP, Mr. Batchelor moves this Court to order a new trial. Alternatively, he moves this Court to reconsider the sentence.¹

I. MOTION FOR NEW TRIAL BASED ON TRIAL ERROR.

“A trial judge has the discretion to grant or deny a motion for a new trial.” *State v. Johnson*, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007) (affirming grant of new trial because jurors heard improper reference to polygraph exam); *and see State v. Dean*, 427 S.C. 92, 106, 828 S.E.2d 243, 251 (Ct. App. 2019) (affirming grant of new trial because accused was “unable to cross-examine [cooperating co-defendant] about the details of any understanding with the State that his

¹ Mr. Batchelor moved “this Court for an order dismissing this case based on law enforcement’s destruction of all of the physical evidence in this case,” based on *State v. Cheeseboro*, 346 S.C. 526, 538-39, 552 S.E.2d 300, 307 (2001) and *Arizona v. Youngblood*, 488 U.S. 51 (1988). *See* Motion to Dismiss and Pre-Trial Brief, Section I(C). During the hearing on the motion, the parties provided this Court with a copy of the Firearms/Tool Mark Report of James W. Armstrong dated, February 10, 2016. A copy of this report was not placed into the record. Exhibit A is a copy of this report that Mr. Batchelor proffers for the record.

cooperation would be communicated to the court”). This Court should order a new trial based on the following trial error.

A. This Court should order a new trial based on inadequate *voir dire*.

Prior to selecting jurors, Mr. Batchelor submitted his Request for Voir Dire.² At a sidebar during jury selection, Mr. Batchelor expressly requested this Court ask questions three, four, five, and six. This Court asked questions three and five but not four and six. Request number four asked:

You will hear testimony and may see evidence of serious bodily injuries. Is there anything about the nature of serious bodily injuries that would so affect you that you would not be able to remain fair and impartial? If so, please come forward and explain.

This Court erred by not asking the potential jurors this question. As anticipated, the jurors heard evidence that Stephanie Batchelor suffered multiple gunshot wounds to her head and chest. They also viewed photographs and videotape of her injuries. Dr. Brian Thurston testified the chest wounds were life threatening. He further testified he head wound was so life threatening that he and the other medical providers did not expect Ms. Batchelor to survive. This testimony allowed the Solicitor to argue to the jurors that “it is a miracle” that Ms. Batchelor survived.

Request number six asked:

You may see and hear audiotape and videotape that uses profanity. Is there anything about the nature of profanity that would so affect you that you would not be able to remain fair and impartial? If so, please come forward and explain.

This Court erred by not asking this question. During the trial, it became necessary for Mr. Bachelor to introduce the 911 call and portions of the videotape from Deputy Malpass’ body worn camera. The jurors accordingly heard audiotape and videotape that contained profanity

² Mr. Batchelor proffered his Request for *Voir Dire* as Exhibit A to his Pre-Trial Brief.

Pursuant to the Sixth Amendment of the United States Constitution, Article I, Section 14 of the South Carolina Constitution, and S.C. Code Ann. § 14-7-1020, Johnathon Batchelor requested that the potential jurors be placed on their oath and asked questions to determine whether any potential juror “has any interest in the cause, has expressed or formed any opinion, or is sensible to any bias or prejudice.” Courts have long recognized the tricky nature of analyzing jurors’ bias. *See Smith v. Phillips*, 455 U.S. 209, 221-2 (1982) (O’Connor, J., concurring) (recognizing that jurors may be incapable of acknowledging their own bias); *Crawford v. United States*, 212 U.S. 183, 196 (1909) (“Bias or prejudice is . . . an elusive condition of the mind . . . and it might exist in the mind of one . . . who was quite positive that he had no bias, and said that he was perfectly able to decide the question wholly uninfluenced by anything but the evidence”); *United States v. Burr*, 25 F. Cas. 49, 50 (D.Va.1807) (a person under the influence of personal prejudice “is presumed to have a bias on his mind which will prevent an impartial decision of the case, according to the testimony” for such person may declare that “notwithstanding these prejudices he is determined to listen to the evidence, and be governed by it; but the law will not trust him”). Mr. Batchelor requested this Court’s *voir dire* be guided by *Skilling v. United States*, 561 U.S. 358 (2010), where the District Court’s *voir dire* included questions to determine whether the prospective jurors had formed any opinions about the accused and issues involved in the case. The Court in *Skilling* individually questioned all jurors providing affirmative responses and allowed counsel for the parties to ask follow up questions.

Because of this Court’s failure to aske requests for *voir dire* numbers four and six, there is a real possibility that one or more of the jurors could not remain fair and impartial because of serious injuries and hearing profanity.

B. This Court should order a new trial because this Court improperly admitted the testimony of Dustin Tiller.

In his Pretrial Brief, Section II(B), Mr. Batchelor moved this Court to convene a hearing regarding the reliability and admissibility of Dustin Tiller’s testimony and to issue an order excluding this testimony. Mr. Batchelor proposed criteria for this Court to consider when deciding whether or to allow Mr. Tiller to testify. These criteria militated in favor of excluding the testimony.

Although convening an *in camera* hearing regarding Mr. Tiller’s testimony, this Court declined to exercise its discretion to consider the admissibility of the testimony by stating trial courts do not weigh evidence and when there is a scintilla of evidence this Court allows jurors to consider it. *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) (“A failure to exercise discretion amounts to an abuse of that discretion.”). In doing so this Court conflated the directed verdict standard with the standard for admissibility. *See, e.g., State v. Cherry*, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004) (“If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.”).

This Court also overlooked its gatekeeping function, which requires it to consider the reliability of the evidence. *See, e.g., State v. Cope*, 405 S.C. 317, 341, 748 S.E.2d 194, 206 (2013) (“[E]vidence of third-party guilt that only tends to raise a conjectural inference that the third party, rather than the defendant, committed the crime should be excluded.”); *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010) (“[T]he trial court must evaluate the substance of the [expert] testimony and determine whether it is reliable.”); *State v. Tutton*, 354 S.C. 319, 325, 580 S.E.2d 186, 189 (Ct. App. 2003) (“To be admissible, a prior bad act must first be established by clear and convincing evidence.”).

This Court should order a new trial and exclude the testimony of Dustin Tiller.

C. This Court should order a new trial because this Court improperly limited the cross-examination of Dustin Tiller in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution.

Although allowing cross-examination about the plea agreement with the United States Attorney, this Court prevented Mr. Batchelor from cross-examining Mr. Tiller about how his cooperation in this case influenced the downward departure from a mandatory life without parole sentence.³ Specifically, Mr. Batchelor wanted to question Mr. Tiller about the United States Attorney reducing the government's recommendation from 240 months to 220 months because of his cooperation in this case. Mr. Batchelor also wanted to question Mr. Tiller about Assistant Solicitor Jennifer Wells speaking on his behalf in Federal Court during his sentencing hearing. These limitations allowed the Solicitor to suggest to the jurors that Mr. Tiller did not gain anything from his cooperation in Mr. Batchelor's case and argue only the District Court Judge could further reduce Mr. Tiller's sentence. While it is technically true that only the District Court Judge can reduce Mr. Tiller's sentence, this argument is misleading to the jurors because resentencing cannot occur without a motion from the United States Attorney and the District Court Judge is required to consider all of the information presented in a sentencing hearing, which previously included Ms. Wells presentation and might include her presentation in the future. *State v. Blurton*, 342 S.C. 500, 512, 537 S.E.2d 291, 298 (Ct. App. 2000) ("The prosecutor accused Blurton of a recent fabrication, an accusation which could not have been seriously made if the trial court had properly admitted the taped telephone conversations between Blurton and Mayfield.") *reversed on other*

³ Mr. Batchelor's proffer includes his cross-examination of Mr. Tiller during the *in camera* hearing and the transcript of Mr. Tiller's sentencing hearing attached as Exhibit D to his Tre-Trial Brief.

grounds by State v. Blurton, 352 S.C. 203, 573 S.E.2d 802 (2002).

The Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution guarantee the right of an accused to confront and cross-examine the witnesses who testify against him. “Included in the Confrontation Clause protection is the right to cross-examine any State’s witness as to possible sentences faced when there exists a substantial possibility the witness would give biased testimony in an effort to have the solicitor highlight to a future court how the witness cooperated in the instant case.” *State v. Gillian*, 360 S.C. 433, 454, 602 S.E.2d 62, 73 (Ct. App. 2004) (internal quotations omitted) *affirmed as modified on other grounds*, 373 S.C. 601, 646 S.E.2d 872 (2007). *See also State v. Sims*, 348 S.C. 16, 25, 558 S.E.2d 518, 523 (2002) (“Because of the number of charges pending against [the witness] and the severity of the potential sentences, we find the evidence was probative on the issue of bias and should have been admitted.”); *State v. Mizzell*, 349 S.C. 326, 334, 563 S.E.2d 315, 319 (2002) (“We believe the defendant’s Sixth Amendment right to effective cross-examination in this case outweighs the right of the State to shield the jury from knowledge of the possible sentence for a defendant who faces the same charges as a witness against him.”). Because of this Court’s restrictions, Mr. Batchelor was “unable to cross-examine [Mr. Tiller] about the details of any understanding with the State that his cooperation would be communicated to the court.” *Dean*, 427 S.C. at 106, 828 S.E.2d at 251.

This Court should order a new trial and exclude the testimony of Dustin Tiller. Alternatively, this Court should allow Mr. Batchelor to fully cross-examine Mr. Tiller.

D. This Court should order a new trial because of the improper show of force it authorized during Johnathon Batchelor’s testimony.

Unbeknownst to Mr. Batchelor and undersigned counsel, this Court decided that a uniformed law enforcement, noticeably wearing body armor and carrying a firearm and two pairs

of handcuffs, to shadow Mr. Batchelor to the witness stand, stand over his shoulder during Mr. Batchelor's testimony, and shadow Mr. Batchelor back to the defense table.⁴ This show of force was "plainly visible" to the jurors. *State v. Heyward*, 432 S.C. 296, 326, 852 S.E.2d 452, 467 (Ct. App. 2020). If fact, this Court took up a matter of law outside the presence of the jurors during Mr. Batchelor's direct examination. The jurors walked within just a few feet of Mr. Batchelor and his guard when leaving and returning to the courtroom. Prior to authorizing this show of force, this Court did not convene a hearing pursuant to *Deck v. Missouri*, 544 U.S. 622 (2005) (shackling in instant case was not shown to be specifically justified by circumstances, and thus offended due process).⁵

Heyward explained the burden of proof for a Deck violation.

Where a court, without adequate justification, orders the defendant to wear shackles *that will be seen by the jury*, the defendant need not demonstrate actual prejudice to make out a due process violation. The State must prove beyond a reasonable doubt that the shackling error complained of did not contribute to the verdict obtained.

432 S.C. at 325, 852 S.E.2d at 467 (cleaned up) (citing *Deck* 544 U.S. at 635).

Because the State cannot prove beyond a reasonable doubt that this show of force did not contribute to the jurors' verdict, this Court should order a new trial.

⁴ This procedure appears to be a regular custom in Spartanburg. One purpose of the law enforcement officer standing next to an accused when he testifies is to guard the door to the hallway leading to judges' chambers. It appears Spartanburg follows this procedure rather than a less restrictive procedure of having a law enforcement officer guard the door from inside the hallway outside the notice of the jurors. In addition to this stated reasons, Mr. Batchelor notes Spartanburg County's "policy" of shackling all criminal defendants when jurors return a verdict, which would have occurred in this case but for Mr. Batchelor's objection based on *Deck*.

⁵ Although *Deck* involved shackling, the same due process concerns apply to the use of force in Mr. Batchelor's case.

II. MOTION FOR NEW TRIAL BASED ON INSUFFICIENCY OF THE EVIDENCE.

Mr. Batchelor renews he motions for a directed verdict of acquittal that he made at the close of the State’s case and the close of all evidence. Because the State failed to present any direct evidence or substantial circumstantial evidence, based upon which reasonable jurors could convict beyond a reasonable doubt, this Court should order a new trial. *See Cherry, supra*.

III. MOTION TO RECONSIDER SENTENCE.

As this Court is aware, Mr. Batchelor previously entered an *Alford*⁶ plea to attempted murder, and the Court sentenced him to eighteen years imprisonment. Mr. Batchelor’s conviction and sentence were vacated in post-conviction relief. *Batchelor v. State*, Case No. 2018-CP-42-04276. Prior to sentencing, Mr. Batchelor asked this Court to impose a sentence that did not exceed eighteen years because, to impose a greater sentence, would penalize Mr. Batchelor for exercising his right to challenge his conviction and sentence in post-conviction relief and, subsequently, exercising his right to a jury trial. The Solicitor requested and this Court imposed the maximum sentence of thirty years.

As our Supreme Court observed:

In the landmark decision of *North Carolina v. Pearce*,^[7] the United States Supreme Court held that the Due Process Clause of the Fourteenth Amendment prevented a trial court from penalizing a defendant for choosing to exercise his right to appeal. In order for the presumption of prosecutorial retaliation (or the “*Pearce* presumption”) to apply, Petitioner must show there is a “reasonable likelihood” that retaliation was a motive behind bringing the additional charges. *Alabama v. Smith*, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989); *State v. Fletcher*, 322 S.C. 256, 471 S.E.2d 702 (Ct.App.1996). Where no such “reasonable likelihood” exists, the defendant has the burden to prove actual retaliation. *Alabama v. Smith*, 490 U.S. at 800, 109 S.Ct. at 2205. In the instant case, there is a “reasonable likelihood” retaliation was a motive, and therefore Petitioner was entitled to the presumption.

⁶ *North Carolina v. Alford*, 400 U.S. 25 (1970).

⁷ *North Carolina v. Pearce*, 395 U.S. 711 (1969), modified by *Alabama v. Smith*, 490 U.S. 794 (1989).

Patrick v. State, 349 S.C. 203, 209, 562 S.E.2d 609, 612 (2002).

Here, “there is a ‘reasonable likelihood’ retaliation was a motive, and therefore Petitioner was entitled to the presumption.” *Id.* In bond hearings in this case, the State noted its displeasure that the Attorney General’s office consented to the PCR court granting Mr. Batchelor a new trial. Two post-PCR court orders denying bond reference Mr. Batchelor’s prior *Alford* plea. Exhibits B and C. The State did not present any evidence that was not available to it prior to the *Alford* plea. This Court, accordingly, should reconsider the sentence and impose a sentence not to exceed eighteen years.

IV. CONCLUSION.

For the foregoing reasons this Court should order a new trial. Alternatively, this Court should reconsider the sentence and impose a sentence that does not exceed eighteen years.

IT IS SO MOVED.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Jonathon Batchelor

November 13, 2021
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Indictment No. 2016-GS-42-01345
THE STATE	)	
	)	
	)	
vs.	)	
	)	
Jonathan Batchelor	)	
_____	)	

I certify that I have served a copy of this pleading on the State of South Carolina, pursuant to South Carolina Supreme Court Order No. 2021-08-27-01, Section (e), by emailing at copy to counsel, at counsel's AIS email address, as reflected below:

Jennifer Elizabeth Wells, Esquire
Spartanburg County
180 Magnolia Street
Spartanburg, SC 29304
jwells@spartanburgcounty.org

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

November 13, 2021
Greenwood, South Carolina

Exhibit A



County of Greenville

"...At Your Service"

DEPARTMENT OF PUBLIC SAFETY

Page 1 of 1

R. 138
16010388

FIREARMS / TOOL MARK REPORT

Department: **Spartanburg Sheriff's Office**
Officer: **Walsh, M.**
Subject: **Gary, W.**
Batchelor, Johnathan

Agency **16010388**
Number(s): **16010487**

Case Number: **11-2016-000008**
Report Number: **1**

Incident Date: **01/07/2016**
Received From: **Property & Evidence**
Received Date: **01/25/2016 and 02/02/2016**

This is an official report of the Greenville County Department of Public Safety Crime Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no examinations of evidence submitted in this case have been or will be conducted by any other laboratory or agency.

*John Vandermosten, Assistant County Administrator
Department of Public Safety*

ITEMS SUBMITTED:

Item 1 (16010487) is a Arms Corp model Armscor 206 revolver, serial number AP1267726, caliber 38 Special, made in the Philippines, imported by Armscor Precision International located in Nevada.

Item 2 is five caliber 38 Special cartridges marketed by Hornady.

Item 1 (16010388) is a caliber 38/9mm fired bullet specimen, consistent with Hornady manufacture.

Item 41 is a caliber 38/9mm fired bullet specimen, consistent with Hornady manufacture.

Item 34A is a sealed envelope containing a caliber 38 Special fired cartridge case.

Item 55 is five caliber 38 Special fired cartridge cases, marketed by Hornady.

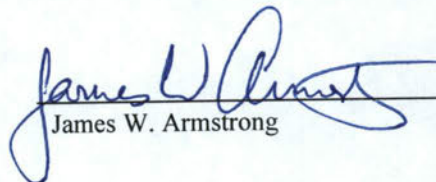
RESULTS:

The item 1 (16010487) revolver was examined, test fired and found to be operable. The items 1 (16010388) and 41 fired bullet specimens were not fired from the item 1 (16010487) revolver, but bear similar but insufficient microscopic marks to permit a positive identification to each other. The item 34A fired cartridge case was not fired in the item 1 (16010487) revolver. The item 55 fired cartridge cases were fired in the item 1 (16010487) revolver.

ADDITIONAL INFORMATION:

The items 1 (16010388) and 41 bear general rifling characteristics consistent with firearms marketed by Llama, Ruger, Smith & Wesson, Taurus and others.

I am a Criminalist employed by Greenville County to perform physical and microscopic examinations on evidence submitted by law enforcement agencies in criminal cases, and have been qualified in courts of record in the state of South Carolina to testify on such examinations.


James W. Armstrong

02/10/2016

Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

The STATE of South Carolina,

-vs-

Prosecutor,

Johnathan Olin **BATCHELOR**,

Defendant.

IN THE COURT OF GENERAL SESSIONS

ORDER FOR DENIAL OF
Warrant/Indictment NUTWELL, COX

2016-G2-42-0134

CLERK OF COURT
SPARTANBURG COUNTY
FAMILY, COX

2019 SEP 13 PM 2:56

FILED

This matter was before this Court on the defendant **JONATHAN OLIN BATCHELOR**'s *pro se* motion pursuant to S. C. Code Ann. Section 17-15-10, et. seq. for release from custody on the above-referenced charge pending trial in this matter. At the hearing held on the motion the State was represented by **JENNIFER E. WELLS** of the office of the circuit solicitor.

It appears that the defendant is presently being held in the County Detention Facility and charged with the crime of **ATTEMPTED MURDER**. On January 5, 2018 the defendant appeared with counsel and entered a plea of guilty to Attempted Murder in the brutal beating and shooting of his wife after negotiating an agreed upon recommendation as to sentence. That recommendation was imposed by the Court. The defendant subsequently filed an application seeking post-conviction relief which included a request for relief based upon the imposition of an unlawful sentence. In the post-conviction proceeding the assistant attorney general and the applicant's counsel agreed to remand the case for a new trial.

Having considered the nature and circumstances of the offense(s) charged; the defendant's character and mental condition; the defendant's family ties and length of residence in the community; employment and financial resources; prior criminal history; any record of flight to avoid prosecution and; any failure to appear at other court proceedings, this Court finds that releasing the defendant on his/her own recognizance will not reasonably assure his/her appearance at any future court proceedings as required and/or an unreasonable risk of danger to a particular person and/or the community will result.

This court further finds that there are no conditions of release that this court could impose with surety which would reasonably assure his appearance at future court proceedings and/or which would reduce the unreasonable risk of danger to a particular person or the community at large.

Based upon the foregoing this Court finds that the defendant's **MOTION** for release on bail pending trial should be and **IS** therefore **DENIED**.

In the event there is a material change in circumstances or the defendant's case is not scheduled for trial and disposition made within 180 days, the defendant is granted leave to seek a reconsideration of the Court's decision to deny bail.

IT IS SO ORDERED:

SEPTEMBER 13, 2019

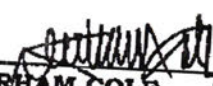

J. DERHAM COLE, RESIDENT JUDGE
The SEVENTH JUDICIAL CIRCUIT COURT

Exhibit C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
STATE OF SOUTH CAROLINA	)	
	)	ORDER ON DEFENDANT'S
	)	MOTION TO RECONSIDER
	)	COURT'S ORDER DENYING BOND
vs.	)	
	)	
Jonathan Batchelor,	)	Indictment No.: 2016-GS-42-01345
	)	
	)	
	)	
<u>Defendant.</u>	)	

This matter was brought before me by the Defendant on a Motion to Reconsider the Order Denying Bond. The hearing was conducted via Webex with the consent of all parties. The Defendant was present at the hearing and represented by his attorney Charles Grose, Esq. Assistant Solicitor Jennifer Wells, Esq. was present and represented the State.

After hearing from both sides, the Court finds that Defendant's Motion to Reconsider Bond is denied. The Court takes judicial notice that Article 1 Section 15 of the South Carolina Constitution provides bail may be denied to persons charged with violent crimes after giving due weight to the evidence and circumstances of the allegations. The Defendant is charged with one count of attempted murder which is defined as a violent crime in South Carolina Code of Laws §16-1-60. The facts present in this case were admitted by the defendant in his initial plea before the Honorable J. Derham Cole.¹ The defendant admitted there was a substantial likelihood that if the following facts were presented to a jury, the jury would convict him based upon the facts. *See* Def. Plea Transcript 18:5-9. The following facts are present and are relied upon by this Court in denying bond due to the Defendant being a significant danger to the community and past victim.

The facts are as follows. On January 7, 2016, deputies responded to [REDACTED] Reidville Road in Spartanburg County in reference to a shooting that occurred. *See* Def. Plea Transcript 13:10-13. Defendant led Deputy Malpass to his wife, Stephanie Batchelor, who was laying on the ground outside of the house at the above-referenced location. *See id.* at 13:14-19. Mrs. Batchelor was conscious when Deputy Malpass arrived and identified herself and stated that she believed she had been shot. *See id.* at 13:20-23. Mrs. Batchelor was then transported to Spartanburg Regional where she was treated for multiple gunshot wounds to her head and body. *See id.* at 14:4-5; 23-25. Doctors did not expect Mrs. Batchelor to survive due to the amount of brain swelling. *See id.* at 15:8-10. While Mrs. Batchelor initially denied that defendant had shot her, after she survived the incident and regained the ability to speak, Mrs. Batchelor identified the Defendant as the person who pulled the trigger after he had assaulted her with a hammer when she arrived home from work. *See id.* at 16:2-14. This initial assault resulted in Mrs. Batchelor losing consciousness, but she regained consciousness to find her husband standing over her; pulling out a weapon; and she then heard gunshots and hurt all over. *See id.* at 16:15-23.

¹ Defendant plead guilty before Judge Cole on January 5, 2018. It was by way of consent agreement to post-conviction relief that Defendant was before this Court on a bond motion. After denying Defendant's motion, Defendant filed a motion to have the Court reconsider its denial of bond.

This Court, having weighed the evidence presented at the hearing and considered the nature and circumstances of the event, finds it necessary to deny Defendant's motion to reconsider its decision denying the Defendant's motion for bond. Defendant remains without bond. The Court makes this decision due to the facts being present showing that the Defendant is an extreme danger to the victim and the entire community at large.

IT IS SO ORDERED.

s/ R. Keith Kelly
Hon R. Keith Kelly
Circuit Court Judge
Seventh Judicial Circuit

1 March 2021
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

The State,)
-vs-) TRANSCRIPT OF RECORD
Johnathan Olin Batchelor,) 2016-GS-42-1345
Defendant.) January 5, 2018
Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE

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

JENNIFER ELIZABETH WELLS, ESQUIRE
Attorney for the State

TRAVIS A. MOORE, ESQUIRE
Attorney for the Defendant

Linda D. Moffitt
Circuit Court Reporter

INDEX

Guilty plea -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 MS. WELLS: May it please the Court, Your Honor.

2 Your Honor, standing before you is Jonathan Olin
3 Batchelor. He's here entering a plea under North Carolina
4 vs. Alford in Indictment No. 2016-GS-42-1345. That's a
5 true bill of indictment for attempted murder.

6 There is a recommendation from the state in this
7 matter.

8 I'm handing up that indictment, as well as a permanent
9 restraining order that I understand the defendant is going
10 to consent to.

11 THE COURT: You are Jonathan Olin Batchelor.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Batchelor, I have before me Indictment
14 2016-1345. That indictment charges you with the crime of
15 attempted murder.

16 The state alleges on January the 7th of 2016 you did
17 here in Spartanburg County with malice aforethought attempt
18 to kill Stephanie Batchelor by shooting her with the intent
19 to kill Stephanie Batchelor.

20 If convicted of attempted murder you could receive a
21 potential sentence of up to 30 years in jail.

22 Do you understand what you're charged with?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand the potential punishment
25 that can be imposed upon a conviction?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Moore is your lawyer.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: How long has he been representing you on
5 this charge?

6 THE DEFENDANT: A little over a year and a half.

7 THE COURT: Have you had plenty of time to talk to him
8 about this charge and your decision as to how you wish to
9 proceed with its disposition?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: He's been over the indictment with you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: He's explained the charge?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: He's told you what kind of sentence could
16 be imposed if you were found guilty?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Did you tell him everything you know about
19 the facts that relate to these allegations?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And after your discussions with him did
22 you and he determine whether or not you have a defense to
23 the charge of attempted murder?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And what did you determine?

1 THE DEFENDANT: Due to the new evidence that's come in
2 it's better we don't go to trial.

3 THE COURT: Okay. Well, did you and he decide that
4 you have a defense to the charge?

5 THE DEFENDANT: No, sir.

6 THE COURT: You don't have a defense to the charge?

7 THE DEFENDANT: Not a legal defense, no, sir.

8 THE COURT: Well, why is this an Alford plea? Why is
9 this an Alford plea?

10 MR. MOORE: Based off the discovery, Your Honor, he
11 decided that it'd be more likely than not that a jury would
12 convict him. But he doesn't have a legal defense as -- in
13 the discovery a defense that we felt was enough that he
14 could put it before a jury and be acquitted on these
15 charges.

16 THE COURT: Well, he may not be successful, but I'm
17 assuming if he's pleading under Alford he must have some
18 defense to it. In other words, for instance, like I did
19 not shoot nor did I intend to kill Stephanie Batchelor.

20 MR. MOORE: That is his position, Your Honor.

21 THE COURT: That's his position.

22 So you deny the allegations?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Well, do you understand if you deny the
25 allegations, you deny guilt, that is a defense to a

1 criminal charge? Because you can only be convicted of a
2 crime if you committed one.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Except under some circumstances that we're
5 going to be talking about like North Carolina vs. Alford.
6 But, in any event, from what I understand now you do have a
7 defense to the charge.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand when you enter a plea of
10 guilty you give up your right to assert that defense as a
11 defense to the charge?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: In other words, there's no chance today,
14 even though you have a defense, that you'll be found not
15 guilty when you enter a plea of guilty to the charge,
16 notwithstanding the fact you deny you committed it.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And when you enter a plea of guilty to a
19 charge, notwithstanding the fact that you deny you
20 committed it, you still authorize me to impose a sentence
21 just as if you had pled guilty and admitted your guilt or
22 just as if you had gone to trial before a jury, denied your
23 guilt but they found you guilty anyway.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand it?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Is that what you wish to do?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Did Mr. Moore explain to you that
5 attempted murder is designated and classified as a violent
6 offense under the law?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand the significance of that
9 designation?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Did he also explain to you that attempted
12 murder is designed and classified as a most serious offense
13 under the law?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand the significance of that
16 designation?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Did he also explain to you that attempted
19 murder is designated and classified as a no-parole offense
20 under the law?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand the significance of that
23 designation?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Did Mr. Moore also explain to you that you

1 have a right to remain silent?

2 In other words, you don't have to say anything that
3 relates to this charge; you don't have to testify; you
4 can't be required to testify even during a trial; you don't
5 have to make any statement; you don't have to answer any
6 questions that relate to the charge. You don't have to
7 answer my questions I'm asking you right now unless you
8 want to plead guilty.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Because you always have the right to
11 remain silent and to require the state to come into court
12 with sufficient evidence to establish your guilt to the
13 satisfaction of a jury beyond a reasonable doubt, and you
14 never can be required to assist them in those efforts to
15 prove your guilt by you making statements, testifying or
16 responding to questions that might tend to help them prove
17 your guilt.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand your right to remain
20 silent?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you wish to give that right up in order
23 to plead guilty?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Did Mr. Moore also explain to you that you

1 have a right to confront and to examine any witness in
2 court that would provide evidence against you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand that you have a right to
5 require the state to bring their witnesses into court, have
6 them take the witness stand, have them testify in your
7 presence under oath so you can see them, you can hear them?
8 Your lawyer would be able to cross-examine them on their
9 testimony in order to test the credibility of the witnesses
10 and the reliability of the information they're providing.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand when you plead guilty
13 that process does not occur?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand the right?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you wish to give it up in order to
18 plead guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did Mr. Moore also explain to you that you
21 have right to have a jury trial and to have 12 jurors
22 decide if you're guilty or not?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you understand that if you plead
25 guilty a jury is not going to decide -- not going to

1 consider any evidence, not going to decide any verdict?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that if you have a jury
4 trial the burden is on the state to prove your guilt?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that if you have a jury
7 trial you still don't have to testify or provide evidence?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: But you can if you want to.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that if you have a jury
12 trial all 12 jurors have to be convinced of your guilt
13 beyond a reasonable doubt? It takes all 12 to be convinced
14 before you can be convicted of a crime.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand your right to have a
17 jury trial?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you wish to give that right up in order
20 to plead guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, the solicitor has indicated that she
23 has a recommendation to make, that you and your lawyer and
24 she have been involved in negotiations and it has resulted
25 in some agreement to present to the Court as it relates to

1 the sentence.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand what that recommendation
4 is?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: What do you understand it to be?

7 THE DEFENDANT: Thirty years suspended to 18 years in
8 the Department of Corrections with five years probation.

9 THE COURT: Was anything else besides that promised to
10 you in order to induce your decision to plead guilty?

11 THE DEFENDANT: No, sir.

12 THE COURT: Have you been forced, coerced or pressured
13 in any way whatsoever that resulted in your decision to
14 plead guilty when you otherwise would not have made it?

15 THE DEFENDANT: No, sir.

16 THE COURT: Are you pleading guilty freely and
17 voluntarily?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And are you satisfied with your decision
20 to plead guilty today?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you need to discuss it with your lawyer
23 any further?

24 THE DEFENDANT: No, sir.

25 THE COURT: You're 29 years old?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: How far did you go in school?

3 THE DEFENDANT: I graduated high school and was a
4 certified electrician through college and some automotive
5 through Spartanburg Tech as well.

6 THE COURT: And you Stephanie Batchelor have been
7 married?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: For how long?

10 THE DEFENDANT: We've been married for almost three
11 years -- five years.

12 THE COURT: Five?

13 THE DEFENDANT: Three years.

14 THE COURT: Three. Did you have children?

15 THE DEFENDANT: Two.

16 THE COURT: What age?

17 THE DEFENDANT: Now they're five and three.

18 THE COURT: And what kind of work have you done?

19 THE DEFENDANT: I'm a mechanic.

20 THE COURT: And how long have you been in jail?

21 THE DEFENDANT: 710 days.

22 THE COURT: Have you ever been treated for any type of
23 substance abuse or addiction?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you ever been treated for any type of

1 mental illness or emotional disturbance?

2 THE DEFENDANT: No, sir.

3 THE COURT: Do you suffer from any of those
4 conditions?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. Listen to what the solicitor
7 tells me about the facts that relate to your case.

8 MS. WELLS: Thank you, Your Honor. May it please the
9 Court.

10 Your Honor, on January 7th of 2016 deputies with the
11 Spartanburg County Sheriff's Office responded to [REDACTED]
12 Reidville Road here in Spartanburg County in reference to a
13 shooting.

14 The officers arriving on the scene, Deputy Christian
15 Malpass was the first on the scene. She said she was
16 flagged down by an officer who -- excuse me -- by
17 Mr. Batchelor who led the deputy to Stephanie Batchelor who
18 was lying face down in the grass on the side of the
19 residence at 585 -- excuse me -- [REDACTED] Reidville Road.

20 This individual identified herself as Stephanie
21 Batchelor at the time. She was able to speak to law
22 enforcement.

23 She said that she felt like she had been shot. Deputy
24 Malpass' body cam was activated at that time, and
25 Mrs. Batchelor was able to speak to law enforcement. She

1 is not at that time -- she's asked who did it. She at that
2 time does not tell law enforcement who committed the
3 shooting.

4 Mrs. Batchelor is transported to Spartanburg Regional
5 Medical Center where she can be treated for her injuries.

6 Mr. Batchelor gave a statement saying that he had been
7 in the shower. Mrs. Batchelor had been on her way home
8 from work. She worked at Kay Jeweler at the mall. She had
9 done a night deposit with another coworker, and that he had
10 talked to her on her way home. He was in the shower and he
11 came out. She wasn't in the residence, and he went outside
12 and found her on the ground.

13 Her purse was in the -- her vehicle was missing. Her
14 purse was in the driveway. Deputies located her vehicle,
15 which was a 2010 Ford Explorer, just down the road about a
16 mile and some change, down the road from the residence. It
17 had been run up on an embankment as though -- it was at a
18 bridge with the river running underneath it, and it was
19 still running.

20 Mrs. Batchelor, it was discovered, carried a .38
21 revolver, a .38 weapon, with her at all times. That weapon
22 was missing.

23 At Spartanburg Regional the trauma team was activated
24 to treat Mrs. Batchelor. They determined she had been shot
25 multiples times in the head and body.

1 Her parents were told that she would not survive.

2 She was able however -- at the time when she was
3 admitted she was still able to speak and-but still was not
4 able to tell her father. She gave a description of a
5 suspect. That description matched Mr. Batchelor, but she
6 did not say Mr. Batchelor committed the crime at that
7 point.

8 She later lost consciousness. At that point doctors
9 said her brain swelling was so severe they did not expect
10 her to survive.

11 Law Enforcement Investigator William Gary with the
12 sheriff's office was present, and Investigator Mike Walch.
13 The two of them handled the bulk of this investigation,
14 Judge.

15 That investigation showed that, in fact, Mr. Batchelor
16 was having an affair with a coworker, that Mr. Batchelor
17 admitted that to them. That coworker came to the hospital
18 while Mrs. Batchelor was fighting for her life and sat in
19 the family waiting room with Mr. Batchelor.

20 Mr. Batchelor was interviewed a number of times. He
21 never admitted that he was involved in the shooting. He
22 maintained the entirety of his involvement with law
23 enforcement until his arrest, that, in fact, he did not
24 commit the crime.

25 A number of witnesses were interviewed and the --

1 basically, what happened is Mrs. Batchelor was interviewed
2 by law enforcement. She denied initially that
3 Mr. Batchelor shot her.

4 when she was able to regain the ability to speak she
5 asked to speak with law enforcement again. They came in,
6 and she said that, in fact, he did, he was the one who
7 pulled the trigger, that she had pulled into the driveway,
8 that they were on the phone on her way home from work, that
9 she pulled into the driveway, that she got out of her
10 vehicle and that Mr. Batchelor attacked her, that he
11 assaulted her with what she described as an orange hammer
12 that -- which -- that had a soft covering on it. That's a
13 hammer that's known as, I believe, a dead-blow hammer
14 commonly used in automotive work. That he assaulted her.

15 She loses consciousness. When she comes to she is
16 being dragged from where she got out of her vehicle near
17 the garage to the side yard.

18 She says she recalls Mr. Batchelor standing over her,
19 Mr. Batchelor pulling out a weapon. And she said at that
20 point she hurt all over. She heard the gunshots and that
21 she hurt all over. That was her recollection of what
22 happened, but that Mr. Batchelor is the one who stood over
23 her with the weapon.

24 This case has been set for trial on several occasions.
25 The weapon was -- that committed this crime was a .38.

1 That .38 was never recovered. Although Mr. Batchelor was
2 arrested on a different date with a .38, that gun was not
3 the gun that was involved with this crime and that gun
4 charge that is somewhat tangential to this case is going to
5 be dismissed at the end, that once Mr. Batchelor has been
6 sentenced here.

7 I received information from a defense attorney in
8 Greenville that he had a federal client who was housed with
9 Mr. Batchelor who Mr. Batchelor had been having
10 conversations with at the Spartanburg County Jail.

11 I had the opportunity to interview that defendant, and
12 that cooperating defendant tells me that Mr. Batchelor
13 during some conversations about potential legal strategy in
14 this case admitted to him that he did, in fact, shoot his
15 wife and that he did that because he was afraid that she
16 was going to leave him and take his children. And he said
17 that he was going to kill to keep -- to have contact with
18 his children.

19 So, Your Honor, those are some of the facts and
20 circumstances the state would rely upon at trial in this
21 case.

22 The victim is present here with her father.
23 Investigator Gary is present. I do know that
24 Mrs. Batchelor and her father would like to address the
25 Court at the appropriate time.

1 And, Your Honor, he has no prior criminal history.

2 THE COURT: All right. Mr. Batchelor, you heard what
3 the solicitor just told me.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you believe that if that presentation
6 was presented to a jury of 12 that you would help select
7 that there's a reasonable probability that the jury would
8 find you guilty of attempted murder?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And based upon that belief and the
11 agreement reached between the state and you and your
12 lawyer, you prefer to enter a plea of guilty rather than to
13 go forward with the trial?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: The solicitor says that you were in jail
16 with a fellow who had some conversations with you and that
17 he was going to come to court and testify that you told him
18 you did shoot your wife, you did intend to kill her and you
19 did that so that she couldn't leave and take the children
20 away from you.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did you tell him that?

23 THE DEFENDANT: No, sir.

24 THE COURT: He is lying about it?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I see.

2 All right. You still want me to accept your plea of
3 guilty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. I'll accept it and hear from
6 you and Mr. Moore.

7 MR. MOORE: Yes, sir. May it please the Court, Your
8 Honor.

9 As you already heard, Mr. Batchelor is 29 years old.
10 He's a graduate of Dorman High School.

11 He was working full time at Spartanburg Dodge at the
12 time of his arrest. And he has been in custody for 710
13 days, ever since his initial arrest in this matter.

14 As Ms. Wells relates to the Court, this has been a
15 trial ever since I represented him. We prepared for trial
16 all the way up until this week.

17 We've interviewed witnesses; we've investigated the
18 case; we've met on dozens of occasions; we've had the
19 medical records professionally reviewed. We have done
20 everything that Mr. Batchelor has indicated he wanted done
21 in preparation for this trial. And it was a trial up until
22 this past week when Ms. Wells came forward with this
23 codefendant-federal-prisoner statement.

24 In light of that, in light of the testimony we believe
25 the victim, Stephanie Batchelor, would have testified to

1 had this gone to trial, Mr. Batchelor decided it was in his
2 best interest to accept the state's recommendation in this
3 matter and not -- not to go forward with the jury trial.

4 I would tell the Court, and I think the Court is
5 aware, but the recommendation made by the state has been
6 the result of extensive negotiations, probably some of the
7 most back-and-forth negotiations I've had recently in a
8 case.

9 I believe considering all of the circumstances, the
10 testimony that would be presented, the physical evidence
11 that may or may not be present in the case, the lack of a
12 prior criminal record, the lack of any history of violence,
13 I believe under all of those circumstances the
14 recommendation by the state is fair, and Mr. Batchelor
15 believes it's fair. And we would ask the Court to accept
16 that recommendation and make it the Court sentence in this
17 matter.

18 THE COURT: Mr. Moore, I'm assuming that Ms. Wells did
19 share with you the name of the prisoner that she intended
20 to call to testify about what he said was a confession by
21 your client.

22 MR. MOORE: Yes, sir. That's correct.

23 THE COURT: And did -- does your client agree that he
24 was being housed in some detention facility with that
25 person?

1 MR. MOORE: Yes, sir. He would -- he would
2 acknowledge he was in the same pod at the same facility
3 during the time period alleged by the state.

4 He has since been moved based off the statement made
5 by this individual.

6 And just for the record, Ms. Wells did provide a
7 2-page statement as to what this person would testify to.
8 We've reviewed that statement.

9 I contacted that person's attorney. He has reviewed
10 those notes and my concerns and he acknowledges those are
11 consistent with what his client continues to tell him and
12 would be prepared to testify to.

13 THE COURT: Okay. All right. Mr. Batchelor, have you
14 got anything you want to add to what your lawyer's told me?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Have you got somebody you want
17 to hear from?

18 MS. WELLS: Yes, sir, Your Honor.

19 Your Honor, this is Stephanie Batchelor. She is the
20 victim in this case.

21 THE COURT: All right. Mrs. Batchelor, what would you
22 like to tell me?

23 THE VICTIM: Yes, sir. I'd like to tell you that that
24 man beat me and then shot me and left me to die with my
25 children 30 feet down the hall in the house.

1 Then once I woke up in the hospital they told me that
2 my children had been taken from me and placed into DSS
3 custody because of the violentness of what he did to me.

4 I had to relearn how to walk, how to eat. I couldn't
5 brush my teeth. I had to be fed through a feeding tube. I
6 had constant care.

7 I couldn't take care of my children when I was allowed
8 to be around them. I was only allowed a couple of hours a
9 day. I had to go at night to someone else's house to stay
10 because I couldn't be with them. And my children -- my
11 oldest son, Timmy, is afraid of his father. He doesn't
12 want to talk about him. He is still to this day afraid of
13 him. And I just want him out of our lives.

14 THE COURT: All right. Thank you, ma'am. I'm glad
15 you're here today.

16 MS. WELLS: Your Honor, I believe her father,
17 Mr. Gibson, would like to make a statement as well.

18 THE COURT: Okay.

19 TIMOTHY DOC GIBSON: Your Honor, my name is Timothy
20 Doc Gibson. I am the father of Stephanie Gibson Batchelor,
21 the victim in this case, whatever.

22 And what I'd like to say to you is that the woman you
23 see here today is not the woman that was attacked.

24 I raised her. I was a single father. I've been with
25 her every day. I fed her, I bathed her and I clothed her.

1 Until she married Mr. Batchelor, she lived with me. And
2 when I walked in the hospital if you had not told me that
3 was my daughter, I would not have recognized her.

4 The beatings on her head were severe, bullet holes
5 through her neck, through her arms. As they were operating
6 on her to try to save her life, they would lay her arms
7 back. You could see that she had them up in a defensive
8 mode trying to defend against the gun with her bare hands.

9 The hole in the side of her head, they told me it was
10 a bullet hole. I assumed that had she had been struck with
11 a pickax or something of that.

12 I could see through her skull into the bone. The
13 blood from that was over into her eye, matted parts of her.
14 I couldn't recognize -- the only way I could recognize her
15 was from her left eye. I could tell it was my daughter
16 from her left eye.

17 I sat there and watched my daughter die. The doctor
18 came out. He told me. He said no one survives this. He
19 said if you have anything to say to her, say it now because
20 she will not survive this.

21 And as she began to blackout, I left assuming that she
22 was dead and I wouldn't see her again. The next morning,
23 miraculously, she'd survived, but she looked dead again.
24 She looked worse the second day than she did the first.
25 Her head was as large as a basketball. Her tongue was

1 exposed, swollen as large as a cantaloupe. Her head was
2 split from the front to the back, split open. I still
3 couldn't recognize her. Of course she was unconscious and
4 couldn't speak.

5 She went from that moment, from that condition, to
6 consciousness, in and out. When she regained
7 consciousness, the part of her brain that didn't work, she
8 couldn't swallow. She had to be fed through the stomach.
9 She had a trach in her throat. She couldn't talk. She was
10 there for a month.

11 When we got her back she couldn't walk, she couldn't
12 talk, she couldn't eat.

13 Her children did not recognize her. It was months
14 before they would have anything to do with her. Like she
15 said, I was -- I was granted temporary custody when all of
16 this happened. The judge that was overseeing it, he said
17 he didn't have enough information to make a decision. So
18 he gave them to me with the understanding that I'd be
19 responsible if any misdoings or anything was wrong or any
20 lies to be told about the -- you know, whatever. He gave
21 me custody of the children.

22 So she wasn't allowed to see them at night. We had to
23 get her up every night and take her to a friend of ours who
24 is a physician, and she stayed with her all night. She was
25 fed every day. It's a slow rehabilitation process.

1 And even now she can't run. The parts of the bone
2 where the bullet impacted are gone. There are nothing to
3 reconstruct. It's been a very, very -- the damage done to
4 her is permanent. No matter what, that cannot be undone.
5 And I just pray that justice be done for her.

6 THE COURT: Okay. Thank you, sir. Good luck to you.

7 TIMOTHY DOC GIBSON: Thank you.

8 MS. WELLS: That's all, Your Honor.

9 THE COURT: Okay. On indictment 2016-1345, Sentence
10 of the Court is you, Johnathan Olin Batchelor, be confined
11 to the South Carolina Department of Corrections for a
12 period of 30 years.

13 That sentence shall be suspended upon the service of
14 18 years followed by five years of probation.

15 The defendant is to be given credit for any time he is
16 entitled to pursuant to 24-13-40. And he is to have no
17 contact directly nor indirectly with Stephanie Batchelor or
18 any members of her family.

19 So far as the children go, that'll depend upon the
20 Court order unless they're adults, and then they'll make
21 that decision on their own.

22 Also, Mr. Batchelor, you're also subject to a
23 permanent restraining order, which I understand you have
24 agreed to. And that's been signed today, and therefore
25 you'll have no contact also pursuant to that order with

1 Stephanie Batchelor, directly nor indirectly.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay.

4 MR. MOORE: Thank you, Your Honor.

5 MS. WELLS: Thank you, Your Honor.

6 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 5th day of January 2018.

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

January 9, 2019

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
)
2)
COUNTY OF SPARTANBURG)
3)
)
4)
STATE OF SOUTH CAROLINA,)
5)
 Plaintiff,)
6)
 vs.)
7)
JONATHAN OLIN BATCHELOR,)
8)
)
9 Defendant.)
)

TRANSCRIPT OF RECORD
2016-GS-42-01345

10 -----
11
12 October 7, 2021
 Spartanburg, South Carolina

13 B E F O R E:

14 HONORABLE J. MARK HAYES, II, Judge.

15
16 A P P E A R A N C E S

17 JENNIFER WELLS, ASSISTANT SOLICITOR
 For The State

18
19 E. CHARLES GROSE, JR., ESQUIRE
 For Defendant

20
21
22
23 Julie A. Cendroski,
 Circuit Court Reporter III
24 Seventh Judicial Circuit
25

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EXHIBITS

MARKED

ENTERED

NO EXHIBITS PROFFERED

1 THE STATE VS. JOHNATHAN OLIN BATCHELOR

2 SOLICITOR WELLS: You're Mr. Batchelor?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay? Mr. Batchelor, can you hear
5 us? Just nod your head yes.

6 THE DEFENDANT: (Nods head up and down.)

7 THE COURT: Okay, good. Mr. Batchelor, this is a
8 motions hearing, so I don't anticipate that you'll be
9 speaking today, so after the hearing is over, please
10 reach out to your lawyer. I'm sure he'll be able to
11 explain anything to you or answer any of your questions.

12 All right. At this time I will hear from Mr.
13 Grose. I believe this is his motion.

14 Julie -- Madam Court Reporter, do you have the
15 information?

16 COURT REPORTER: Yes, sir.

17 THE COURT: Okay. Yes, sir, Mr. Grose.

18 MR. GROSE: Thank you, Your Honor, for scheduling
19 this.

20 THE COURT: I can't hear you, I'm sorry. It's my
21 audio, so hang on one second. Okay, there we go. Thank
22 you, Mr. Grose.

23 MR. GROSE: All right. Can you hear me now?

24 THE COURT: Yes, sir.

25 MR. GROSE: Okay. I was just saying thank you

1 for scheduling this and may it please the Court.

2 Your Honor, you have before you our initial
3 motion, as well as our amended motion regarding medical
4 records, access to medical records and mental health
5 records in this case. I sent an email this morning with
6 some records that I wanted to reference.

7 In the State's response, I think that they agree
8 that we're entitled to any psychiatric records from the
9 Spartanburg Hospital during the period of time when Ms.
10 Batchelor was admitted to the hospital. The State has
11 also reached out to the hospital to try and get those
12 records and have been told that they don't exist. And I
13 have no doubt that that's what the State did and that's
14 what the hospital told the State.

15 I've been doing this for a long time and have
16 realized that oftentimes when a provider says they don't
17 have records, that may be mistaken. And when you look
18 at some of the records that have been provided in this
19 case, they tend to reference -- well, there's a lot of
20 references to psychiatry. There's also references to
21 consultations with a psychiatrist, and it doesn't appear
22 that we have records for those.

23 For example, in the records I sent, on page 1061,
24 you know, there's a reference to a change in mental
25 status. On page 1124, there's reference to a consult

1 with Dr. Wells for a psychiatric evaluation. Page 1211,
2 appears to be that same record, but with some
3 handwritten notes added to it. Again, referencing the
4 consult with Dr. Wells for a psychiatric evaluation.

5 Page 1326 may be a part of the reduced charge
6 summary, but it once again references other
7 consultations at the bottom, Kenneth Wells in
8 psychiatry. 81743 references, you know, mental status
9 and behavioral health concerns and a psycho/social
10 assessment.

11 Page 1838 references, it appears to say,
12 psychiatry to evaluate today for suicidal ideation.
13 Page 1839, which I believe is in that same timeframe for
14 the next day as a prior record, also references a
15 psychiatric evaluation pending for suicidal ideation.

16 Page 1848 is making notations regarding, I guess,
17 mental status and mood being sad. This is still all in
18 that later part of the hospitalization. 1852 is similar
19 to the prior page.

20 Page 1853 references continuing the psychiatric
21 meds. 1856 also talks about depression and anxiety.
22 And it seems to say that psychiatry saw the patient.
23 Although, sometimes I don't know the best way to
24 interpret those notes.

25 1861, other mental status. 1864, mental status.

1 18 -- I'm sorry, 2129, this is a record from January
2 21st of 2016, increased depression, suicidal ideations.
3 And it again references what appears to be, you know,
4 anxiety.

5 Page 2134 says, psych evaluation initiated.
6 Psychiatrist to further evaluate. Page 2227, patient
7 seems confused as to what happened. Patient later
8 received medication to help her sleep and pain
9 management.

10 Page 2259, at the bottom it notes the patient is
11 alert, oriented in place and time, but also with an
12 occasional need for a reminder of injuries. Then on
13 2286, you know, there's notations about, you know,
14 anxiety related to the family dynamics, mental state --
15 I mean, I'm sorry, medical state. And the goal, anxiety
16 controlled.

17 Page 2297, a very similar entry as to the one on
18 the prior page I read. Again, 2303, you know, again, a
19 similar reference with regards to the issues regarding
20 anxiety.

21 And so, I don't know how we resolve this, but,
22 you know, despite the efforts that the State has gone
23 through, and I do appreciate the efforts that they've
24 made, you know, it still appears that, you know, that
25 there's references to psychiatric evaluations. Dr.

1 Wells, in particular.

2 And it doesn't appear, you know, that we have
3 some of those records. Those records also, you know,
4 indicate that Ms. Batchelor had, you know, some
5 confusion about this incident and the injuries. In the
6 State's, you know, reply to our motion, and I understand
7 the position that they're trying to take, that once Ms.
8 Batchelor identified her husband as the perpetrator in
9 late January, that she's remained steadfast on that.

10 You know, when she was being questioned at the
11 incident location, she said that she didn't know who the
12 perpetrator was. When, I think, the State even
13 acknowledges that in their response that the first time
14 she was asked about it at the hospital, you know, she
15 didn't identify Mr. Batchelor.

16 I understand that they have a theory as far as
17 explaining all of that, but this is, you know, an issue
18 of fact that is disputed at the trial. And I think, you
19 know, at a minimum we need to have access to the records
20 from the hospital with regards to, you know, the
21 consultations with psychiatry. And I would think that
22 an order from the court asking them to, you know,
23 redouble their efforts and try to, to locate those
24 records could be very helpful.

25 Also, we have every reason to believe that Ms.

1 Batchelor had, you know, followup care after the
2 hospitalization. I mean, it would ordinarily be
3 expected in a case like this. And we think that given
4 the hospital records referencing a level of psychiatric
5 care. Also discussing, you know, the confusion that she
6 had about the incident.

7 We believe that some of the medications that she
8 was on at the hospital can have memory side effects. We
9 believe that, you know, the records for her followup
10 care are relevant or are potentially relevant to this
11 case and that we've made a showing for the Court to have
12 those records obtained and do an in-camera review.

13 THE COURT: All right, thank you very much.

14 MR. GROSE: And that's our position. Thank you,
15 Your Honor.

16 THE COURT: Thank you.

17 Yes, ma'am, Ms. Wells.

18 SOLICITOR WELLS: Thank you, Your Honor. May it
19 please the Court? Your Honor, the State did make a
20 request outside of the initial medical records request,
21 which was incredibly voluminous. Thousands of pages of
22 medical records that we have provided to multiple
23 counsel for Mr. Batchelor at this point. But when Mr.
24 Grose asked about these additional psychiatric records,
25 the State did make a specific inquiry with a HIPAA

1 release to Regional and we asked for any and all medical
2 records related to any behavioral health records or
3 mental health records in regards to Ms. Batchelor. We
4 received a response from Spartanburg Regional telling
5 us, and that was provided to Mr. Grose on/or about
6 August 18th of this year, stating that no such records
7 existed.

8 And it says: We regret to inform you that we are
9 unable to process your request, as the patient did not
10 receive services and that there are no behavioral mental
11 health records for this patient.

12 Now, we did not limit the timeframe in our
13 request. We gave them a point in time when she had been
14 in the hospital, but we did not say just on that date.
15 We just said any and all records. And Regional informs
16 us that those records do not exist.

17 I understand Mr. Grose is referencing things in
18 the records, but Regional's telling us there's nothing
19 additional. So I'm certainly happy to rephrase our
20 request to Spartanburg Regional, but outside of that I'm
21 not sure how -- I don't know that a -- I mean, and if
22 the Court wants to issue an order, that's fine. But I
23 don't know that the Court needs to issue an additional
24 order.

25 I mean, however the Court advises on those

1 records, the State's ready to follow that directive.
2 But we did make this request subsequent to our hearing
3 with Judge Knie in July and have received the response
4 back that no such records exist.

5 So, Judge, I will let you know that just for your
6 edification. And I don't want to confuse issues here
7 because there's -- this motion to disclose was
8 multi-faceted. So -- and the State responded to it in
9 that vain. So that is for the medical records request
10 that Mr. Grose made on Mr. Batchelor's behalf.

11 Then there's an additional what the State styled
12 as a mental health records request in our response where
13 the defense sought the victim's mental health records.
14 And, obviously, as the State knows, State v. Blackwell
15 is the controlling case there. And, obviously, the
16 defense must make a sufficient preliminary showing that
17 the mental health records are necessary.

18 I can tell the Court here that she, Ms.
19 Batchelor, informs me that she did not receive any
20 additional medical mental health records or anything
21 where medicine would have been prescribed or monitored
22 or anything like that subsequent to this. She did
23 occasionally see a therapist, but did not see a
24 therapist regularly. And that person is not a person
25 who is a medical doctor who could handle medications.

1 And she does not consent to the release of those therapy
2 records. And the State believes and continues to
3 believe that the defense has not made a sufficient
4 showing that those mental health records are relevant.

5 We agree anything from Regional is fair game and
6 anything where she was treated at Regional should be
7 turned over, and we've made efforts to ensure that that
8 can happen. But as to her personal therapy records, I
9 can't imagine anything where those would be relevant
10 here. This was sporadic therapy that she received over
11 the course of several years subsequent to this event.
12 And, I think, you have to have more than a showing that
13 she just went to therapy.

14 Now, if she had received and informed us that she
15 had received psychiatric care, the State's position
16 might be different. But this is a, this is a
17 family-style therapist who is not handling medications,
18 just simply doing talk therapy with her. And we think
19 that just because a victim seeks therapy is not a
20 sufficient showing that those records are somehow
21 relevant to this case. Obviously, you know, it would
22 have a significant chilling affect on our referrals to
23 -- and when I say "our", I mean service provider
24 referrals for victims, for mental health records if all
25 defense has to do is say, well, they went to see a

1 therapist and that's a sufficient preliminary showing.
2 I think there needs to be more than that. And here I
3 don't see that, for this particular purpose, that that
4 threshold has been met.

5 So that's what I would tell the Court. And,
6 obviously, under *Blackwell*, as the Court well knows,
7 should the Court determine there is sufficient
8 preliminary showing, then there would be -- we would
9 have to somehow get those records. We do -- the State
10 does not have them. We have not sought them, and do not
11 intend to seek them unless the Court orders us to seek
12 them. And then once, should the Court determine that
13 this is what should happen, then the Court would have to
14 conduct an ex parte review of those records prior to any
15 dissemination to either side.

16 So we don't think as to her therapist records the
17 threshold has been met. And we'd ask the Court to deny
18 that portion of the defendant's request. But the State
19 will continue, at the Court's direction, to inquire of
20 Spartanburg Regional as to these additional psychiatric records,
21 should they exist.

22 THE COURT: Any reply, Mr. Grose?

23 MR. GROSE: Yes, Your Honor. Just with regard to
24 Spartanburg Regional. And, again, I acknowledge and
25 appreciate the efforts that the State has made in that

1 regard. I do think that sometimes a court order has the
2 ability to get a provider's attention in a way that, you
3 know, a release might not.

4 With regards to the therapist's records, this
5 morning is the first acknowledgment that we've received
6 that Ms. Batchelor did, in fact, seek therapy. And we
7 think that, as we argued before, that the showing has
8 been made because number one, we're dealing with
9 inconsistent statements. And I think that the parties
10 have going to have different explanations or different
11 theories with regards to those inconsistent statements,
12 but they definitely do exist.

13 The records that, you know, we provided for you
14 today showed, you know, some mental health concerns, as
15 well as confusion about the events, anxiety with regard
16 to family dynamics. Of course, that could include
17 Mr. Batchelor, but that could also include other family
18 members.

19 The -- I think that with regard to the showing, I
20 think that we have made a sufficient showing that Ms.
21 Batchelor's mental state at the time and immediately
22 after these events when she's identifying her husband
23 eventually. And then as the State is gonna apparently
24 argue, has continued to do that over the course of the
25 period since she was released from Spartanburg Regional.

1 I think that we have made that showing. I think
2 that we're also in agreement for the procedure following
3 the showing, which would be for the Court to obtain
4 those records and conduct an in-camera review. And so
5 at this point our position is, is that we've made the
6 showing and the Court should conduct that in-camera
7 review, determine whether or not to release the records.

8 SOLICITOR WELLS: And, Judge, if I may? I just
9 have one matter for the record. Mr. Grose says the
10 State is just now informing them that this -- that Ms.
11 Batchelor sought therapy. The State had not reason to
12 make that inquiry to Ms. Batchelor until Mr. Grose made
13 his motion. And then we only did so that we could fully
14 inform both the defense and the Court about the style
15 and nature of any therapy she did seek afterwards. So I
16 don't want there to be any idea that we were -- I don't
17 think we were obligated to make that inquiry at any
18 point, but I don't -- I just don't want there to be
19 inference or suggestion on the record that the State
20 played hide the ball here.

21 We absolutely sought that information when Mr.
22 Grose made the inquiry, but the State's not obligated to
23 provide therapist records. We don't make that as a
24 regular course of our business seeking those records for
25 any victims in any cases, so I just did want to make

1 that clarification. Thank you.

2 MR. GROSE: And I didn't mean to raise that
3 inference. I just was as much intending to point out
4 that, you know, the concerns that led us to file this
5 motion have been confirmed, and that's why we're here.

6 THE COURT: All right. Prepare an order, Mr.
7 Grose. I'm gonna grant your motion. Now, I'm doing
8 your motion in two parts, and the State's position is
9 they also view it in two parts.

10 Mr. Grose, as a practical matter, Spartanburg
11 Regional Medical Center is a large entity, so you might
12 want to define what the term hospital means so that you
13 understand, so that they understand it means the things
14 that you are looking for. I think a sufficient showing
15 has been made that she has received some type of
16 treatment, as demonstrated by these records, and that
17 let them know what you're looking for. And I will take
18 a look at the order. Share it with Ms. Wells first.

19 In regards to the therapy records, I think a
20 sufficient showing has been made. I mean, when he's
21 asking for these records and, you know, the difference
22 between therapy records and mental health records,
23 there's a very thin line to this Court. So he's looking
24 for that information. I think he's made a sufficient
25 showing.

1 I'll be more than happy to do an in-camera review
2 of any of those records that y'all receive. Include
3 that in the order as well. Try to be as specific as you
4 can as to the providers that you're looking for, as
5 opposed to just some broad net, anybody in Spartanburg,
6 you know? Try to identify the therapy providers that
7 you intend to -- that you want to take a look at.

8 SOLICITOR WELLS: Judge, as to the second part of
9 the State's order, the State would request that those
10 records not be provided to the parties, but be provided
11 to the Court for the Court's ex parte review.

12 THE COURT: I believe that I said that I was
13 gonna do an in-camera review.

14 SOLICITOR WELLS: Yes, sir, Your Honor, I just
15 for any clarification purposes. You said -- I just
16 wanted to make sure it was clear.

17 THE COURT: I wanted the order to be as clear as
18 we can so that we don't run into this problem where the
19 State has been asked for information, the State, through
20 the solicitor's office doesn't get this information,
21 then all of a sudden this information shows up at the
22 time of trial. And then the State takes a position,
23 well, we weren't obligated to do it or we didn't look
24 for it. Do you understand, Ms. Wells?

25 SOLICITOR WELLS: Well, I think the Court

1 misunderstands the State's argument. I do understand
2 what the Court is telling me.

3 THE COURT: The Court does not misunderstand the
4 State's argument. Why are you smirking?

5 SOLICITOR WELLS: I'm not, Your Honor.

6 THE COURT: I'm glad this is on recording.

7 SOLICITOR WELLS: Thank you, Your Honor.

8 THE COURT: Anything else, Ms. Wells?

9 SOLICITOR WELLS: Not from the State, Your Honor.

10 THE COURT: Mr. Grose, share the order with Ms.
11 Wells before you share it with me.

12 MR. GROSE: Yes, sir, we'll do that.

13 THE COURT: Ms. Wells, what part of your argument
14 do you think I do not understand?

15 SOLICITOR WELLS: Your Honor, again, I don't wish
16 to argue with the Court.

17 THE COURT: Ma'am, I'm asking you what you want
18 me to understand because you just pointed out that you
19 think I don't understand it. I would like to know.

20 SOLICITOR WELLS: No, sir, Your Honor. What I'm
21 trying to say is the State does not regularly seek
22 therapist records on behalf of our victims because we
23 believe that those are protected communications between
24 the parties. So, again, I was just simply trying to
25 correct any inference that the State played -- was

1 hiding the ball. We have sought all of the psychiatric
2 records in this case that we believe are relevant to the
3 case.

4 However, her personal conversations with her
5 personal therapist, who was not a medical provider and
6 not a physician who was handling medications, we do not
7 in any cases that I'm aware of, certainly none that I
8 handle, do I seek those records unless the defense asks
9 -- unless the Court orders us to. And I don't think
10 that's an unusual practice in this office. So that's
11 all I wanted to clarify.

12 THE COURT: All right. I understood that
13 argument.

14 SOLICITOR WELLS: Okay, thank you.

15 THE COURT: And I want to point out the cases
16 that I see where therapy records are gathered by the
17 solicitor's office where the therapist is not licensed
18 to prescribe medication. That is part of the case file
19 that I regularly see in criminal cases that are handled
20 by the solicitor's office. I see that, okay?

21 SOLICITOR WELLS: Yes, sir.

22 THE COURT: And in this particular case, I think
23 there has been made a sufficient showing. I do not
24 intend to somehow intrusively or without the appropriate
25 reason to issue an order to ask for these therapy

1 records. I applaud victims that get therapy services.
2 But in this particular case a sufficient showing has
3 been made to implore this Court to do an in-camera
4 review of those records.

5 SOLICITOR WELLS: Yes, sir. I understand the
6 Court's order and I appreciate that.

7 THE COURT: Okay. And you might want to go and
8 take a look at the other cases that are handled by the
9 solicitor's office that involve ---

10 (Audio cuts out.)

11 COURT REPORTER: Judge, you cut out. Judge, I'm
12 sorry, I lost you way back.

13 THE COURT: Okay. Well, glad you came back. I
14 was asking them about the timeframe that the records
15 might be received by the Court, because I have to do an
16 in-camera review and Ms. Wells -- did you hear what Ms.
17 Wells said?

18 COURT REPORTER: I did not.

19 THE COURT: Okay. Ms. Wells, can you repeat it
20 one more time?

21 SOLICITOR WELLS: Yes, sir. I said that the
22 therapist is local and I don't anticipate the records to
23 be voluminous, based on my understanding of the therapy
24 received.

25 THE COURT: Okay. Mr. Grose, what do you think?

1 MR. GROSE: Without knowing, I have no reason to
2 dispute that. What I can tell you is that I will get a
3 proposed order to Ms. Wells by 5 o'clock today,
4 hopefully even earlier than that, with the idea that we
5 can get it to you before the end of this week, as it is
6 already Thursday.

7 THE COURT: It is already Thursday. And, again,
8 please make your order as specific as you can make the
9 order so that these providers will know what to look
10 for, you know, timeframe. You know, try and narrow down
11 what you're looking for. I mean, if she's received
12 therapy ever since she was 12 years old and it deals
13 with things not relevant, deals with things that from a
14 time perspective, someone would conclude is not relevant
15 to the criminal case, I don't want to see those things.
16 Try to help the Court out as much as possible in
17 defining what it is you're looking for, so that when the
18 Court receives those documents and an appropriate
19 in-camera review can be done that doesn't interfere with
20 the trial of the case, because if it comes in three
21 bankers boxes, there's a very good chance the trial
22 might not go on as scheduled. I'm just letting you
23 know.

24 MR. GROSE: I understand. And, Your Honor, if
25 the State would identify the particular therapist for

1 the followup, we can identify them by name in the order.

2 SOLICITOR WELLS: Your Honor, the State will ---

3 THE COURT: Okay. Send her the order.

4 SOLICITOR WELLS: Yeah. Mr. Grose, if you will
5 send me the order, I will edit it and enter the name and
6 send it back. I just don't have it sitting here in
7 front of me right now, but I've got it.

8 MR. GROSE: I understand. That's helpful. Thank
9 you.

10 THE COURT: All right. Thank y'all very much.

11 SOLICITOR WELLS: Thank you.

12 MR. GROSE: Thank you, Your Honor.

13 (Court concluded at 9:30 a.m.).

14

15 --- THIS ENDS REQUESTED TRANSCRIPT ---

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1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Cendroski, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that to the
6 best of my ability the foregoing is a true, accurate,
7 and complete transcript of record of all the proceedings
8 and evidence introduced in the hearing and/or trial of
9 the captioned case, relative to appeal, in the Court of
10 COMMON PLEAS for Spartanburg County, South Carolina, on
11 the 7th day of October, 2021.

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

14
15
16
17
18
19 s/o *Julie A Cendroski*

20 _____
21 Julie A. Cendroski
22 Circuit Court Reporter III
23 Seventh Judicial Circuit
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

The State,)
-vs-) TRANSCRIPT OF RECORD
Johnathan Olin Batchelor,) 2016-GS-42-1345
Defendant.) October 25, 2021
Spartanburg, South Carolina

B E F O R E:

HONORABLE R. KEITH KELLY, JUDGE; and a jury

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

JENNIFER ELIZABETH WELLS, ESQUIRE
Attorney for the State

E. CHARLES GROSE, JR., ESQUIRE
Attorney for the Defendant

Linda D. Moffitt
Circuit Court Reporter

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Jury qualification -- page 3.

1 (Proceedings October 25, 2021)

2 (The following takes place at the Spartanburg Memorial
3 Auditorium.)

4 THE COURT: Okay. We are on the record. Today is
5 October 25, 2021. I'm told by madam clerk that Juror
6 No. 455 who is Gabriel Tucker has -- was qualified as a
7 juror this morning. And that juror now has car trouble and
8 is unable to be with us this afternoon.

9 I have met with the lawyers here at the bench, and the
10 lawyers agree that we will transfer that juror to the next
11 term of court. The lawyers are in agreement.

12 Anybody have an objection, any lawyer?

13 (No response.)

14 THE COURT: Hearing none. Okay. Thank you.

15 (Pause.)

16 THE COURT: Good afternoon, everyone. I'm Keith
17 Kelly. I'm one of your circuit court judges here in the
18 Seventh Judicial Circuit. Spartanburg County is home to
19 me. I reside here. It was born and live here. It's good
20 to be here, because sometimes we do travel and we're in
21 other counties spending the night away. But it's real good
22 to be home this week.

23 We are about to pick a jury in the matter of the State
24 of South Carolina vs. Johnathan Olin Batchelor.

25 Mr. Batchelor is charged in Indictment 2016-1345 with

1 the criminal offense known as attempted murder.

2 It is alleged that he did in Spartanburg County, South
3 Carolina, on or about January 7 of 2016 commit this
4 criminal offense.

5 Ladies and gentlemen, I will say this more than once
6 this afternoon. He has entered a plea of not guilty, and
7 he is presumed innocent of the allegations contained in the
8 indictment.

9 The indictment is a piece of paper. It is not
10 evidence made against him. It is a piece of paper that
11 brings him before the Court for a trial. Again, he has
12 entered a plea of not guilty and he is presumed innocent of
13 the allegations contained in that indictment.

14 Now, ladies and gentlemen, you were sworn this
15 morning, and you remain under oath. And there's some
16 questions that I'm required to ask this afternoon.

17 I'm going to ask Mr. Batchelor to please stand.

18 Sir, and if you'll lower your mask, if you feel
19 comfortable, just stand for about 15 seconds.

20 (Whereupon, the defendant stood.)

21 THE COURT: Thank you, sir.

22 Is there any member of this jury panel who is now or
23 ever has been related by blood or marriage to Mr. Johnathan
24 Olin Batchelor? If so, please stand. You're related by
25 blood or marriage, now or ever have been.

1 (No response.)

2 THE COURT: If you're in the back and you cannot hear
3 me, please raise your hand. I'm trying to speak louder
4 than usual. Okay. Everybody can hear me.

5 Is there a member of this panel who has a personal or
6 social relationship with Mr. Batchelor? If so, please
7 stand. You know him from school; you know him from work.
8 I don't know. Recreation.

9 Yes, sir. Your number, please.

10 JUROR NO. 482: 482.

11 THE COURT: 482.

12 JUROR NO. 482: Yes, sir.

13 THE COURT: You know him as a friend; you know him
14 as --

15 JUROR NO. 482: A friend in high school.

16 THE COURT: High school. Would that interfere with
17 your ability to be fair and impartial in the trial of this
18 case?

19 JUROR NO. 482: I think it would, yes, sir.

20 THE COURT: Yes, sir. You may be excused from the
21 trial of this case. Stay with us. We're going to pick
22 another one shortly.

23 Yes, sir. Your number, please.

24 JUROR NO. 58: Fifty-eight.

25 THE COURT: Five-eight.

1 JUROR NO. 58: Yes, sir.

2 THE COURT: Okay. Yes, sir. You know him.

3 JUROR NO. 58: He used to date my daughter.

4 THE COURT: Would that interfere with your ability to
5 be fair and impartial?

6 JUROR NO. 58: Yes, sir.

7 THE COURT: All right, sir. You may be excused from
8 the trial of this case. Thank you.

9 Yes, ma'am.

10 JUROR NO. 271: In 2016 I worked -- oh -- 271.

11 THE COURT: 271.

12 JUROR NO. 271: In 2016 I worked with his sister and
13 his then wife. And I'm familiar with the case.

14 THE COURT: Thank you, ma'am.

15 Would that interfere with your ability to be fair and
16 impartial?

17 JUROR NO. 271: Yes, sir.

18 THE COURT: Thank you. You may be excused from the
19 trial of this case.

20 Anyone else -- anyone else?

21 (No response.)

22 THE COURT: The following will be a list of potential
23 witnesses. I say potential because you never know exactly
24 who is going to testify. And it's lengthy.

25 Stephanie Nicole Batchelor; Timothy -- is it Gissom --

1 Gissom; William Randolph Johnson; Stephanie Nichole
2 Gonzalez; Brino Rose Trout; James Lee Banner; Sidney Breann
3 Allen; Benjamin Jacob Allen; Mario Mashen Bleichen; Nicole
4 Lee Burns; George Pullo; Reberta Face1; LeeAnn Cheeks;
5 Officers Malpus, Bowen, Morrow, Ingle, Henderson, Hubbard,
6 Baird, Roman, Walsh, Diaz, Knighton, Kruger, McGraw, Nix,
7 Clark, Burgess, Horton, Woodcock, Foster, Does, Lawson,
8 Hutchins, Onsed, Gary.

9 Travis Wood, fire department; Timothy Nafziner, Jr.,
10 Greenville County D.N.A. laboratory; Katlin Appel,
11 Greenville County Forensics; James W. Armstrong, Greenville
12 County Public Safety; Tyler Sturkie, SLED, South Carolina
13 Law Enforcement Division.

14 Officers Lawson, Nelson, Shue; Dr. Brian Thurston;
15 Debra Rowe; Amanda Gailagher; Keith Lee; Lavante Glenn;
16 Timothy Gibson; Tonya Camp from the clerk's office; Lori
17 Crawford.

18 I believe I have them all. Did I miss anyone from the
19 lawyers? Get everybody?

20 MS. WELLS: You didn't miss anyone from the state,
21 Your Honor.

22 THE COURT: Mr. Grose, got everybody? Think so.

23 MR. GROSE: Yes, sir.

24 THE COURT: Okay. All right. Those are potential
25 witnesses.

1 Is there any member of this jury panel who is now or
2 ever has been related by blood or marriage to any of the
3 potential witnesses in this matter? If so, please stand.

4 Okay. Sir, hang on. Microphone will be coming to
5 you.

6 Yes, sir. Your number.

7 JUROR NO. 112: 112.

8 THE COURT: 112.

9 JUROR NO. 112: Yes, sir.

10 My son is a SLED agent. It's SLED 42. He could be
11 one of them. I don't know.

12 THE COURT: That's the only one involved in this case
13 that I'm aware of. I don't know of another SLED agent.
14 That agent was not your son, right? Tyler Sturkie.

15 JUROR NO. 112: Matt Hutchins.

16 THE COURT: Okay. But Tyler Sturkie is on the list.
17 Your son's name is not.

18 JUROR NO. 112: Right. No.

19 THE COURT: Okay. The fact that your son is employed
20 by SLED, would that interfere with your ability to be fair
21 and impartial in the trial of this case?

22 JUROR NO. 112: No, sir.

23 THE COURT: Thank you, sir. You may stay.

24 Is there any member on this jury panel who has a close
25 personal or social relationship with any of the potential

1 witnesses in this case? If so, please stand. Again, you
2 know them very well from church, work, play.

3 Microphone is coming, ma'am.

4 JUROR NO. 282: No. 282.

5 THE COURT: 282. would that interfere with -- it's a
6 friend?

7 JUROR NO. 282: I grew up in church with Stephanie.

8 THE COURT: With Stephanie?

9 JUROR NO. 282: Was her maiden name Gibson?

10 THE COURT: Yes.

11 JUROR NO. 282: Yeah.

12 THE COURT: would that interfere with your ability to
13 be fair and impartial?

14 JUROR NO. 282: No, sir.

15 THE COURT: Thank you, ma'am. You may stay with us.
16 Yes, sir. Your number?

17 JUROR NO. 494: 494.

18 THE COURT: 494.

19 JUROR NO. 494: Due to previous career I know most of
20 the deputies on that list.

21 THE COURT: would that interfere with your ability to
22 be fair and impartial?

23 JUROR NO. 494: No, sir.

24 THE COURT: Thank you, sir. You may stay.
25 Yes, ma'am. Your number, please.

1 JUROR NO. 475: 475.

2 THE COURT: Yes, ma'am.

3 JUROR NO. 475: Tonya Camp. I used to work in the
4 clerk's office with her.

5 THE COURT: You sure did. Would that interfere with
6 your ability to be fair and impartial?

7 JUROR NO. 475: No, sir.

8 THE COURT: Thank you. You may stay with us.
9 Yes, sir.

10 JUROR NO. 12: No. 12.

11 THE COURT: Yes, sir.

12 JUROR NO. 12: Yeah. Voluntary chaplain with the
13 sheriff's office. I know many of those guys. And from my
14 previous employment with the city as well.

15 THE COURT: Would that interfere with your ability to
16 be fair and impartial?

17 JUROR NO. 12: No, sir.

18 THE COURT: Thank you, sir. You may stay.
19 Anyone else -- anyone else?

20 (No response.)

21 THE COURT: I'm going to ask the lawyers to introduce
22 themselves, and, as always, ladies first.

23 MS. WELLS: Thank you, Your Honor. May it please the
24 Court.

25 Good afternoon, ladies and gentlemen. My name is

Jury qualification

1 Jennifer wells and I'm an assistant solicitor or I'm a
2 state prosecutor here in the Seventh Judicial Circuit.
3 That covers Spartanburg and Cherokee counties.

4 Sitting at the counsel table here with me is
5 Investigator William Gary. He works for the Spartanburg
6 County Sheriff's Office.

7 THE COURT: Thank you.

8 Mr. Grose.

9 MR. GROSE: Thank you, Your Honor. May it please the
10 Court.

11 Good afternoon. My name is Charles Grose and I'm a
12 lawyer. I handle cases around the upstate part of South
13 Carolina. And today and when we get into the trial of this
14 case it's my pleasure to represent Johnathan Batchelor who
15 has pled not guilty to these charges.

16 THE COURT: Thank you.

17 Is there any member of this jury panel related by
18 blood or marriage or ever have been related by blood or
19 marriage to any of the lawyers in this case? If so, please
20 stand.

21 (No response.)

22 THE COURT: Any member of this jury panel have a
23 social or personal relationship with the lawyers in this
24 case? If so, please stand.

25 (No response.)

1 THE COURT: Is there any member of this jury panel who
2 has ever been summoned to appear in a case -- be a witness
3 in a case -- by the Seventh Circuit Solicitor's Office?
4 That includes not only Spartanburg County but Cherokee
5 County. We are the Seventh Circuit. If you've been
6 summoned to testify in a case by the solicitor's office,
7 please stand.

8 (No response.)

9 THE COURT: Any member of this jury panel ever been
10 summoned by a subpoena to testify in a case that Mr. Grose
11 was involved in? If so, please stand.

12 (No response.)

13 THE COURT: Any member of this jury panel have a
14 family member or a close friend who is employed by the
15 Seventh Circuit Solicitor's Office in Spartanburg or
16 Cherokee County? If so, please stand.

17 Yes, ma'am. Your number, please. He's coming with
18 the microphone.

19 JUROR NO. 308: No. 308. My mother. She is the
20 director of the Juvenile Arbitration Program for
21 Spartanburg and Cherokee.

22 THE COURT: Would that interfere with your ability to
23 be fair and impartial?

24 JUROR NO. 308: No, sir.

25 THE COURT: Thank you. Please stay with us.

Jury qualification

1 Any member of this jury panel have a family member or
2 a friend who is employed in the law offices of Mr. Charles
3 Grose? Please stand.

4 (No response.)

5 THE COURT: This is going to get a lot of people on
6 their feet, but it's necessary.

7 Any member of the jury panel, you yourself, ever been
8 a commissioned law enforcement officer, a commissioned law
9 enforcement officer for any agency. That includes military
10 police, state police, county, municipal, even private
11 security. You have been an officer, please stand.

12 All right.

13 JUROR NO. 112: 112. 1981 through '93, Spartanburg
14 city.

15 THE COURT: Would that interfere with your ability to
16 be fair and impartial?

17 JUROR NO. 112: No, sir.

18 THE COURT: Thank you. You may stay.

19 Yes, sir.

20 JUROR NO. 407: Juror 407. It was early 80s. I
21 served with the Spartanburg Sheriff's Office and later
22 served with the highway patrol in Columbia.

23 THE COURT: Would that interfere with your ability to
24 be fair and impartial?

25 JUROR NO. 407: No, sir.

1 THE COURT: Thank you. You may stay.

2 Yes, sir.

3 JUROR NO. 494: Juror 494. Highway patrol for four
4 years.

5 THE COURT: Would that interfere with your ability to
6 be fair and impartial?

7 JUROR NO. 494: No, sir.

8 THE COURT: Sir, you may stay. Thank you.

9 JUROR NO. 73: Seventy-three. '95 to 2015, Cherokee
10 County Sheriff's Office and the Horry County Police
11 Department.

12 THE COURT: Would that interfere with your ability to
13 be fair and impartial?

14 JUROR NO. 73: No, sir.

15 THE COURT: Thank you. You may stay.

16 Yes, sir.

17 JUROR NO. 70: I worked for the Newberry Sheriff's
18 Department for five years and private security for D.C.
19 Summer as well.

20 THE COURT: Would that interfere with your ability to
21 be fair and impartial?

22 JUROR NO. 70: No, sir.

23 THE COURT: Thank you.

24 MR. GROSE: Your Honor, I didn't get the number.

25 THE COURT: I'm sorry. Your number again, sir.

1 JUROR NO. 70: Seventy.

2 THE COURT: Seven?

3 JUROR NO. 70: Seven zero.

4 THE COURT: Seven zero.

5 JUROR NO. 156: 156.

6 THE COURT: Yes, sir.

7 JUROR NO. 156: Air Force, military police from 2007
8 to 2013.

9 THE COURT: Would that interfere with your ability to
10 be fair and impartial?

11 JUROR NO. 156: No, sir.

12 THE COURT: Thank you. And thank you for your
13 service.

14 JUROR NO. 274: 274. I was a detention officer for
15 Greenville County.

16 THE COURT: Would that interfere with your ability to
17 be fair and impartial?

18 JUROR NO. 274: No, sir.

19 THE COURT: Thank you. You may stay.

20 Is there a member of this jury panel who has a law
21 enforcement officer in your immediate family? Okay. Not
22 extended family. But I want to know if it's a son,
23 son-in-law, daughter, daughter-in-law or spouse, something
24 of that. Immediate family. If so, please stand.

25 Yes, ma'am.

1 JUROR NO. 160: 160. My husband is a South Carolina
2 state trooper.

3 THE COURT: Would that interfere with your ability to
4 be fair and impartial?

5 JUROR NO. 160: No, Your Honor.

6 THE COURT: Ma'am, you may stay. Thank you.

7 Yes, ma'am.

8 JUROR NO. 301: Your Honor, my husband's retired
9 police.

10 THE COURT: Your number, please.

11 JUROR NO. 301: I'm sorry. 301.

12 THE COURT: 301.

13 JUROR NO. 301: Yes, sir.

14 THE COURT: Would that interfere with your ability to
15 be fair and impartial?

16 JUROR NO. 301: No, sir.

17 THE COURT: Thank you. You may stay.

18 Yes, sir.

19 JUROR NO. 112: 112. My son is a SLED agent.

20 THE COURT: Would that interfere with your ability to
21 be fair and impartial?

22 JUROR NO. 112: No, sir.

23 THE COURT: Thank you. You may stay.

24 We have one more standing in the back.

25 JUROR NO. 156: 156.

1 THE COURT: Would that interfere -- what agency?

2 JUROR NO. 156: My sister-in-law is a
3 Charlotte-Mecklenburg police.

4 THE COURT: Okay. Would that interfere with your
5 ability to be fair and impartial?

6 JUROR NO. 156: No, sir.

7 THE COURT: Thank you. You may stay.

8 This case involves allegations of a violent crime. Is
9 there any juror who has personal experience or association
10 that would prevent him or her from rendering a fair and
11 impartial verdict? If so, please stand. I guess asked a
12 different way, is there a member of this jury panel who has
13 been the subject of, been the victim of, a violent crime?
14 If so, please stand.

15 (No response.)

16 THE COURT: Any member of the jury panel have a close
17 friend or an immediate family member who was a victim of a
18 violent crime? If so, please stand.

19 Yes, ma'am.

20 JUROR NO. 97: No. 97. My father was kidnapped and
21 assaulted.

22 THE COURT: Would that interfere with your ability to
23 be fair and impartial in the trial of this case?

24 JUROR NO. 97: No.

25 THE COURT: Thank you, ma'am. You may stay.

1 I know someone has already answered this, and so that
2 person's already been excused. But is there any member of
3 this jury panel other than a lady on this side over here
4 that knows anything about the trial of this case? Anything
5 at all you know about the facts of this case? And it
6 would -- okay.

7 Yes, ma'am. I think you went to church with Ms. Guess
8 -- Guest.

9 JUROR NO. 282: I remember when it happened.

10 THE COURT: Okay.

11 JUROR NO. 282: Clearly. But as far as the facts,
12 probably don't know the facts, but I still remember it
13 happening.

14 THE COURT: Well, whatever it is you remember, would
15 it interfere with your ability to be fair and impartial in
16 the trial of this case?

17 JUROR NO. 282: No, sir.

18 THE COURT: Thank you, ma'am. You may stay.
19 Your jury number again.

20 JUROR NO. 282: 282.

21 THE COURT: 282.

22 Let me see the lawyers real quick.

23 (Bench conference held off the record.)

24 THE COURT: It is expected that state and local law
25 enforcement officers will testify in this case.

1 Is there a member of this jury panel who believes that
2 a law enforcement officer's testimony is entitled to more
3 belief or less belief because they are a law enforcement
4 officer? If so, please stand.

5 (No response.)

6 THE COURT: It is expected that testimony in this case
7 will be about a person being shot at her home. Would
8 hearing that testimony so affect you that you would not be
9 able to remain fair and impartial in this case? If so,
10 please stand.

11 (No response.)

12 THE COURT: You may hear testimony about marital
13 infidelity. Is there a person here who holds such strong
14 beliefs, religious or otherwise, about marital infidelity
15 that you would not be able to remain fair and impartial?
16 If so, please stand.

17 (No response.)

18 THE COURT: Is there a member of this jury panel who
19 knows of any reason why he or she should not try this case,
20 you should not sit on this jury, please stand.

21 (No response.)

22 THE COURT: Anything from the state?

23 MS. WELLS: Nothing else from the state, Your Honor.

24 THE COURT: From the defense?

25 MR. GROSE: Can we approach?

1 THE COURT: Yes, sir.

2 (Bench conference held off the record.)

3 (Bench conference held off the record with Juror No. 75
4 and counsel.)

5 THE COURT: Anything further from the state or the
6 defense?

7 MS. WELLS: Nothing further from the state, Your
8 Honor.

9 MR. GROSE: Nothing further.

10 THE COURT: Okay. We'll have the jury.

11 MS. WELLS: Your Honor, may we approach just one more
12 second?

13 (Bench conference held off the record.)

14 THE COURT: Okay. Ladies and gentlemen, the clerk's
15 office is having trouble with the system, and it is new.
16 There were some changes made. I was actually holding jury
17 trials in Cherokee County last week and we had some
18 difficulty with that same program.

19 But, at any rate, we're going to use the next 15
20 minutes to refresh yourselves. So if you need to refresh
21 yourself -- I know you probably already know. The
22 restrooms are back in that direction over there. There
23 might be some water out there. I'm not sure. I come
24 through a different door. But, anyway, the bailiffs will
25 be happy to help you. If you don't need to, you're welcome

Jury qualification

1 to stand and just stretch your legs. You'll see me
2 standing a lot this week during the trial.

3 So we'll be in break for about the next 15 minutes.

4 (Whereupon, a recess was taken.)

5 THE COURT: Madam clerk, we'll have the jury.

6 THE CLERK: When your jury name and number is called,
7 please come to meet the bailiff at the center with all your
8 belongings.

9 Jury No. 140, Tawarren Fernandors.

10 what says the state?

11 MS. WELLS: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. GROSE: Please seat the juror.

14 THE CLERK: 235, Gina Johnson.

15 what says the state?

16 MS. WELLS: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. GROSE: Please seat the juror.

19 THE CLERK: 103, Tyler Crawford.

20 what says the state?

21 MS. WELLS: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. GROSE: Please seat the juror.

24 THE CLERK: 461, Devonte Wade.

25 what says the state?

1 MS. WELLS: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. GROSE: Please seat the juror.

4 THE CLERK: 164, Paula Giraldo.

5 What says the state?

6 MS. WELLS: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. GROSE: Please excuse this juror from this case.

9 THE CLERK: 72, James Caldwell.

10 What says the state?

11 MS. WELLS: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. GROSE: Please seat the juror.

14 THE CLERK: 69, Tanya Burney.

15 What says the state?

16 MS. WELLS: Please present the juror.

17 THE CLERK: What says defense?

18 MR. GROSE: Please seat the juror.

19 THE CLERK: 420, Rebecca Stanley.

20 What says the state?

21 MS. WELLS: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. GROSE: Please excuse this juror from this case.

24 THE CLERK: 73, Gregory Camp.

25 What says the state?

1 MS. WELLS: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. GROSE: Please excuse this juror from this case.

4 THE CLERK: 78, Robert Carlton.

5 What says the state?

6 MS. WELLS: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. GROSE: Please seat the juror.

9 THE CLERK: 300, Christopher Meadows.

10 What says the state?

11 MS. WELLS: Please present the juror.

12 THE CLERK: What says defense?

13 MR. GROSE: Please seat the juror.

14 THE CLERK: 56, Elizabeth Bridwell.

15 What says the state?

16 MS. WELLS: Please present the juror.

17 THE CLERK: What says defense?

18 MR. GROSE: Please seat the juror.

19 THE CLERK: 156, Anthony Garcia.

20 What says the state?

21 MS. WELLS: Please present the juror.

22 THE CLERK: What says defense?

23 MR. GROSE: Please seat the juror.

24 THE CLERK: 81, Cynthia Carroll.

25 What says the state?

1 MS. WELLS: Please present the juror.

2 THE CLERK: What says defense?

3 MR. GROSE: Please seat the juror.

4 THE CLERK: 41, Danny Bishop.

5 What says the state?

6 MS. WELLS: Please excuse this juror from service in

7 this case.

8 THE CLERK: 179, Joseph Greer.

9 What says the state?

10 MS. WELLS: Please present the juror.

11 THE CLERK: What says defense?

12 MR. GROSE: Please seat the juror.

13 THE CLERK: This will be for the first alternate.

14 275, Veronica Littlejohn.

15 What says the state?

16 MS. WELLS: Please present the juror.

17 THE CLERK: What says defense?

18 MR. GROSE: Please seat the juror.

19 THE CLERK: 307, Melody Miller.

20 What says the state?

21 MS. WELLS: Please present the juror.

22 THE CLERK: What says defense?

23 MR. GROSE: Please excuse this juror from this case.

24 THE CLERK: 177, Lisa Graydon.

25 What says the state?

1 MS. WELLS: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. GROSE: Please seat the juror.

4 (Whereupon, the jury was impaneled.)

5 THE COURT: Any matters from the state?

6 MS. WELLS: Nothing from the state, Your Honor.

7 THE COURT: From the defense?

8 MR. GROSE: No, sir.

9 THE COURT: Okay. Ladies and gentlemen who have been
10 selected, your trial begins next Monday, next Monday at
11 9:00 a.m. in the Spartanburg County Courthouse.

12 Do not come here. Again, go to the Spartanburg County
13 Courthouse. I think we're going to be in Courtroom East, I
14 mean, West. We'll have a courtroom for you.

15 But here's what you're going to be coming to. You're
16 going to be given one of these yellow slips because you
17 have been selected to serve as a juror.

18 This has magic phone numbers on it. It's an
19 instruction, and it asks you to park in the Magnolia Street
20 Parking Deck.

21 There is a new parking deck adjacent to the
22 courthouse. It's going to be for the new courthouse, and
23 it's being used currently. That's not it. Other folks are
24 going to be parking there, which is why we're asking you to
25 park in the Magnolia Street Parking Deck, the one where the

1 -- is the bank still there? I'm not even sure. It's no
2 longer Palmetto Bank, but I think there is maybe a bank
3 still in that building. But it's very near the -- well,
4 you know it's very near the courthouse.

5 If you walk across the road, that's what you do. So
6 it's where jurors would have parked for all of these years
7 before we even had a parking deck. Magnolia Street Parking
8 Deck. And there's some instructions on here for you, and
9 you do not have to pay. Okay. I mean, the clerk's office
10 will have a voucher for you to park there.

11 All right. And it also asks you, tells you, to come
12 into the front door of the courthouse, the one on Magnolia
13 Street. The courthouse faces Magnolia Street. The front
14 door is the door that you will come in. And the reason for
15 that is as you walk through that door there will be
16 somebody there -- bailiffs, law enforcement personnel --
17 and they will point you straight ahead, 12:00 o'clock, and
18 a set of glass double doors that you have to go through
19 that are locked, and a bailiff has to let you in there to
20 go to the jury assembly room.

21 Okay. So, and that's the door I go through every
22 morning. So that's where you will be. Next week
23 9:00 o'clock, a.m., at the courthouse, 180 Magnolia Street.
24 Park in the parking deck on Magnolia called the Magnolia
25 Street Parking Deck.

1 And any other instructions, Madam Clerk?

2 THE CLERK: No, sir. We can answer questions once
3 they get in the hallway.

4 THE COURT: All right. Madam Clerk -- if you failed
5 to hear, we'll send you out this way. You do not have to
6 call that magic number this week. You will not be chosen
7 for any other cases. You are chosen for this case, and
8 this case only.

9 Do not come this week; do not call that number. Next
10 Monday, 9:00 a.m. You will not be selected for any other
11 case. Thank you.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: We're back on the record. I'm advised by
15 madam clerk that Juror 181 -- 181 -- who is here has become
16 ill and is in the restroom right now, and so that person
17 will be transferred to the next term of court. I don't
18 think I have any objection from the state.

19 MS. WELLS: No, sir.

20 MR. GROSE: None, Your Honor.

21 THE COURT: None from the defense. Okay. Juror 181
22 is transferred to the next term of court -- 184. I'm
23 sorry. 184 -- 184.

24 MS. WELLS: No objection.

25 THE COURT: Mr. Farr, any objection?

1 MR. FARR: No, Your Honor.

2 THE COURT: Thank you. 184. Thank you.

3 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 25th day of October 2021.

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

March 25, 2022

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

Spartanburg Co. Courthouse

R. 223

RANDOM STRIKE SHEET

Judge Name: Kelly, R Keith

Sorted By Random Nbr

Trial Type: Criminal

Panel ID: 2016GS4201345

Description: 2016GS4201345

Trial

Courtroom: WA

	NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1	Fernandors, Tawarren L	140	B	M	(✓)	(✓)	()	
2	Johnson, Gina S	235	W	F	(✓)	(✓)	()	
3	Crawford, Tyler E	103	W	M	(✓)	(✓)	()	
4	Wade, Devonte T	461	B	M	(✓)	(✓)	()	
5	Giraldo, Paula J	164	W	F	(✓)	(X)	()	
6	Caldwell, James W III	72	W	M	(✓)	(✓)	()	
7	Burney, Tanya M	69	B	F	(✓)	(✓)	()	
8	Stanley, Rebecca L	420	W	F	(✓)	(X)	()	
9	Camp, Gregory L	73	B	M	(✓)	(X)	()	
10	Carlton, Robert W Jr.	78	W	M	(✓)	(✓)	()	
11	Meadows, Christopher	300	B	M	(✓)	(✓)	()	
12	Bridwell, Elizabeth A	56	W	F	(✓)	(✓)	()	
13	Markley, Kryston	282	W	F	()	()	(X)	
14	Garcia, Anthony C	156	M	M	(✓)	(✓)	()	
15	Carroll, Cynthia D	81	W	F	(✓)	(✓)	()	
16	Bishop, Danny R	41	W	M	(X)	()	()	
17	Greer, Joseph H III	179	W	M	(✓)	(✓)	()	
18	Littlejohn, Veronica M	275	B	F	(✓)	(✓)	()	
19	Miller, Melody L	307	W	F	(✓)	(X)	()	
20	Graydon, Lisa A	177	W	F	(✓)	(✓)	()	
21	Wilkie, Robert C	479	W	M	()	()	()	
22	Crouse, Virginia B	109	W	F	()	()	()	
23	Skripchenko, David	403	W	M	()	()	()	
24	George, Stacie L	160	W	F	()	()	()	
25	Carter, David S	83	W	M	()	()	(X)	
26	Smith, Kimberly B	409	W	F	()	()	()	
27	Weber, Brianna N	473	W	F	()	()	()	
28	Leon, Francisco R	264	H	M	()	()	()	
29	Gist, April N	166	B	F	()	()	()	
30	Southerland, Summer D	415	W	F	()	()	()	
31	Hipps, Charlotte E	207	W	F	()	()	()	
32	Blanton, Jodi L	449	W	F	()	()	()	

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

The State,)
-vs-) TRANSCRIPT OF RECORD
Johnathan Olin Batchelor,) 2016-GS-42-1345
Defendant.) October 29, 2021
Spartanburg, South Carolina

B E F O R E:

HONORABLE R. KEITH KELLY, JUDGE; and a jury

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

JENNIFER ELIZABETH WELLS, ESQUIRE
Attorney for the State

E. CHARLES GROSE, JR., ESQUIRE
Attorney for the Defendant

Linda D. Moffitt
Circuit Court Reporter

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WILLIAM GARY (SW) In-camera

Direct examination by Ms. wells

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No exhibits entered into evidence.

1 (Proceedings October 29, 2021)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Okay. We're here on Mr. Johnathan
5 Batchelor on some pretrials.

6 Matters from the state?

7 MS. WELLS: Thank you, Your Honor.

8 Your Honor, I don't know if the Court wants to take up
9 the motion to dismiss to begin since that would be
10 dispositive should the Court rule against or rule for the
11 defense in this matter or that we can hear -- however the
12 Court wants to proceed is fine with the state.

13 THE COURT: We can do that too.

14 Yes, sir. Want to do the motion to dismiss first?

15 MR. GROSE: That suits us, Your Honor. Of course
16 you have the -- probably have seen the motion, which is in
17 the file, and also referenced the motion in the pretrial
18 brief and cited Youngblood vs. Arizona.

19 You know, I don't think that there's really going to
20 be any dispute in this case that the evidence was destroyed
21 and that it was intentionally done.

22 You know, it's my understanding that after
23 Mr. Batchelor's Alford plea there was, I guess, a
24 communication within the sheriff's office about whether or
25 not the evidence needed to be retained or if it could -- if

Motions

1 it could be destroyed, and the decision was made to destroy
2 it. And they did it without waiting for the period of time
3 to transpire for Mr. Batchelor to be able to file a
4 post-conviction-relief case, which of course he did and was
5 granted relief, and that's why we're here today.

6 There's a state statute on retaining evidence, and
7 while it doesn't specifically list attempted murder, it
8 does list murder and several other crimes. And construing
9 that in favor of Mr. Batchelor and against the state that
10 evidence should have been preserved under that statute as
11 well.

12 So, you know, that's our position, and I think that,
13 you know, Mr. Batchelor is prejudiced from, you know, two
14 standpoints.

15 One is although there's, you know, numerous pictures,
16 it's my understanding that, you know, there's probably at
17 least two bullet fragments that were in evidence that had
18 been destroyed that we will not be able to have examined by
19 an expert because of that.

20 And throughout the discovery -- I don't know if
21 they're going to try to do this, because I know there's
22 things that you can do for investigative purposes that are
23 not admissible in a trial -- but throughout discovery they
24 make some conclusions, opinions, speculation, whatever you
25 want to call it, with regards to that evidence. And we're

Motions

1 in a position where we would not be able to refute that
2 evidence by actually being able to examine the fragments or
3 the projectiles ourself.

4 You know, I think too Mr. Batchelor has already -- has
5 also been prejudiced in the sense that I realize they have
6 their theory as to why he entered the guilty plea before,
7 he has his reasons why we entered the Alford plea before,
8 and a significant part of that was, is that from
9 Mr. Batchelor's perspective his counsel at the time was not
10 prepared to go to trial.

11 And he, in fact, did raise a number of grounds of
12 inefficient assistance involving that that are
13 unadjudicated, but because of the, I guess the, prejudice
14 flowing from that prior representation, that combined with
15 lots of evidence, has put us in a particularly, you know,
16 tough situation as far as being able to confront that
17 evidence here in court.

18 THE COURT: Okay. Yes, ma'am.

19 MS. WELLS: Thank you, Your Honor. May it please the
20 Court.

21 As to the motion to dismiss, a controlling case in
22 South Carolina is State vs. Cheeseboro, which is to be
23 found at 346 S.C. 526. That's a 2001 case out of Richland
24 County.

25 As the Court may recall, that involves a murder at a

1 barber shop there in Columbia, in the Columbia area.

2 And during the course of that the City of Columbia
3 inadvertently destroyed a gun that had been submitted to
4 SLED for testing. It came back and on the -- the SLED
5 agent had put something on the gun apparently that
6 indicated this gun might be evidence in this barber shop
7 shooting where Mr. Cheeseboro was developed as a suspect
8 and later a defendant, but that, so, and-but, that was not
9 apparent -- readily evident to the evidence custodian in
10 Columbia at the police department and therefore that
11 evidence was destroyed.

12 what the Court held in Cheeseboro is to establish. So
13 the burden is on the defense here, Judge, and the defense
14 must demonstrate that the state destroyed the evidence in
15 bad faith or that the evidence possessed an exculpatory
16 value apparent before the evidence was destroyed and the
17 defendant cannot obtain other evidence of comparable value
18 by other means and that -- and actually -- and the state's
19 position is that the defense has shown neither of those,
20 Judge.

21 We do concede and as soon as I discovered it -- I was
22 not aware of it until, I believe, March of this year -- I
23 actually called defense counsel and said come up, let's
24 take a look, let's get you -- get a look at the evidence.
25 He had just gotten in the case. The state was and has

Motions

1 been -- was and continues to be ready to resolve this case
2 and wanted to make all of that available. And that's when
3 the state learned at that time that the evidence had been
4 destroyed.

5 I will tell the Court this. There was extensive
6 testing done on this evidence at the time this
7 investigation was ongoing. There is G.S.R. evidence that
8 Agent Sturkie with SLED conducted and there are reports
9 therefrom.

10 There was serology and D.N.A. analysis done and
11 supplemental D.N.A. analysis done by the crime lab in
12 Greenville. That is -- in fact, I notified this defense
13 last month that that evidence is still available should
14 additional testing be required or requested by the defense
15 as to that evidence. And they have not requested it.

16 Additionally, the firearm evidence of the guns that
17 were seized, the projectiles that were recovered and the
18 shell -- and any additions, some shell casings in this
19 case, that too was analyzed by an expert with -- with
20 Greenville. And that is available and all of those
21 witnesses are available.

22 So, Judge, we agree that the evidence was destroyed.
23 There's no -- no argument as to that.

24 But as to the first part, was it destroyed in bad
25 faith, it was not. The sheriff's office believed that at

Motions

1 the time of the destruction the case had been resolved, had
2 no reason to know that the existence of a
3 post-conviction-relief hearing, knew that no appeal had
4 been filed and inquiry was made could the evidence be
5 destroyed and in -- in good faith they believed that it
6 could be destroyed because they believed this case had
7 reached a final resolution. So there is no bad faith here.
8 This case was considered concluded and complete and that
9 was -- that was the end of that.

10 As to the second part, which is whether or not the
11 evidence possessed an exculpatory value apparent before it
12 was destroyed and the defendant cannot obtain other
13 evidence of comparable value by other means, I would direct
14 the Court to the case that underlies State vs. Cheeseboro,
15 which Cheeseboro relies upon in creating its own -- the
16 rule here, and that is Arizona vs. Youngblood. That's at
17 488 U.S. 51. Your Honor, that's a 1988 Supreme Court case
18 where the Court discusses, not at great length but it does
19 discuss, what happens as to a due-process violation when --
20 when you have a destruction of evidence.

21 And what the Court says there is, you know, obviously,
22 when evidence is permanently lost the courts face the
23 treacherous task of dividing the important materials as the
24 contents are unknown and very often disputed.

25 And I will tell the Court that's not what we have

Motions

1 here. We don't have things that are unknown. We -- we
2 know what the testing revealed and we -- we have all of
3 that information, and that's available for the defense to
4 call witnesses, to make inquiries of those witnesses as to
5 the testing that was done and all of those things. And I
6 have not heard that that has happened. I'm hearing that
7 there may be an assumption or a generalization that maybe,
8 but we don't know that.

9 what we know is that the testing was done. It's
10 available to both sides. The D.N.A. still exists in this
11 case and that that is available for additional testing if
12 needed.

13 So the state's position is that neither of the state
14 -- the defendant has failed to meet its burden on both
15 prongs of the Cheeseboro test, that no bad faith has been
16 shown and that, again, the reports of all -- of the testing
17 of all items remains available to the defense, has been
18 available to the defense, and the D.N.A. is -- continues to
19 be available to the defense for additional testing.

20 So in -- I will tell the Court that in State vs.
21 Hutton, 358 S.C. 622 -- that's a 2004 Court of Appeals
22 case -- the Court of Appeals does say that to do, basically
23 to do, this that we consider dismissal of criminal charges
24 a drastic remedy which should rarely be invoked for the
25 state's failure to preserve evidence. And we believe that

Motions

1 is the case here, Judge.

2 There's no bad faith. I think everybody believed at
3 the time that this case was resolved, and the sheriff's
4 office certainly believed that it was complete with the
5 entry of the guilty plea, and so there's no bad faith.

6 Additionally, this evidence does exist. There are
7 hundreds of photos of all of the items that were recovered.
8 There's a multiple of testing that was conducted on those
9 items of evidence that's available to the defense. And we
10 would ask the Court to deny that motion.

11 THE COURT: Okay.

12 MR. GROSE: In response to that a couple of things.

13 First of all, while I understand, you know, how
14 they're making an argument that in their mind the case was
15 resolved, that is simply not the way the law looks at it.

16 The way the law looks at it is, is that, you know,
17 the -- after the time to file an appeal ends and no appeal
18 is filed you still have a year from final judgment to file
19 a post-conviction-relief-action case.

20 The same year statute of limitation is running in
21 order to be able to file a federal habeas case resulting
22 from that judgment, and that year statute is tolled while a
23 P.C.R. action is pending.

24 I've been doing this long enough to remember when
25 there wasn't a statute of limitations for P.C.R.s in South

Motions

1 Carolina, and the reason for putting one in place was for
2 situations like this so that if a year passed and there was
3 no P.C.R. and also that had tolled the federal statute of
4 limitations, then the state would have some assurances in
5 what they claim is an interest in final judgments.

6 And, so, you know, I would argue that, you know, any
7 policy, evidence retention policy, that doesn't respect
8 those well-known statutes of limitations in and of itself
9 is a bad faith policy.

10 Secondly, she spent a lot of time talking about G.S.R.
11 We're not contesting the G.S.R. I didn't bring that up
12 earlier. She spent a lot of time talking about the D.N.A.
13 evidence and that's still available. And it's true we
14 haven't requested any D.N.A. testing. We didn't bring that
15 up earlier.

16 What we have is, what we're interested in in
17 particular is, you know, these two projectiles, one which
18 was found on the driveway and one which was removed from
19 Stephanie Batchelor at the hospital and that, you know, are
20 described in hospital records as being a 9mm. And the law
21 enforcement is describing the projectile from -- that was
22 found on the garage or on the driveway outside the garage
23 as a different type of ammunition and even identified it in
24 their opinion as a particular brand.

25 Regardless of what they claim their expertise are to

Motions

1 be able to do that, we don't -- that's what we need.
2 That's what we need to be able to see. That's what I would
3 like to have examined.

4 I'm not an expert on that, but when I got into this
5 case and was arranging to look at the evidence, I planned
6 to come and do as I've done in other cases and photograph
7 it and make some notes about it so then I would be able to
8 talk with somebody about, you know, what could be done with
9 actually examining, you know, that evidence. And I know at
10 least a couple of experts that could have been done that.

11 And as far as the beneficial nature of that evidence,
12 whether that's readily apparent or not, you know, to me
13 that's fairly obvious when you have, you know, two different
14 projectiles that are being described in different ways.

15 That's something that, you know, the defense would
16 typically make use of in a case, that we would like to be
17 able to make use of in the case, and we'd like to be able to
18 do it in a way where we could provide, you know, expert
19 testimony on that regard.

20 And, you know, if it's something that could lead to his
21 innocence, proving his innocence or establishing a
22 reasonable doubt, then the beneficial nature of that is
23 readily apparent. And we can't get that from any other
24 source other than actually having these bullets examined and
25 having them here for the jurors to look at and to be

Motions

1 discussed with expert testimony. And so, you know, that's,
2 you know, where the situation comes about.

3 I don't think that there's any, you know, dispute as to
4 what law applies. I mean we cited Cheeseboro in our motion,
5 which cites to Youngblood. I put Youngblood in the pretrial
6 brief. We're not arguing, you know, different case law
7 applies.

8 what we are arguing is as to, you know, these specific
9 items, you know, that we've been able to establish
10 prejudice, and that's partly why -- not partly. It's
11 largely why when I made my initial presentation I didn't
12 argue about any of these other aspects of evidence that
13 we're not, you know, wanting to dig into any further.

14 THE COURT: Let me ask you this because I don't know.
15 I don't know much about this case at all to tell you the
16 truth.

17 So is there an allegation or an inference or something
18 that there was more than one firearm or more than one
19 shooter? See, I don't know anything about the facts.

20 MR. GROSE: We don't -- we don't know. Certainly, you
21 know, having a bullet described, I believe, as a .380 on
22 the driveway and one as a 9mm from the hospital suggests
23 two different bullets and/or two different shooters. But,
24 you know, that's -- you know, that's something that if we
25 had somebody who could examine them we would be able to

1 answer that question.

2 THE COURT: Well, it's described as being a .380 and a
3 nine. I mean, is there a ballistics expert that did that
4 or just --

5 MS. WELLS: There is. Judge, a former sheriff's or,
6 well, I guess he was a -- not really. Greenville, you
7 know, has their own crime lab. And so how that all works
8 over there, they're not technically sheriff's deputies. I
9 think they're agents of that lab.

10 But there was analysis done. It's not a
11 thirty-eighty. It's a .38. And, as the Court knows, 9mms
12 and .38s can also often be used interchangeably. And so
13 for one -- for someone who's not an expert at the hospital
14 to describe it as one and for someone who is an expert to
15 describe it as another is really a noumenon here.

16 This expert's available; those reports are available.
17 The defense has had those reports, and they're also not
18 dispositive. The fact of the matter is, is that they're --
19 and that the state filed a third-party-guilt motion in this
20 case, as the Court well knows, there's no evidence that
21 anybody else committed this crime other than Mr. Batchelor.

22 Ms. Batchelor has identified him from the beginning as
23 the person who shot her. As the Court's aware, she's
24 continued to identify him for the years that have
25 interceded the time of the shooting up until today, that he

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1 is the person who shot her and there was no one else
2 involved.

3 So this is not dispositive evidence. Judge, she -- we
4 have an eye witness who says it was him. So, I mean, you
5 know, we can -- I don't -- even if -- and, I mean,
6 certainly James Armstrong is available. I've spoken with
7 Mr. Armstrong about what his testimony would be in court.
8 He's the expert who examined all of this firearm evidence,
9 and that he's readily available to the defense as well to
10 discuss the concerns about the evidence here. He's the one
11 who examined it.

12 So the state doesn't believe, one, that it would have
13 been readily apparent to the sheriff's office that this
14 would have been dispositive or somehow exonerating
15 evidence. It wasn't -- it wasn't. And it was never going
16 to be and it's not going to be as we go forward here today
17 or we go forward next week.

18 But the expert and the reports and all of that stuff
19 is available to the defense, and I'm happy to facilitate
20 that. But it's not going to be just -- I think that
21 perhaps there's a misunderstanding of what the evidence is,
22 but it's not going to be dispositive.

23 THE COURT: Okay. One other thing about the crime
24 lab, and I'm familiar with it.

25 My niece worked there, but I don't think she was ever

1 involved in any firearms. I think she, basically, tested
2 drugs. But her name is Kelly Smoak, S-M-O-A-K, Dixon,
3 D-I-X-O-N. So if she's involved in that, I don't know that
4 she is --

5 MS. WELLS: She is not, Judge. I have not seen her
6 name on -- on anything.

7 THE COURT: She no longer works there. She's teaching
8 school now, but she worked there for a while.

9 MR. GROSE: Sitting right here I couldn't point you to
10 anything where she's involved in. It was Kelly --

11 THE COURT: Kelly Smoak, S-M-O-A-K, Dixon, D-I-X-O-N.

12 MR. GROSE: I'll check over the weekend and --

13 THE COURT: See's been gone from there at least three
14 years, but I don't know.

15 MR. GROSE: Well, this is a 5-year-old case, so almost
16 six.

17 THE COURT: She worked there. I think mostly she --
18 she tested drugs, but I don't know. I don't think she was
19 ever involved in firearms.

20 I was in Greenville one time holding court and her
21 name was on the witness list and I just told the lawyers
22 that's my niece, but it was a plea anyway. But I just
23 wanted everybody to know.

24 MS. WELLS: Thank you, Judge.

25 She did not do the serology or the D.N.A. or was

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1 involved in the gun testing in this case. I'm familiar
2 with the experts who did that.

3 THE COURT: She doesn't --

4 MR. GROSE: Okay. I appreciate you sharing that.

5 THE COURT: Yes, sir.

6 MR. GROSE: I mean, obviously, we just disagree with a
7 lot of what has been argued factually, and we stand by our
8 motion.

9 THE COURT: Okay. Is there a report or something I
10 can look at? I am going to take this under advisement, so.

11 MS. WELLS: I can make that available. We can get you
12 a copy of that report, Judge.

13 THE COURT: A copy.

14 MS. WELLS: I think mine -- mine is probably written
15 on. But we'll get you a --

16 THE COURT: Okay.

17 MS. WELLS: -- clean copy and provide that to you. I
18 think we can probably work on that right now. Would it be
19 okay if we have a separate copy just to email it? We can
20 email it to everybody.

21 THE COURT: Yeah. Just email it to me and make sure
22 you copy Mr. Grose.

23 All right. That one is under advisement.

24 MR. GROSE: I'm sorry. Did you say that's under
25 advisement?

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1 THE COURT: Under advisement, yes, sir.

2 MR. GROSE: Thank you.

3 THE COURT: All right. What's the next one? State
4 want to argue something?

5 MS. WELLS: Judge, just briefly as to the state caused
6 to be filed a third-party-guilt motion in this case, and as
7 you heard from me just a few moments ago, it is the state's
8 contention that it would be improper to allow the defense
9 to introduce evidence or suggestion of third-party guilt in
10 this case because it's inconsistent with the evidence in
11 this case.

12 The state has, like again, we've filed a written
13 memorandum of law which the Court received yesterday
14 afternoon, and the state would rely upon that for the basis
15 of this motion.

16 Specifically, I want to point the Court to the case of
17 the State vs. Al-Amin. It's a South Carolina Court of
18 Appeals case, 353 S.C. 405.

19 That's a 2003 case where the defendant sought to admit
20 the proffered testimony of an officer in an attempt to
21 establish that the person who lived in the apartment with
22 the victim of that crime had been evicted. During that
23 proffer, in addition to testifying regarding living
24 situation, the officer testified, stated, that the first
25 place the police look for as a suspect once a murder victim

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1 has been identified is in her immediate family or immediate
2 surroundings.

3 He also sought to present evidence that D.N.A. testing
4 demonstrated Al-Amin was excluded as a source of D.N.A.
5 from sperm fraction on a vaginal slide taken from the
6 victim. And the Court allowed a proffer but excluded the
7 evidence. He said that that evidence was -- did not raise
8 a reasonable inference or presumption as to his innocence,
9 and I don't think that there's anything here that's going
10 to do that.

11 Again, we have a witness, an eye witness, in this case
12 who intimately knows the defendant, who identifies him as
13 the person who committed the shooting. And I think that
14 there's no -- there's been no suggestion that anybody else
15 did that. So we think the introduction or suggestion that
16 another individual committed this crime would be
17 inappropriate. We don't seek to confuse the issue before
18 the jury and we ask the Court to exclude it.

19 MR. GROSE: You know, several things with regards to
20 that, Your Honor.

21 First of all, we are not going to be pointing to a
22 specific person because we don't know who did this.

23 Ms. Wells keeps saying that the victim in this case
24 has been consistent all along about who shot her, but she
25 hasn't. I mean, she started off initially saying she

1 didn't know who shot her.

2 As far as the D.N.A. evidence that they have in the
3 case, there's D.N.A. that came from the steering wheel of
4 the victim's car, and the major contributor of that matches
5 the victim.

6 The minor contributor of that is a male who is not
7 Mr. Batchelor nor the first responder who turned off her
8 car when it was found running in a ditch.

9 So that is at least, you know, some circumstantial
10 evidence that an unknown person was recently driving that
11 car. And I don't think that that gets to her concerns
12 because we're not introducing any specific instance, trying
13 to identify somebody, trying to say, oh, this person was in
14 the area and could have done it, which is, you know,
15 different than a lot of their cases.

16 Just for the record, I don't concede that all of the
17 case law that she has cited in her memorandum is valid
18 because a lot of those cases were either implicitly
19 overruled or modified by Holmes vs. South Carolina by the
20 United States Supreme Court. But it did leave, Holmes did
21 leave, you know, certain interpretations of South
22 Carolina's third-party guilt in place.

23 I just say that to put that on the record, but I don't
24 think it matters in this case because we're not going to do
25 the things that she's suggesting that we're going to do or

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1 concerned that we're going to do.

2 However, it does raise another concern that I have.
3 we're beginning to hear a little bit of it this morning,
4 which is if Mr. Batchelor didn't do it, who did it. And
5 that is not only diluting the burden of proof. It's
6 actually burden-shifting.

7 And so if they're going to make this type of motion in
8 particular, but even if they don't, I think that we need to
9 be very careful next week that the focus is on whether or
10 not they can prove this case beyond a reasonable doubt,
11 which we don't think they can do, and not shift the burden
12 to Mr. Batchelor to prove that he didn't do it. And so I
13 don't know that there's much else to argue, but I did want
14 you to be aware of that potential concern.

15 THE COURT: Okay. So there's some D.N.A. on a
16 steering wheel that's unidentified.

17 MR. GROSE: Correct.

18 MS. WELLS: That's correct, Your Honor. And I think
19 that Al-Amin addresses that specifically when you've got
20 D.N.A.

21 In that case he had D.N.A. testing. It excluded him
22 as a source of D.N.A. from the victim's person, and the
23 Court of Appeals held that that was not enough to overcome
24 and to introduce third-party guilt into testimony.

25 MR. GROSE: But I think -- I'm sorry.

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1 MS. WELLS: So, Judge, we would say that. And also
2 having a third-party-guilt motion is not burden-shifting.

3 I mean, the state has -- the state is very aware of
4 its burden having tried criminal cases from upwards of 20
5 years now. So the state filing a third-party-guilt motion
6 is not in any way, shape or form an attempt to shift the
7 burden. It's simply to understand the playing field the
8 parties have before coming to court next week and, as we
9 talked about yesterday, to keep things moving along.

10 So I'm not sure what this suggestion that the state is
11 trying to shift the burden. We're just simply trying to
12 kick the tires on everything so we all understand we're all
13 in the same sheet of music as we go forward next week.

14 MR. GROSE: Well, and -- and I didn't say that filing
15 a third-party-guilt motion was burden-shifting.

16 What I had said was, is that we're -- with the way
17 that arguments are being made in this courtroom today,
18 including on the prior motion, when she, you know,
19 basically suggested that Mr. Batchelor is the only person
20 who could have done it, that is where we slide into the
21 burden-shifting.

22 Now, she has not moved to exclude that D.N.A.
23 evidence, but it sounded like she was arguing. Certainly,
24 the fact that that D.N.A. evidence is on the steering
25 wheel, you know, mixed with the blood, you know, or mixed

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1 with the victim's D.N.A., that certainly is something that
2 can be argued as a reasonable doubt. And I don't think
3 that that's covered by her motion.

4 MS. WELLS: Judge, we're -- I mean, we're not asking
5 for it to be excluded.

6 THE COURT: Okay.

7 MS. WELLS: I mean, it's -- it's a fact that of the --
8 I mean, it's just a fact that exists.

9 MR. GROSE: Then I misunderstood.

10 MS. WELLS: We're just -- we're just saying, you
11 know -- we're just making a very standard third-party-guilt
12 motion.

13 MR. GROSE: I don't think there's anything here to
14 see. I don't think there's a dispute.

15 THE COURT: All right. That's agreed to. There is no
16 dispute.

17 MS. WELLS: And, Judge, just I guess at this point we
18 can probably walk through the defense motions, and I would
19 probably just do that sort of in order, because I think
20 some of what the state's concerns and have raised in the
21 notice to the defense and the Court will probably
22 interweave itself in some of these motions.

23 First, I think we spent time in the motion filed
24 yesterday, the pretrial, kinda brief filed yesterday
25 afternoon as to concerns that the defense has of Juror 78.

1 And I would just put on the record that the state has no
2 objection to just inquiring as to this juror, how we can
3 best accommodate him outside of the presence of the other
4 jurors. We have no objection to doing that. I think
5 that's appropriate.

6 THE COURT: Okay. Mr. Grose, she agrees that
7 we'll have -- I'll have a colloquy with the juror. And I
8 can bring him in here, of course on the record, and discuss
9 with him on the record here that he would be seated over
10 here and if people are talking will he be able to hear
11 okay. And I can even arrange to have him sit on the front
12 row.

13 MR. GROSE: Okay. And that's all. That's all we're
14 asking.

15 I mean, our -- you know, the Court has found him
16 qualified. And as I think I put in my motion, I mean, the
17 only concern was whether or not he was going to be able to
18 hear the evidence in the case. And as long as we're able
19 to accommodate him, I don't think there's going to be a
20 problem.

21 THE COURT: You know, and I have to be careful about
22 that too because I think he is a qualified juror. I found
23 him to be a qualified juror. And, you know, I'm a little
24 sensitive to people who have disabilities, and if I can
25 accommodate them in any way, whether they be in a

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1 wheelchair or hard of hearing or blind or whatever it might
2 be, I try to accommodate them as best I can. I don't think
3 those people should be excluded from -- you know, people
4 who have something like that, unfortunately, should not be
5 excluded from jury service, so.

6 MR. GROSE: And I agree with that. You know, but that
7 Bryant case that I cited in the brief that was argued en
8 banc in the Fourth Circuit this week, you know, the trial
9 judge in that case did a lot to accommodate that juror and
10 to question the juror throughout the trial to make sure
11 that she was able to hear what was going on. And that
12 issue is still, you know, alive and kicking.

13 I mean, the district court granted relief on that
14 issue. The three panels of the Fourth Circuit flipped it,
15 and I don't know what's going to happen after the en banc.
16 And so I just didn't want us to get down the road and have
17 that same kind of problem later on.

18 THE COURT: Sure. Okay.

19 MS. WELLS: And then I think the next motion or issue
20 that the defense wished to address was the issue as to 404
21 evidence under 404(a) and 404(b), the defense making a
22 motion to exclude the state mentioning the defendant's
23 marital infidelity. So I don't know if the defense wants
24 to address that and allow the state to respond.

25 MR. GROSE: Well, I mean, the discovery is full of

1 evidence and witnesses and statements about marital
2 infidelity, and we're not, you know, disputing that that
3 took place from a factual standpoint.

4 So I don't know that you really have to make the
5 inquiry as far as the weight of the evidence, but I think
6 that you do need to determine whether or not the -- it's
7 the state that has to suggest an exception to the 404(a)
8 and (b) that exclude, you know, character evidence unless
9 an exception is met. And so you have to determine whether
10 one of those exceptions is met. And even though I don't
11 cite Rule 403 in the, you know the, one sentence in the
12 brief, 404 incorporates a 403 analysis.

13 And, you know, we argue that it doesn't come in unless
14 you're satisfied an exception is met, which I don't know
15 what they're going to argue as far as that's concerned, but
16 if it does come in or if it meets the exception, there's a
17 whole host of 403 considerations that we would have to talk
18 about with regards to exactly what comes in, how much comes
19 in, how much they can use or whether all of it, you know,
20 has a prejudicial effect that substantially outweighs a
21 probative value.

22 What I don't want to have happen, and, again, you
23 know, it gets to, you know, an issue about, you know, the
24 burden of proof as far as the elements of the crime is
25 concerned, the reason that we generally don't like that

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1 evidence coming in or bad-act evidence or character
2 evidence, bad-character evidence coming in against the
3 accused, is that it suggests a reason other than proof of
4 the elements in order for the jurors to convict him. And
5 we need to make certain that that doesn't happen here.

6 THE COURT: Okay.

7 MS. WELLS: Thank you, Your Honor.

8 Your Honor, one, I would say that I refer the Court to
9 State vs. Holder at 382 S.C. 278, 2009 case, citing -- that
10 says the term character refers to a generalized description
11 of a person's disposition or general traits such as
12 honesty, temperance or peacefulness.

13 That's not what we're talking but here. We're talking
14 about an integral part of this crime, and it's absolutely
15 relevant under any analysis under 403.

16 And I would also point this Court to State vs. Sweat.
17 Judge Jefferson tried that case. That's a Court of Appeals
18 case at 362 South Carolina 117. That's a 2004 case.

19 Judge, in Sweat the Court notes that -- a number of
20 things, and they talk about something that's almost exactly
21 what the defense is talking about here, doing the analysis
22 under 404 and then making the determination.

23 Of course, you know, this is under 403 whether it's
24 more prejudicial than probative. But it's absolutely
25 relevant, Judge, and the state would struggle to try this

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1 case without being able to just talk on it about the fact
2 that Mr. Batchelor was having an affair when this shooting
3 happened.

4 And I would say, you know, it's *res gestae*, Judge. I
5 mean, the evidence of other bad acts may be an integral
6 part of the crime with which the defendant is charged or
7 may be needed to aid the fact-finder in understanding the
8 context in which the crime occurred.

9 And, Your Honor, that's a quote from State vs.
10 Gillian, 360 South Carolina 433rd. That's a Court of
11 Appeals case from 2004. And that cites a number of cases
12 where judges have allowed in -- and, again, the state's
13 first position, it's not character evidence. It's part and
14 parcel of the motive behind this crime. And the state,
15 while it's not -- the state recognizes motive is not an
16 element, certainly the jury doesn't need to try this case
17 in a vacuum and not be able to discuss the facts and
18 circumstances surrounding why and how this shooting
19 happened, would really be, I mean, would fly in the face of
20 allowing the state to meet its burden.

21 Under 404(a) -- and, Judge, we think that it's -- and
22 in Sweat the Court notes that the state is entitled to give
23 a full snapshot of what happened and said that I don't
24 think that you can isolate. This is actually Judge
25 Jefferson talking here. "I don't think you can isolate out

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1 this incident that started a continuum and it does go to
2 show his intent and his motive." And that would -- and
3 that is true here as well, Judge.

4 In Sweat the difference is the case that -- what they
5 were seeking to introduce in Sweat was actually a prior
6 domestic violence incident that had happened a few months
7 prior to the incident in Sweat.

8 That's not even -- we're not even going that far,
9 Judge. We want to be able to talk in a way -- way
10 necessary to convey to this jury without trying this case
11 literally in a vacuum about what the facts and
12 circumstances were around these people's marriage at the
13 time this crime was committed. And I think it would really
14 be -- it would be -- to -- I mean, to imagine trying the
15 case without being able to talk about that would -- it
16 would not make sense.

17 I cannot imagine -- I cannot fathom how I can make
18 this case make sense to the jury without that information.

19 So, Judge, we think it's relevant. We think that
20 the -- it's not -- this is not character evidence. This is
21 evidence actually of the crime itself, and we would ask the
22 Court to deny this motion and while -- and the state's not
23 going -- I mean, the state's got to use what it's got to
24 use, but we're not going to spend hours upon hours just --
25 I mean, there's evidence there that we need to be able to

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1 talk about, and that's all we're asking to be able to do.

2 THE COURT: We're not going to be a family court.

3 MS. WELLS: So that's -- it's not family court, Judge.

4 Agreed. But there is -- there is relevant information that
5 is part and parcel of the affair that he was having and the
6 state's got to be able us use to make this case make sense
7 to the jury.

8 MR. GROSE: And I agree that this shouldn't be tried
9 as a family court case.

10 with regards to whether this is character evidence or
11 not, and she lists the factors that included, you know,
12 honesty, I doubt that, you know, anybody would say that,
13 you know, marital infidelity doesn't have a, you know a,
14 component in it involving character and involving, you
15 know, potentially involving honesty.

16 In fact, Your Honor might recall that. I think we
17 were at a sidebar and I mentioned then the first part of
18 my, you know, what I just proffering in voir dire, you
19 know, that I had asked the Court to ask some specific
20 questions. And one was about the marital infidelity
21 because I was afraid that this might come up.

22 The state objected to that because they didn't think
23 people would be honest about marital infidelity and that it
24 would be a meaningless exercise.

25 So accepting that at face value, then we may have

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1 picked some jurors who are biased based on marital
2 infidelity and weren't honest in the voir dire.

3 The flip side of that was, is nobody immediately
4 answered that question. But we did have a juror come up in
5 tears, and I had identified her in the civil case because
6 Mr. Brannon was trying a civil case and it came up in voir
7 dire that her husband was represented by Mr. Brannon in an
8 ongoing divorce.

9 And so I kind of flagged that as, you know, see if
10 anything developed from there, and it turned out that same
11 woman was the one who came up crying talking about the
12 marital infidelity.

13 So, you know, they're saying that they're not going to
14 call Mr. Batchelor dishonest for doing that. You know,
15 that's, I think, the concession that gets us there.

16 They have to prove, at the end of the day they have to
17 prove, the elements of the crime, and motive is not an
18 element of the crime.

19 And I have tried more cases where the state tries to
20 prove a crime without proving a motive than where they do,
21 and so I think that they need to establish why doing this
22 as motive is so interregal to their case.

23 I don't think it has anything to do with intent. I
24 mean, the intent is whether the person who shot the gun
25 intended to cause harm. You know, I don't think that this

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1 goes to that.

2 I see their argument that it could go to motive, but
3 they've got to make that connection, which I don't think
4 they've done yet. And then you have to determine whether
5 the -- they have made that connection and whether or not
6 the danger of unfair prejudice substantially outweighs any
7 probative value.

8 THE COURT: Okay. That one is under advisement.

9 MS. WELLS: And, Judge, I just -- I want to point you
10 to one thing as you made that consideration, which is while
11 the defense counsel may not believe that motive has
12 anything to do with intent, the courts disagree.

13 And, again, I will point you to State vs. Sweat, which
14 cites -- which says generally motive is not an element of a
15 crime that the prosecution must prove to establish the
16 crime charged but frequently motive is circumstantial
17 evidence of the intent to commit the crime when the intent
18 or state of mind is an issue. State of mind is an issue
19 any time malice or wilfulness is an element of the crime.

20 And that's part of the underpinnings as to why the
21 Court allowed this prior D.V. incident in and why -- and
22 why Judge Jefferson allowed it and the Court upheld that
23 admission. So I do think that absolutely goes to that.
24 And, again, we would just renew our request to deny this
25 motion.

William Gary (In-camera)
Direct examination by Ms. Wells

1 MR. GROSE: And I would just point out that our
2 appellate decisions on Lyle and 404(b) are such a mess that
3 when Justice Few wrote that opinion in Perry overruling the
4 Wallace decision, they said there's just too many cases out
5 there that are inconsistent with the rule for us to even
6 list them and overrule them.

7 So you really got to sort through, you know, which
8 cases are helpful and which ones have been decided poorly
9 arguably in an outcome determinative kind of way by the
10 appellate courts.

11 THE COURT: Okay. Before we reach to the next one
12 we're going to take a break. We've been running since
13 9:00. We're going to take a break about every 90 minutes,
14 but we've been going a good 80 minutes anyway. Let's take
15 about 15 minutes to refresh ourselves. I'm going to get
16 some more coffee.

17 (Whereupon, a recess was taken.)

18 THE COURT: Okay. That will bring us to Number E,
19 which is Mr. Batchelor's statements.

20 MS. WELLS: Yes, Your Honor, the state is prepared to
21 go forward in a Jackson vs. Denno hearing here today. The
22 state would put the Court and the defense on notice that
23 the state only intends to admit one of the defendant's
24 prior statements to law enforcement. That is the one made
25 to Investigator William Gary on January the 8th of 2016

William Gary (In-camera)
Direct examination by Ms. Wells

1 that occurred at Spartanburg Regional Hospital outside in
2 Investigator Gary's vehicle.

3 MR. GROSE: That's the one that's just audio, right?

4 MS. WELLS: No. That is not recorded at all.

5 MR. GROSE: Not recorded at all?

6 MS. WELLS: Correct.

7 MR. GROSE: Okay. That's the written statement.

8 MS. WELLS: That's the -- it's the statement that he
9 made just between the two of them in Investigator Gary's
10 vehicle.

11 MR. GROSE: That's fine.

12 THE COURT: So you want --

13 MR. GROSE: No, no. I mean, I'm just saying I
14 understand what they're saying now.

15 THE COURT: Okay. So does he want the hearing?

16 MR. GROSE: Yes.

17 THE COURT: Okay.

18 MS. WELLS: The state would call Investigator William
19 Gary to the stand, please.

20 WILLIAM GARY, having been
21 first duly sworn, testified as follows:

22 THE COURT: Sir, adjust the microphone and then tell
23 us who you are. And spell your last name, please.

24 THE WITNESS: Lieutenant William Gary, G-A-R-Y,
25 Spartanburg County Sheriff's Office.

1 THE COURT: All right.

2 MS. WELLS: Yes, sir. Thank you, Your Honor.

3 DIRECT EXAMINATION BY MS. WELLS

4 Q Sorry, Lieutenant Gary. You're employed as a
5 lieutenant over investigations with the Spartanburg County
6 Sheriff's Office, correct?

7 A Yes. I am.

8 Q And how long have you been all total with the
9 Spartanburg County Sheriff's Office?

10 A Be 27 years in March.

11 Q And what can you tell the Court about what roles you
12 held with the sheriff's office?

13 A Of the 27 years about four and a half years working
14 patrol. The rest of the time in investigations. Three
15 years assigned to auto thefts specifically. The rest of the
16 time working violent crimes or supervising violent crimes in
17 some form or fashion.

18 Q And that's what you -- that's your current job today,
19 is supervising violent crimes investigators and also
20 investigating violent crimes if called upon to do so?

21 A All of the different types of crimes within criminal
22 investigations, but according to my captain my main focus is
23 helping with the violent crimes.

24 Q I want to direct your attention back to January the --
25 I'm going to direct your attention back to that January 7 of

1 2016 just to kind of set the stage for how this interview
2 occurred.

3 Did you -- were you called to a residence on Reidville
4 Road in the late morning hours -- late evening hours of
5 January the 7th into the early morning hours of January the
6 8th?

7 A Yes. I first responded to the hospital to try to speak
8 to the victim. Then I proceeded to the incident location.

9 Q All right. And you went to the hospital, went to the
10 incident location on Reidville Road and were able to gather
11 some information about what had happened at the residence?

12 A Basically, kind of how at the time it was presenting
13 itself and the information that had been obtained from
14 Ms. Batchelor and a little bit from Mr. Batchelor at the
15 time.

16 Q Okay. And did y'all make some decisions from an
17 investigative standpoint as to some telephones in this case?

18 A Yes. Ms. Batchelor's phone was laying on the driveway.
19 It was taken into evidence. And we decided we wanted to see
20 if there's anything on the phone that could point to a
21 suspect in this, somebody she's talking to, somebody talking
22 to her, whatever. So we decided to do an exam on that. And
23 considering that they were married, we wanted to speed
24 things up a little bit and let's get a permission to search.

25 So I made contact with Mr. Batchelor because I could

1 not talk to her to get her permission. And he agreed that
2 we could do that. He wanted me to come to the hospital to
3 talk to him about doing that and get the permission to
4 search signed.

5 Q Okay. And you did that on January the 8th of 2016?

6 A Yes, ma'am.

7 Q All right. And where did you meet with Mr. Batchelor
8 at the hospital?

9 A If you're familiar with Spartanburg Medical Center, you
10 have the horseshoe, the main kind of guest entrance and
11 exit.

12 He came out that door, and I pulled into the horseshoe
13 and he got -- it was raining. He got in the passenger front
14 of my Tahoe. Then we just pulled down to the end of the
15 horseshoe without going back out onto East Wood Street and
16 sat there in the vehicle and talked.

17 Q And when Mr. Batchelor got into the vehicle was there
18 anybody else with you?

19 A No.

20 Q And tell the Court about what happened once
21 Mr. Batchelor got into the vehicle with you.

22 A He got in the vehicle talking about what he knows about
23 her, his wife and her condition.

24 We started talking about what could lead to this. I
25 was asking him if he knows if she's seeing anybody, has

1 anybody been threatening her. He told me no, not that knows
2 of.

3 And, you know, for 20 to 30 minutes we're in the -- in
4 the vehicle talking about this and her and the relationship.
5 I believe that's the first time he talked about her ring had
6 been lost for some time. And, you know, that's what we
7 talked about, was them and who possibly could have done
8 this, any information we could try to get on that.

9 Q Okay. And did he provide you with any information
10 about what Ms. Batchelor might have said, information she
11 had provided?

12 A She -- he told me that she had told him that basically
13 the physical description was the same as him.

14 Q And is that basically the end of -- the beginning of
15 the end of your conversation with him?

16 A Yes. He -- that was said. And I don't remember
17 without my notes with me. I forgot to bring them.

18 He had signed the permission-to-search form while we
19 were there. No problem. No hesitation on that. And once
20 we concluded that I pulled back around. Again, it's
21 raining. Pulled back around to the doorway to let him get
22 back out to go back in the hospital.

23 Q And as he's getting out of the vehicle does he say
24 anything additional to you?

25 A Yes. This is where it got different. He's getting

1 outta the vehicle. He steps. He opens the door and he's
2 stepping out. He's half in and out of the car. And he
3 says, "Oh, by the way, you're going to see some things on
4 her phone where she thinks I'm having an affair but I'm not.
5 I'm not seeing anybody."

6 Q And what happened after? Did you ask him any questions
7 about that statement?

8 A I didn't have a chance. He made the statement and he
9 closed the door and went back in the hospital.

10 So when I left I came back to the office, and
11 Investigator Walsh was at his desk. I brought him the
12 permission-to-search form for the phone. But I told him
13 we're not going to use it, that with what he just told me
14 gives me rise to more suspicion with him possibly being
15 involved with this. So we decided to do a search warrant to
16 go in her phone versus using the permission-to-search then.

17 Q Now, Lieutenant Gary, during the time Mr. Batchelor was
18 in your vehicle was he free to leave, free to go at any
19 time?

20 A Absolutely.

21 Q Did you have an opportunity or need to offer him food,
22 water, use of a restroom?

23 A Didn't have to. The time for that and it never -- he
24 never asked. With the limited amount of time, didn't offer
25 it.

1 Q And if he had asked would you have made those things
2 available to him?

3 A Absolutely.

4 Q Was he restrained in any way? Did you tell him he was
5 in investigative detention, tell him that he was no longer
6 free to live?

7 A No, not at all.

8 Q And, in fact, he was free to leave. He got out of the
9 vehicle and walked away. You didn't follow after him and
10 ask him additional questions about it.

11 A No. And of course in those Tahoes, you put it in park,
12 the door unlocks. But even with the door locked, if you
13 pull the door twice it opens. So at any time he could have
14 just opened the door and got out.

15 Q Did you Mirandize him?

16 A I didn't have a reason to.

17 Q You say you didn't have a reason to. Why not?

18 A Well, he wasn't in custody, and at the time not really
19 asking guilt-seeking questions for it, because it wasn't
20 until he got outta the vehicle that really that, coupled
21 with what he says Stephanie had given the description as,
22 and I'm asking her about or asking him about any chance
23 she's having an affair and we had that whole discussion, to
24 me that would have been the time to say she's not but she
25 thinks I am or something to that effect.

1 So just -- the way that happened and he gets outta the
2 vehicle and leaves as he says it and just -- that at that
3 point said he's possibly a suspect in the case. So that's
4 when, you know, I didn't ask him anything else after that.
5 He wasn't a suspect at the time.

6 Q All right.

7 MS. WELLS: Your Honor, I don't have any further
8 questions for Lieutenant Gary.

9 MR. GROSE: Just very briefly.

10 CROSS-EXAMINATION

11 BY MR. GROSE

12 Q I think you testified that the phone was found at the
13 incident location.

14 A Yes, sir.

15 Q Where exactly was it found?

16 A I'd have to look back at the photos, but I think it was
17 right next to her purse on the driveway looking up the
18 garage on the left side of the driveway probably, I don't
19 know, two feet from the edge of the driveway.

20 Q In the area where there was blood?

21 A There was some blood close to it. A lot of the blood
22 was further up closer to the garage than around to the right
23 side of the driveway.

24 Q Okay. And I think that your initial testimony was, is
25 that because -- well, Ms. Batchelor wasn't in any condition

1 to give consent at that point because she was in the
2 hospital.

3 A Correct.

4 Q And I think you said in order to expedite things you
5 were going to ask Johnathan to do it because they were
6 married.

7 A Correct.

8 Q But you didn't need the permission to do it. You could
9 have gotten a search warrant at that point.

10 A We could have. At the time of the morning that it was,
11 I mean, I don't remember the specifics for this day. There
12 are times that there may not be a magistrate available
13 and --

14 Q And in Greenwood they have them on call 24 hours. You
15 don't do that here where y'all got more?

16 A Well, I mean, I can go into all of the schedule that
17 I'm aware if I need to, but a lot of times during, like,
18 shift-change hours, 11:00 to midnight, maybe 6:00 to 8:00,
19 there's a gap because we normally -- at some points we've
20 had a magistrate 24 hours a day whether they're at the jail
21 or the courthouse.

22 Then we went for a period of time where we didn't have
23 anybody third shift. So, and I don't remember here, but
24 permission to search in a reasonable condition or
25 circumstance can be quicker than just the time it takes to

1 type a search warrant and do that. And so that was the
2 option that we chose at that time, is to do the
3 permission-to-search.

4 Q And-but my question was is you had -- you had -- by
5 finding her phone at the location where this happened, you
6 had enough to get a search warrant whether it was then or
7 whether it was in the morning when the magistrate got there.

8 A We -- we could have gotten the search warrant. Any
9 time that's what we did --

10 Q Right.

11 A -- to actually do the exam.

12 Q Right. All right. So -- so you didn't any need
13 anything else from Mr. Batchelor in order to get a search
14 warrant. You could have gotten that regardless of whether
15 he consented or not.

16 A Absolutely.

17 Q Okay. All right.

18 MR. GROSE: That's all I have.

19 THE COURT: I want to be clear.

20 You did get a search warrant.

21 THE WITNESS: We did.

22 MR. GROSE: Right. But/and what I was trying to
23 clarify is -- is that they didn't need those statements to
24 get a search warrant because at this point I'm more
25 concerned about presenting this testimony in front of the

1 jury that goes beyond just what the substance of the
2 statement was because then it's starting to provide, you
3 know, analysis and opinion and -- and I think that goes
4 beyond just, you know, hey, this is the statement that was
5 made, you know, if that makes any sense.

6 I don't know that I'm -- going back and look. I'm not
7 sure I'm making any sense, but/and I understand that we're
8 outside of the presence of the jury and often we talk about
9 things outside the presence of the jury that we have no
10 intention of talking about in front of the jury. But his
11 testimony, I think, went a little bit beyond the scope of
12 this was what the statement was made. And, you know, I am
13 going to be concerned about them giving a lot of opinion
14 testimony in this trial that is nothing more than vouching
15 for the credibility of their case.

16 THE COURT: Okay. Anything else from him?

17 MS. WELLS: The state has no follow-up questions.

18 THE COURT: Investigator, you can step down.

19 MS. WELLS: Your Honor, that'd be the state's
20 presentation on the Jackson vs. Denno portion of this
21 hearing.

22 THE COURT: Okay. Anything further on that?

23 MR. GROSE: Not on this issue. No, sir.

24 MS. WELLS: I don't if the state wants to -- if the
25 Court wants to hear from the state. I mean, I think we've

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1 shown what we need to show under Jackson vs. Denno to have
2 this statement be admitted.

3 THE COURT: Okay. It's under advisement. And I'll
4 get a ruling on that too. This kind of like taking things
5 under advisement, I'll put them all on the record on
6 Monday.

7 Potential evidentiary issues we have next, Mr. Grose.

8 MR. GROSE: Well, before we move on from that it's not
9 on here, but I don't want to forget to put on the record
10 our conversation yesterday after your review of the --

11 THE COURT: Oh, yes.

12 MR. GROSE: -- the records from Mr. Cooksey.

13 THE COURT: Okay. I'll put this on the record today.
14 And Linda will not be with me next week, so I was going to
15 introduce these into the record Monday. I'll have a
16 different -- I'll have Lisa Amick for a court reporter.
17 And that way she can mark it unless you just want them in
18 today.

19 MS. WELLS: We're satisfied. The state is satisfied
20 waiting until Monday and having one court reporter mark all
21 of the evidence.

22 MR. GROSE: I'm satisfied with that too. I just
23 didn't want to forget.

24 THE COURT: Thank you for reminding me.

25 Okay. We had a webex conference yesterday --

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1 yesterday sometime around lunchtime, I guess it was. This
2 week we've had difficulty getting some therapist notes,
3 records, and pursuant to a subpoena that was delivered, I
4 guess, to the therapist.

5 MS. WELLS: I would say it was a court order delivered
6 to the therapist and then a subpoena secondary to that
7 court order requiring that Mr. Cooksey who was the
8 therapist of question in this case appear with the records.
9 We were able to resolve that issue and have the record
10 provided to the Court prior to this hearing today.

11 THE COURT: Yes. And they were delivered and they are
12 in a white envelope. My law clerk and I have unsealed
13 this. Yesterday, they were sealed.

14 We looked at them. Sara went back. I told you there
15 were eight pages. They're nine pages, plus the letter that
16 you have. And it's -- and I put that letter in here with
17 them. And I've got some tape on it here. I am going to
18 put more tape on that and sign and date it across the seam
19 and then we'll put these in the record.

20 But on the record, I have advised both the state and
21 defense that there was nothing useful in those records. It
22 is not like I've seen in the past. I've seen some actual
23 questions and answers in the therapist note. That is not
24 in here. They are summaries and they're in chronological
25 order, but it's a summary from where she entered therapy.

1 And I told them, and I'll say it on the record, it was
2 she's concerned about the future. She doesn't know what
3 the future is going to look like. She's scared.

4 She doesn't know the legal process. She keeps
5 referring to it as the legal -- the legal process. She
6 doesn't refer to it as the judicial process. She's a
7 layperson, obviously, just kind of lost about what happens
8 next, and when and why is it taking so long and that sort
9 of thing.

10 But there's nothing in there about her identifying any
11 other person. She identifies her husband as the person who
12 harmed her starting out with a -- the first session, a
13 blunt force object. She doesn't say what it was. And then
14 shot. And she refers to him throughout as her husband and
15 then later as her exhusband or former husband.

16 And there's one note in there that she was getting
17 ready to go to court about the divorce. But there's no --
18 there's no other information. They're just summaries.

19 She does not identify anyone else. She does not say
20 that she doesn't know who harmed her. Again, she
21 identifies the defendant.

22 Anybody want to put anything on the record about that?

23 MR. GROSE: I just want to add two things.

24 One, you mentioned a call around lunchtime yesterday.
25 I think that was probably actually the call on wednesday

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1 around lunchtime where we discussed procedure that we have
2 put on the record where, I guess, initially Mr. Cooksey was
3 under the impression that he didn't have to turn over the
4 records because they were confidential. I think he did say
5 that he was going to talk to his insurance carrier, an
6 attorney, and I'm assuming he did that because then he did
7 provide the records.

8 I think the call where we actually discussed this,
9 your review of the records, was around 4:30 yesterday
10 afternoon.

11 THE COURT: Yes.

12 MR. GROSE: And I just wanted to add to what you said
13 that, you know, I did request, as you've done, to place
14 these in the record, and there was two reasons for doing
15 that, which I don't think I mentioned on the phone.

16 One is, you know, we -- you know, we're not abandoning
17 our motion. So if there is ever an appellate review, they
18 have to be in the record.

19 Two, I think that they -- they need to be in the
20 record and available to Your Honor in case something that
21 we don't expect at this point happens in the trial and
22 things change and the -- your conclusion about the
23 relevancy of them to the trial changes.

24 I'm not saying that's going to happen, but there are
25 case-law cases out there that discuss, you know, how

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1 something wasn't an issue before the trial and then became
2 an issue in the trial.

3 THE COURT: Yes, sir.

4 MR. GROSE: So I just want to be mindful of that
5 process.

6 THE COURT: Yes. Around lunchtime is when I got these
7 records.

8 MR. GROSE: Okay.

9 THE COURT: Our call was actually on the webex about
10 4:30. In fact, Sara set it up at 4:30 because we were
11 still in court up until close to that time. But, yes,
12 that's correct.

13 All right. So I will seal these and sign and date
14 them and put them in the record on Monday.

15 Okay. The use of body-worn cameras and dash cameras,
16 and it goes to some redacting that might need to be done.

17 Is there an agreement on that?

18 MS. WELLS: I think I can short circuit this, Judge.
19 We're not. As I sit here today, I'm not planning on
20 putting in any of the body-worn cameras.

21 The state is intending to offer screen shots from
22 those body-worn cameras. I will provide those to counsel
23 for the defense first thing Monday morning.

24 I think I've got them all, but I don't have them
25 numbered. I can -- I can preview what I have screen-shoted

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1 that I don't want -- I'm not certain I'm going to put all
2 of those photos in. I'm happy to preview that for defense
3 counsel after motions today, but we're not going to offer
4 the body-worn camera or from any of the officers or any
5 dash cam in this case.

6 THE COURT: Mr. Grose.

7 MR. GROSE: I think that handles that.

8 THE COURT: Okay. That brings us to snitch testimony.

9 MR. GROSE: You know, as I indicate in there, there's
10 sort of a wealth of evidence out there nationally that
11 jailhouse informants, commonly referred to as snitches, can
12 lead to, you know, wrongful convictions.

13 There's even a case out of Laurens where, I think, it
14 was ultimately determined that the informant was never in a
15 position in the jail where they could have ever have heard
16 the case. And that case came back on P.C.R.

17 So South Carolina is not immune from this, and this
18 is, you know, a different situation than a testifying
19 codefendant. And, you know, the gain that Mr. Tiller got
20 in, you know in, this case is enormous.

21 You know, he did -- he was debriefed in his case in
22 federal court and, you know, actually a lot of people in
23 that case were giving information against him too.

24 He was at the top of that indictment. He was the --
25 there was people in the conspiracy that he was dealing with

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1 in some sort of cartel, and that's referenced in that plea
2 transcript that he had owed them money from a prior case.
3 But because of his record he was facing, you know, life in
4 prison. And, you know, there was really I think, you know,
5 limits on the value of what he could tell them about his
6 codefendants.

7 And so the plea talks about the fact that, you know,
8 he assisted them on another case in convincing somebody to
9 forfeit in excess of half a million dollars worth of
10 assets.

11 And his involvement in Mr. Batchelor's case figures
12 pretty heavily into the sentencing hearing. There was a
13 delay of about 15 months between sentencing and when -- I
14 mean, between the guilty plea and sentencing.

15 And as, you know, Jim Bannister pointed out that that
16 amount of time, you know, presents new opportunities. I'm
17 paraphrasing. But new opportunities puts new things into
18 play. And the new thing that went into play was
19 Mr. Batchelor.

20 And I think, you know, the United States attorney,
21 Andy Moorman, was pretty candid in saying that, you know,
22 he reduced his recommendation because -- for Mr. Tiller not
23 to get a life sentence.

24 The government had to make a motion for a downward
25 departure, and they were initially planning on requesting

1 or recommending a 240-month sentence in federal court, and
2 that because of Mr. Batchelor's assistance in this case,
3 you know, they -- they reduced -- they reduced the
4 government's recommendation to 220 months.

5 I think it's also significant the fact that Ms. Wells,
6 you know, attended the sentencing hearing and spoke on, you
7 know, Mr. Tiller's behalf and was, you know, in part, you
8 know, what helped him to get those 20 months.

9 I think it's also important that the judge, the
10 prosecutor, the defense counsel and Mr. Tiller all have it
11 left open for an additional downward departure based on,
12 you know, other things that he's done.

13 I don't know if this continued cooperation in this
14 case would figure into it or not figure into it, but he
15 certainly, according to, you know, that, that plea had
16 it -- or that sentencing hearing had identified, you know,
17 not only inmates in the Department of Corrections but
18 people who work for the Department of Corrections as being
19 involved in, you know, drug trafficking and that sort of
20 thing. You know, I mean, contraband in general.

21 And I don't know. I'm involved in a state grand jury
22 case where I'm representing somebody. I don't know if
23 Mr. Tiller is connected to that or not because, you know,
24 he might not be, but I know that that is something that our
25 attorney general's office is looking into, is, you know,

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1 corruption in the Department of Corrections.

2 And I don't know what the status of anything
3 regarding, you know, Mr. Tiller's involvement is, but he
4 certainly still has the hope of, you know, gain in the
5 future.

6 And, you know, just as the state argues that, you
7 know, this Court has a gatekeeping function for, you know,
8 third-party guilt, I think this court has a due-process
9 gatekeeping function for, you know, jailhouse informant
10 testimony, particularly when it's in this nature very much
11 distinguishable from, you know, codefendants that are
12 testifying about, you know, facts of a crime.

13 And so that would be our position. And you may need
14 to have Mr. Tiller here before you can rule on this motion.

15 THE COURT: Solicitor.

16 MS. WELLS: Thank you, Your Honor.

17 Your Honor, I have handled codefendants, cooperating
18 federal defendants in cooperating codefendant cases for
19 years and years and years. And there is nothing that
20 stands out to me about this case that makes it any
21 different from any of those cases.

22 I don't -- can't think of a single case that I tried
23 as a federal prosecutor where I didn't put a cooperating
24 federal defendant on the stand. And that's why you reduce
25 all of these things to writing, so everyone has a full and

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1 complete understanding of what your agreement is between
2 the parties before you talk to anybody. And all of that
3 stuff will come in when Mr. Tiller takes the stand.

4 Judge, I want to clarify something because the
5 implication that I went and testified at this hearing, I
6 want to make clear to the Court I was subpoenaed by
7 Mr. Bannister to appear.

8 I had a child -- and I believe this is June the
9 26th of 2018. I had a child who'd been recently
10 released -- I think that day previous -- from the hospital.
11 And I had made it clear to Mr. Bannister that I did not
12 want to appear, that I did not want to leave my child, and
13 he forced me to appear.

14 And you can see it in the record where he says,
15 "Please let her go first, she is here against her will, she
16 does not want to be here, Judge." And Judge Childs was
17 kind enough to let me go forward.

18 And Mr. Moorman was not comfortable. He -- Mr.
19 Moorman asked me to come, and I said I'm not coming, I'm
20 not coming to say anything on Mr. Tiller's behalf, that is
21 your job. And here -- but I was forced to appear, Judge,
22 and I want to make that clear for the record, that that was
23 not something that I did because I wanted to. It was
24 because I was compelled to by the Court process.

25 So as the Court well knows having handled cases like

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1 this previously, the state and the defense made an
2 agreement. He agrees that he's going to testify
3 truthfully.

4 There are penalties for people who do not testify
5 truthfully, as this Court knows. And Judge Childs at the
6 end of the day is the person who hears all of that
7 information, takes that into account.

8 And Judge Childs is the one who made the decision.
9 She could have rejected all of that and sentenced
10 Mr. Tiller to life without parole in federal prison, and
11 Mr. Tiller would have had no recourse, and he knew it even
12 when he signed his plea agreement. With Mr. Bannister's
13 advice he agreed to it.

14 So, you know, and the fact that there's testimony in
15 this hearing or discussion between the parties that he may
16 be involved in future cases, then it's commonplace.

17 So if I were a federal prosecutor I'd put that on the
18 record too to let the court know, listen, if you're going
19 to cut this time you may be cutting more in the future so
20 keep that in mind as make your decisions because he's
21 involved in some other investigation. I think that's
22 completely normal and completely appropriate to discuss on
23 the record in these hearings.

24 And none of that has had anything to do with
25 Mr. Tiller's ability to testify about what Mr. Batchelor

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1 told him while they were both in Pod 3 at Spartanburg
2 County Detention Center.

3 So, and, you know, the only reason that he's got hope
4 of gain in the future out of this case is because of the
5 P.C.R. I mean, that's all, because we're back here doing
6 this. Otherwise, I have no use for him other than I've
7 been put in the position where now I have to try this case.

8 So, Judge, I would just note all of those things.
9 None of this -- there's nothing in going back. I had
10 forgotten, in fact, until I read this and realized that the
11 timing on this, exactly the facts and circumstances around
12 how I ended up in court over there, but, you know, I knew
13 as soon as I looked at the date that, you know, I had -- my
14 child had been hospitalized. And that's why I was forced.
15 I mean, I was literally forced to be there.

16 So, but reading through this there is, having handled
17 these kind of cases there is, nothing that stands out to me
18 as unusual or suspect. As I -- again, as I think I brought
19 this up on our webex and I'll put it on the record here
20 today, Mr. Grose represented a codefendant of Mr. Tiller's
21 in this case. So this was all very -- you know, so he was
22 part of this process too. It's all very par for the course
23 in how this works.

24 So, Judge, I just don't see any issues with this that
25 would raise any concerns with me with anything as to this.

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1 And I'm happy before Mr. Tiller testifies to proffer that
2 testimony should the Court have any inquiry the Court wants
3 to make.

4 Obviously, the state's position is, is that -- well,
5 and I guess we can cross that bridge when we get to it with
6 Mr. Tiller, but I think that's all of my statements.

7 THE COURT: Well, we don't have a reveal-the-deal in
8 this case, right, I mean?

9 MS. WELLS: So, I mean, the deal was that there's -- I
10 mean, that he's got a plea agreement with the federal
11 government and the deal is, as I told Mr. Bannister and Mr.
12 Tiller, there's no deal. I mean, he's here and we brought
13 him back, but I haven't agreed to do anything for him,
14 Judge.

15 MR. GROSE: But that she did say that in response that
16 the reason that Mr. Tiller has hope of getting something
17 else out of Mr. Batchelor's case is because Mr. Batchelor
18 was successful on a P.C.R. and he's here to testify in the
19 trial.

20 You know, I -- when we had the status conference and
21 she mentioned that I had represented the codefendant in
22 that case, also said that that was how I knew the extreme
23 amount of pressure that Mr. Tiller was under in order to
24 come up with information to try to help his situation out.

25 You know, Ms. Wells did not bring up the fact that she

1 had appeared at his sentencing hearing. In fact, I didn't
2 even remember that that transcript had been filed. I would
3 have gotten notice when it was filed through PACER, but my
4 involvement in that case was over.

5 I didn't realize that transcript had been filed until
6 after that status conference when I went to download copies
7 of some of the other documents that are attached to the
8 pretrial brief.

9 And so, you know, I mean, we're already past that
10 point. But the fact that she spoke at the hearing is
11 something that should have been disclosed.

12 And whatever circumstances that exist that allow
13 Mr. Tiller to now have an expectation that he might get
14 more benefit for assisting in the prosecution of
15 Mr. Batchelor, I think we need to get on the record and we
16 need to learn about it.

17 And I'm just going to come out and say this. There's
18 that case, State vs. Edward Dean out of Greenwood, South
19 Carolina.

20 I was the trial and the appellate law on that, and you
21 go read Chief Judge Lockemy's opinion on that. The Court
22 was very upset with the fact that all appearances were as
23 that, and that was a cooperating codefendant, was going to
24 get a benefit out of that case and denial, denial, denial.
25 And then even though Judge Addy had retained jurisdiction

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1 over all of the codefendants in that case, they snuck off
2 to Saluda County in another circuit to give him his
3 benefits, you know, and try not to let anybody find out
4 about it. And that resulted in Judge Addy having to order
5 a new trial, which the state appealed, and Judge Lockemy
6 and the 3-judge panel affirmed Judge Addy.

7 I don't want us to get into that situation here, so we
8 need to get all of that, whatever Mr. Tiller's expectations
9 and hopes are, out on the record so this jury knows what
10 kind of motive he has when he testifies.

11 MS. WELLS: And, Your Honor, I have years of
12 experience on putting these folks on the stand. I
13 certainly intend to ask him that question on front of the
14 jury, but I resent the implication that I somehow hid the
15 ball again from the Court.

16 I did not recall testifying here until I read this
17 transcript. Judge, I have no independent recollection of
18 that. Again, I remember now because I remember I was under
19 subpoena to do so.

20 So, again, and I told the Court now. I mean, it's
21 obvious I was there. I just didn't recall at the time
22 because I wasn't coming to the courthouse.

23 Judge, the only -- they all have. All of these folks
24 that come in to testify have hope that they're going to get
25 something. At the end of the day Judge Childs is still his

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1 judge and Judge Childs is the only one who's going to make
2 that decision. There's no running off to Saluda to do
3 anything with this case.

4 Should anything happen, which there have been no
5 recommendations or promises or hopes or -- or, I mean, when
6 I say hopes, I mean, there's nothing that's been
7 communicated to either Mr. Bannister or Mr. Tiller about
8 any outcome in this case. So there's nothing.

9 I mean, I'm happy to proffer him and let him tell the
10 Court that, but there's no promises.

11 The plea agreement, the state would put that redacted
12 version with the paragraph that refers to the government's
13 ability to polygraph the defendant if they think he's being
14 untruthful. The state will redact that portion because I
15 don't think that's appropriate to go before the jury when
16 the rest of it's going to come in.

17 We're going to put that plea agreement in. We're
18 going to let him talk about any conversations we have.
19 We're going to do all of those things, not just in the
20 proffer but on the record before the jury.

21 So and, again, this is not -- this is not a State vs.
22 Dean situation. This is a federal defendant, and I'm not
23 the one who's going to be making any decisions about filing
24 any Rule 35 motions on his behalf. That would be up to the
25 Assistant United States Attorney, whoever has been assigned

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1 to handle this case in the place of Mr. Moorman.

2 Mr. Moorman is now in private practice. I'll put that
3 on the record. That's why someone appeared.

4 THE COURT: Okay. Anything further on that?

5 MR. GROSE: Just two things.

6 One is I think we're in agreement that there needs to
7 be a proffer when Mr. Tiller is here.

8 Two, you know, regarding the insinuation of something
9 in bad faith, as the Court is well aware under Brady, good
10 faith or bad faith is not an issue.

11 And so, you know, that's our point, whether it's -- I
12 mean, I don't have to prove bad faith, and I'm not trying
13 to prove bad faith. I'm just saying it's there, it should
14 have been disclosed, it wasn't, and/but it's out in the
15 open now.

16 THE COURT: Okay. All right. We can do that.

17 We might talk about -- well, don't let me forget to
18 talk about time for Monday. Well, let's just do it right
19 now.

20 When you say we need to proffer that -- and I agree
21 that that's what we are going to do -- I really dislike
22 having jurors sit and wait. I have told the jury to come
23 in Monday at 9:00. And that's one reason why we're doing
24 what we're doing here, to keep from taking all day Monday.

25 Do you think that -- how much time do you think we're

1 going to need Monday morning? Because Kerry Shaw is our
2 juror trial coordinate or she is -- there's only 14 of
3 them. She can call those 14 and change the time for them
4 to report.

5 So do we want them to come at -- I hate to bring
6 anybody in at 11:00 because that just didn't seem to work
7 for anything. But do we need them at 1:00? There's
8 nothing magic about starting at 2:00.

9 MS. WELLS: So the Court wants to do the proffer of
10 Mr. Tiller Monday morning?

11 THE COURT: I was just thinking. We don't have to.
12 We could wait until, as you know until, he's about to
13 testify or something, or we could proffer him at the end of
14 a day one day or at the beginning of the morning. I don't
15 know that he'd be the first witness up anyway.

16 MS. WELLS: He would not be the state's first witness.

17 THE COURT: Okay. Well, then maybe we ought to just
18 leave the jury coming in about 9:00 or so.

19 MS. WELLS: That satisfies the state. Leave them.
20 Let them go ahead and come on in, and then we can see how
21 much progress we make on Monday.

22 THE COURT: Right.

23 MS. WELLS: And that might -- that might help form the
24 Court's decision of whether we should bring them in early
25 on Tuesday morning.

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1 THE COURT: Okay. That sound good, Mr. Grose?

2 MR. GROSE: Yes, sir. And I wasn't meaning to suggest
3 to do it Monday morning. Just before he testifies, so.

4 THE COURT: Oh, yeah. Okay. well, all right. we'll
5 keep them at 9:00 then, I guess.

6 You know, it might not be a bad idea for Kerry just
7 as -- just as caution to make those 14 calls to remind them
8 that we need them Monday morning.

9 THE CLERK: Okay. I don't know if she's in today, but
10 I can figure out who can do that.

11 THE COURT: I think it'd probably be a good idea.

12 THE CLERK: Okay.

13 THE COURT: Just make -- there's only 14 of them and
14 they can just be called and be reminded.

15 THE CLERK: Okay.

16 THE COURT: Because the only thing I know so far we
17 have to do Monday morning before we do anything else with
18 this, I've got the Juror 78 issue to address which should
19 not take long. And then I'll put -- make some comments on
20 these motions. Maybe somebody could make some calls.

21 THE CLERK: Okay. All right.

22 THE COURT: Okay. That brings us to page six,
23 requests to charge. We talked a little bit about criminal
24 intent. I think you were going to put something together.

25 MR. GROSE: I think I emailed something last night. I

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1 don't think we need to discuss charges now unless you want
2 to.

3 THE COURT: No.

4 MR. GROSE: I just -- I just wanted to get some of
5 this out there so that when the time came everybody would
6 already kind of --

7 THE COURT: Be thinking about it.

8 MR. GROSE: -- be thinking about it. In fact, I may,
9 with what I sent last night, I may even revise that before
10 we get to the point depending upon how the trial goes, so.

11 THE COURT: So we don't need to go through the rest.
12 These are all --

13 MR. GROSE: Right.

14 MS. WELLS: I had kind of drawn a line between the end
15 of the federal-cooperating-defendant portion and the
16 request to charge thinking that's probably as far as we
17 would go on the defense motions today unless Mr. Grose
18 wants, there's something else in there that I missed.

19 MR. GROSE: I think we -- I think we covered
20 everything else, particularly when we put the issues about
21 the records, on the therapist records on the record
22 with what -- which wasn't in there.

23 I don't know that we addressed the other motion that
24 the state had with regards to, you know, the evidence
25 that's not available. Of course one of the things that is

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1 foreshadowed in the request to charge is, you know, a
2 spoliation instruction.

3 You know, they -- they imply in their motion that, you
4 know, if we talk about the fact, you know, that -- and
5 we've been pretty precise today with what evidence we're
6 concerned about not having access to -- that if we talk
7 about that they're implying that they're going to bring in
8 the fact that Mr. Batchelor, you know, previously pled
9 guilty and that's the reason that they destroyed the
10 evidence.

11 And, you know, Rule 410 of course is pretty
12 straightforward that, you know, they're not allowed to go
13 into a guilty plea that was later vacated. And so maybe we
14 need to hear from them on that motion so that we know
15 what -- what the ground rules are going into next week.

16 MS. WELLS: Sure. Judge, I'm happy to do that, and I
17 do think this kind of -- this spoliation request and the
18 state's motion to limit the discussion of destruction of
19 evidence in this case do kinda ducktail.

20 So, it may be a lot, and it may just be a preview and
21 something the Court wants to hear from us again on. But I
22 did want to talk about that.

23 So, and I think what place I would like to start if it
24 pleases the Court is with the spoliation charge, and then
25 the request for that. And I know I said we weren't going

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1 to talk about the requests for charge, but I do think it
2 kind of -- when I was kind of putting my thoughts together
3 last night I seemed to start there. And if it pleases the
4 Court, I'm going to kind of go through that first.

5 As the Court is well aware having been a criminal and
6 a civil attorney previously, you know, generally spoliation
7 charges are something that we come across in civil cases
8 where the parties haven't maintained evidence despite an
9 order of the court to do so.

10 And I would point the Court to Kershaw County Board of
11 Education vs. U.S. Gypsum. That's at 302 South Carolina
12 390. That's a 1990 case. That's a Judge John Hamilton
13 Smith case where he had ordered Kershaw County. There was
14 a -- you're familiar with it.

15 THE COURT: I am.

16 MS. WELLS: So, and he told them that they needed to
17 maintain this evidence at Camden High School for U.S.
18 Gypsum to examine. Some of that evidence was destroyed,
19 and U.S. Gypsum made a motion for summary judgment, which
20 Judge Smith denied.

21 He did permit Kershaw to explain the circumstances
22 surrounding its failure to notify Gypsum and instructed the
23 jury. They gave a spoliation charge, instructed the jury
24 that an inference may be drawn by the jury that the
25 evidence which is lost or destroyed by that party would

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1 have been adverse to that party.

2 And the Supreme Court found that was appropriate and
3 that Judge Smith was correct and the granting of the motion
4 for summary judgment was too severe under the facts of the
5 case.

6 And our Supreme Court again looked at that notion in
7 Austin vs. Beaufort County Sheriff's Office. That's at 377
8 South Carolina 31. That's a 2008 case.

9 That was then Judge Few who granted a motion for
10 summary judgment in favor of the Beaufort County Sheriff's
11 Office after the sheriff's office destroyed evidence at the
12 conclusion of a criminal investigation that left the family
13 of a man who had died of a drug overdose unable to file an
14 action for wrongful death.

15 In Austin the Court expressly declined, one, to adopt
16 a third-party spoliation of evidence tort in South
17 Carolina. There's some discussion of West Virginia case
18 law and the spoliation tort -- of evidence torts available
19 there. And our Supreme Court expressly denied to adopt any
20 of that.

21 And in that case, Judge, I think it's important to
22 note that the Supreme Court notes that this is not -- the
23 civil cases are not the controlling law in the criminal
24 cases.

25 It points to State vs. Cheeseboro as the leading case

Motions

1 for destruction of evidence in the criminal setting. And,
2 again, like I said, this kinda ducktails into our
3 discussion about the limited -- limiting of the discussion
4 of the destruction of evidence in this case.

5 If the Court's inclined to grant a motion for a
6 spoliation charge I think the issue is what Judge Smith
7 dealt with in Kershaw county. He allowed Kershaw County
8 the ability to explain why the evidence had been destroyed.

9 Here the evidence was destroyed because the defendant
10 had entered a guilty plea. And the actual criminal case --
11 there's actually a case on point in this in the criminal
12 world. That's State vs. Breeze, 379 South Carolina 538.
13 Judge Hill was the trial judge in that case. That's a 2008
14 case.

15 In Breeze the defendant failed to appear for a term of
16 court and a bench warrant was issued for his arrest. As a
17 product of that warrant the case was marked as disposed of
18 by -- in the whatever system they had. And the highway
19 patrol in the course of their regular business saw the case
20 had been disposed of and destroyed the marijuana evidence
21 in the case as was their policy.

22 During preparation for trial the state realized the
23 evidence had been destroyed, notified the defense. And the
24 court of appeals cited the Cheeseboro, Judge, in holding
25 that the defense failed to, one, to show bad faith. They

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1 didn't -- they didn't meet their burden. The defense
2 didn't meet their burden under Cheeseboro. And what the
3 state proposed and what Judge Hill did was allowing the
4 state to inquire as to the trooper who testified two
5 questions -- does the highway patrol have a policy as to
6 the destruction of marijuana and was that policy followed.

7 Judge Hill didn't prevent the defense from asking any
8 additional questions but cautioned the defense about asking
9 more. The defense would basically be creating an invited
10 response situation, one where the state would then be able
11 to elicit from the witness, the trooper witness, why the
12 evidence was destroyed.

13 Judge Hill also, I think it's notable, denied a
14 request for a spoliation charge in this case, the exact
15 same request that the defense is making here. And they
16 asked that the jury be charged in an adverse inference to
17 be drawn against the state for failing to produce the
18 evidence.

19 Judge Hill denied. Breeze cites to Kershaw County in
20 support of his motion which the Court of appeals found to
21 be clearly distinguishable because of the civil case.

22 So, Judge, we just think that the state has to be --
23 if they're going to ask for spoliation, if they're going
24 to, you know, do all of these other things, it's unfair to
25 the state to not be able to give an explanation or have to

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1 manufacture. We can't manufacture. That's a -- that would
2 commit a fraud upon this court to do so.

3 So we think that, one, I mean, we just think that
4 spoliation defense is not appropriate, but it will all lead
5 up to that. That's why, Judge, is that, again, I think
6 Breeze is about as an on-point case as you can get as to
7 why the state should be able to -- to answer up should the
8 defense decide to go down this road, because otherwise I
9 think it's committing a fraud on the jury.

10 THE COURT: Yes, sir.

11 MR. GROSE: Well, several things. Committing a fraud
12 on a jury, jurors don't hear a lot of evidence a lot of
13 times because of the un -- you know, the danger of unfair
14 prejudice or relevance or a variety of situations.

15 The -- all of the discussion about creating a tort on
16 spoliation of evidence in South Carolina has nothing to do
17 with what we're talking about here. You know, that's --
18 that's not what we're asking for.

19 If their proposed solution is, is that, you know, do
20 you have this evidence, no, we don't this evidence, it was
21 destroyed, do you have a policy on destruction of evidence,
22 yes, was that followed, I don't think I have a problem with
23 that.

24 What I do have a problem with is, is if they then go
25 into what they can't go into, which is the fact that he's

Motions

1 entered a guilty plea before. So we may not have an issue
2 with it on that.

3 MS. WELLS: We would not intend. The only way -- and
4 that's why I wanted to put the defense on notice early --
5 is that the state knows we can't get into that, and the
6 state has not intention of doing that.

7 The only reason we would do it would be if the door
8 were opened, and I don't want a mistrial in this case,
9 Judge. I mean, we -- I tried -- tried to do everything I
10 can on it.

11 MR. GROSE: But you can understand why --

12 MS. WELLS: I understand their concern. I do.

13 MR. GROSE: Right. Well, particularly after that's
14 what you used in the bond hearings all along and, you
15 know --

16 MS. WELLS: Well, it's fair game in a bond hearing.
17 It's a different thing in front of a jury, Judge, and I
18 don't think there's anybody who could deny that this was
19 previously done. And I don't think I dwelled on it. I
20 think it's just part and parcel of the case.

21 Again, we were simply putting the defense on notice to
22 avoid any issues as to this.

23 MR. GROSE: Well --

24 MS. WELLS: What Judge Hill had proposed and what the
25 Court of Appeals approved as a way to handle it, and I

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1 think that that is -- would be appropriate and I think
2 perhaps the defense agrees.

3 THE COURT: I think we have an agreement.

4 MR. GROSE: I think we -- I think we have an agreement
5 on that. I think it's also premature on the spoliation
6 instruction. I understand that there's a difference
7 between a criminal and a civil case.

8 I tried a case in Laurens County the week of --
9 attempted murder case the week of October 11th, so just a
10 few weeks ago. That spoliation-evidence instruction that
11 I'm asking you to give is the spoliation instruction that
12 Judge Verdin gave that jury in Laurens County.

13 And I believe that that's probably in the current
14 version of the charge book or at least being circulated by
15 the circuit court judges, because in preparation for that
16 trial I was asking some of my colleagues if they had me --
17 had one that they could send me and they sent me one from
18 another case that was identical to the one that she gave.

19 So to say that we don't do it in criminal cases is not
20 accurate. And I would remind, you know, you about the
21 Arizona vs. Youngblood case where part of the reason that
22 they didn't find a due process violation is because the
23 jurors were instructed about spoliation of evidence, so.

24 MS. WELLS: And I will just say maybe the state wasn't
25 quite as prepared in that case to argue with Judge Verdin

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1 about why that shouldn't have happened but I hand --

2 MR. GROSE: We were very prepared.

3 MS. WELLS: So I don't know. But I just wanted -- I
4 just -- based on my reading of it, and my research, I don't
5 think it's appropriate. We'll get there. We'll cross that
6 bridge.

7 THE COURT: So you know, I have seen nothing on the
8 list, sir, about spoliation. So I don't know where that
9 came from. I've never seen anything. As you know, those
10 bench books were taken down in 2015 or something and
11 they've never been updated and put back on.

12 MR. GROSE: That's after we cited it in the Beatty
13 brief as --

14 THE COURT: I know.

15 MR. GROSE: Yeah. I don't know if it was a cause and
16 effect, but it was after those briefs went in. It wasn't
17 long after that that it came off the website.

18 THE COURT: It came -- it came off line quickly. I
19 mean, I still have it. Of course it's downloaded on our O
20 drive.

21 MR. GROSE: I still have a copy of it too.

22 THE COURT: All right. Do we have anything else this
23 morning?

24 MS. WELLS: I think -- I will defer to Mr. Grose, but
25 I think, as the state recalls, that's everything that we

1 have brought to the Court's attention at this point.

2 MR. GROSE: I think we're covered through today.

3 THE COURT: Okay. Very good.

4 All right. Let's get off the record.

5 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 29th day of October 2021.

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

March 26, 2022

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
) 2016-GS-42-001345
COUNTY OF SPARTANBURG)

STATE OF SOUTH CAROLINA,)
)
 Plaintiff,)
)
) TRANSCRIPT OF RECORD
vs.)
)
BATCHELOR, JONATHAN OLIN,)
)
 Defendant)

November 1st - November 4th, 2021

Spartanburg, South Carolina

B E F O R E:

HONORABLE R. KEITH KELLY, JUDGE

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

Jennifer Elizabeth Wells, Esquire
Attorney for the State

E. Charles Grose, Jr., Esquire
Attorney for the Defendant

Lisa G. Amick
Official Court Reporter

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THE COURT: Alright. We're on the record in the matter of State of South Carolina versus Jonathan Olin Batchelor, 2016-GS-42-1345. First thing's first, thanks to my law clerk remembering, last week we had some pretrial motions, and these are the records that are the therapist's record, the counselor records, and I have, if anybody wants to look, I have taped across it, signed it, and put today's date and we'll make note of, part of the Court's exhibits.

(Whereupon counselor records were entered as Court's Exhibit Number 1 for evidence.)

THE COURT: Okay. There's a motion to dismiss that was argued both pro and con last week, the Court took it under advisement and after considering the case law that was given to the Court, State versus Cheeseboro, Arizona versus Youngblood, State versus Mabe, State v Jackson, and one more that's in the record. At any rate this Court finds that the case will not be dismissed. The State does not have an absolute duty to preserve potentially useful evidence that might exonerate a Defendant. To establish a due process violation, a Defendant must demonstrate that the State destroyed the evidence in bad faith, or the evidence possessed an exculpatory value apparent before the evidence was destroyed and the Defendant can obtain other evidence of comparable value or by other means. The Defendant has failed to demonstrate any evidence of bad faith. There's no prejudice to the Defendant as a result of the

destruction of the bullet fragments. The report is available, and it was made available to me, and I have it. The report is a documentation of the microscopic comparison of the bullets, the bullet fragments were tested. Again, I have the evidence, the lab personnel are still available to be cross examined or testify, and he has also not demonstrated that the bullet fragments have any exculpatory value that was apparent before it was destroyed. Our Court has also said that dismissal of a criminal charge is a drastic remedy which should rarely be invoked as a sanction for this State's failure to preserve the evidence. Again, that, this Court has that report, reviewed it, it's, it's in great detail about what it does and doesn't say, and it's available for anybody to, to look at who wants to look at it. As to the Jackson v Denno hearing, the statement that was made to Investigator Gary, again, it was argued by both sides and this Court took it up, the investigator testified to the date, the place, the date, and the place of the statement. He told where it was, it was in the hospital parking lot in his Tahoe vehicle. He and the Defendant were the only persons present during the questioning. The length of time, I think he testified was about 30 minutes. No breaks were asked for and none were offered, none were taken. The Defendant was not denied access to a telephone, bathroom, food, or drink. No threats or promises were made in exchange for the statement. In fact, the investigator testified no Miranda

warnings were given because they were not necessary, the Defendant was not under arrest at the time, he was free to go at any time during the questioning, in fact, he did exit the vehicle on his own accord. He spoke voluntarily with the investigator and the investigation into the crime was not focused on this Defendant as a suspect at the time of the questioning. The investigator testified that the Defendant made the statement as he was getting out of the car, that on his wife's phone would be stuff about him having an affair, but he was not having an affair. And that caused the investigator to pause and not use the permission granted to access the wife's telephone. In fact, at that point, the investigator in an abundance of caution sought and received a Magistrate Court search warrant. This Court finds the Defendant not in custody, his statement was made voluntarily. As to the 404 argument about, about an extramarital affair, that is not the evidence of, that's not character evidence, this Court finds it's not character evidence, and the State will be allowed to go into that because it shows a complete picture. While the State's not required to prove motive, it may do so, and that's where the case is headed, I think, from what I have heard. As to juror 78, this Court is going to conduct a hearing on juror 78, but I'm going to point out that juror 78, while identified to Judge Knie in qualifying the overall panel that he had a hearing issue, he has not raised any such issue at any time

when this Court inquired is there any reason why a juror should or should not serve on this jury, he did not raise that issue. But in an abundance of caution, and I have read with great detail that Bryant case, Mr. Grose, even went back to see who the Judge was, and it was my good friend and yours too, Paula Thomas presided over that trial, did an excellent job of that too, as she always did as a Circuit Court Judge and as one of our Appellate Court Judges. So with that, Mr. Bailiff, I need juror number 78, please. And I know there are a couple other things we probably have to talk about as we go along, but we're not going to get into jury charges this morning. We'll talk about that.

MR. GROSE: Right. I understand.

THE COURT: Okay. Good morning, sir.

JUROR 78: Morning.

THE COURT: You can come right here, please, I just want to ask you a couple of questions. You had indicated to Judge Knie in qualifications that you have a little bit of a hearing loss, but you didn't indicate that to me, but the lawyers were there for the ---

JUROR 78: Yes, sir.

THE COURT: --- for the morning. If I put you on the front, would you be able to hear?

JUROR 78: As long as I can see your face, if I don't hear you, well, I can hear your voice okay.

THE COURT: Right.

JUROR 78: Some of the lower tones I don't hear.

THE COURT: Right.

JUROR 78: If I can see your lips, though, I'm fine.

THE COURT: Okay. So if I seat you on the front row, right over there, you think you'd be able to hear me okay?

JUROR 78: Probably the best bet would be that corner right there.

THE COURT: I'll make that your seat.

JUROR 78: Thank you.

THE COURT: That suit you?

JUROR 78: That's perfect.

THE COURT: Alright. So otherwise, you can hear me?

JUROR 78: Yeah.

THE COURT: You want to walk over there and see if you can still hear me?

JUROR 78: When it, it's tones, so when a lot of people are talking at once, I can't hear.

THE COURT: Well, I'm with you on that.

JUROR 78: If it's quiet like this and one person at a time, I have no problem at all.

THE COURT: No problem at all. Any questions from the State?

MS. WELLS: No questions from the State ---

THE COURT: From the Defense?

MS. WELLS: --- other than allowing him the opportunity to stand there and make sure he can hear us okay if he wants to.

MR. GROSE: And I have no objections.

THE COURT: Okay. Sir, can you hear me okay?

JUROR 78: Yeah.

THE COURT: Alright. Ms. Wells, you have the softest voice, so why don't you speak and see if he can hear you.

MS. WELLS: I don't know if that's absolutely accurate, Judge.

JUROR 78: That's why I asked to sit here. I had a hard time, the other day I had a hard time hearing you, that's why I sat right up front at first.

MS. WELLS: That's the first time anyone's ever said that to me, so I'd like the record to note that. But usually I'll be standing right at the corner, so hopefully that will alleviate any issues.

JUROR 78: Yeah. That's not a problem. As long as not everybody's talking at once, which doesn't happen in a Courtroom ---

THE COURT: No it doesn't.

JUROR 78: --- then I should be fine.

THE COURT: No it doesn't. One person at a time because she has to record, so, and she's great, but she can't

get five people at a time, can you? No. Alright. Thank you, sir. You may go back. I just want to make sure.

JUROR 78: Thank you.

MR. GROSE: Thank you, Judge.

JUROR 78: I was kind of worried about that.

THE COURT: Alright. I think I've covered everything on my homework list up to this point.

MS. WELLS: Nothing further from the State unless the Court wants to inquire of the jury as to Mr. Tiller since the State left him inadvertently off the list.

THE COURT: I can do that when everybody comes in.

MS. WELLS: That's fine, or we can do, I mean, I guess, maybe we should do it before we swear them.

THE COURT: Yes. I can bring all 14 of them in as to that very question. His name again is Dustin?

MS. WELLS: Dustin Tiller.

THE COURT: Tiller.

MS. WELLS: Yes, sir.

THE COURT: Okay. Are we ready for the jury?

MS. WELLS: State's ready, Your Honor.

THE COURT: Defense is ready for the jury?

MR. GROSE: Yes, sir.

THE COURT: Okay. Bring all 14.

(Jury entering.)

THE COURT: Good morning ladies, and gentlemen.

I need to ask one question, or a couple questions here before we start. A witness was left off, a potential witness was left off of the list last week by, by mistake. That person's name is Dustin Tiller. Is there any member of this jury panel related by blood or marriage to Dustin Tiller?

(No response.)

THE COURT: Any member of the jury panel have a social relationship with Dustin Tiller?

(No response.)

THE COURT: Any member of the jury panel know Dustin Tiller?

(No response.)

THE COURT: Anything from the State?

MS. WELLS: Nothing from the State, Your Honor.

THE COURT: From Defense?

MR. GROSE: No, sir.

THE COURT: Alright. Madam clerk if you will swear the jury to try this case.

MADAM CLERK: Please stand and raise your right hand. Do you swear or affirm in the case about to be tried to truly try the issues that are joined in this case and a true verdict rendered according to the law and evidence so help you God?

ALL JURORS: Yes.

MADAM CLERK: Thank you, you may be seated.

THE COURT: Ladies and gentlemen of the jury, we're here to try the matter of the State of South Carolina versus Jonathan Olin Batchelor. It is alleged in the indictment, 2016-GS-42-1345 that he did in the county of Spartanburg, State of South Carolina on or about January 7 of 2016 with malice of forethought commit the criminal offense known as attempted murder by shooting Stephanie Batchelor. He has pled not guilty to this indictment and as I told you previously, he is presumed innocent of the allegations contained in this indictment. This indictment is merely a piece of paper that brings him before the Court. It is not evidence made against him and cannot be considered by you as evidence made against him. Again, he has entered a plea of not guilty. Now, ladies and gentlemen, you are the jury in this case and I'm going to take a few moments to tell you a few things about your duties and give some instruction. At the close of the trial, I will provide more detailed instructions and those will control your deliberations. This case has been brought by the State of South Carolina against the Defendant, Jonathan Batchelor. And again, the State has the burden of proof beyond a reasonable doubt, he does not have to prove his innocence. South Carolina law makes you 12 the finders of the facts. You 12 alone are the finders and it will be your duty to decide from the evidence what the facts are. You will hear the evidence, decide what the facts are, and apply those facts to the law

that I give you at the close of this case, and this is how you will reach a verdict. In doing so, you must follow the law whether you agree with it or not. Ladies and gentlemen, the evidence will consist of testimony of witnesses, any documents or other items received into evidence as exhibits and any facts on which the lawyers agree are stipulated. The same law that makes you 12 the finder of the facts makes me the judge of the law. Our rules of evidence control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and the lawyer on the other side believes it is not permitted by our rules of evidence, that lawyer may object. This simply means that the lawyer is requesting I make a decision on a particular rule of law. Now, ladies and gentlemen, what I'm speaking of is one of our rules of evidence which are contained in these books on my bench up here. The objection simply means the lawyer's requesting I make a decision and rule on the evidence. State law prevents a trial Judge from making a comment to the jury about a fact. Therefore, because it may be necessary for me to comment on a fact in applying our rules of evidence, it may be necessary for me to speak with the lawyers outside of your hearing by having what's known as a bench conference while you are present in the Courtroom, or by excusing you from the Courtroom. The purpose of these conferences is to decide how certain evidence is to be treated under our rules of evidence. Now, certain things are

not evidence; statements, arguments, and questions, and comments by the lawyers are not evidence. Objections are not evidence. Lawyers have a duty to their client to object when they believe something is improper. You should not be influenced by an objection. If I sustain an objection, you must ignore the question or the exhibit and do not try to guess what the answer might have been or what the exhibit might have contained. If I overrule an objection, the evidence will be admitted, but do not give it special attention because it drew an objection. Testimony that I order stricken from the record or tell you to disregard is not evidence. And anything you see or hear about this case outside of this Courtroom is not evidence. Finally, some of you have heard the terms direct evidence and circumstantial evidence. Direct evidence is testimony by a witness about what that witness personally saw, heard, or did. Circumstantial evidence is indirect evidence. It is proof of one or more facts from which one can find or infer another fact. You may consider both direct and circumstantial evidence, and our state law permits you to give equal weight to both. In deciding what the facts are, you have to decide what testimony you believe and what testimony you do not believe. You may believe part of what a witness says or none of what a witness says. You may accept all that a witness says, or you may reject that testimony in its entirety. It is my responsibility to rule as a matter of law as to whether the

testimony is admissible, but once the testimony is admitted, whether or not you believe it is solely for you 12 to determine. To ensure fairness, you as jurors must not talk among yourselves about this case or about anyone involved in this case until the case has ended and you go to the jury room to decide a verdict. Do not talk with anyone else about the case or with someone who has something to do with it until the trial has ended and you have been discharged as jurors. Ladies and gentlemen, anyone includes your family and your friends. You may tell them that you are a juror, but do not discuss anything about this case until you have been discharged as a juror. Do not let anyone talk to you about the case, and if someone should try to do so, please report that to me immediately. During the trial, do not talk with or speak to the parties or the lawyers or the witnesses. It is important that not only you do justice, but you also give the appearance of doing so. If a person from one side of this case sees you talking with someone on the other side, they might think that, that something is suspicious right there, that the fix is in or something of that nature and it's not the truth. You may be talking about a child or grandchild and nothing else. If a lawyer or party or witness does not speak to you when they walk past you in the hallway, it is because they are not supposed to do so. Ladies and gentlemen, I have instructed the lawyers and the litigants and the witnesses not to speak to you. You are

wearing those badges as jurors for a reason, okay? That tells each one of us that you are on jury duty and are not to make any kind of comments in your presence. Do not read any news stories or articles about the case if any. Do not listen to a radio or a television report if any. Do not do any research on the internet about this case or about, or use a dictionary or any reference materials, and do not make any independent investigation on your own. Ladies and gentlemen do not make up your mind about what the verdict should be until you have gone to the jury room to discuss this case with your fellow jurors. I am often asked about taking notes, and you are not to take notes during the trial, and the reason is, we want you to pay close attention to each witness as he or she testifies and not be fixated on making notes. Now, the first step in this trial will be the opening statements. The State in it's opening will tell you about the evidence it intends to put before you so that you will have an idea about what the case is about. Just as the indictment is not in evidence, neither is the opening statement by either of the lawyers. Its only purpose is to help you understand what the evidence will be and what the State will try to prove. After the State's opening, the Defense's lawyer may if he chooses, make an opening statement. Next, the State will offer evidence that it says supports its charge against this Defendant. The State's evidence will consist of witnesses, and it may include documents or other

exhibits. The Defendant does not, and I've told you this, but I'll tell you again, the Defendant does not have to prove his innocence in this case. The State has the burden of proving his guilt beyond a reasonable doubt. At this time, I'm going to appoint a foreman of this jury, juror number 72, Mr. James Caldwell. Sir, would you raise your hand, please? Sir, will you serve as a foreman of this jury?

MR. CALDWELL: Yes, sir.

THE COURT: Mr. Foreman, your duties will be to be the spokesperson for this jury. Your vote doesn't count any more or any less than any other jurors vote, but we have to have someone to preside, if you will, over the jury. Additionally, you are the spokesperson, so if there's a problem, a juror's car will not start, a child is sick, a parent is ill, then you would be the one to convey that to me here in the Courtroom or through a note passed by the Bailiffs, okay? Alright. Ladies and gentlemen, one other housekeeping on seats. Where you are seated, I'm going to ask that you be seated in that seat for the entire trial. In other words, that is your seat. Normally, we move around, but in a covid precaution, you see the shields that we have, we are asking jurors once you sit in that seat that that remain your seat during, for the duration of this trial. They are wiped down in the evenings, maybe even so at lunch breaks, I'm unsure about that, but I know in the evenings when I'm still here they are

spraying and wiping down. But in an abundance of caution, if you'd be kind enough to claim that as your seat for the duration of the trial, I would be appreciative, okay? Anything from the State?

MS. WELLS: Nothing from the State, Your Honor.

THE COURT: From the Defense?

MR. GROSE: No, sir.

THE COURT: Ladies and gentlemen, please give your attention to the lawyers.

MS. WELLS: May it please the Court, Your Honor?

THE COURT: Yes, ma'am.

(Opening arguments by the State.)

MS. WELLS: On January 7th of 2016, Stephanie Batchelor worked an evening shift at Kay Jewelers at Westgate Mall. She helped make the evening deposit, they weren't allowed to go individually, they had to go together in teams. And she did that, and then she drove home, drove home here on Reidville Road in Spartanburg. On her way home, she called her husband, the Defendant, Jonathan Batchelor, and they spoke on the way home, he asked her where was she. She had called him to see if he wanted food or if they needed food for their two small boys. He said that he didn't, and the boys were fine, but they talked almost the entirety of her ride from the Wells Fargo to their house out in, on Reidville Road. She pulls in the driveway, she pulls into the, pulls into the house, and she

was listening to music. She starts to gather her things to get out of the vehicle and the driver's side door opens and she turns, somebody puts their hand on her arm, and she looks and it's her husband, it's Jon, the Defendant. He leads her out of the car, she's confused, what's going on. And then he assaults her. He strikes her with some object, he shoots her, her memory comes in and out, she is blacked out, she loses consciousness. She sees him over her and then she doesn't remember, and then when she comes to, she hears the voice giving directions to their home and then she hears voices of people that she doesn't know asking her what happened. And that, ladies, and gentlemen, is why you are here today. As you probably remember from about a week ago, my name is Jennifer Wells and I'm an assistance solicitor, I represent the State, I'm a prosecutor. It's my job, and I work here in Spartanburg, and as I said last week, I work some in Cherokee, too, we handle both of those counties here in the seventh circuit. It's my job to bring forth all of the relevant evidence to you, the members of the jury to make a determination as a group as to what happened back on January the 7th of 2016. Now, how is that evidence going to come to you, as Judge Kelly told you, evidence can come in many ways. Mainly, it comes to you through witnesses that are going to take the witness stand, and they're going to swear to tell the truth and they're going to tell you what they know about this case. You may have exhibits

that are introduced through these witnesses, and some of those exhibits you may be able to take back in the jury room with you so that you can look at those as you make your deliberation. Evidence can also come in the form of stipulations, I don't know that we'll have any stipulations in this case, but a stipulation is of an agreement between the parties as to the admission of a piece of evidence. Sometimes that happens in cases, and that's another way that evidence can come to you. Now, who is going to bring this evidence to you? You'll hear from a number of witnesses during the course of this trial from the stand. You're going to hear from law enforcement, and they're going to tell you what they observed and what they saw and what people told them about what happened back in January of 2016. You're going to hear from Ms. Batchelor, she's going to talk to you about what happened to her. You're going to hear from medical experts, a medical expert who's going to tell you about Stephanie's treatment at Spartanburg Regional where she was transported and was in the hospital for approximately a month after the shooting recovering. And you may hear from other individuals as well. Once you've heard all the evidence and you've heard the closing arguments from the State and from the Defense, and the charge from Judge Kelly, and Judge Kelly, as he told you, it's his job to, he's the Judge of the law. So he is going to tell you at the end of this case what the law is, and then it's your job to take that law and apply it to the

facts and make a determination of guilty or not guilty. And I'll submit to you once you've heard it, you're going to come back, and you'll find the Defendant guilty. But once you've heard all the evidence, this case is going to be yours. And what I would ask you, and what I'd ask any jury is to not check your good common sense at the door. Each one of you come to this Courtroom here today with a lifetime of experience in making tough decisions and making easy decisions and making daily decisions. And I would ask you to use that same good common sense that you use every day in your life to decide how you're going to go forward on things to decide the outcome of this case. Your common sense, what you rely on, don't check that at the door. And like I said, once you've heard all the evidence in this case and the door of that jury room closes and y'all have an opportunity to discuss it together, I submit to you that once you've heard all the evidence and you take the law as Judge Kelly gives it to you and apply it to the facts in this case, you're going to find Jonathan Batchelor guilty of attempted murder. Thank you. Thank you, Your Honor.

THE COURT: Thank you.

MR. GROSE: May it please the Court?

THE COURT: Yes, sir.

(Opening arguments from the Defense.)

MR. GROSE: I guess at this point, we're still at the beginning of this trial and one of the things that Judge

Kelly's talked to you about is the fact that this is a process. We went through a process last week; I know it was probably inconvenient for everybody. We're actually, sadly, but necessarily dealing with more inconveniences now because of the pandemic, but we do our best and we work through them, and we got through it last week, and we're going to do the same here this week. And there's a process, and as the Judge explained to you a little bit about the trial, we're now making opening statements and there's going to be witnesses that you hear from, evidence that you look at and matters for you to consider when you make your decision about whether or not Jonathan Batchelor's guilty or not guilty of this charge. I think, you know, one of the things that Judge Kelly talked about a minute ago was is that the Defendant never has to prove he's innocent. The burden is always on the government. If you think about that, that makes sense because when a crime happens, it's the, its law enforcement, the police who come out and do the investigation and they take control of a crime scene. And they're the ones who do interviews and they're the ones who are collecting all the information, deciding what to collect and what not to collect, and what's come to be presented in the Courtroom. And, and the burden of proof is the government has to prove that somebody's guilty beyond a reasonable doubt. Beyond a reasonable doubt is the highest standard that we have in the law. It's not maybe somebody's guilty, it's not

possibly somebody's guilty, it's not probably somebody's guilty, it's not even more likely than not, it's the highest standard. And what the law says is is that a person has the, the jurors have to be firmly convinced that somebody's guilty before they can vote not guilty. The law also says, or also includes the fact that if there is a reasonable doubt about whether or not somebody is guilty or not guilty, the person is entitled to the benefit of that doubt. I don't know for sure whether that's where the statement, give somebody the benefit of the doubt came from, but it certainly makes sense that it would come from this type of context when the government is accusing one of its citizens of committing a serious crime. And if there is a doubt, that person's entitled to the benefit of the doubt. One more thing I want to touch on that Judge Kelly talked about was direct versus circumstantial evidence, well, it's not really versus each other, it's just two types of evidence. And circumstantial evidence, if the State relies on circumstantial evidence, either all or in part in their case, all those circumstances have to point conclusively to the guilt of the accused. If not, then that person's entitled to the benefit of the doubt. And I tell you all of this and emphasize some of this so that you all will have that knowledge, that framework when you're listening to what these witnesses are saying and you're looking at the evidence that they bring for you to look at and consider during this trial. At the end of

the case, Judge Kelly's going to tell you about the law and he's going to go over these same concepts again. And certainly, you pay attention, listen to what he says, but I think it helps that, that you have that framework here at the beginning of the case. It's also important that we don't decide cases based on emotion. There is absolutely no doubt that this is a tragic situation and you're going to hear about some injuries that Stephanie Batchelor sustained, you're going to hear that there were very serious life-threatening injuries, and certainly that is a, a tragic, tragic situation. What is not clear cut, not as clear cut as the government made it sound in their opening statement is that Jonathan Batchelor did this to his wife. In fact, Jonathan Batchelor has pled not guilty to this charge. What they have left out is, is that when Stephanie Batchelor was first asked who did this, she said she didn't know. She repeated that at the hospital. It wasn't until a month later, and granted, she was being treated and was, for a period of time in a medically induced coma, but it wasn't until almost a month later, about four weeks later that for the first time she named Jonathan, her husband, as the person who she accused of doing this to her. You're also going to hear some things about Jonathan Batchelor that you might not like. You might remember last week the Judge asked everybody if they had beliefs about extramarital affairs that would prevent people from being able to serve on juries. Jonathan

has not always exercised the best judgement in the world, and he didn't exercise the best judgement when he was first talking to law enforcement because he had had an affair on Stephanie, but that doesn't mean that he committed this crime. But I bring that up because one of the things that they left out is from the moment that Stephanie went to the hospital, her father who doesn't like Jonathan because he ---

MS. WELLS: Objection.

THE COURT: Yes, ma'am?

MS. WELLS: These are facts clearly not in evidence at this point, Judge.

MR. GROSE: Well, neither are the things that she said, so ---

THE COURT: He's on opening. Go ahead.

MR. GROSE: Thank you. Her father who had caught Jonathan in an affair before immediately started talking to the police and saying I think it's Jonathan, you need to look at Jonathan. And that's what happened, is they got focused on looking at Jonathan from the beginning. They got focused on the fact that there was this affair, and they never really considered any other possibilities. You're going to hear a lot about the evidence. There's going to be a lot of photographs, there may be some testimony about some of the evidence and what it shows or what it doesn't show. And that's where we're going to be getting into circumstantial evidence, what the

circumstances of the evidence show about things that were collected, things that were observed. And at the end of this trial, if all those circumstances don't point conclusively to Jonathan, that's a reasonable doubt. If at the end of this trial there's a reason to question, despite how tragic this situation is for Stephanie, if there's a reason to question whether or not she came to naming Jonathan because that's what really happened or because that's what her father and law enforcement took her in that direction during the investigation, and those are reasonable doubts. And at the end of this case, I believe that you're going to have reasonable doubts and we're going to ask that you find Jonathan Batchelor not guilty of this charge.

THE COURT: Thank you. You may call your first witness, Solicitor.

MS. WELLS: Your Honor, may we approach for one second?

THE COURT: Sure. Alright. Mr. Foreman, ladies, and gentlemen of the jury, we have a witness that's going to be longer than, we have to break just shy of 11 am to take care of another matter that is totally unrelated to this case, okay? It was previously set, and it's got, I've got to do something at 11. So what we're going to do is we're going to take a break now and we'll reconvene, that might take how long?

MR. GROSE: 15 minutes.

THE COURT: Okay. We might reconvene in about 40, in about 40 minutes or so, 45 minutes or so. I'm sorry for the break this early, but we've got to break at 11 and the State has to talk to a witness right quick, okay? Mr. Foreman, if you'd take your jury out, please. Don't talk about the case, it's just now getting started.

(Jury exiting.)

THE COURT: Okay. We'll be in recess until about 11:10, 11:15.

(Off the record.)

MR. GROSE: Can I show him those pictures?

MS. WELLS: Sure. And Judge, I don't think the Defense has an objection, I'm going to admit the full body cam as a Court's exhibit, and then we're going to use screen shots as we discussed on Friday from that body cam. But I did want to submit the body cam of the Court's exhibit for the record.

THE COURT: Any objection?

MR. GROSE: No objection.

THE COURT: That will be a Court's exhibit, but the jurors are only going to see screen shots?

MS. WELLS: That's correct, Judge.

THE COURT: Okay. Alright. We'll go ahead and stand down.

MS. WELLS: I'm going to go ahead and hand that to Madam Court reporter.

COURT REPORTER: Ms. Wells?

MS. WELLS: Yes, ma'am.

COURT REPORTER: The Court wanted me to mark this sealed envelope, so I'm going to make this 2 instead of 1, okay?

MS. WELLS: Okay. That's fine. I can do that.

(Whereupon a body cam was submitted as Court's Exhibit Number 2 for identification and entered into evidence.)

MS. WELLS: Just briefly for the record, Judge. Mr. Grose and I had an opportunity to discuss some of the photos that will come in with the first witness, and they are not going to object to the screen shots that the State is offering in lieu of the much more graphic photos from the hospital. So I am not going to mark those graphic photos as Court's exhibits with the understanding that they are not objecting to them.

MR. GROSE: That's correct.

THE COURT: Okay.

MS. WELLS: Okay. Thank you.

(Off the record.)

BAILIFF: Remain seated, come to order.

THE COURT: Thank you, thank you, thank you. Everybody remain seated. Alright. If we can get the Defendant. Anybody got anything before I bring the jury in?

MS. WELLS: Nothing from the State, Judge.

MR. GROSE: I just want to get him in here before they come in here ---

THE COURT: Okay.

MR. GROSE: --- because they're bringing him in now in cuffs.

THE COURT: Oh, yeah. Okay.

(Defendant entering.)

THE COURT: Okay. We'll have the jury in.

(Jury entering.)

THE COURT: Thank you, Mr. Foreman, ladies, and gentlemen for your patience. Solicitor?

MS. WELLS: Thank you, Your Honor. The State would call as its first witness, Sergeant Kristin Malpass to the stand.

MADAM CLERK: Do you swear or affirm the testimony you give will be the truth, whole truth, and nothing but the truth so help you God?

SERGEANT MALPASS: I do.

MADAM CLERK: Thank you.

THE COURT: Sergeant, if you would adjust the microphone to suit yourself, tell us who you are and spell your last name, please.

SERGEANT MALPASS: Yes. My name is Kristin Malpass, and that's M-a-l-p-a-s-s.

THE COURT: Okay. And I'm going to ask you to use your outside voice and speak it in here so everyone can hear you. Thank you. Solicitor?

MS. WELLS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. WELLS:

Q Sergeant Malpass, where are you employed?

A Where? The Spartanburg County Sheriff's Office.

Q And how long have you been employed there?

A Eight years.

Q And what's your current assignment, brand new today?

A Yeah. Desk sergeant.

Q And prior to being the desk sergeant with the Spartanburg County Sheriff's Office, what other positions have you held within the sheriff's department?

A I have been on the road as a deputy.

Q And that's for the previous ---

A The whole time.

Q --- eight years until now?

A Yes, ma'am, now.

Q Alright. I want to direct your attention back to the night of January 7th, 2016, were you working that evening?

A I was.

Q And in what, you were working as a road deputy?

A Yes, ma'am.

Q Alright. Were you dispatched to [REDACTED] Reidville Road?

A I was.

Q And is that residence in Spartanburg County?

A It is.

Q And do you recall what you were dispatched to that residence for?

A I don't recall how it came out, what specific call came out, I only remember that it was a high priority call, so we were responding with lights and sirens.

Q Okay. When you say a high priority, that requires lights and sirens?

A Correct.

Q Can you tell the members of the jury what happened once you got on scene to that [REDACTED] Reidville Road address?

A So when I pulled up, I got flagged down by a male and he then took me to where I located a female lying face down in the grass in the side yard.

Q Okay. And I'm going to show you what's been marked for identification purposes as State's Exhibit 1 and 2. I'm going to show them to Defense counsel first and then I'll bring them to you. Showing you State's Exhibits 1 and 2. Do you recognize those?

A I do.

Q And what are those photographs of?

A That's going to be the side yard.

Q Okay. Let's talk about State's Exhibit 1 first. Okay.

What's State's Exhibit 1 a photo of?

A The yard.

Q Of [REDACTED] Reidville Road?

A Yes, [REDACTED] Reidville Road.

Q Okay. And State's Exhibit 2?

A That's the back where the garage and driveway is.

Q Okay. And is this a fair and accurate depiction of how that residence and side yard appeared to you when you arrived on scene that evening?

A Yes.

MS. WELLS: Your Honor, we'd offer State's Exhibit 1 and 2 at this time.

MR. GROSE: With no objection.

THE COURT: Without objection, they're admitted.

(Whereupon photos were submitted as State's Exhibit Numbers 1 and 2 for identification and entered into evidence.)

MS. WELLS: Thank you, Your Honor. We'd ask for permission to publish them to the jury?

THE COURT: Yes, ma'am.

MS. WELLS: Thank you.

Q So you arrived on scene, and you said that you were met by an individual. Can you describe that person?

A He was a white male wearing a hoodie, hat, winter, winter wear, and he was standing in the yard.

Q Okay. And that person, do you recognize him here in the Courtroom today?

A I do.

Q And who is, who is, where is that person located?

A At the Defendant's table.

Q Okay. And which one, there are two folks over there, can you tell me which one?

A The one to the right with the blue face mask.

MS. WELLS: Your Honor, I'd ask the record reflect she's indicated the Defendant?

THE COURT: So noted.

MS. WELLS: Thank you.

Q So the Defendant then took you to, showing you, bear with me. I'm showing you State's Exhibit 1, is this where the Defendant took you?

A Yes, ma'am.

Q Okay. And what's that green thing in the grass?

A It is a blanket.

Q And then showing you State's Exhibit Number 2, you said this was?

A The garage backdoor area.

Q Okay. Alright. And this would have been ---

A Same house.

Q Same house. Some of the first things you would have seen when you arrived on scene that night, correct?

A Correct.

Q Okay. And when you got to the side yard, what, what, what if anything did you see?

A I saw a female lying face down in the grass, and she was wrapped up in that blanket that was in the picture.

Q Alright. Can you describe her for the jury?

A She was a white female, had lighter hair and she was lying, like I said, face down and she was propping herself up on her arms. And her head was kind of, she couldn't hold her head up, and her hair was in front of her face, and it appeared to be matted with what look to me like to be blood.

Q Alright. I'm going to show you what's been marked for State's, for identification purposes as State's Exhibit 3, 4, 5, 3 and 4 and 5, and I'm going to go ahead and show you 6 too. I'll show this to Defense counsel first. Sergeant Malpass, showing you now what's been marked as State's Exhibit 3, do you recognize that?

A I do.

Q Okay. And what is State's Exhibit 3?

A That is the female I located on the side yard.

Q Okay. And where is this photo from?

A That's from my body camera.

Q Okay. So you had a body worn camera on at that time?

A I did.

Q Alright. And this is a screen shot from that camera?

A It looks like it, yes.

Q Okay. And that's a fair and accurate depiction of how she appeared to you that night of January the 7th of 2016?

A Yes.

Q Alright. Showing you now State's Exhibit 4, do you recognize that?

A I do.

Q And what is State's Exhibit 4?

A It's another screen shot from my body camera from when I located her.

Q When you say her, you mean the female ---

A The female, yes, Ms. Batchelor.

Q Alright. And is that a fair and accurate depiction of how she appeared to you that evening?

A Yes.

Q Showing you now what's been marked for identification purposes is State's Exhibit 5, do you recognize that?

A I do.

Q And what's State's Exhibit 5?

A It's another screen shot from my body camera with Ms. Batchelor.

Q Okay. Is that a fair and accurate depiction of how she also appeared to you that evening?

A It is.

Q I'm showing you now what's been marked for identification

purposes as State's Exhibit 6, do you recognize that?

A I do.

Q And what's State's Exhibit 6?

A Another screen shot from my body camera of Mr. Batchelor.

Q Alright. And is that a fair and accurate depiction of how he appeared to you that evening?

A Yes, ma'am.

MS. WELLS: Your Honor, we'd offer State's 3 through 6 at this time.

MR. GROSE: No objection.

THE COURT: Without objection, they're admitted.

(Whereupon photos were submitted as State's Exhibit Numbers 3, 4, 5, and 6 for identification and entered into evidence.)

MS. WELLS: Thank you, Your Honor. We'd ask for permission to publish at the appropriate time?

THE COURT: Yes, ma'am.

MS. WELLS: Thank you.

Q Okay. I'm going to show you State's 3 to start, okay?

A Okay.

Q And you described finding her face down, hair matted with blood, is this description a fair and accurate depiction of how she appeared when you first saw her?

A Yes.

Q And once, was she, was she able to speak to you?

A She could. It didn't seem like she could really say too much, but we were able to get a little bit of a conversation and she was able to tell me her birthday and stuff like that.

Q Okay. And was she able to identify herself as, did she give you her name?

A Yes.

Q And do you recall what that was?

A Stephanie Batchelor.

Q Alright. And were you able to, did you ask her what happened?

A I did. I asked her if she knew what had happened and she just kept telling me that she didn't know.

Q Alright. Did you have her, can you describe her demeanor to the, to the jury?

A She appeared to be very tired, very distraught, and at some points annoyed.

Q Alright. Did she stay face down the entire time?

A She, she did not. She tried to roll over and then when EMS arrived, they did roll her over.

Q Okay. I'm going to show you what's been admitted into evidence, State's Exhibit 4. Is this from your body camera where she actually rolled over there in the beginning?

A Yes.

Q Alright. And can you describe what, what you, well, Let me walk back around here. Can you describe in this,

what we're looking at here in State's Exhibit 4?

A So at that point when she had rolled over, I was trying to find out where she was injured. So I was looking for any holes or slices or anything like that where the blood was coming from so I could tell EMS when they got there.

Q Okay. And when she rolled over to this position that we see in State's 4, what did you observe?

A I observed some holes on her chest.

Q Showing you now State's 5. And where, can you tell us what injuries you observed at this point?

A At this point, the only thing I could tell were the holes that were on her chest and her breast area.

Q Okay. And that's, where, can you describe where in the picture we can see that?

A So kind of where her hand is, if you'll look to the bottom left, you'll see what appears to be a hole.

Q Okay.

A A bloody hole right there.

Q Is there like a blue gloved hand there ---

A Yes.

Q --- right up underneath ---

A Yes, yes, that's EMS inspecting it.

Q Did you observe any wounds to her head or face area?

A I couldn't tell, honestly, because there was so much blood. I couldn't see if there were any holes or anything

else, I couldn't tell where the blood was coming from on her face.

Q And I'm showing you State's Exhibit 6. You said this was her husband, is that right, the Defendant?

A Yes, ma'am.

Q Can you describe his demeanor?

A He was just walking around with his hand on his head and just kept asking the same questions over and over again. And he wouldn't give me a chance, he just stayed around the whole entire time, I didn't get any chance to talk with Stephanie alone at that time, and he just hovered.

Q And you said EMS was on scene, came on scene?

A They did, EMS did arrive.

Q About, approximately, just giving your best estimation, how long were you out there before EMS arrived?

A I would say around 10 minutes if I recall correctly. It didn't, it seemed like it took a minute, but in the moment...

Q And then what happened once EMS got on the scene?

A EMS came, they looked at her, they brought the stretcher out, loaded her up and then took her on to the hospital.

Q And what did you do after EMS left?

A At that point, I just walked around the scene some more to see if I could help find any evidence. I walked in through the garage and then in through the house to see if I could find anything inside, and to go check on the kids because Mr.

Batchelor had asked about the kids, and I walked in to make sure they were okay.

Q So there were children present?

A There were.

Q Did you see these children?

A I did. They were asleep in there, in their room.

Q So you walked, you said you walked the crime scene?

A I did.

Q Alright. Just to get all of this done at one time, I'm going to show you a series of photos, it's going to be 7 through 15. I'm showing State's Exhibit 7, do you recognize that?

A Yes. That is the garage.

Q Alright. Fair and accurate depiction of how it appeared to you on January the 7th of 2016?

A Yes.

Q Showing you State's Exhibit 8. Do you recognize State's 8?

A Yeah. That's the driveway.

Q Alright. And fair and accurate depiction of how it appeared to you when you walked the scene back on January the 7th of 2016?

A Yes.

Q I'm showing you now State's 9. You recognize 9?

A That's the inside of the garage and the back door.

Q And fair and accurate depiction of how the, that back ramp area looked to you on January the 7th of 2016?

A Yes.

Q Showing you State's 10. Do you recognize that?

A Yes.

Q Okay. And what are we looking at in State's 10?

A The driveway and garage area.

Q Fair and accurate depiction of how it appeared to you when you walked the scene the night of January the 7th of 2016?

A Yes.

Q State's 11?

A Another view of the driveway and garage.

Q Okay. And fair and accurate depiction of how that appeared to you on January the 7th, 2016?

A Yes.

Q Showing you State's 12?

A That's the blanket that Ms. Batchelor was wrapped in.

Q Okay. Fair and accurate depiction of how that appeared to you after she was transported by EMS on January the 7th, 2016?

A Yes.

Q State's 13?

A That's the kitchen right inside when you come in from the garage.

Q Okay. Fair and accurate depiction of how it appeared when you entered the residence that evening?

A Yes.

Q State's 14?

A Another view of the kitchen.

Q Okay. Fair and accurate depiction of how the interior of that residence appeared to you on January the 7th, 2016?

A Yes.

Q Okay. And State's 15?

A That is the bathroom.

Q Okay. And that's a screen shot from your body camera?

A That is from my body camera.

Q So you're familiar with the fair and accurate depiction of how that bathroom appeared to you on January the 7th, 2016?

A Yes.

Q Alright.

MS. WELLS: Your Honor, we'd offer State's 7 through 15 at this time with permission to publish if they're admitted.

MR. GROSE: No objection.

THE COURT: Without objection, 7 through 15 are admitted.

MS. WELLS: Thank you.

(Whereupon photos were submitted as State's Exhibit Numbers 7 through 15 for identification and entered into evidence.)

Q Now, Sergeant Malpass, I'm going to show you State's Exhibit 7. Can you describe to the jury what we're

looking at here?

A So this is the driveway in the back of the house, to the right of the picture is the side yard where I located Ms. Batchelor. And then the truck is just out of view to the right from the picture before. So this is looking directly into the garage where that back garage door is.

Q Alright. I'm going to show you State's Exhibit 8 which is just a little closer view of State's 7 on one side. What are we looking at here in State's Exhibit 8?

A That is the right side of the driveway.

Q Okay. And what if anything was of significance to you when you walked this crime scene that night?

A It was the location of the blood, for me.

Q Okay. And what was significant about that?

A That it just stopped. It appeared to only be collected on one side and it just kind of suddenly stopped as if something was parked right next to it in the way.

Q Okay. I'm going to show you now State's Exhibit 9. What is the jury looking at here?

A So this is inside the garage, and it is the ramp leading up to the door to go into the house where the kitchen is.

Q Okay. And was there anything of significance that you observed in, when you were walking up the ramp, anything important that stood out to you?

A So the blood on the ramp appeared to have been like

something had been dragged down the ramp. It just, in my experience and what it looked like to me ---

MR. GROSE: I'm going to object to improper expert opinion.

MS. WELLS: Your Honor, I don't believe it's expert opinion, she's just describing what she observed.

THE COURT: It's what she observed, go ahead. Be careful though.

A It just looked smeared to me.

Q Okay. And now showing you State's 10. Well, actually, I'm going to come back to 9. This blood that you're describing, can you point out in State's 9 where you're observing that?

A Right there to the right of that toy, toy car.

Q Okay. Like that 4-wheeler?

A Yeah.

Q Okay. So towards the end of the ramp there?

A Yes.

Q Alright. Now looking at State's 10. What are we looking at here?

A So this, again, is the overview of where the garage is and the driveway showing the blood on the ramp and then how it comes out to the driveway.

Q Alright. Showing you now State's Exhibit 11. Was there anything of significance to you in State's 11?

A So this was on the left side of the driveway, and it appeared to be a purse with all of its contents just dumped out which was really strange to me.

Q Alright. Why was that strange to you?

MR. GROSE: Objection. That's an improper opinion, speculation.

THE COURT: Let's don't speculate.

Q So you observed the contents of this purse here on the left-hand side of the driveway?

A Correct.

Q Showing you, showing you now State's Exhibit 12. What are we looking at in State's 12?

A This is the blanket in which Ms. Batchelor was wrapped up.

Q Okay. And this would have been taken when, obviously, she's not in the blanket, so ---

A Right. This was after she had already been taken by EMS.

Q What's that black thing in the middle?

A That's one of our gloves.

Q And the yellow placard, what, what is that?

A That's an evidence marker.

Q Now looking at State's Exhibit 13. Can you describe what we're looking at here for the jury?

A That is going to be the door that leads out to the garage. And when you come in up the ramp and go in through that door, that's going to be the door that leads into the kitchen.

Q Showing you now State's 14. What are we looking at in State's 14?

A That's the view from when you walk inside the door into the kitchen. You just immediately see the hallway leading to the rest of the residence and then the refrigerator and the rest of the kitchen is to the left.

Q And going down that hall, you said there's a doorway in State's Exhibit 14 to the right side of the photo. What is down that hallway?

A Down the hallway is where all the bedrooms and bathrooms are.

Q And you said you checked on the boys and that's where their bedroom was, down there?

A It was, it was down the hall to the right.

Q Alright. And did you also go into the primary bedroom or the bedroom that appeared to belong to the, to Mr. and Mrs. Batchelor?

A I did. I was doing a soft clear of the residence to make sure there was no other threats or anything like that.

Q Okay. And can you just kind of describe, when you said you kind of did a walk-through of the crime scene and the residence, can you describe what if anything you observed as you walked through?

A So I walked through, and I was peeking into doors and rooms to make sure there was nothing really obvious, no obvious

threats around. I went and checked in on the kids in the bedroom to the right, they were asleep in the bed. And then I looked to the left, which was a bedroom, I believe it to be the primary bedroom, the master bedroom of the house, and I saw that there was another opened door, so I went into the bedroom, looked at the open door and found out that it was a bathroom.

Q Can you describe that bathroom?

A It was a very small bathroom, you come into the door and there's the mirror right away and there's the shower to the left and then just a toilet. So very, very small.

Q Okay. And we've got an image from your body cam, State's Exhibit 15. Does that, I know it's kind of hard to look at on the screen. That's an image of what?

A That's the bathroom that's off of the master bedroom.

Q Okay. And we have a reflection from a mirror in there, is that right?

A Yes. So it's just, and I didn't go too, too deep into it, so that kind of shows how small it was.

Q Okay. And was there anything that you noted of significance or not, or anything you expected that you didn't find in the bathroom?

A It wasn't steamy, humid, hot like, like a shower had recently been taken there, or at least a long hot shower. It was, it was just pretty standard.

Q Did you note whether or not it was wet?

A I did look in, I did look into it and it didn't seem overly wet to me.

MS. WELLS: May I have a moment, Your Honor?

THE COURT: Yes.

MS. WELLS: Your Honor, those are all the questions I have for Sergeant Malpass as this time.

THE COURT: Thank you. Yes, sir, Mr. Grose?

MR. GROSE: Thank you, Your Honor. May it please the Court?

CROSS EXAMINATION

BY MR. GROSE:

Q You're starting a new job today, I take it that's a promotion?

A Yes, sir.

Q Congratulations. So as I understand it, you were the first law enforcement officer that arrived at the incident location?

A Myself and another deputy arrived at the same time, but I was primary, yes.

Q Okay. And the first person that you encountered was, was Jonathan Batchelor?

A Yes, sir.

Q And he was distraught?

A He appeared to be in shock.

Q In shock, yes. And Jonathan, you're aware that Jonathan's the one who called 911?

A Yes.

Q Okay. And so Jonathan took you to where Stephanie, Stephanie was on the ground?

A Yes, sir.

Q And I think you said that Stephanie appeared distraught?

A Yes, sir.

Q She was able to talk to you, though?

A She was.

Q She identified herself?

A She did.

Q Gave you her name?

A She did.

Q Did you get her date of birth from her?

A I did. She was able to tell me her birthday.

Q Alright. She was also able to tell you that she had been shot?

A I don't recall if that's exactly what she said.

Q Well, she at least told you that she felt like she had been shot?

A I would have to look back at the report to see exactly what she said, if you have it.

Q That doesn't have your name on it, but does that, that's the first part of your report, isn't it, the narrative?

A Yeah, yeah. She felt like she had been shot.

Q And so she was able to tell you that she felt like she had been shot?

A Yes.

Q And I think you also asked her if she knew what happened?

A I did.

Q And, and she wasn't, she wasn't able to tell you, she didn't know what happened?

A Yeah, she just kept telling me she didn't know.

Q Alright. And she didn't identify anybody as who had shot her?

A No, sir.

Q Okay. And of course, the, I guess EMS was probably dispatched at the same time you were?

A Yes, sir.

Q And I guess you were in communication with them as to how far out they were?

A I ---

Q Or receiving word?

A No. They don't give us ETAs for EMS, so they just show up when they show up.

Q Alright. So they got there within about 10 minutes?

A I would think.

Q Okay. And during that period of time, I guess, the EMS was working, you know, providing medical care to Stephanie?

A Yes, sir.

Q Alright. And at some point, some of the other officers arrived too?

A Yes, sir.

Q And some of them spoke with Jonathan?

A They did.

Q Alright. And that was while EMS was working on Stephanie?

A Yes.

Q Alright. And after, and I guess the first thing that you do, I mean, you're, as a first responder, one of the first things that you do is to see if anybody is hurt, needs medical help, and that's what we've been talking about?

A Correct.

Q And you said, I think you used the word, soft clear of the house, or that phrase?

A Correct.

Q And what that means is is that you went through the house to make sure that there was no other threats?

A Correct.

Q And also I assume to check on the children to make sure that they appeared to be okay?

A Yes. That was at Mr. Batchelor's request.

Q So he was, he ---

A Yeah, he said ---

Q He had told you that they were inside?

A Correct.

Q And I think at that point they weren't letting him go back in and out of the house?

A Correct.

Q And so he wanted, after having been outside for a little bit, he wanted somebody to check on them?

A Correct.

Q Alright. And I think you said you went in through the garage area to do that?

A I did.

Q Alright. And did a walk-through of the whole house, is that correct?

A I did.

Q And as I understand it, you did look into the, the, the bathroom in the master bedroom?

A I did.

Q And you said that the tub was wet?

A It was a little bit, yes.

Q Okay. And I guess after they had taken Stephanie to the hospital and after you did the soft clear of the house, then provisions were made for somebody to come get the children?

A Yes. That was done by ---

Q Somebody else?

A Yeah. Investigators, that wasn't done by me.

Q Alright. And then the crime scene, or the, yeah, the incident location was secured more carefully as far as the crime scene tape that we're familiar with from the movies and occasionally see driving around, right?

A Yes, sir.

Q So at that point, nobody was going to be going in and out of the area so that the investigation could go on?

A Correct.

Q Alright. Are you aware that Jonathan went to the hospital that evening?

A I ---

Q Or do you know?

A When he left the scene, that's, that's all I know is when he, when he left.

Q And that's fair ---

A Yeah.

Q --- you're just here to talk about your little part of this, is that right?

A Correct. I just wrote the report.

Q Right. And whenever there's an investigation like this, it's, for lack of a better description, it's sort of a team type situation. Everybody has their own responsibilities in that team?

A Correct.

Q Alright.

MR. GROSE: Beg the Court's indulgence for a moment?

THE COURT: Yes, sir.

MR. GROSE: That's all I have. Thank you, Your Honor.

THE COURT: Alright. Anything at all?

MS. WELLS: No follow up questions, Judge.

THE COURT: Thank you. Sergeant, you may step down. Please be careful.

MS. WELLS: We'd ask that Sergeant Malpass be released from her subpoena in this case?

MR. GROSE: No objection.

THE COURT: Sergeant, you're released. You may stay or go, whichever you choose.

SERGEANT MALPASS: Thank you, Your Honor.

MS. WELLS: Judge, the State's next witness, next two witnesses will be much longer. It might be a good time to take a break for lunch and then resume ---

THE COURT: Yeah, let's do that very thing. It's 10 after. Ladies and gentlemen, you can expect every day for us to break somewhere between 12 and 12:30 is my general, general rule, and it is now 10 after, so we are going to break. I'm going to ask you to be back at 1:30, at 1:30, please be back and be ready to work. Don't talk about the case, it's certainly not at an end. 1:30, I'll see everybody then. Mr. Foreman, take them out.

(Jury exiting.)

THE COURT: We'll be in recess until 1:30.

(Off the record.)

BAILIFF: All rise, Court come to order, please.

THE COURT: Thank you, thank you, please be seated, thank you. I've been told there might be a couple matters before the jury comes?

MS. WELLS: I, just, I think it's just one, Judge. At the lunch break, I went through what I anticipated to be the evidence that State would try to move into the record with the next couple of witnesses with Defense counsel and he had indicated at least one, possibly two exhibits he might object to. So I just thought it might be an idea instead of breaking, sending them back out, just go ahead and handle those objections now.

THE COURT: Absolutely, thank you. What is the objection?

MS. WELLS: Is it just this one or ---

MR. GROSE: It's just that one.

MS. WELLS: Your Honor, may we approach?

THE COURT: Sure.

MS. WELLS: Judge, this is State's, proposed State's Exhibit 16. This is a photograph of the victim in this case contemporaneous with the time that this crime was committed. The State is offering through Ms. Batchelor just to show how

she appeared at the time of the crime. The State is also showing a photo that would be State's Exhibit 20, which is Ms. Batchelor subsequent to her release from the hospital. And I'm just showing those so the jury can see what she looked like before and after. So that, that's the reason for the State's offering of this evidence.

MR. GROSE: With regard to 16 that you have in your hand, our contention would be that it's, it's not relevant. I understand the relevance of maybe showing what the injuries were, but we don't believe that number 16 is relevant. We also think that the prejudicial effect would substantially outweigh any probative value because it's not just a picture of her, it's also a picture with the children, and it seems to be designed for, you know, a, an emotional reaction from the jurors. They could have gotten a, assuming it's relevant, and you rule it's relevant, they could have gotten another picture of her from the same time without the children in it or they could have cropped that photograph so that it didn't show the children.

THE COURT: Solicitor, you want to be heard on that?

MS. WELLS: Judge, I mean, truly, you know, the fact of the matter is that thankfully for Ms. Batchelor, the surgeons on this case were able to do, really amazing work, and you can't really tell, I mean, she has injuries that still exist, but, I mean, truly the shot gun, the gunshot wound to

the face looks like a dimple. I just think it would, it's helpful to the jury to understand, you know, what she looked like before. She looks, you know, obviously, I think wonderful now, but I do think it's helpful for them to understand what she looked like at the time of the event as well, so they could see the difference from before and after with the injuries. So that's all I would say, Judge. And if, if, that's the photo we have ---

THE COURT: Give me one minute here.

MS. WELLS: Yes, sir.

THE COURT: Okay. I'm looking at State versus Livingston, that can be found at 488 Southeastern 2nd 313, that's 1997 which of course talks about arouse sympathy or prejudice of the jury. In an abundance of caution, I think it's close, Mr. Grose, but in an abundance of caution, I will keep out 16 out as it is before me at this point in time. Now, I will say this, what gets, you know, the children, if you want to crop that, I'm going to let that in.

MS. WELLS: Okay. She has, Ms. Paris has been able to work a copy of it. If Mr. Grose wants to step around and see if that's satisfactory or we can bring the laptop up to the Court, we would just need a moment to print it upstairs and bring it back down and mark it.

THE COURT: Sure. See if Mr. Grose, I'm going to let the children come out, but I'm going to let her picture come in.

MS. WELLS: I mean, we can only, I mean, we have most, the face is out, but there's still an indication that we have cropped something.

THE COURT: Well, that's okay.

MS. WELLS: Will that work?

MR. GROSE: That'll work.

MS. WELLS: Alright. Judge, if we can have just a moment so Ms. Paris can do that, and I'll re-mark that exhibit.

THE COURT: Yes. I'm just trying to be ---

MS. WELLS: We'll, I'm going to make this a Court's exhibit now, Judge?

THE COURT: Make it a Court's exhibit.

MS. WELLS: Alright. And that's to be Court's exhibit 3, so let me get a new sticker.

MR. GROSE: Let's put both stickers on there so that we can ---

MS. WELLS: Yeah, I'm going to put it right next to it?

MR. GROSE: Okay. That's fine.

MS. WELLS: And Judge, for the Court's exhibit, at the request of Madam Court reporter, I'm just putting a C In the corner to delineate so we'll have all the stickers

in the same place.

THE COURT: Okay.

MS. WELLS: Your Honor, I'm going to approach and give this to Madam Court reporter.

(Whereupon a photo was submitted as Court's Exhibit Number 3 for identification and entered into evidence.)

THE COURT: Mr. Foreman, any matters for the jury?

MR. FOREMAN: (Nonverbal response).

THE COURT: Everybody's good. Solicitor.

MS. WELLS: Thank you, Your Honor. May it please the Court? The State would call Stephanie Batchelor to the stand, please.

CLERK: Do you swear or affirm the testimony you give will be the truth, the whole truth, and nothing but the truth so help you God?

MS. BATCHELOR: I do.

CLERK: Thank you. You can be seated.

THE COURT: Ms. Batchelor, if you feel comfortable, you may lower your mask. And if you'll adjust the microphone, tell us who you are and spell your last name, please.

MS. BATCHELOR: Yes, sir. My name is Stephanie Nicole Batchelor, B-a-t-c-h-e-l-o-r.

THE COURT: Thank you, ma'am. Solicitor.

MS. WELLS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. WELLS:

Q Stephanie, do you still live here in Spartanburg County?

A I do.

Q And do you know the Defendant in this case, Jonathan Batchelor?

A I do.

Q And how do you know him?

A He's my ex-husband.

Q And when were y'all married?

A September 21st, 2012.

Q And do you have children together?

A We do. We have two little boys.

Q Okay. And how old are they now?

A Seven and nine.

Q And back in January of 2016, how old were they?

A One and three.

Q And back in January of 2016, where were y'all living?

A In Moore, Duncan area.

Q Okay. Did y'all have a house?

A We did, yes, ma'am.

Q And what was the address of that house if you remember?

A [REDACTED] Reidville Road.

Q That's here in Spartanburg County?

A It is.

Q And were you working in January of 2016?

A I was. I was working at Kay Jewelers in Westgate Mall.

Q And what did you do for Kay Jeweler?

A I was a salesperson, floor clerk.

Q And was the Defendant working in January of 2016?

A He was.

Q And where did he work in January of 2016?

A He worked at Spartanburg Dodge ---

Q And ---

A --- the old one.

Q And when you say the old one, what do you mean?

A They just built a new facility, but he worked at the one, I don't know what road it's on.

Q The one where they do the covid testing now?

A Yes, that one.

Q And what did he do for Spartanburg Dodge?

A He was a mechanic.

Q Now, Stephanie, you remember the date that this happened, January the 7th of 2016. I, just prior to that, did you have an incident that caused you to have some concern about the state of your marriage?

A I did.

Q Okay. I need you to speak up, either pull the microphone a little closer to you or speak up a little bit louder so everybody can hear you, okay? Did you have, did that happen?

A Yes, ma'am.

Q Okay. Can you tell the jury what, what, about how, about, let me back up and slow my questions down, give me one second. About how long before January the 7th did that happen?

A It was about two weeks before January 7th.

Q And what happened, Stephanie, can you tell the jury?

A I was taking our children to my aunt's house that was a halfway point between where he worked and Westgate Mall. And I would drop them off there and then he would come and pick them up. Well, the kids were hungry, so I went to Chick-fil-A on Ashville Highway. And when I pulled into the drive-thru line, I saw Jonathan walking with some woman side by side, just about holding hands with each other, laughing and giggling. And I just pulled up real slow beside them and rolled down my window and was like, what are you doing. He was oh, this is just a friend from work, I was just giving her a ride. There was a group of us here and everybody else just left and I'm just taking her back to Dodge.

Q And what happened after that, did you say anything back to him?

A I did not. I had to be at work shortly, so I just went through the line and got the food for my kids and took it back to my aunt's and then I went on to work.

Q Okay. And can you describe the person you saw him with?

A It was a female, dark hair, maybe shoulder length, slender, tall, white girl.

Q So then after that you went to work, is that right?

A Yes, ma'am.

Q Okay. And did y'all talk later that evening?

A We did. After I got off work.

Q And what was the next, how was, was that a friendly conversation?

A No, it was not.

Q Okay. Can you tell the jury how that conversation went?

A I can. I came in from work and then he was down in the bedroom, and I asked him, I said are we going to talk about this, and he's like there's nothing to talk about, she's a friend from work. I was just being a gentleman, I took her to Chick-fil-A and took her back to work, there were other people there. He convinced me that there was nothing going on. And I said Jon, you don't walk hand in hand with a co-worker, you don't do that, that's just not something's that's done. And he's like, well, you're just crazy.

Q And what happened next?

A I reached for my phone because I knew, I'm not stupid, I knew there was more to it. So I reached for my phone, Jonathan grabbed my phone and through it across the room because I was going to call my dad, my brother, grandma, somebody because I was done with all the cheating and the lying. And Jonathan blocked the doorway so I could not get out of our bedroom, and I was trying to push past him, and Jonathan pushed me into the

floor and told me that I was not taking his children from him. And then I grabbed a gun, and I couldn't, I really couldn't even do anything with it, I, my children were 10 feet behind us, asleep in their beds. I couldn't point it at him, there's no way I could shoot the father of my children with them right there.

Q So what did you do?

A I just put the gun down and he convinced me that it was just a friend from work, and he was just being a nice guy.

Q Stephanie, did you tell him that you were going to leave him that night?

A I really don't remember.

Q And after this happened, what, after you set the gun down, what happened next?

A We just went to bed and carried on with normal day life. I was going to call someone the next day to come get my stuff while he was at work, and I was just going to be gone.

Q And did you do that?

A I did not.

Q Why not?

A I came from a broken home, so it was, all I wanted to do for my kids to not have that.

Q Okay. There are tissues to your right, okay? And do you need a glass of water?

A I'm okay.

Q Okay. Alright. If you need a break, say so, okay?

A I'm alright.

Q Okay. Did y'all talk about it again?

A Not really because the one time we did talk about it, it was just she's a friend, that's all it was to it, is that she was a friend from work, just work.

Q And did he tell you what this friend's name was?

A Her name was Sydney.

Q Alright. Let's talk about the night of January the 7th of 2016, okay? You worked that night?

A Yes, ma'am.

Q And what happened when you got off work, what did you do?

A Well, the mall closes at 9, so if there was no customers in the store about 8:30, 8:45, we'd start cleaning the counters, putting the jewelry in the safe so we could get out of there right at 9:00. And then for safety, two people had to go to the bank, so I volunteered to follow Rhonda to the bank which is the Wells Fargo beside Chick-fil-A on W. Ezell Boulevard.

Q Okay. And who was Rhonda?

A Rhonda was a fellow coworker.

Q And so y'all made this night deposit at that Wells Fargo?

A Yes, ma'am.

Q Okay. And what do you do next?

A Well, Rhonda waived to me from her little review mirror,

and then she pulled out and then left, and I pulled out and followed her. I went under that bridge that's right there, I think it's 26, then I grabbed my cell phone and I called Jon and I said hey, I'm on the way home, do you and the kids need anything to eat, and he said no. He said I just fed the kids macaroni, he said I'm getting them ready for bed, and I'm going to put them to bed in just a minute. So we stayed on the phone pretty much all the way home, I would just drive, and then he was like where are you now, and I told him I was passing some apartments they had just built on Reidville Road.

Q And did he ask, was that the only time he asked you where you were?

A No. He kept asking me which was not usual. And I would just, as I would drive down the road, I kept saying well, I'm going over the first bridge and then I'm going over the second bridge. And there was a light, and I said I'm going through the light now, and I'll be home shortly. I was trying to figure out where this was going and why he wanted to know where I was. And I finally got, there's a church across the street from our house and I got to that church, and I said I'm right here at the church, or the church is here and then our driveway was literally right here, and so I turned at the church onto that road and into our driveway.

Q Okay. I'm going to stop you right there, okay?

A Okay.

Q I'm going to show you an exhibit, or I'm going to show you two exhibits.

MS. WELLS: May I approach, Your Honor?

THE COURT: Yes, ma'am.

Q Stephanie, I'm going to show you what's been marked for identification purposes as State's Exhibit 16, do you recognize that?

A Yes. That's me.

Q Okay. That's a picture of you? And do you remember about what time, when I say what time, about what year and what month this was taken?

A It was right before Christmas that year.

Q When you say that year, you mean?

A 2016.

Q 2016. So this was a Christmas time photograph, is that right?

A Yes, ma'am.

Q Okay. Is this how you appeared back in December, January of 2016, 2017?

A Yes, ma'am.

MS. WELLS: Your Honor, we'd offer State's Exhibit 16 at this time.

THE COURT: Any objection?

MR. GROSE: Only what we discussed earlier.

THE COURT: Okay. It's admitted.

MS. WELLS: Thank you, Your Honor.

(Whereupon a photo was submitted as State's Exhibit Number 16 for identification and entered into evidence.)

Q Showing you what's been marked for identification purposes as State's Exhibit 17, do you recognize this?

A Yes, ma'am. That's the area where we lived.

Q Okay. And you've seen this before, before you testified today we talked about this when, this is not the first time you and I've ever spoken, correct?

A Right, yes.

Q We've talked in preparation for trial, is that right?

A Yes, ma'am.

Q Okay. And you had an opportunity to review this map before, during trial prep discussions?

A Yes, ma'am.

Q Okay. Is that a fair and accurate depiction of where your residence is on this map?

A Yes, ma'am.

Q Okay.

MS. WELLS: Your Honor, we'd offer State's Exhibit 17 at this time.

THE COURT: Any objections?

MR. GROSE: No objection.

THE COURT: It's admitted.

MS. WELLS: Thank you.

(Whereupon a map was submitted as State's Exhibit 17 for identification and entered into evidence.)

MS. WELLS: Your Honor, we'd ask for permission to publish both of these exhibits?

THE COURT: Yes, ma'am.

Q And Stephanie, I think I might have said the wrong years. This is a picture taken in December of '15 before January of '16, is that right? I think I said the wrong year.

A Yes, ma'am.

Q Okay. Thank you.

MS. WELLS: Let me just quickly, I'm going to show everybody State's Exhibit 16, I'm going to see if I can ask, okay, that's as far out as I can get it to go.

Q Stephanie, this is the way that you looked in December of 2015, January of 2016?

A Yes, ma'am.

Q Okay. Alright. Now, I'm going to show you State's Exhibit 17. Okay. And if it helps, I don't know that it does, but if it helps, you can get off the bench and come look at this smaller picture, only if it helps, if not, we can talk about it from where you are, it's up to you.

A I can come point.

Q Okay.

MS. WELLS: Your Honor, may she leave the bench just to help me, just, the detail's kind of lost, I think, on these big screens.

THE COURT: Yes, ma'am. Please be careful, ma'am.

Q You can come over here. Just remember, the Court reporter is taking down everything, so if I ask you questions, you got to keep your voice up, and also so that the jurors all the way to the end can hear you, okay?

A (Nonverbal response).

Q Stephanie, you were talking about where, which direction were you coming from?

A This is upside down.

Q Okay. What direction were you coming from?

A Coming in from this direction.

Q Okay. So going on this exhibit, it would be from the right side of the exhibit down to where this heart icon is?

A Yes.

Q Is that right? Okay. And is that your residence?

A It is.

Q Okay. Where is the church that you talked about?

A The church is right here, this little white dot.

Q Okay.

MS. WELLS: Your Honor, I'd ask that the record reflect that she has indicated that the church is the white

space about, not even half an inch from the top right corner, about over an inch and a half on State's Exhibit 17.

Q Okay. You can sit back down. You said you turned in right there at the church, which is pretty close to your back, the back entrance to your house, is that right?

A Yes, ma'am. Our house was the first one on that road so, literally, once you turned on to the side street, it wasn't even 10 feet, and it was our driveway.

Q And when you pulled into the driveway, the jury's seen photos of the back of your house. Where did you pull in?

A I parked in the garage.

Q And when you pulled in, what did you do?

A Well, that night I waited outside of the garage for the garage door to open, our button would stick on occasion. And I sat there for a minute and then once the door opened, I pulled into the garage, and I unbuckled my seatbelt and I sat there for a minute just finishing the song that was on the radio. And then I reached into the passenger's seat to get my pocketbook and my cell phone and what I was going to take inside and then my car door flung open and Jonathan grabbed me and pulled me out of the car. And I was not really sure what was happening at that point, so, it was cold, I was tired, I just wanted to go inside. So I started up to the ramp that was inside of our garage.

Q Stephanie, I want to stop you for a second. Did you ask

him what he was doing, did y'all have a conversation when that happened?

A No, ma'am. He didn't speak to me at all.

Q Okay. You said you started towards the ramp?

A Yes, ma'am.

Q Okay. What happened next?

A I got onto the platform of the ramp, and I took about three steps up which put me, maybe, middle ways, and something hit me on the back of the head.

Q What, do you know what hit you on the back of the head?

A I do not. I turned around to see what it was, and Jonathan was standing on the platform with some long orange, it looked like the length of a baseball bat, I'm not exactly sure what it was, but he just stood there on the bottom of it just hitting me over and over and over. He had both hands pulling it above his head, just constantly hitting me. I, I froze, I didn't know what to do, I couldn't do anything. I put my hands like this because that's all I could do was just to hopefully stop it, and he just hit me over and over and over. And then he stopped for just a minute, and I could see through my hand and he pulled out a black gun and he pointed at me and he fired with my arms in the air. He fired it a couple of times in the garage.

Q Okay. Then, so you had, and you had your hands above your Head, you demonstrated that for the jury. What happened

that for the jury. What happened next, Stephanie?

A The next thing I remember is I was laying face up on the ramp and Jonathan had my feet and he was dragging me out of the garage to the side of the house. And he kind of disappeared for a few minutes, I don't, I'm not sure where he went. It felt like hours, but I just, I laid there, I was shivering, I was freezing, and then he reappeared at my feet, and he pointed the gun at me again and he pulled the trigger, and I remember it going off. And then I remember a stranger standing over me.

Q How did you, I know this may see like a ridiculous question, Stephanie, but how did you feel?

A I was scared.

Q Were you in pain?

A It was unbearable pain.

Q Did you eventually hear someone that you did not know, voices that you didn't know?

A Yes, ma'am. I could hear Jon periodically shouting it's the house with the lights. And then there was a stranger that I didn't recognize and she said can you tell me your name, can you tell me your birthday, and I answered.

Q Did you lose consciousness at points in all of this, do you know?

A I, there's pieces that are kind of fuzzy, and I guess that's when I lost consciousness because I got, it's like pieced together that night.

Q After you talked to the, you said you heard a voice that asked you some questions, what do you remember next?

A The next thing I remember is just that lady asking me my name, my birthday and if I knew what happened to me. And then I woke up in a room with a bunch of lights and I saw my stepmom's face.

Q Did you say anything to your stepmom?

A I told her my ear hurt.

Q Do you remember going back to being there and talking to this person, you don't, do you know who that person is that you ---

A I don't.

Q --- that you talked to? And they asked you what happened, do you remember what you think your answer was?

A I told her I felt like I had been shot.

Q And did you tell her who had done it?

A No, ma'am, I didn't.

Q Why not, Stephanie?

A Because Jonathan was right there, I was scared. He was standing on the side of me, he moved from my feet to my head, back to my feet, just, he constantly, he wouldn't go away, he was just standing right there, I couldn't say anything.

Q Why did you feel like you couldn't say anything?

A Well, because he just shot me, what's to stop him from shooting whoever this person was?

Q Do you remember talking to law enforcement at the hospital?

A Yes, ma'am.

Q Okay. Before, like, okay, to be clear, there's kind of two sections of your hospital time, is that right?

A Yes, ma'am.

Q Okay. There's the, when you get to the hospital that night on the late evening hours of January 7th into the early morning hours of January 8th, okay? So that's where, I want to focus on that right now, alright? Do you remember talking to law enforcement at the hospital during that time frame?

A No, I don't.

Q Do you remember talking to anybody about who had done the, who had, about any of this, who had done it or who, or saying anything to anybody that night, do you have any recollection of that?

A No, ma'am. I just remember talking to my stepmom and kept telling her my ear hurt, I just wanted it to stop hurting.

Q And then, Stephanie, you are placed into a medically induced coma, is that correct?

A Yes, ma'am.

Q And do you, as we sit here today, do you know exactly how long you were in that coma?

A A week.

Q And do you remember, what was it like to wake up from that? Can you tell the jury what that was like to wake up from a medically induced coma like that?

A It was very confusing; it was frustrating because I also had been trached so I couldn't really talk. All I could do is, I had to write notes to people, and I didn't know where my kids were?

Q Do you remember talking to law enforcement after you wake up from the coma?

A Yes, ma'am.

Q Do you remember how many times you talked to them?

A I remember them about twice being there.

Q And do you remember, the first time you talked to them, whether or not you told them that it was Jon, do you remember whether or not you told them?

A I don't remember.

Q Okay. At some point do you tell them? Who do, at some point do you tell law enforcement who did this to you?

A No, I didn't.

Q Not, not when the first time they met with you at the hospital?

A No, ma'am.

Q Did you, how did you, why, why didn't you tell them then, he's not there now, like, why not tell, why not tell law enforcement then?

A I just didn't, I couldn't believe what had happened, I didn't want it to be him, I wanted it to be somebody else because he's, he was my husband, we were married for four or five years, we had two children, I just, I didn't want to believe that he could have done this to me.

Q And at some point, though, you do tell law enforcement that he had done it?

A Yes, ma'am.

Q How did that happen? How did you come to do that?

A They were just, they come in another day and were asking me, and they asked me to give them a description of the person and I told them it was my husband.

Q And were you able to talk at that point or you were writing notes at that point?

A I was still writing notes.

Q And then at some point you're able to give an interview where you're not writing notes, but you have to use a suction device, is that right?

A Yes, ma'am.

Q Did you eventually get your purse back from the scene?

A I did, yes, ma'am.

Q Was there anything missing?

A No. I had cash in my wallet, all my credit cards were there, nothing was taken.

MS. WELLS: My approach the witness, Your Honor?

THE COURT: Yes, ma'am.

Q Stephanie, what kind of vehicle were you driving that night?

A I was driving a 2010, white Ford Explorer.

Q And that was your car?

A Yes, ma'am.

Q What kind of vehicle does your husband, or your now exhusband, what kind of vehicle did he have?

A He had a red F150.

Q I'm going to show you what's been marked for identification purposes as State's Exhibit 18, do you recognize that?

A Yes, ma'am, that's our house.

Q That's the [REDACTED] Reidville Road address?

A Yes.

Q That is a fair and accurate depiction of how it appeared on January, other than it was dark, is this how this appeared?

A Yes, ma'am.

Q I'm showing with you now State's Exhibit, what's been marked for identification purposes as State's Exhibit 19, do you recognize those?

A Yes, ma'am. That's my vehicle.

Q Okay. And how are you able to recognize it?

A We put stickers on the sides for our children, my children, there was a sticker on each side, one for each kid.

Q Okay. This one has a Jolly Roger on this, on this, the passenger side rear window that night?

A Yes, ma'am.

Q And other than this red mark in the middle, is this how your car generally appeared back in January of 2016?

A Yes, ma'am.

Q I'm showing you now State's Exhibit 20, do you recognize this?

A I do.

Q Okay. What's this, State's Exhibit 20?

A This is a picture of me and my sister and her best friend after I came home from the hospital.

Q Alright. And do you know about when this was taken?

A I believe March.

Q March of 2016?

A Of 2016.

Q And this is how, so this is how you would have looked about a month after your release from Spartanburg Regional?

A Yes, ma'am.

MS. WELLS: Your Honor, we'd offer State's 18, 19, and 20 at this time with permission to publish.

MR. GROSE: No objection.

THE COURT: Without objection, they're admitted.

MS. WELLS: Thank you.

(Whereupon photos were submitted as State's Exhibits 18, 19, and 20 for identification and entered into evidence.)

Q Stephanie, showing you State's Exhibit 18, this is y'all's, this is the [REDACTED] Reidville Road address, is that right?

A Yes, ma'am.

Q Showing State's Exhibit 19, this is your white Ford Explorer?

A Yes, ma'am.

Q Okay. Showing you State's Exhibit 20. And Stephanie, I may, with the Court's permission, I may have you step off the stand to talk about the injuries that you sustained that, that, the scaring that you've got here and some of the couple other things ---

MS. WELLS: --- with the, if the Court has no objection?

THE COURT: No objection. Go ahead. Be careful, ma'am.

Q So is your hair pulled back in this photo?

A No, ma'am. My head was shaved to take a bullet from my brain.

Q Okay. And can you point out to the jury the facial, where the gunshot wound entered your face?

A Right here is where the bullet entered my, my cheek and it went through my ear into my brain.

Q Okay.

MS. WELLS: Your Honor, I'd ask the record reflect that she's indicated that kind of the dimple portion of her right cheek on State's Exhibit 20.

THE COURT: So noted.

Q And Stephanie, you've got your right arm kind of held up, is there also a, a gunshot wound that you suffered to that arm?

A Yes, ma'am.

Q Can you point that out for the jury?

A This here is the gunshot wound.

THE COURT: Ms. Batchelor, I don't mean to interrupt, but your voice is soft.

MS. WELLS: You're going to have to speak up.

THE COURT: Would you, please, thank you.

A This right here is the gunshot that went through my arm.

Q Okay.

MS. WELLS: Your Honor, she's pointing to the kind of dark spot on the lower just above the elbow on the arm, the right arm that she has raised in State's Exhibit 20, I just ask the record reflect that.

Q And then you also had a, you can also see in this photo a gunshot wound to the chest, is that correct, Stephanie?

A Yes, ma'am.

Q Okay. Can you point out to the jurors where that is?

A This smudge here is gunshot that went into my chest.

Q Okay.

MS. WELLS: And I'd ask the record reflect, it's just over, almost right about where the white and pink portions of her shirt meet. I'd ask the record reflect that's what she indicated.

Q And Stephanie, one other thing, I noticed there's a tube kind of coming from underneath your shirt, is that fair?

A Yes, ma'am. That's a peg tube.

Q Why did you have to have a peg tube?

A The damage done to my brain, I couldn't eat or drink anything, I had to be fed directly into my stomach.

MS. WELLS: Can I have a moment, please, Your Honor?

THE COURT: Yes, ma'am.

Q Stephanie, when you were on your way home, did the Defendant indicate to you what he was going to do, if anything, when you got home?

A No, ma'am.

Q He didn't?

A (Nonverbal response).

Q What did he normally sleep in?

A He usually slept in gym shorts and a t-shirt.

MS. WELLS: Just one more moment, please, Judge. Your Honor, those are the questions I have for Ms. Batchelor at this time.

THE COURT: Okay. Counsel.

MR. GROSE: Thank you, Your Honor, may it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. GROSE:

Q Stephanie, you and I have never met, but I'm Charles Grose, and I'm representing Jonathan. And it's necessary that I ask you some questions. If at any time you don't understand those questions, would you let me know so I can repeat it, rephrase it, explain it so that you know what I'm asking before you try to answer?

A Yes, sir.

Q Okay. So just as far as like a, an ordinary workday kind of situation, you worked at the jewelry store and that would go into the evenings, is that right?

A Yes, sir. I worked the afternoon shift.

Q Okay. And Jonathan would go in early in the morning and get home before you did?

A Yes, sir.

Q And so he would watch the children when he got home?

A Yes, sir.

Q Okay. And it would not be uncommon for you to do what you did that night with regard to the deposit?

A Yes, sir.

Q Okay. And you would usually let Jonathan know what time you were going to be getting home?

A I either called Jon or I called my grandmother, one of the two, and I would talk to them on my way home just in case something were to happen to me.

Q Okay. And you'd do that all the time?

A Yes.

Q Okay. And if, it wouldn't be uncommon for when you're getting home or about to get home for Jonathan to get a shower?

A Usually, yes.

Q Okay. And also it wouldn't be uncommon that after you got home to maybe have Jonathan run out to the store?

A Yes.

Q For example, it would be fairly regular that you would have him go to the store, to the convenient store and get boiled peanuts?

A I guess, yes.

Q Is that a yes?

A Yes.

Q Okay. And the reason I ask you to clarify is first I thought you said yeah, but we've got to help this lady out over here. We all understand each other, but when it gets all printed up on a transcript, sometimes if we're not real clear, it can be confusing.

A Okay.

Q Alright. And on this particular night, I think you said that you were on the phone with Jon from the time that you left the Wells Fargo to almost when you got back?

A Yes, sir.

Q Alright. And, and during that call, he told you that he was planning on getting a shower?

A He told me that he had fed the kids macaroni and he was putting them to bed.

Q And then he would normally get a shower after that?

A He would just shower whenever ---

Q Okay.

A --- it wasn't like a set time.

Q Alright. You, you've talked to law enforcement about what happened several times, is that right?

A Yes, sir.

Q The first one that you talked to was a person you didn't know, but who came to your house the night that you got shot?

A Yes, sir.

Q Alright. And then you talked to law enforcement after you were woken up from the coma, you talked to law enforcement several times at the hospital?

A Yes, sir.

Q Okay. The, the first time that, the night of the, the night of the shooting when you talked to the lady, you suspect

it was probably the lady you saw testify this morning, you know that now?

A Yes, I do.

Q Okay. And she asked you for information, is that right?

A She did.

Q And she gave, and you were able to give her your name?

A Yes, sir.

Q And information like your date of birth?

A Yes, sir.

Q Alright. And so you were able to understand her questions well enough to know what she was asking?

A I did.

Q And you did tell her that you felt like you had been shot?

A Yes, I did.

Q And you told her that you didn't know what happened?

A I did.

Q Alright. And after you came out of the coma, you talked to them probably at least three times, do you remember how many times you talked to them?

A I don't remember.

Q Okay. Do you remember talking to them one time on about the 18th of January where they specifically ask you who did this, do you remember that?

A Not really. I know they asked for a description of the person.

Q Okay. Do you remember telling them that you knew that you, that they thought that Jon did it?

A I don't remember that.

Q Do you remember telling them at that time that even though they thought he did it, he didn't do it?

A No.

Q You don't remember that?

A (Nonverbal response).

Q Alright. Do you remember at one point telling them that you parked the car on the driveway outside the garage?

A Yes, sir.

Q Today you said it was inside the garage, is that right?

A Yes, sir. I didn't park the car; I was waiting on the garage door to open.

Q Well, but you said that, that you pulled the car into the garage?

A I did.

Q Alright. This garage is a one car garage, right?

A Yes, sir.

Q That's right. And you were here when they put some photographs up this morning, weren't you?

A Yes, sir.

Q Alright.

MR. GROSE: Do we have those photographs?

MS. WELLS: The Court reporter has them.

Q Okay. This has been identified as a photograph of the garage for that night, do you see that?

A Yes, sir, I do.

Q To me, it looks like there's not enough room to pull a car inside that garage.

MS. WELLS: I'm going to object to speculation on behalf of counsel.

THE COURT: You want to rephrase the question?

MR. GROSE: Okay.

Q Do you disagree with how the garage, that that's how the garage looked that night?

A All that pile of stuff that's right beside the ramp was usually pushed underneath the ramp because I had to get my kids in and out. That normally was not there.

Q Okay. But there's also some stuff on the other side as we look at the photo, the right hand ---

A There's more than enough room. I pull in all the way to the left so I can open the doors to get my children out, and my youngest son was in a baby carrier. There is more than enough room there.

Q Okay. Alright. So have you sometimes said that this happened outside the garage?

A Not to my knowledge.

Q Okay. You, around the 25th of January, you, you talked to law enforcement, do you remember that?

A I don't know dates.

Q Okay. Do you remember them coming back and saying that they were going to do a recording of an interview with you?

A I do, I remember that.

Q Okay. And that was the first time that you told them that Jonathan had done it, is that right?

A Yes, sir.

Q Okay. And they asked you, they, they were trying to ask you questions as to determine when you remembered that, do you remember that?

A I remember them asking me questions about that night.

Q Okay. Do you remember telling them that you, quote, unquote, remembered it since the last time that they had talked to you?

A I do.

Q Okay. Now, they also were asking you about the affairs?

A Yes, they were.

Q And you and the prosecutor talked about when you saw Jonathan with Sydney at the Chick-fil-A?

A Yes, sir.

Q Okay. In fact, before you got married, you knew that Jonathan sometimes had affairs?

A I did, yes, sir.

Q Yeah. In fact, even before you got married, you had caught him doing that?

A I did.

Q Okay. There was a lot of tension between Jonathan and your father, wasn't there?

A Not really.

Q Okay.

A Jon took his truck to my dad's shop and fixed it, he went on vacations with us, birthdays, Christmases, any holiday, Jon was there. He wasn't alienated like you're making it sound. He was there always with us; he was a part of the family.

Q Did you know that your father had caught Jonathan in the, having an affair on you?

A After, like, way after I woke up.

Q Okay. But it, just to be clear, the affair that your father caught Jonathan having was before this incident happened?

A Yes.

Q Okay. You didn't know about that until afterwards?

A No, I didn't.

Q Did you know that from the first night that you went into the hospital, your father was telling police he thought it was Jonathan?

A No.

MR. GROSE: Beg the Court's indulgence.

THE COURT: Yes, sir.

MR. GROSE: That's all I have. Thank you, Your Honor.

THE COURT: Okay. Anything?

MS. WELLS: Yes, sir, Your Honor, just briefly.

REDIRECT EXAMINATION

BY MS. WELLS:

Q Stephanie, on this night, talking about January the 7th of 2016, had y'all, had you and Jon talked about him running out to the store for you later to get anything?

A No.

Q Did he tell you he was getting a shower?

A No. He said he was putting the kids to bed and that was it.

Q When the officers came on January the 18th, that would have been the interview where you still couldn't, couldn't talk, not even with the suction, okay?

A Yes, ma'am.

Q Why did you not want to tell them then that it was, about who had done it?

A Just for the sake of my family, I wanted to save my family. I hoped and prayed that it was somebody else and that I was wrong.

Q Was it a conversation with your dad that convinced you you were right?

A No. I don't really remember talking to my dad much.

Q Do you remember talking to your dad at that emergency room that night, the night that you went into the hospital?

A No.

Q You remember talking to your stepmom?

A I remember talking to my stepmom.

Q Do you remember talking to your dad at great length right after, around the 18th right after you woke up from your coma?

A I, there was one point where he was questioning me. He was just looking for any detail, you know, was he black, was he white, just generic, was he tall, was he short, was he fat, was he skinny, just generic questions. At no point did he say was it Jon, I told him it was Jon.

Q Mr. Grose asked you about answering law enforcement questions on the 25th, that would have been the interview with the suction, okay? And you're saying you had remembered it since the last time they were there. What did you mean by that? Had you not had a memory of who had done this to you?

A No. I just, I realized that my husband had did it and that I couldn't keep my family together. That there was no living with someone who does this to someone else, who did it to me.

Q Mr. Grose also asked you about this, apparently your dad seeing Jon and somebody else prior to all this happening. Your response was I didn't find out about it until way later, way later than what?

A I was out of the hospital and at home, and then he told me that him and my stepmom were at Lowe's and had caught Jon with a girl in the parking lot.

Q So this was after you had been released from the hospital?

A This was months later.

MS. WELLS: Can I have a moment, Your Honor?

THE COURT: Yes.

MS. WELLS: Your Honor, those are the questions I have.

THE COURT: Anything?

MR. GROSE: Very briefly.

RECROSS EXAMINATION

BY MR. GROSE:

Q On the, what I've been calling the January 18th interview, do you remember telling the investigators that you knew they thought Jon shot her, but you would shake your head no when asked if Jon shot you?

A I don't remember that.

Q You don't remember that?

A No, sir.

Q Okay. You just told Ms. Wells that the reason that you didn't tell them that day that you knew it was him, but you didn't want it to be true?

A Yes, sir, that's true.

Q In fact, I think you said that you hoped and prayed that it was someone else, right?

A Yes, sir. He was the father of my children; we did everything together. Why would I want it to be him?

Q I, and I, and I understand that, but on the interview, the one where Ms. Wells said that they were using the, the suction, the one that was recorded, the one that I've been saying was on the 25th, you told the investigators that you remembered that and it wasn't until after that they were there that you remembered that, right?

A I'm not, can you rephrase that?

Q Well, do you recall them asking has anybody told you any of this and then telling them I remembered this, or, until after you were here, they gave me pain medicine and put me to sleep?

A I don't remember that ---

Q You don't remember that?

A --- but I do know that they did not give me pain medicine.

Q (Nonverbal response).

A I was not on any pain medicine at the time when the detectives came to talk to me.

Q Okay.

A I was on Tylenol.

Q Okay. And that was on the 25th?

A Whenever they came and talked to me.

Q The one that was recorded?

A It was the second time they came and talked to me.

Q Okay. Alright. You also, when Ms. Wells was asking you questions a minute ago, you said something that you came to realize that your husband had done this?

A Yes.

Q Okay.

A I couldn't not protect my family; I have to protect my children ---

Q So there's ---

A --- and there's no living with someone who did this, so.

Q And was there a time I take it then that you didn't realize that he had done this?

A No. I just realized I couldn't not tell the truth. There was no living with this man.

Q Alright.

A We're not going to go home from the hospital and be one big happy family.

Q You were here in opening when Ms. Wells talked about you having some memory issues?

A I have no memory issues.

Q So you don't know why she would have said that then?

A There are things that are blurry in my memory, but I have no memory issues.

Q Okay. Things that are blurry?

A Moments of that night where I blacked out.

Q Things that are blurry about the night that you got shot?

A Yes, sir.

Q Thank you.

MR. GROSE: That's all I have, Your Honor.

THE COURT: Thank you. Ma'am, please step down and be careful.

MS. WELLS: May it please the Court?

THE COURT: Yes.

MS. WELSS: Your Honor, the State would call Lieutenant William Gary to the stand.

MADAM CLERK: Do you swear or affirm the testimony you'll give will be the truth, the whole truth, and nothing but the truth so help you God?

LIEUTENANT GARY: I do.

MADAM CLERK: Thank you.

THE COURT: Sir, if you'll tell us who you are and spell your last name for the Court reporter, please.

LIEUTENANT GARY: Lieutenant William Gary, G-a-r-y.

THE COURT: Thank you. Solicitor?

MS. WELLS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. WELLS:

Q Lieutenant Gary, where are you employed?

A The Spartanburg County Sheriff's Office.

Q And how long have you been employed there?

A March will be 27 years.

Q And in, what's your current assignment with the sheriff's office?

A I'm currently the lieutenant over criminal investigation division which is, I'm second command over about 90 people.

Q And, well, I don't want to bore people, but can you kind of give an overview of some of the roles you have held at the sheriff's office in your 27 odd years there?

A Four and half years working patrol, and then I've been in criminal investigations the rest of my career. Three years working auto thefts, the rest working violent crimes or supervising including at this time, the sergeant over the violent crimes division, and lieutenant for a little bit over five years now. Over that, more specific interests, over the violent crimes versus the other.

Q And I want to direct your attention back to January of 2016, what was your role with the sheriff's office at that point in time?

A I was sergeant over the violent crimes division since September of '15.

Q And did you receive, what's, how's, how does an on-call work for y'all, I mean, were you on call that night?

A So not really. When you're the supervisor of the violent crime division, especially with a very serious crime, someone

shot, potential die or somebody that is dead of some nature or whatever, the supervisor normally comes out regardless if you're the supervisor on call or not just because of the type of crime that it is. We do have an on-call investigator for it, and normally they work Monday to Monday on call. And so at this point, Sergeant Walsh was the one for, I, he wasn't a sergeant at the time, Mike Walsh, one of my investigators and he's the, was the lead on this case.

Q And so on January the 7th, 2016, were you called to assist in an investigation into a shooting that occurred on Reidville Road?

A Yes. Particularly with something like this, we have a potential witness or a victim that's transported to the hospital, we try to get somebody to the hospital as quickly as we can to see what information we might can get. With where I lived then, and still currently do, live very close to the hospital, so when I got notified of it, I went to the hospital before I went to the scene. That's where I first encountered Ms. Batchelor.

Q Can you tell the members of the jury what you observed, first off, where did you, were able to talk, were you able to talk to Ms. Batchelor?

A Kind of. When I first got there, she was still in the trauma bay where they treat all incoming trauma patients. And then she was, luckily, didn't have to go straight to surgery.

They put her into a room, and I went in there, but with everything going on, I wasn't able to get much information from her with all the attending to her.

Q When you say, who was attending to her?

A Medical personnel.

Q Oh. Who, was anybody else there? Was family able to be in the back at that point?

A I don't, right now I don't remember if someone else from the family was there or not. But I don't recall family being there at that time.

Q What, so after you attempted to speak with Ms. Batchelor, was she able to tell you anything?

A I asked for a description and she, let's see what I put in my notes.

Q And I understand and note for the record, I see you're looking at some notes, does that help you refresh your recollection?

A It is.

Q Alright.

A Basically, she told me that she didn't know anything from that, which didn't surprise me.

Q Alright. What did you do next?

A From there I went to the incident location on Reidville Road.

Q Alright. And I think, actually, the, Madam Court

reporter may have that photo. Nope, I have it. I'm going to show you on the screen what's been admitted as State's Exhibit 18, do you recognize that?

A Yes. That is the front of I believe it's [REDACTED] Reidville Road as it faces Reidville Road. It's at the corner, I can't remember the side road, but there's another road that you can turn on to to access the house, but it faces Reidville Road.

Q And when you arrived on scene, what, what did you do?

A Just kind of assessing how the crime scene's presenting itself. Mr. Batchelor was still on the scene when I first got there. I heard a little bit of his account of, of some things from the people that were there. Then he had said he wanted to leave to go to the hospital, we had no reason to stop him from doing so, so he left. And later it was just a matter of working the crime scene from there.

Q Okay. What, what did you do, when you say work the crime scene, what did you do?

A Well, we have a forensic unit that takes the photos and all and before we do too much wondering and looking so we don't disturb something, we let them take their photos first so that it's as it presents itself. And walking through looking, what evidence do we see, what do you not see, what, how it presents itself. And in this situation, I knew where she was to the side yard from what I was told, and the blood in the driveway, the contents of the purse on the left side of the driveway,

blood inside the garage, things that were seen there that some of it looked odd based on what we were being told. As well as knowing her vehicle was found a mile and a half down the road.

Q Where, do you know where that was located?

A Down Reidville Road past the Riverfalls Golf Course on the other side of 290, I guess it would be the west side of 290, right before you get to where the Tyger River crosses Reidville Road and the bridge goes over the river.

Q And that was a white Ford Explorer, 2010?

A Yes.

Q Okay. Did you, so you said you had observed, we had shown some pictures previously of that back driveway, the purse, contents and some blood to the right-hand side of the driveway. I'm going to show you State's 8 first, did you observe that when you were out on the scene?

A Yes, I did.

Q Alright. And then that red, what, there's a vehicle right there next to where this blood was located, what, what kind of car is that?

A It's a Ford pickup that we discovered through this, not really discovered, but learned that it belonged to Mr. Batchelor, the vehicle he drove on a daily basis.

Q And then showing you State's 10, you also observed those?

A Yes.

Q And then State's 9?

A Yes, that's how it looked that night.

Q Okay. And then State's 11, that's the contents of the purse, is that right?

A Yes, ma'am.

Q Okay. And that's all how you observed it that evening?

A Yes, ma'am.

Q You said it didn't look right to you, what do you mean?

MR. GROSE: Objection, Your Honor. This is speculation, improper expert opinion.

MS. WELLS: It's not speculation. He's telling exactly ---

MR. GROSE: But it is improper opinion evidence, he's not been qualified as an expert.

THE COURT: He's not going to give an opinion, Ms. Wells. Just ask him what, what his investigation revealed.

MS. WELLS: Alright.

A The way the call came out, as it was presented to the investigators and officers there ---

MR. GROSE: Your Honor, I think this is going to be what you just said he couldn't do, give an opinion.

MS. WELLS: He hasn't given an opinion, Judge, so if he makes one then Mr. Grose can make an objection.

THE COURT: He hasn't made an opinion yet. Go ahead.

A It was that Ms. Batchelor was shot on the scene, her car's missing from the scene and her purse is poured out. When you hear that, you think, okay, this is a robbery, how this looks. What made no sense was that the ---

MR. GROSE: Objection. Now this is an improper expert opinion.

THE COURT: Okay. Mr. Foreman, would you take the jury out, please. Don't talk about the case.

(Jury exiting.)

THE COURT: Okay. What's the objection, Mr. Grose?

MR. GROSE: Your Honor, this, we got into a little bit of this during the, the pretrial hearing, during the, the Jackson v Denno hearing. I, I don't have a problem with them laying out what the photographs, what they observed that night, having them testify about what they observed that night. I think for evidentiary reasons, they have to have that kind of testimony. What I do have a problem with is when they start saying things like we had this morning, this looked odd to me, it was presented to us one way, this was different another way. This is, some of this is a circumstantial evidence case and, you know, they can put in the evidence that establishes those circumstances and they can argue about it later, but I don't think they get to sort of narrate their interpretation of the evidence. I've not been given any information that he has training in reconstruction of crime scenes and that sort of

thing. So I think that what he's about to do is give an opinion about what he thought of the evidence, the purpose of that is going to be to, to, to bolster their investigation, and I think it's improper for him to do that.

THE COURT: Solicitor?

MS. WELLS: Judge, Investigator Gary's been an investigator for 27 years with the sheriff's office. He's responded, and I'm happy to back up and illicit this testimony from Investigator Gary about the number of the violent crime scenes he's responded to and the violent crimes he's investigated or participated in the investigation of. But he certainly can say this is what's, this is why this stood out to me because it explains what they did next. I mean, he has to be able to talk to the jury and say this didn't, this, this stood out to me, this looked unusual. Just, I mean, you know, I could, I mean, you know, we could put up anybody to talk about well, this is what this picture looks like and it shows. But I mean, their investigation led them to a particular place for a reason, and I think that he gets to explain the reason where they ended up. I mean, you know, it started as they thought it might be a robbery, but what they saw on scene led them to find that it wasn't. And I think that he gets to give the jury the information as to why they came to the conclusion that they came to. I don't think that's unreasonable; I don't think that's rendering an opinion, that's explaining what law

enforcement's investigation, how it, how they got where they got.

MR. GROSE: Well, I mean, basically, what he's getting ready to say is, you know, you know, we were being told one thing and we don't believe that, and that gets into the vouching, the opposite side of the vouching and bolstering problems. But Ms. Wells can do what she's saying that she wants to do, you saw this, this was here, that was there and bates, and then after you did that, what did you do next without them giving an opinion and telling this jury we believe Jon Batchelor's guilty. I mean, that's, that's the ultimate issue in the case. I, I've been, you know, representing people charged with violent crimes for probably 25 years now. I'm not sure, I've seen, you know, a lot of crime scene evidence, I couldn't get on the stand and testify as an expert. I mean, just because he has that kind of experience doesn't make him, you know, an expert witness. And that's the concern that I have.

THE COURT: Well, like you, I practiced law in criminal defense work for 25 years before I came up here, which has been eight and a half years, I can't believe it's been that long, but I spent 25 years sitting at that very table in this very Courtroom and other places. He's not being offered as an expert and he's not going to render an opinion as an expert, it would be totally improper for him to do that. Now, he can say

in his years of experience that I was called out as a possible robbery and when I got there and took a look at it and my training of 27 years of experience, to me it didn't look like a robbery, and I started to do A, B, C or X, Y, Z, he, he's going to do that. But you're protected on the record, sir.

MR. GROSE: Okay.

THE COURT: Okay. I'll tell you what let's do ---

MR. GROSE: And I think they were going to go a lot further than that the way ---

MS. WELLS: Well, I don't appreciate the assumption, we were certainly going to follow the rules of evidence as we well know them.

THE COURT: And I'm sure ---

MS. WELLS: I just wanted to explain where the investigation went.

THE COURT: I'm sure ---

MR. GROSE: And I do have an objection to that, but I ---

THE COURT: I understand. Alright. Here's what we're going to do real fast here because I'm going to try to run longer than usual, so here's what we're going to do. We're going to take, while they're out, we're going to take like a seven- or eight-minute break here to refresh ourselves because, to accommodate you Mr. Grose, and I'm happy to do that, but I usually stop about every 90 minutes and if I do that and give

them an afternoon break, then I'm going to have to break too quick. So I want to run on up until about 10 til, at least. So let's take about five or six minutes here, refresh yourselves, stretch your legs, get a drink of water, I'm going to get some more water, and we'll resume. Sir, you can get off the stand for the same purpose, don't talk to anyone about your testimony. Be back at the top of the hour, top of the hour.

(Off the record.)

THE COURT: Okay. Are we ready?

MS. WELLS: State's ready, Your Honor.

THE COURT: Mr. Grose?

MR. GROSE: Yes, sir.

THE COURT: Everything good, Mr. Foreman?

MR. FOREMAN: Yes, sir.

THE COURT: Solicitor?

MS. WELLS: Thank you, Your Honor.

DIRECT EXAMINATION (cont'd)

Q Lieutenant Gary, we were talking just before we took a break about you said you had responded to the scene and that your understanding was that it had been called in as a robbery, is that right?

A Correct.

Q Alright. And the, as you looked at the scene, walked through the scene, it raised some questions for you?

A It did.

Q Is that a fair assessment?

A It did.

Q Okay. What did you, what was it that you, and you've been in investigations, you said you did four years on the road, and then the rest of the time in investigations either as an investigator ---

MR. GROSE: Objection to the leading.

MS. WELLS: I'm just trying to get us through the question, Judge.

THE COURT: Okay. Go ahead.

MS. WELLS: Thank you.

Q Either as an investigator or as a supervisor over investigators and during that course of time, how many, if you can, I mean, ballpark, how many violent crimes have you been the lead investigator on?

A It's really hard to say. Depending on your, whatever, how you classify a violent crime. Of the, what, a little bit over 26 and a half years now, I guess it'd be 26 years and what, eight months, with 22 of that being in investigations, 19, doing some quick math, 19 having to do with violent crimes either as a supervisor or as the investigator working the day to day case, probably somewhere in the ballpark of 200 plus homicides, 3, 4, 500 robberies, I don't know how many shootings, stabbings, beatings, I mean, it's, it's quite a bit.

And not, you know, there's times that we help with other agencies as well, not just cases that we have.

Q I was going to ask about, that's just where you were the lead, I mean, you've assisted in as a ---

A Well, all those aren't lead ---

Q Okay.

A --- necessarily. Probably, you know, as far the robberies go, you're probably 80 percent of them, I would guess, the numbers, but it's, it's quite a bit. I don't have a journal that I write down every case that I work, so I can't give you an exact number on that.

Q But in, but with that as your background for what, in this case, based on your training and experience, what was it that raised some questions for you?

A The fact that it appeared the only thing missing was the vehicle, and yet it was a mile and a half down the road, run off the road, stuck on a berm running. I've had where cars were stolen before, used to get away with, they're set on fire or they're not found, they're a long ways away. The purse sitting there with a cell phone there that has value to it, it's not missing. You know, Mr. Batchelor told us that there's a gun that his wife kept there, that's nowhere to be found on the scene. You know, there's, there's, obviously, when you evaluate the crime scene, there's two different places where it appears that Stephanie was drug, based on what the evidence

shows. For that to be a robbery, for somebody to steal something from her, why would they worry about dragging her, it made no sense to us. You know, why not take something if that's the point that you're there. We do look at the deposit, but it has already been made, we confirmed that, got video from the bank, didn't see anybody appear to be following her from the bank. I did try to get video in-between the house and where the car was, and there are outside cameras that was at a store at the corner of 290 and Reidville Road at the time there's nothing at opposite corner now. Their outside camera didn't work at that time, so we didn't have that. But there was things that were still there that shouldn't have been if it's a robbery. And why try to move your victim if that's the point. So in all the cases that I've worked on, to me, this didn't seem robbery, it seemed personal based on all of that.

MR. GROSE: Objection, Your Honor. That's, that is speculation, that is an improper opinion.

MS. WELLS: Judge, I would just say he's explaining the process that they, he went through to assess the evidence he saw on this case.

THE COURT: I understand but be careful about giving opinions.

MR. GROSE: I move to strike, Your Honor.

THE COURT: I will strike that last piece, yes. The jury will disregard. Go ahead solicitor.

Q So Lieutenant Gary, you said that you walked through the crime scene, and we've, I talked about some photos already that were previously in evidence. I want to talk to you about a few more from that particular evening, January the 7th.

MS. WELLS: May I approach the witness, Your Honor?

THE COURT: Yes.

MS. WELLS: I need to show these to Mr. Grose first.

Q Okay. And I'm going to show you State's, what's been marked for identification purposes, let's start with State's 26 and 27 and ask if you recognize those?

A I do.

Q Alright. Let's start with State's, let's start with State's 26. What are we looking at here?

A This is an evidence placard beside a projectile that is between the driveway and the garage right in the corner where it connects.

Q And did you personally observe that on the night of January the 7th, or it might have been the early morning hours at this point of January the 8th of 2016?

A I did.

Q Alright. Showing you, and that's a fair and accurate depiction of what you observed that evening?

A Correct.

Q Showing you State's 27, what's State's 27?

A It's the, a closeup picture of the same one. This

had actually been taken first because that placard's not there, but it's a closer picture of that projectile.

Q Okay. A fair and accurate depiction of how it appeared to you, just so I can stop saying both dates, do you think it was January the 8th or January the 7th?

A Honestly, I, probably, most likely the 7th, I would assume.

Q Okay. So January the 7th of 2016, fair and accurate depiction?

A Yes.

Q Showing you what's been marked for identification purposes is State's 21, do you recognize that?

A I do.

Q What is State's 21?

A It's a partial picture, well, it's a whole picture, but partial, we're showing the contents of Ms. Batchelor's purse on the driveway with the contents there.

Q Okay. And, okay. So, and I, and you personally observed that?

A Yes.

Q And that's how it appeared to you on January the 7th of 2016?

A Yes.

Q Showing you now, I'm going to show you State's 22 and 23. Let's start with State's 22, what, do you recognize State's 22?

A I do.

Q What is State's 22?

A It's a picture of a pistol in a holster, this should have been taken in the, I would say in the master bedroom.

Q Okay. And that's a shelf in the master bedroom?

A Yes, at the residence.

Q And you personally observed that?

A Yes.

Q Fair and accurate depiction of how you observed it that evening, January 7th, 2016?

A Yes, ma'am.

Q Okay. Showing you State's 23, what's 23?

A That same shelf area in the master bedroom showing contents of the shelf including a box of 38 special plus P rounds.

Q Okay. And that's, okay. Fair and accurate depiction of how it appeared to you that evening?

A Correct.

Q Showing you State's 24 and 25. You recognize that?

A I do.

Q Alright. What's State's 24?

A Picture of zip tie that was at the edge of the driveway.

Q Okay. State's 25?

A Another picture of a different zip tie, one is not connected, and one is connected.

Q Okay. And fair and accurate depiction of how those appeared to you on January the 6th of, excuse me, January the 7th of 2016?

A Yes, ma'am.

Q Alright. I'm showing you now State's Exhibit 28. Do you recognize that?

A I do.

Q What is State's 28?

A This is a picture of Mr. Batchelor's truck as it appeared that night with some sort of white powder that was on the truck.

Q Okay. And you personally observed that?

A I did.

Q Fair and accurate depiction of how it appeared that evening?

A Yes. It was on a couple different spots, but primarily right there.

Q Alright.

MS. WELLS: Your Honor, we'd offer, I think I've gotten them out of order at this point, but it's State's 21, 22, 23, 24, 25, 26, 27, and 28 into evidence at this time. And with ---

MR. GROSE: No objection.

THE COURT: Without objection. They're admitted.

MS. WELLS: Permission to publish as needed?

THE COURT: Yes, ma'am.

(Whereupon photos submitted as State's Exhibit Numbers 21 through 28 for identification and entered into evidence.)

Q Okay. Mr. Gary, I'm sorry, Lieutenant Gary, I'm going to show you what's been admitted into evidence, State's 21. This is, you said the contents of the purse on the lefthand side of the driveway, is that right?

A Yes, ma'am.

Q Alright. And what contents did y'all, did you observe laid out in the driveway?

A The biggest thing's the, stood out to me, of course it was most all the contents of the purse, but the wallet and the cell phone laying there and the valuable things that you see laying there.

Q Okay. And that's an LG cell phone, is that correct?

A Yes, ma'am.

Q And was that seized and placed into evidence?

A It was.

Q What about the contents of the bag?

A Yes, the whole thing was collected.

Q What about the bag?

A I think so.

Q And let's talk about, let's stay in the driveway. I'm going to show you, you talked about the projectile. I'm going to show you State's 26 because you noted in your previous

testimony this was actually the second picture, but just to give an idea in time and space where that projectile was when you were on scene. You testified previously you personally observed this. Was there anything that stood out to you based on your experience and training with this projectile, on your first observation?

A Well, it's a hollow point round, obviously, it's been fired out of a gun, the way it presents, you can see the rifling on it, it did not expand, and it still has a polymer insert that I'm familiar with, a brand that puts that in their, in their gun.

Q Okay. And how are you familiar with that?

A I own some of it. And just in my experience of being around guns and, and, you know, I can't think of one case we've had with them other than this one.

Q Okay. You're a firearms instructor?

A I'm not.

Q You're not?

A No, I'm not.

Q You just assist with firearms instructing?

A Yes.

Q Okay. So you're familiar, and what, so you were familiar with this, did you recognize it on site when you saw it?

A I did.

Q What is it?

MR. GROSE: Objection. He's not been qualified as an expert in identifying ammunition.

MS. WELLS: Judge, he says he has personal knowledge of it, recognized it on site.

THE COURT: Yes. I'm going to let him testify to it. That's overruled.

A It's a brand, Hornady, made under critical defense line as what the insert is put in.

Q And what was significant about the insert? What is it that makes you know?

A It's designed to help keep it from clogging up like a close or whatever to expand.

Q I'm showing you now State's 27. That's just a closer up of the photo that Hornady critical defense that you identified previously?

A Yes, ma'am.

Q Showing you now, I'm going to show you State's 22, it's been admitted. You said that was recovered from the master bedroom?

A It was photographed that night; I don't remember if it was recovered that night or not.

Q Okay. So it was photographed in the master bedroom. And what is this?

A It's a Sig Sauer pistol.

Q Alright. Showing you State's 23. You have

testified previously that you personally observed this?

A Yes.

Q What are we looking at in State's 23?

A That is a box of Hornady 38 special plus P rounds.

Q Okay. Is that consistent with what you saw, personally observed and recognized in the driveway?

A Yes.

Q And did, based on something you had overheard earlier, did this stand out to you?

A Yes. When I come from the hospital to the scene, Mr. Batchelor was there for a little bit of time while I was there. I made notes if I could make sure I say this correctly. I heard him state that his wife had a Smith and Wesson Bodyguard 38 revolver and he had loaded with 480 critical defense ammo.

Q I'm going to show you State's 28. You testified previously that this was on the Defendant's vehicle?

A Yes, ma'am.

Q Alright. And what, again, just remind us, what are we looking at here?

A Some sort of white powder.

Q And that's on the hood area of the vehicle?

A Yes, ma'am. On the passenger's side of the hood.

Q Once you had an opportunity to view all these things on scene, what did you do next?

A Next thing I was involved in with was we decided

we wanted to look in the phone, I forget exactly what time it was in Ms. Batchelor, in Stephanie's phone. Based on what the scene presented, I was seeing if there's any information there that may point us to somebody she could be involved with that may have a reason to do this. So I contacted Mr. Batchelor who was at the hospital and told him that we wanted to look in her phone and that since they were married, we couldn't speak with her, asked if he would be willing to sign a consent to search for us to look in her phone. He stated that he would. So I went to the hospital, arranged to pick him up. I don't know if you're familiar with Spartanburg Medical Center, but off of East Wood Street there's a horseshoe that you can pull in, patient pick up and drop off. I pulled in there and picked him up at that door, it was raining that night. So I picked him up and just pulled right to the end of the horseshoe to speak with him there. My vehicle, I was driving a Tahoe at the time, and ---

Q Investigator, I mean, Lieutenant Gary, I'm going to stop you for one second. What day was this?

A The next day, the 8th.

Q Okay. Alright. Go ahead, sorry to interrupt, go ahead. So you pulled down to the end of the horseshoe?

A Right. First thing, I presented him with the consent to search, electronic media form which he signed. Then we sat there talking about this incident. I was trying to ask him

does he know if she's having an affair with anybody, he said he did not. Trying to find something, you know, else that we can run with just because of how the scene presented and, you know, what could give us more to go on. And, and we talked for, like I said, about 30 minutes total in the vehicle. He told me a story of some kids that were in the yard at one point that he had confronted, one of them had a BB gun, this was a little while back from what he said. He did tell me, let's see how I put this in my notes, he said that he was told by someone that Stephanie had told someone that the person who did this was about the same build as he was, that's what he told me in the truck that morning. That's one of the last things he said before I pulled back around to the door to let, to drop him back off. When I pulled up, he opens the door to get out, he's about half in and half out of the vehicle and he said, oh by the way, when you look at her phone, he said when we looked at her phone, we would see where the two of them were arguing about her engagement ring being lost. He also said that he had not always been the most honest with her, that there was nothing going on right now and he got out of the car and closed the door before I could respond to anything that he said.

Q Based on that conversation, what did you do?

A I came back to the sheriff's office with the permission to search and gave it to Investigator Walsh and told him that here's this, but we're not going to use it. I told him what

was just said and all, and I said we're going to do a search warrant now to go into the phone instead of that.

Q Okay. And without rendering an opinion, but based on your training and experience, why did you say that to Investigator Walsh?

A For the amount of time that Mr. Batchelor and I were together in the vehicle, and he knew what I was there for and the questions I was asking him about her having an affair, anybody he knows, without it coming up earlier and the way it came out as a, oh by the way, as he was getting out of the car, in my mind, he just became a suspect.

Q I want to direct your attention now to January the 10th of 2016. Did you obtain a search warrant for Mr. Batchelor's phone on that day?

A Yes.

Q And that phone had been taken into evidence at that time?

A Yes.

Q The investigation's ongoing, and then on January the 27th, did you have cause to participate in a search warrant that was executed at the Batchelor's residence at [REDACTED] Reidville Road?

A I did.

Q Can you tell the members of the jury about coming to the residence and what you observed upon arrival?

A Prior to getting to the residence, I contacted Stephanie's father, knowing that there was a key pad on the left side of

the garage door that you can put the code in to get in in case we needed it, and he gave me the code before we ever went. When we arrived, Mr. Batchelor's truck was in the driveway in front of the garage, but the garage door was closed. So I put the code in, we had the search warrant in hand for the residence, so I put the code in for the garage and the garage door opened. Inside the garage was a minivan that was parked there.

Q Hold on one sec. I want to show you a couple of exhibits.

MS. WELLS: May I approach, Your Honor?

THE COURT: Yes, ma'am.

Q I'm going to show you what's been marked for identification purposes as State's 29, State's 30, ask if you recognize those?

A I do.

Q Alright. What's State's 29?

A That's a picture from the 27th of January 2016 showing Mr. Batchelor's vehicle in the driveway.

Q Okay. And is the garage door open or closed?

A It's opened.

Q Alright. Fair and accurate depiction of how you observed it after you opened the garage door on the 27th of January 2016?

A It is.

Q Alright. Showing you State's 30, what's State's 30?

A It's the picture, this is a picture of the front of the minivan and it's inside the garage on the morning of the 27th.

Q Okay. Fair and accurate depiction of the front of the minivan as you observed it that day?

A It is.

MS. WELLS: Your Honor, I ask to admit these into evidence with permission to publish.

MR. GROSE: No objection.

THE COURT: Without objection, they are admitted.

(Whereupon photos were submitted as State's Exhibit Numbers 29, and 30 for identification and entered into evidence.)

Q Okay. Before I go on, I don't want to chop up your testimony too much, but I do want the jury to understand how the sequence of the photos, what we're talking about. Showing you what's been admitted into evidence as State's 29, what are we looking at here, Lieutenant Gary?

A Alright. This, these pictures had been taken after we secured the residence making sure the search warrant had been secured. That's where the garage door is open showing the van inside with the truck where it was when we arrived, nothing being moved prior to the pictures.

Q Okay. So this is how the truck appeared to you as you arrived on scene?

A Correct.

Q And the minivan inside the garage, is that right?

A Yes.

Q Okay. Showing you State's 30, this is the front of the minivan, is that right?

A It is with the license plate Sydney on the front.

Q So you open the garage, you see this minivan, what do you do?

A First thing I did was go to the door up the ramp. You've seen the pictures before to go in the residence, the door's locked. I knock on the door, and I see Mr. Batchelor coming down from the back left bedroom, master bedroom, coming up. And when I see him coming up, I'm trying to remember, I think he's got on a shirt, yes, he was putting on a shirt when he was coming up the hallway. He came to the door, I asked if anyone else was there, he said that Sydney was, so I kind of had him step on outside where the other investigators were. I went into the residence just looking at rooms as I kind of went by, knowing where he came from the back bedroom, that's where I was headed towards. When I get back to the back left bedroom, around, there's a, when you go in, there's a dresser or something right there to the right, but the bed here, bathroom around the right. I could tell, I called out and Sydney said she was in there, I told her I needed her to come out, and she said that she needed to get some pants on. There was a drawer kind of open with a pair of shorts right there and I said well,

grab those shorts, and she had on a men's button up shirt, that was the only thing she had on when she slipped on the shorts, and I had her step out of the room into the kitchen area where we were.

Q I'm going to show you what's been marked for identification purposes, is State's 36.

MS. WELLS: May I approach?

Q Do you recognize State's 36?

A I do.

Q What is that a picture of?

A That's a picture of the female that I met by the name of Sydney that's standing in Mr. Batchelor's residence.

Q Okay. And does Sydney have a last name?

A If she does, I don't remember.

Q Alright.

A I can probably find it in my notes.

Q If it would refresh your recollection to look at your notes. Is this a fair and accurate depiction of how she appeared to you once she came out of the bedroom on January the 27th of 2016?

A It is.

Q Alright.

MS. WELLS: Your Honor, we'd offer State's 36 at this time with permission to publish.

MR. GROSE: No objection.

THE COURT: It's admitted.

MS. WELLS: Thank you.

(Whereupon a photo was submitted as State's Exhibit Number 36 for identification and entered into evidence.)

A I can't find it.

Q If you, if, if ---

A It may be here somewhere.

Q If it recollects ---

A I talked to her a few times.

Q --- you just speak out and let me know, okay? So showing you what's been admitted into evidence as State's 36, that's how she appeared to you that day after she put some pants on?

A Yes, ma'am.

Q Alright. Now, Investigator Gary, y'all, sorry, Lieutenant Gary, you were there on a search warrant, and you did some, and you did walk back through the residence that day, is that right?

A Yes, ma'am.

Q Okay. I'm going to show you a set of photos, once Mr. Grose has looked at them.

MR. GROSE: Your Honor, may we approach?

THE COURT: Sure. Let's go to the side, get away from the microphone.

(Whereupon, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

Q Showing you, first I'm going to show you what's been marked for identification purposes is State's 31, do you recognize that?

A I do.

Q Okay. And what are we looking at at State's 31?

A It's a holster in the front seat of Mr. Batchelor's truck.

Q Alright. Showing you then State's, this is going to be State's 32 and 58, do you recognize those?

A I do. These are two different pictures of the inside of the glove box of Sydney's van ---

Q Alright.

A --- that was taken when it was in the garage.

Q Okay. And you said there was two different pictures. What are we looking at in State's 32?

A In 32 it seems like a coupon book with a pistol to the left side of that.

Q Okay. State's 58?

A Same.

Q Okay. And were both of those items collected?

A They were.

Q As well as that empty holster in 31?

A Yes.

Q Okay. Showing you State's 33.

A Yes. This was taken the day, on the 27th from the search warrants, a pistol from the shelf inside the kitchen above the refrigerator.

Q Okay. And then showing you State's 34 and 35.

A Yes.

Q Okay. What's 34?

A 34 is the pistol up on, I believe, that's the Taurus. I believe that's the one that came out of the van. Yes. That's, that's the picture of the pistol and it was taken at the residence that day, I know that, that picture was.

Q And 35?

A Same day, picture of the pistol that was taken at the residence.

Q Have they been made safe in these photos?

A Yes.

Q Okay. And then I'm going to show you 37 and 38. Do you recognize those?

A These are pictures of, so where the driveway comes up, there's a detached garage, shop area, like the house is here, the driveway is in the back, it would be opposite end of the garage door. You can see in the pictures here if you look straight that way, these are the pictures of the inside of that shop.

Q There are all fair and accurate depictions of the Evidence that was collected and that you observed on

January the 27th of 2016?

A Yes.

Q Alright.

MS. WELLS: Your Honor, we would offer with the understanding there's an objection to two, 31, 58, 32, 33, 34, 35, 37, and 38. And I'm going to beg the Court's indulgence because I think I'm missing an exhibit. But we would offer all those subject to Defense objection.

THE COURT: Subject to the Defense's objection.

MR. GROSE: Yes, sir.

THE COURT: They're admitted.

(Whereupon photos were submitted as State's Exhibit Numbers 31, 58, 32 through 35, 37, and 38 for identification and entered into evidence.)

MS. WELLS: I'm sorry, Judge, I, we, I didn't ---

JUROR: Was she just saying numbers, that's all I heard.

THE COURT: I couldn't ---

MS. WELLS: A juror asked a question, I don't want to answer directly, Judge.

JUROR: Was she just rattling off numbers, that's, I didn't see her what she was saying, so.

THE COURT: She is just reading; she's reading the numbers.

JUROR: Okay. That's what I thought I heard,

but I wasn't a hundred percent sure.

THE COURT: Thank you, sir. And again if any juror doesn't hear something, please raise your hand for me, okay? She was reading numbers into the record.

JUROR: Thank you.

MS. WELLS: And Judge, how, how long, I just wanted, I didn't want to get into ---

THE COURT: About ---

MS. WELLS: --- something ---

THE COURT: About ---

MS. WELLS: --- that's going to take a few minutes --

-

THE COURT: We're going to take our afternoon break about 10 minutes til, and that's going to be our afternoon break after we do that, we're going to conclude today ---

MS. WELLS: Yes, sir.

THE COURT: --- with, with testimony.

Q Alright. Lieutenant Gary, you said there was a, showing you State's 31, where, you said there was an empty holster here, is that correct?

A Yes, ma'am. Bottom left corner of the picture there's a magazine that's in the passenger side of the seat, holster sitting there.

Q Okay. And then showing you, you talked about an item that was recovered, two items recovered from the glove box of the

minivan, how, was that unusual how the glove box in that minivan, at least it was different to me, how was the glove box in that minivan set up?

A I've seen a couple where you got them stack to stack or you open one then, kind of, another one opens up, and that's kind of how this one was. Kind of like two separate compartments.

Q Okay. I'm going to show you what's been admitted as State's 32. And there's a, I think it's just the way the light is set up, there's just a glare that I can't seem to, kind of get it where you can actually see, there we go, that may help. What are we looking at in State's 32?

A Not quite halfway down, about a third of the way over from the left you can see the back of the slide of the semi-automatic pistol that's stuck in the glove box.

Q Okay. And that's kind of gray in color, is that fair? I mean, I know it's kind of hard to say with this ---

A It's a two-tone kind of gray with a black frame.

Q Okay. And then I'm going to show you State's 58, that's easier to see.

A Yes.

Q What are we looking at here?

A A cell phone that was in the glove box of the van.

Q Okay. I want to show you State's 34. What are we looking at in State's 34?

A Pistol that was recovered that day.

Q Alright. And then State's 33, there we go.

A Okay. That pistol was recovered that day. That's the shelf when you come in the, from the garage, the door that leads to the kitchen, refrigerator, the hallway straight ahead. The refrigerator's to just the left of that in the kitchen, the shelf above it is where that pistol was sitting.

Q State's 35.

A That's the pistol that was sitting there.

Q And then you also talked about the shop in the back, is that right?

A Yes, ma'am.

Q Okay. I almost wish I could show you these at the same time, but I'm going to show you separately. Showing you State's 37 first, what are we looking at here?

A The inside of that shop.

Q Okay. What kind of items did it contain, based on your personal observation?

A Personal possessions, some tools, things of that nature.

Q I'm showing you State's 38.

A More of the personal stuff stored in there.

Q Did it seem to be of an automotive nature or various things?

A No, there was kind of various, there was tools and things in there.

Q And all those items that we talked about were recovered and taken and placed into evidence, is that right?

A Yes, ma'am.

Q Now, you didn't respond out to where the vehicle was recovered, is that correct?

A I did not.

Q Are you aware based on your supervisor status whether or not the dive team was called in out there?

A It was.

Q And did they have any, what, what were they called in for?

A So where the vehicle was positioned, you've got the, Reidville Road crosses the South Tyger River, and there's a guardrail that runs along that. The vehicle was just right there near the guardrail off the road a little bit where it had hung up on some undergrowth like a berm or whatever, stuck, it was running in gear when it was located. So as part of the investigation, with the river being right there, we had the dive team go out and see if there's any evidence that might have been tossed in the river, we searched that.

Q Any luck?

A No, unfortunately not.

MS. WELLS: May I have a moment, please, Your Honor?

THE COURT: Yes, ma'am.

Q And investigator, I mean, sorry, Lieutenant Gary, from the residence, as part of your investigation, did you run, or

preparation for trial, perhaps, did you drive your vehicle from the house location to the location where the Ford Explorer in this case, Stephanie's Ford Explorer was recovered?

A I did.

Q Okay. And how far is that?

A It was right at one point five miles.

Q Alright. And how long did that take you, do you recall?

A Just a tad over three minutes and getting caught by the red light at 290 and Reidville Road.

Q Alright. And what about a trip back?

A So I took a corporal from the tracking division with me, he was in uniform with his vest and everything on, we left in my vehicle from the driveway and went up, again, I don't remember the road that connects to Reidville Road, the name of it, but up that road, there's a corner house and then left to the spot where the car was. Sat there for just a minute before he gets out of the car and then he walked from there all the way back to the driveway. He only ran twice and that was just crossing Reidville Road. But he walked it and the total time from driveway there and then for him to get back was just a tad over 25 minutes.

Q Okay.

MS. WELLS: Your Honor, those are the questions I have for Lieutenant Gary at this time.

THE COURT: I don't want to break up your testimony, so I want to take a break.

MR. GROSE: Alright.

THE COURT: Okay. Mr. Foreman, ladies, and gentlemen, we're going to take our afternoon break, we've run a little longer than I usually like to do. This is going to be a good 20 minute or so break; this is the time to refresh yourself and take the afternoon break. And then when we come back, we will finish today with this witness's testimony. Let me ask this, and I hope the answer's no, but is there anyone who smokes and would like to smoke? Anyone who smokes and would like to smoke?

(No response.)

THE COURT: Okay. Very good, thank you. It's personal to me, and these people have already heard this before, but it killed my sister at age 48, lung cancer, only smoker we had in the family. So I'm glad you don't smoke. Mr. Foreman, ladies, and gentlemen, if you go out for your afternoon break, don't talk about the case, don't think about the case, you're at work here and the last thing you want to do on a break is talk about work.

(Jury exiting.)

THE COURT: Lieutenant, you may leave the stand and refresh yourself, don't talk to anyone about your testimony.

MS. WELLS: And Judge, I think Mr. Grose wants

to put his objection on the record.

THE COURT: We are indeed. I'm going to get the lieutenant off the stand. Yes, sir, Mr. Grose, you have the floor.

MR. GROSE: Yes, sir, Your Honor, at this time, we had a sidebar before State's 31 and 38 were admitted into evidence and we had objected under rule 403 and asked the Court to exclude these. We didn't have a problem with the photographs except there is a confederate flag showing in, in both of them. Actually, maybe more than one showing in 38.

THE COURT: Solicitor?

MS. WELLS: Judge, as I stated at sidebar, these are just documenting the residence as, well, the vehicle and the shop as it appeared on that day to the investigators, the State can't help that that was part of those photos, so and you know, I mean, I don't think that it's obvious in either photo that it's there unless you're really looking for it, so.

MR. GROSE: I think it is pretty obvious, but they are what they are, they speak for themselves.

THE COURT: Yes, sir. And the objection is overruled. They are what they are, they speak for themselves, and presumably it's his flag, there's no allegation that anyone else put it there, so it is what it is. Alright.

MR. GROSE: Two things, I just want to be kind of careful about. It seems like during the course of the day

we've had more and more law enforcement coming into the room than we have, at one point we had three sitting by us and nobody sitting on the other side of the room. You know, there's two more officers in the back. I understand it's a public Courtroom and it's a case of some interest in, in, in Spartanburg, but I want to be careful that we don't get, you know, sort of a, a show of force in the Courtroom. And what I'm talking about is officers, I'm not even including Lieutenant Gary who is here as a witness. So I ask to be careful about that. And I'd also, I noticed that Ms. Wells has been putting all of her, her notes and stuff on the jurors' rail and we're getting a little concerned that, particularly number 78 is probably, I don't know if he can read her notes, but seeing all the photographs before or at least some of them, whichever ones are on top before they get admitted. So we just want to kind of be careful about that if we can.

MS. WELLS: Judge, I'm using a folder, and I'm keeping photos generally in the folder until such time and then if I'm not using the notes, they're face down, I'll be ---

MR. GROSE: I just want to be careful.

THE COURT: I understand, but from ---

MS. WELLS: I'll certainly be mindful of it, Judge.

THE COURT: I know you will. And from where she was standing over there, and I'm watching 78 carefully there just to make sure he doesn't raise his hand or something ---

MR. GROSE: Alright.

THE COURT: --- and I don't think he's, I think he's fine.

MR. GROSE: Alright. I think so too, but I do know that because of, you know, what his situation, he does sometimes turn his head and look in her direction when she's speaking, and I understand why he's doing that. Like I say, we just want to be careful, that's all.

THE COURT: Ms. Wells will be careful. And I don't think there's an excessive show of force. We have detention facility officers here as they are at every case, and Officer Pridgeon is assigned to me. And when I go down the hall, he goes down the hall, and when I come back, he comes back. And the other officers are in the back, and, but there's only two of them, so there's not, and I understand the objection, I do, I understand, but first of all, we don't have a police officer who's, who is a decedent or a victim, and so we don't have that show of force where we've got 15 or 18 officers in uniform.

MR. GROSE: Well, I'm getting a little bit more concerned about the, sort of the Deck versus Missouri consideration. I realize it's not the same thing as shackles, but it gets into, you know, sort of, can be prejudicial to the Defendant if they believe that, you know, all these officers are here just for him, so.

THE COURT: I understand. Okay. Anything else?

MR. GROSE: No, sir.

THE COURT: Alright. We'll be in recess for a little bit, see if you can take care of some business.

(Off the record.)

THE COURT: Okay. Are we ready?

MS. WELLS: State's ready, Your Honor.

THE COURT: Mr. Grose?

MR. GROSE: Yes, sir.

(Jury's entering.)

THE COURT: Mr. Foreman, everybody good?

MR. FOREMAN: Yes, sir.

THE COURT: Everybody's good. Okay. Mr. Grose?

MR. GROSE: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. GROSE:

Q Lieutenant Gary, when we left off, I think one of the last things that she was asking you about was the distance between the Bachelor residence and where the car was found?

A Yes, sir.

Q And I think that you said that you measured that yourself?

A Yes, according to the odometer in my car was approximately one and a half miles.

Q Okay. Well, approximately, is it one and a half miles,

is it more, is it less?

A I didn't do tenths or hundredths, but, I didn't do hundredths or thousandths, but when I reset the trip odometer on my car, right there at the driveway, it was, it showed one and a half on my car.

Q Okay. Alright. So we're pretty certain that it's about one and a half then?

A Yes.

Q Okay. And you said that it took three minutes for you to drive that one and a half miles as far as the traffic lights and everything that you encounter on a trip of that distance?

A Yes.

Q Okay. And you said that you had a, a deputy who did a walk back and that was 25 minutes?

A No. The whole time, I started the timer, the whole time was like 25 minutes, and I think 15 seconds from the time we left until he got back to my car at the driveway again.

Q Okay. So it took him 25 minutes, 15 seconds?

A No, sir. It took three minutes to drive ---

Q Okay. I ---

A The total time was that.

Q I'm with you now, so the total time to drive down there, wait for about a minute and drive, and him to walk back was 25 minutes, 15 seconds?

A Yes, sir.

Q Okay. Now, she had asked you some questions about, you know, in your supervisory capacity were you aware that the, the dive team was involved?

A Correct.

Q Alright. And we had some questions earlier about how an investigation is kind of a team effort and while I understand that you're overseeing, supervising everything, you didn't actually, yourself, do every task in the investigation, is that right?

A Correct.

Q Okay. And one of the ones, for example, you have people like we just talked about with the dive team that come out and have that role in it?

A Right.

Q Alright. And I think you said that you didn't go to the location where Stephanie's car was found that night, but other people went there that night?

A Right.

Q And if I understand the investigation correctly, the people who went there, when they got there, the car was running?

A Yes.

Q And they turned it off?

A Yes. I believe that a trooper turned it off.

Q A trooper turned it off, right. And the, they

also actually had a dog team come out that night?

A Right offhand I don't recall.

Q Alright.

A It's possible.

Q You don't recall that the dog never committed to a trail?

A I don't recall.

Q You don't recall. Okay. Alright. I'm sure you are aware though that Stephanie's car was taken into evidence?

A Yes.

Q By that, it was taken from that location, I'm not sure where, but someplace where it would be secure with the sheriff's department so it could be processed?

A Yes. Our impound office is located at 290 Broadcast Drive.

Q Okay. And that was where it was taken?

A Yes, sir.

Q Alright. And after it was taken there, it was processed?

A Correct.

Q Photographs and more?

A Right.

Q And some of the evidence that was collected was, was DNA evidence?

A Correct.

Q And by that, what, how that's done these days is Your take a swab or something and in this case, you rubbed

it on the steering wheel, right, or somebody did, not you necessarily?

A Right. It's not me. It depends on the type of processing that's being done.

Q Okay.

A But if you're talking about the steering wheel, you are correct. You take a swab and swab the steering wheel.

Q Alright. And, and there was a couple swabs, you're aware from the investigation there was a couple swabs taken from the steering wheel?

A Yes.

Q Okay. And again, I know you didn't do everything, but you also were aware that gunshot residue samples were collected in this case?

A Correct.

Q And some of those samples came from Jonathan?

A Yes. One test on him, one on Stephanie.

Q Alright. And Jonathan cooperated in giving you his samples?

A Yes.

Q And of course, Stephanie was in a situation where she was needing medical attention, right?

A Correct.

Q But y'all were still able to get the samples from her from the hospital?

A Right.

Q And it's important with gunshot residue that you try to get the samples sooner rather than later because the evidence could be gone?

A It's very easy to destroy.

Q Right. Okay. And so the, in this case, I believe the DNA evidence was sent to the crime lab in Greenville for examination?

A Yes, sir.

Q And I think that the gunshot residue was sent to SLED, the State Law Enforcement Division, for examination?

A Correct.

Q Alright. And there was also, I think, two projectiles that were collected, right?

A Yes, sir.

Q Alright. One that you talked about earlier and the photographs that was at the, at the residence?

A Yes, sir.

Q And a second one that, I'm assuming, you got from the doctors at the hospital?

A I collected it from Dr. David Wrenn in Spartanburg, the pathology department.

Q Alright. He's a pathologist at Spartanburg Regional Medical Center?

A Correct.

Q Alright. And those projectiles were sent to the crime lab over in Greenville?

A Yes.

Q Okay. Going back to the timing for a second. The, the call, what time did that come in?

A I don't recall.

Q You don't recall?

A No, sir.

Q I'm going to show you on my computer, does that look like the incident report, front page of the incident report?

A Yes.

Q Do you see where it says when reported?

A Yes, sir. But if you have the CAD print of those, I know it would be exactly accurate.

Q Okay.

A I know what's on the incident report, but I prefer the CAD.

Q Alright. But that says 21:19 on the incident report?

A No, sir. It says 22:19.

Q I'm sorry 22:19?

A Yes, sir.

Q I'm sorry, my mistake, 22:19, so that would be 10:19?

A Yes.

Q Okay. Alright. You were also asked some questions about, you know, or as a part of your testimony was some of the things

that your investigative team looked for, tried to collect, and that sort of thing, right?

A Yes.

Q Alright. And you talk about phones?

A Yes.

Q And various video tape like from some of the businesses, is that right?

A Yes, sir.

Q Alright. And the, you were able to, or somebody in the part of the investigation was able to confirm that there was a phone call between Jonathan and Stephanie that night, right?

A Yes, sir.

Q And I think that y'all were able to confirm that that call began at 9:23 pm, is that correct?

A Couldn't tell you right offhand.

Q I'm going to show you on my computer, this is one of the documents out of the file. You see where it says that the phone call began at 9:23 pm?

A Okay. I'm not sure which report that is, but I see it, yes, sir.

Q We can, it's Officer Hutchins' report, it looks like?

A Correct.

Q And, and he was part or, Mr. Hutchins is part of your team, right, Deputy Hutchins?

A He was, he was a lieutenant at the time, my position now.

Q Okay. And he determined that the call started at 9:23 and lasted approximately 13 minutes?

A If that's what he put in here, yes, sir.

Q And then that would take it to 9:36?

A Yes, sir.

Q Okay. Alright. And you have no reason to question the, he, he put in, you would trust him to put in what he determined was accurate?

A I, I would trust his report whether he saw it on the printout from the phone records or someone told him that, I'm not sure. Because it says we located it, so I don't know if he actually read it or ---

Q Right. But he got that information from somewhere?

A Correct.

Q Okay. Going back to the night where the, the night that this happened going into the next morning, obviously, if this happened and was reported after 10:00, 10:19 at night, it takes you a while to get everybody out there to process things?

A It can. It depends on the, whoever's in the process that's working that shift or someone else, we have a forensic unit 24 hours a day.

Q Alright. I guess what I'm getting at, though, when something happens that late at night, it's not uncommon for that investigation to roll over into the early morning hours of the next day?

A Not at all, if not going into the day after that.

Q Right. Right. So when we're talking about some of the things that happened on January 8th, 2016, in fact, we may even be talking about things that happened very early while it's still, before the sun comes up?

A Yes, sir.

Q Okay. And a lot of the, I guess, the first thing was is to, and we heard the officer, the deputy this morning, the first thing was was to get medical attention for Stephanie, right?

A Right.

Q Then you have to kind of clear the scene, make sure there's no other dangers there, like she testified about?

A Yeah. In a perfect case that's going on at the same time because we can't help somebody if there's still a threat behind us.

Q Right.

A But yes. Scene security and helping victims are your top two things.

Q Alright. And then you had to make sure that these children were situated, and then y'all did that?

A Absolutely.

Q Okay. And then you made a comment earlier about one photograph had to be taken before the other photograph because the evidence marker was in one of the photographs?

A Correct.

Q Alright. And that probably did not come out very clear, but if you have a piece of evidence, a lot of times you're going to photograph it before you place the evidence marker?

A The entire scene is photographed and as you're either during the process of doing that or once that's done and you walk through with your crime scene people, you start looking, okay we need to start logging or making note of what we want to take as evidence. So then it's, you know, kind of, maybe as you approach it or what you see, put a placard down to number it and go from there so you can, your photos then will record the location of item number whatever, so you see where it's at in the other pictures.

Q Right. And so you, you, typically, there might be the first round of photographs and then you put down the evidence marker and you photograph that?

A Usually it's all ---

Q Or at the same time?

A Right. Normally, you do your photos, place your markers, do your photos again. Then at that point, you may find something else that you didn't see before, so it's just an ongoing process.

Q And the purpose of placing those markers is that that marker then becomes associated with that piece of evidence?

A Correct.

Q And you can document, it's clear where you found that piece of evidence, right?

A Right.

Q And then as that piece of evidence moves through the investigation process, you're able to track it?

A Hopefully.

Q Hopefully, right. So you know, you know that, for example, a piece of evidence found at marker A, and I'm just using that as an example, you can track that as to that piece of evidence was what got tested later on at the crime lab?

A Right.

Q Alright. And that's sort of the purpose of doing that?

A Yes.

Q Okay. There was some questions about the white substance on the hood of the truck that night. Was any of that collected?

A I don't, I don't recall if it was collected or not. You know, it just, like I said, it seemed, just odd.

Q Alright. So you took a picture of it?

A Correct.

Q I don't remember seeing an evidence marker by it.

A Wouldn't surprise me if it wasn't just because it was just, it was a powder.

Q Okay.

A It wasn't anywhere else; it didn't seem to serve a purpose.

Q Okay.

MR. GROSE: Beg the Court's indulgence for a moment.

THE COURT: Yes, sir.

Q Alright. The night of or going into the next morning, the 7th, 8th of January, there were guns that were photographed, is that right?

A Yes.

Q None of those were collected that night?

A No.

Q The purse was photographed?

A Yes.

Q Purse wasn't collected that night?

A I know there were contents taken, I don't know if the whole purse was taken or not.

Q Okay. But that would probably be reflected somewhere in the investigative materials?

A Yes.

Q Okay. The, I think you, you testified earlier that you overheard Jonathan saying that Stephanie kept a, or had a 38?

A Yes.

Q And that I think also as a part of that conversation, Jon said that the 38's normally kept in her car?

A I don't remember if it was the car or purse.

Q Okay. You don't remember about it being in the console?

A Not anything from that night, no sir.

Q Okay. Her 38, Stephanie's 38 was never recovered?

A No, it was not.

Q Okay. You, you talked about trying to get the video tape from some of the stores, right?

A The only one at the time I knew of having any outside cameras was the, I think it's a Kangaroo or Circle K at the corner of 290 and Reidville Road.

Q Alright. And it wasn't working?

A No. The outside cameras were not.

Q And did you check with the CVS?

A From prior cases, no. From prior cases working robberies and all at that store, I'm pretty sure that that's the only one at the time that had any outside cameras. I know at least one other place now does, the car wash down there.

Q Okay. Alright. So you didn't go to the CVS, you just assumed they weren't going to have it?

A Didn't see any cameras on the outside, typically CVS does not.

Q Okay. Alright.

MR. GROSE: Beg the Court's indulgence again.

Q You did get video from the 7-11, right?

A I think inside.

Q (Nonverbal response).

A I think inside, later.

Q Alright. You didn't get video from the outside to see what had been driving by or not driving by?

A I don't recall any outside video.

Q Okay. Alright.

MR. GROSE: I think that's all I have for right now, Your Honor.

THE COURT: Okay. Anything?

MS. WELLS: May we approach briefly?

THE COURT: Sure.

MS. WELLS: Thank you.

(Whereupon, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

MS. WELLS: Just briefly, Judge, I think I just have a couple questions.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MS. WELLS:

Q Investigator Gary, I mean, Lieutenant Gary, sorry, we've obviously both done this for far too long. On cross exam, you were asked about your knowledge of the forensic evidence in this case?

A Yes.

Q Did any of that evidence point to the, directly point to the Defendant in this case?

A No, it did not.

Q The projectile taken, that you recovered from Dr. Wrenn at the hospital, where did that come from before it was in Dr. Wren's hands, do you now?

A Stephanie's head.

MS. WELLS: One moment, please. Your Honor, those are my only two questions.

THE COURT: Anything as to those two questions?

RE CROSS EXAMINATION

BY MR. GROSE:

Q Just in following up to her questions. She asked you whether or not any of the evidence that was processed pointed directly to Jonathan Batchelor, you remember that question?

A I do.

Q Alright. And you said it did not?

A Correct.

Q And, and by that, there was no gunshot residue on Jonathan's hands?

A No. It's easy to destroy.

Q Okay. The DNA that was collected out of the car, there was part of the DNA, the main contributor of the DNA was Stephanie Batchelor, is that right?

A Yes.

Q And there was a minor contributor to that DNA wasn't there?

A Yes.

Q And that was, that minor contributor was a man, is that right?

A A male.

Q A male.

A Male.

Q Male.

A You don't know the age by the DNA.

Q Oh, I, okay, it was male?

A Correct.

Q It was compared, that male DNA was compared to Jonathan's DNA, wasn't it?

A It was.

Q And that male DNA is on the steering wheel of Stephanie's car did not match Jonathan?

A No, correct.

Q Correct. And earlier when I was questioning you before, you said that a trooper had, the car was running, the trooper had turned off the ignition, turned off ---

A That's my understanding, yes, sir.

Q Alright. And that male DNA sample was compared to that trooper's DNA?

A Yes, sir.

Q And that male DNA sample that was on the steering wheel did not match the trooper?

A Correct.

Q And that male DNA was put into what they call the CODIS system, wasn't it?

A Yes.

Q And what the CODIS system is is a place that you send a DNA sample from evidence to be potentially matched with somebody else in the future?

A Yeah, I said yes on that. I'm not a hundred percent sure on that, though. If it was put in, there was no hit on it.

Q Okay. And so what we're, what we're telling this jury is is that there was a male DNA sample on the steering wheel of Stephanie's car, right?

A Yes, sir.

Q That's not Jonathan's?

A Yes, sir.

Q It's not the trooper's?

A Yes, sir.

Q And we don't know whose it is?

A Correct.

Q Thank you.

THE COURT: Okay. Officer, if you'll step down, please. Ladies and gentlemen, let me meet with the lawyers about time because it's, we're 5:00 and we're getting ready to recess for the day. Let's see what the lawyers want.

(Whereupon, a bench conference was held in the

presence of the jury but out of the hearing of the jury.)

THE COURT: Mr. Foreman, ladies, and gentlemen, I've conferred with the lawyers, we have a matter of law to take up in the morning. As I told you, that does not concern you, it's nothing that we are trying to hide from you, it's simply that I'm going to have to make a ruling on something in the morning and it's going to take a little bit of time. And I am not going to have you sitting back there doing nothing and wondering why we're not working because we are going to be working. So I'm going to ask you to be here in the morning at 10:30, I anticipate being through before that, but I don't want any hiccups in it, and I don't want you sitting back there, so I'm going to ask you to be here at 10:30. We're going to be here at 8:00, but I'm going to ask you to be here at 10:30 and we're going to take up that matter in the morning. And it's going to require a little bit, I'm going to have to take some little bit, time to think about it, and so I'm not going to have you sitting back there wondering what's going on, okay? So I will ask you to be at the Courthouse by 10:30. Anything from the State or the Defense?

MS. WELLS: Nothing from the State, Your Honor.

MR. GROSE: No, sir.

THE COURT: Okay. Very good. Mr. Foreman, if you'll take your jury out to be dismissed for the evening, have a good time this evening.

(Jury exiting.)

THE COURT: Okay. We're going to be in recess until in the morning at 9 am in the Courtroom. I get here at 8:00, okay. If the lawyers need to talk, if we need to do anything, I'm available at 8:00, both of you have my cell phone number.

MS. WELLS: Yes, sir.

MR. GROSE: Yes, sir.

THE COURT: But at 9 am, I want to get started.

MS. WELLS: We'll be ready, I've already notified Lecourse [sic] that we need Mr. Tiller here tomorrow. I did that at lunchtime today, so they should be anticipating any issues with transporting the parties separately and also making sure that any issues around that so he should be here.

MR. GROSE: And he's going to get shaved in the morning, too.

MS. WELLS: Oh, as to the Defendant?

MR. GROSE: Yeah.

MS. WELLS: I'll certainly relay that to Lieutenant Lecourse [sic] as well.

THE COURT: Well, he can, whatever time he's got to get up and shave, I get up and shave, so get him up and shave, too, get here.

MR. GROSE: Well, but he has to get a razor from them, that's the difference.

THE COURT: Well, okay. I'm sure, I'm sure Jeff or somebody make sure that he, he gets a razor to shave his face with if he wants to shave, or he can shave tonight, I don't know, but anyway, we're going to get started on time in the morning. Okay. Thank you everyone, see you in the morning.

(Whereupon, the trial will resume the next morning at 9:00 a.m.)

November 2, 2021

THE COURT: Everybody ready? Okay. Mr. Tiller. Swear him in. Good morning, sir. Right there. She's going to come swear you.

MADAM CLERK: You can put your left hand on the Bible. Do you swear or affirm that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth so help you God?

MR. TILLER: Yes, ma'am.

MADAM CLERK: Thank you.

THE COURT: Thank you, sir. You may have a seat right there please.

MS. WELLS: And Judge, if the Defense doesn't objection, is it possible, and the deputies don't object more importantly, honestly, could we remove the hand shackles so that I can pass his plea agreement to him or does the Court want to ---

THE COURT: I'm going to leave that entirely

up to law enforcement, that's up to law enforcement what they do.

DEPUTY: We can take the hands off, Judge.

THE COURT: Okay. Sir, if you'll adjust the microphone and if you feel comfortable, you may lower your mask. Sir, tell me who you are and spell your last name for my Court reporter, please.

MR. TILLER: Dustin Tiller, T-i-l-l-e-r.

THE COURT: Thank you. Solicitor?

MS. WELLS: Thank you, Your Honor.

DIRECT EXAMINATION - Proffer

BY MS. WELLS:

Q Mr. Tiller, where do you currently live?

A Yazoo, Mississippi.

Q Yazoo, Mississippi? And where in Yazoo, Mississippi, specifically, do you live?

A Federal penitentiary.

Q Alright. And why are you in the federal penitentiary in Yazoo, Mississippi?

A Conspiracy to drug trafficking.

Q Okay. And what kind of drug?

A Meth.

Q Alright. And when did you, do you remember when you entered your plea agreement, these are federal convictions, correct?

A Yes, ma'am.

Q Or a federal conviction. Do you remember when you entered your plea agreement?

A No, ma'am.

Q You do not? Would it refresh your recollection to look at your plea agreement?

A Yes, ma'am.

Q Alright. We're going to do that in just a second. Okay. You were transported here for the purpose of this trial, is that right?

A Yes, ma'am.

Q And do you have an attorney?

A Yes, ma'am.

Q What's his name?

A James Bannister.

Q James Bannister, people call him Jim Bannister, too?

A Yes, ma'am.

Q And is Mr. Bannister present here in the Courtroom today?

A No, ma'am.

Q You don't see him?

A I don't see him.

Q Have you talked to him about being here today?

A Yes, ma'am.

Q And does he know that you're here today?

A Yes, ma'am.

Q Alright. Now, Mr. Bannister represents you now, did he represent you at the time that you entered your plea agreement?

A Yes, ma'am.

MS. WELLS: And I've shown this to Defense counsel already, I've marked it as Court's Exhibit 4, this is the un-redacted version of Mr. Tiller's plea agreement. We will enter the redacted version at trial. May I approach the witness?

THE COURT: Yes, ma'am.

Q I'm going to stand over here so the Court reporter can hear us, okay? Okay. I'm going to have you take a look, I'm showing you what's been, I think introduced into evidence without objection as a Court's Exhibit Number 4. I'm showing you that. Will you take a look at this. I'm going to specifically refer you to the last page and tell me if you recognize this document.

A Yes, ma'am. It's my plea agreement.

Q Okay. Will you look at the last page for me? Actually, let's look at the second to last page. Okay. Do you recognize that signature?

A Yes, ma'am. That's my signature.

Q Your signature. What date did you sign it?

A March 16th, 2017.

Q Okay. Look back to that front page you were looking at, and what date does it say it was entered?

A The 17th of March.

Q Alright. And this is the plea agreement you signed back on March 17th, is that correct?

A Yes, ma'am.

MS. WELLS: Alright. Your Honor, I'm offering it now as a Court's exhibit.

THE COURT: Without objection.

MS. WELLS: Thank you.

(Whereupon a plea agreement was submitted as Court's Exhibit Number 4 for identification and entered evidence.)

Q Alright. Mr. Tiller let's talk about this plea agreement. And I'm going to direct you first to this first paragraph. Who was this plea agreement entered into with?

A Andy Moorman.

Q Andy Moorman? And who is Andy Moorman?

A The federal prosecutor.

Q Okay. He was a federal prosecutor in this, in your case?

A Yes, ma'am.

Q Alright. And having you look at page 15 of this document. Is Mr. Moorman's signature up here?

A Yes, ma'am.

Q Alright. And what date did he sign it?

A 3-23-2017.

Q Alright. And you entered a guilty plea to count 1 of your indictment, is that correct?

A Yes, ma'am.

Q And that was for possession of intent to distribute 500 grams or more of a mixture of substance containing a detectable amount of methamphetamine?

A Yes, ma'am.

Q And how much time were you facing in your case?

A Mandatory life.

Q Mandatory life. And why is that?

A Because I had priors.

Q You had prior, at least one, you had two or more prior felony drug convictions, is that right?

A Yes, ma'am.

Q You had a prior state drug conviction?

A Yes, ma'am.

Q For?

A Trafficking.

Q Trafficking. You had a prior federal drug conviction for trafficking?

A Yes, ma'am.

Q Alright. When you signed this agreement with Mr. Bannister, did he go through the entire thing with you?

A Yes, ma'am.

Q And did you want, did he answer all your questions?

A Yes, ma'am.

Q Did you understand all the terms of this agreement?

A Yes, ma'am.

Q I want to direct you specifically to paragraph, let's talk about paragraph 3 first, okay? Did the United States, that being through Mr. Moorman, the Federal Prosecutor agree to do anything for you in paragraph 3? Just take a look at it and tell me.

A Yes, ma'am.

Q What did Mr. Moorman agree to do?

A To dismiss all counts but the one.

Q Okay. The, the top charge ---

A The top charge.

Q --- the first count of the indictment, is that correct?

A Yes, ma'am.

Q Alright. Did you have to do anything to get him to do that?

A Yes, ma'am.

Q What was that?

A Provide substantial assistance to the government.

Q Okay. So let's look at paragraph, also in paragraph 3, do you know what relevant conduct is?

A Like things that's relevant to the case.

Q Okay. And did Mr. Bannister explain that to you?

A Yes, ma'am.

Q Okay. They, they said that any of the other things in your indictment, any of those other counts could be used as relevant conducts against your federal sentencing, did

you understand that?

A Yes, ma'am.

Q Okay. And what did that mean?

A Like anything that was relevant in my case, they could have brought it up at sentencing and give it to the Judge.

Q Alright. Looking now at paragraph 5, and did, look at paragraph 5 for me, did Mr. Bannister explain paragraph 5 to you?

A Yes, ma'am.

Q Alright. And paragraph 5 says the Defendant understands that the matter of sentencing is within the sole discretion of the Court and that the sentence applicable to the Defendant's case will be imposed after the Court considers as advisory the United States Sentencing Guidelines and some other statutory factors set forth in a particular United States Code. Did you understand that?

A Yes, ma'am.

Q What did that mean to you?

A That the Court really ain't, it's up to the Court's discretion to sentence me to my sentence.

Q Okay. And although you might have received an estimate of a sentencing range from your attorney or from the government, from probation, it's a prediction, not a promise and it's not binding on the government, the probation office, or the Court. Did you understand that portion?

A Yes, ma'am.

Q Did you understand that the government retained the right to tell the Court of any relevant facts, to talk to the Court about all of the facts in your case, all of the relevant facts, to address the Court with respect to the nature of the offense, respond to questions raised by the Court, correct any inadequate, inaccuracies or inadequacies in the pre-sentence report, and to respond to anything that your Defense attorney might have said during your entry of plea. Did you understand all that?

A Yes, ma'am.

Q Okay. And what are the sentencing guidelines, do you know?

A The sentencing guidelines?

Q (Nonverbal response).

A Is what the government uses to sentence people.

Q Okay. And it's something a Judge can use, is that right?

A Yes, ma'am, what the Judge uses.

Q You understood, I'm going to talk about paragraph 7 right now. You understood that you had to be, the Defendant agrees to be fully truthful and forthright with federal, state, and local law enforcement agencies by providing full, complete, and truthful information about all criminal activities about which he has knowledge. The Defendant must provide full, complete, and truthful debriefings about these unlawful activities and

must fully disclose and provide truthful information to the government including any books, papers, documents, or any other items of evidentiary value to the investigation. The Defendant must also testify fully and truthfully before any grand juries or any trials or other proceedings if called upon to do so by the government subject to the prosecution for perjury for not testifying truthfully. Failure of the Defendant to be truthful and forthright at any stage will at the sole election of the government cause the obligations of the government within this agreement to become null and void. Further, it is expressly agreed that if the obligations of the government within this agreement become null and void due to lack of truthfulness on part of the Defendant, the Defendant understand some things. Let's talk about the top of that paragraph. Did you understand, did Mr. Bannister go through paragraph 7 with you?

A Yes, ma'am.

Q And did you understand it when you signed this plea agreement?

A Yes, ma'am.

Q And what does it mean to you?

A If I came in lying to the government, then the plea agreement that I signed was no good and everything I said in my proffer statement could be used against me at Court.

Q Okay. And so paragraph 7 goes on to state some other things. It says if the, you understood that you're not going

to be allowed to withdraw your guilty plea. Did you understand that?

A Yes, ma'am.

Q That any additional charges known to the government might be filed against you?

A Yes, ma'am.

Q That the government would argue for the maximum sentence for the offense to which you had pleaded guilty?

A Yes, ma'am.

Q And the government would use any and all information provided by the Defendant pursuant to this agreement or any prior proffer agreements to prosecute you of all charges. Did you understand all those things?

A Yes, ma'am.

Q Alright. And then looking at paragraph 10, provided the Defendant cooperates, pursuant to the provisions of this plea agreement and that cooperation is deemed by the government as providing substantial assistance in the investigation and prosecution of another person who's committed an offense, the government agrees to the, in Defendant's election, to either move for the Court for a downward departure or reduction of sentence pursuant to some rules and statutes that allow the government to do that. You understood that?

A Yes, ma'am.

Q Alright. Any motion by the government's not binding

on the Court. What did that mean?

A That the Judge, she ain't binded [sic] for no motion, that she can go against the motion that the prosecutor filed.

Q Okay. And that the, should the Court impose, excuse me, should the sentence, the Court sentence the Defendant within the guidelines with the maximum penalty prescribed by law or refuse to reduce the sentence imposed, the Defendant will have no right to withdraw his plea. Did you understand that?

A Yes, ma'am.

Q What does that mean?

A That if the Judge went against what the prosecutor recommended then I still can't withdraw my plea.

Q Okay. And if the Judge sentenced you to life, you couldn't withdraw your plea?

A That's right.

Q Even if you cooperate?

A Yes, ma'am.

Q Okay. The other option was to withdraw at sentencing one of the enhancements contained in the information previously filed pursuant to 21 USC seeking an enhancement minimum penalty based on your two prior felony drug convictions such that the Defendant should only be held accountable for one prior felony drug conviction described in that information. Did you understand that?

A Yes, ma'am.

Q The government filed a piece of paper saying that you had two prior felony drug convictions?

A Yes, ma'am.

Q And they, and did they withdraw one of those?

A No, ma'am.

Q No? You got a downward departure?

A Downward departure, yes, ma'am.

Q Alright. So you elected section A?

A Yes, ma'am.

Q Okay. You agreed that you had the prior drug convictions?

A Yes, ma'am.

Q And who was your Judge in this case?

A Ms. Childs.

Q Judge Childs?

A Yes, ma'am.

Q Michelle Childs?

A Yes, ma'am.

Q And you appeared before her for sentencing?

A Yes, ma'am.

Q And did the government, you said the government filed a downward departure on Mr. Moorman's behalf?

A Yes, ma'am.

Q And did, and did Judge Childs grant that motion?

A Yes, ma'am.

Q Okay. And what was your actual sentence?

A 220 months.

Q 220 months. How many years is that?

A 18 years and three months.

Q 18 years and three months. Okay. So Mr. Bannister talked to you about all this, you entered this agreement. Now, you provided information in this case, Mr. Tiller, with Ms. Batchelor?

A Yes, ma'am.

Q And is this, today the first time that you and I have ever spoken to each other?

A No, ma'am.

Q How many times have we talked?

A Twice.

Q Twice. Was Mr. Bannister present for either one of those conversations?

A One.

Q Which one?

A The first one.

Q The first one. Was law enforcement or an investigator from my office present for either conversation?

A The first time I know that one dude was an investigator, and the, the second time, I don't know what that lady was right there.

Q Okay. There was, but there was, have I ever met with you alone?

A No, ma'am.

Q Alright. Have you ever been promised anything for your cooperation in this case?

A No, ma'am.

Q Have you ever, do you want something?

A Of course.

Q Okay. What do you want?

A A downward departure from my sentence.

Q Right. But it, what has our conversation been about that?

A Strictly no conversation.

Q Okay. Has anybody with the US Attorney's Office made you any promises about anything in this case?

A No, ma'am.

Q Okay. I want to direct your attention back to 2017.

Where were you then?

A Spartanburg, Spartanburg County Detention Center.

Q Alright. What pod were you in?

A Pod 3.

Q And was Mr. Batchelor in there with you?

A Yes, ma'am.

Q Okay. Were y'all in the same cell?

A No, ma'am.

Q Okay. Where were your cells in relation to each other?

A I was on one side of the dorm; he was on the other side of the dorm.

Q Alright. Did y'all ever, were you ever cell mates?

A No, ma'am.

Q How did you come to meet Mr. Batchelor?

A We was in pod 3 together and I conducted a Bible study in pod 3 and Mr. Batchelor used to come to the Bible study.

Q Okay. I need you to speak up just a little bit, okay.

A I said I was in pod 3 and I used to do a Bible study in pod 3 and Jonathan used to come to the Bible study.

Q So and that, is that how y'all started, getting, that's how y'all started to get to know each other?

A Yes, ma'am.

Q Did you have any, did you know, or did you have any particular interest in Mr. Batchelor?

A No, ma'am.

Q Talk to me about how you, you first begin to talk, or Mr. Batchelor first began actually to talk to you.

A I met him, at first we had Bible study then, you know, we talked through that then my lawyer used to send me law cases and law books and used to sit at the table, study my case or whatever, and that's when Jon, Jonathan usually come and we'd talk and he'd ask me questions.

Q Okay. And do you remember when that first happened?

A It was towards the end of 2017.

Q Alright. And do, what were the questions Mr. Batchelor had?

A I mean, the first question he was asking me, he asked me what I think to ask in the trial.

Q Okay. And what did you say?

A I told him if you innocent, you ain't got to worry about what they going to ask you anyway.

Q Alright. Now, is that, is that the only conversation you had?

A Pretty much, the first one.

Q Okay. And then what happened?

A And then a day or two later, he comes back asking the same thing, I said man, if you innocent, you ain't got to worry about it. And then after that he was like, man, man, I did it, man, I shot my wife, man.

Q How did that, how did y'all come to have this conversation. Let's back up and talk about that in a little more detail. Where were you?

A We was on the break yard.

Q Alright.

A Walking. And then that's when he was asking me what do you think they'll ask me at trial. I was like, you know, you ain't got to worry about it if you're innocent. And then he just came out and told me.

Q So he said to you what?

A He said he met this girl that worked with him on his job, I forgot her name, I know she was redheaded, and, like, he say

him and his wife would argue. Said that she had a baby, she gained some weight, she had got fat and then he went on, and then he was, like, he told me he was talking to her the night she would come home and she said she would turn on that road and whenever she turned on the road, he said that he went outside and hid and he said when she came in to the garage or whatever, he said he came out and he said he shot her. And he said that he thought she was dead, so he said he went to get rid of the gun and when he came back, the girl done crawled to the Explorer or the white vehicle, whatever, and he yanked her out the car and then he said that he had put powder and stuff on the red truck to make it look like a, like it was a robbery and set out her purse on the ground. And then he said he got in the car and took the car to a bridge, and he made it look like it was a carjacking or whatever, and then he said he came back up the road, changed his clothes and everything and then called the police.

Q Okay. When you're saying, her, there are two girls we've talked about so far, which her are we talking about, that he did this to?

A The kids' mother, the wife.

Q Did he tell you where his children were?

A Yes, ma'am.

Q Where were they?

A In the house asleep.

Q Did he tell you where he hid the gun?

A No, ma'am.

Q Did he tell you what he did with his clothes?

A He said that he, it's somewhere around the store because he said, he told me one night he was going back to a store and get the clothes and try to hide them, but he said the police came up on him in the store. And he had a gun on him in the store, and he said, he told me, he said, if they would have waited five more minutes, they would have had me.

Q Okay. You said that he said he called the police, did he tell you what he did after that?

A No, ma'am.

Q Did he tell you about the police being in the house?

A Yes, ma'am.

Q What did he tell you about that?

A He told me he could have kept the gun in his back pocket because they ain't really do nothing. He said they checked him for GSR and that was that and said they had left.

Q Okay. Did he tell you about any forensic evidence in the case?

A He said there was none. He said they ain't got no, he said they ain't got no fingerprints, they ain't got no GSR, they ain't got nothing on me.

Q Why did he put the white powder on the hood of the red car?

A He said to make it look like it was a drug deal or a robbery for some drugs. I told him, I said if somebody come to rob for drugs, they not going to put them on the hood of no truck, they come to get them, they going to take them with them.

Q Did he talk to you about any statements his wife had made?

A He showed me a paper, he asked me said you think they could use her against me. He said his wife is in the hospital and they had like scribble scrabble on it where she couldn't really write, but that's what he showed me, like, it's just scrabble on it. And he said, he was, like, man, her daddy's the one telling her that I did it, and so that's how the stuff on the paper.

Q What did he tell you about the girlfriend? The girl that, not the mother of his children, but the girlfriend.

A They worked together on the job, they went down to the railroad, they got close or whatever, she had two kids, he got two kids. She'll come over to the house and the kids would play and they do what they do.

Q What do you mean they do what they do?

A Have sex.

Q Did he tell you anything else about the girlfriend?

A No, ma'am. I mean, he did say, I asked him did she know about what's going on, he said no.

Q When you say what was going on what do you mean?

A Trying to kill, kill his wife.

Q Did he talk to you about a search warrant that the police did at his house?

A Yeah. He said the day the police pulled up at his house, the girl was there, he was like, if they would have came in five minutes later, they would have seen something they ain't want to see.

Q Did you ask him what that meant?

A Yes, ma'am.

Q You did?

A And he told me.

Q What did he say?

A He said they was getting ready to have sex.

Q Did he talk to you about why he did this?

A What he told me, he said, you know, he said they started arguing all the time, said the girl became insecure because she had got fat and they arguing and that was that, I mean.

MS. WELLS: One moment, please, Your Honor.

THE COURT: Yes, ma'am.

Q Did he tell you what gun he used to do this?

A He did tell me what gun, but I forgot which one it was, I forgot what caliber it was.

Q Did he say whose gun it was?

A Hers.

MS. WELLS: Your Honor, I think those are all the questions I have for Mr. Tiller at this time.

THE COURT: Thank you. Counsel?

MR. GROSE: May it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. GROSE:

Q Which store did he hide the clothes behind?

A Which door?

Q Store? You said he hid them in a store?

A No. He said it was close to a store.

Q Okay. Close to a store. Close to which store?

A I don't know. I'm not, I'm not from Spartanburg, I'm from Anderson.

Q Well, I mean, surely he told you the name of the store?

A No, he didn't. He said the clothes were close to a store.

Q Okay. And, and did you ask him where he hid the gun?

A No.

Q Alright. I mean, why not? Why didn't you ask him that?

A Because he was the one doing all the talking, I was just listening.

Q So ---

MR. GROSE: Do you have that plea agreement?

MS. WELLS: Yeah, it's right here.

Q I want to show you what's Court's Exhibit 4 and I think you have already said that you signed this agreement on March 16th of 2017, is that right?

A Yes, sir.

Q Do you remember what day you entered your guilty plea?

A No, sir.

Q Take a look at that. That's the caption of your case, right?

A Yes, sir.

Q And that you entered a plea on March 23rd of 2017?

A Yes, sir.

Q Okay. Do you remember what day you were sentenced?

A No, sir. I know it was, like, 2018.

Q Alright. If I show you that, that's a transcript of your plea, does that refresh your memory that it was June 26th of 2018?

A Yes, sir.

Q Alright. So from March of 2017 to June of 2018, it's about 13 months, or I'm sorry, 15 months?

A Yes, sir.

Q Okay. And when you entered your plea, you knew that you were going to be debriefed about the case that you were charged with?

A Yes, sir.

Q Alright. And that was part of the plea agreement?

A Yes, sir.

Q You also provided assistance for somebody with the last name Peace?

A Yes, sir.

Q Okay. And you, I think, you said you met with Ms. Wells, was that, that was between the time that you pled and the time that you were sentenced, the first time you met with her?

A Yes, sir.

Q And Jim Bannister was there?

A The first time.

Q And who was there from law enforcement?

A I don't know the dude's name, but the heavy-set dude.

Q Okay. So after the plea, after you entered the guilty plea, did you and Jim Bannister talk about how you needed to do something more than just be debriefed in your own case?

A No, sir.

Q Did you and Jim Bannister talk about how it would be helpful if you could provide information against people that weren't in your own case?

A It, it came up when I told him that, you know, I might have some information about a murder weapon. And he said well, if you have information then it could help you.

Q Okay. Well, when did that come up between you and Jim Bannister?

A When, after the conversation with me and Batchelor.

Q Which conversation? Because you said there's more than one that you had with him.

A I did, after the first couple conversations.

Q Okay. But before the conversations were over?

A But before the conversation's over?

Q Yeah.

A After it was over, he told me.

Q Well, but did, did you go to Jim Bannister and say I might have some information about an attempted murder, and he encouraged you to go get more?

A No. I told him that and he was, like, well, I'll contact the, the prosecutor on the case. Jim wasn't, like, oh, go get more information, Jim never said nothing like that.

Q Alright. What did Jim say?

A Jim said if you got something substantial, then it's going to help you.

Q Okay. And when Jim told you if you had something substantial it's going to help you, what did you understand that to mean?

A That it's got to be truthful. And Jim also said if, you better make sure what you're saying it true because if not, they can void the plea and give you a life sentence.

Q Well, I want to know what substantial is?

A Proof with something helpful to the case.

Q Well, what, what, by helpful to the case, what did

he mean, what did you understand it to mean?

A Helpful to the case, something that could help the prosecution.

Q Okay. Ms. Wells spoke at your plea or your sentencing hearing?

A Yes, sir.

Q Okay. How much time did you get knocked off your sentence because of your cooperation in this case?

A Actually, before I even went over there, Andy Moorman's already saying that he's going to give me 220 months, and when I went to sentencing, I still got 220 months.

Q Alright. So your testimony here right now under oath is is that your cooperation in Mr. Batchelor's case wasn't impacted at all by, didn't have any effect ---

MS. WELLS: Judge, I'm ---

Q --- in sentencing?

MS. WELLS: --- I understand this is proffer, and normally I would not object, but I think that calls for speculation on his part. The only person who can answer that question is Judge Childs who's the one who sentenced him. He doesn't know. Like I said, I haven't objected to any of the rest of it which I would if we were before a jury, but I think that that calls for speculation that Mr. Tiller just can't answer that question, he's not the sentencing Judge.

MR. GROSE: He, he, he can answer the question

as far as whether or not it impacted Mr. Moorman's recommendation.

Q Are you saying under oath that this case didn't ---

MS. WELLS: Again, I don't think that he can do that, Judge.

THE COURT: Hang on a second. I know, we're on proffer and I know because I've read it. You're talking about the 240 versus the 220.

MR. GROSE: Well, and I don't, I don't want you to tip him off about that. I want to know what he says because I think he's lying.

THE COURT: Okay. Go ahead, sir.

A In my downward departure with Mr. Batchelor, it was in my downward departure ---

Q Okay.

A --- but, but when Jim came in there to see me before that right there, Jim said 220 months.

Q Alright. So, so Mr. Moorman didn't change his recommendation based on your cooperation in Mr. Batchelor's case?

A This is what I know, I know Mr. Batchelor, the information I provided was in my downward departure because they said it was substantial assistance.

Q Alright.

A So it was in my downward departure, but when I went

to sentencing, I got 220 months.

Q Okay. And, and did, did Mr. Moorman represent to the Court that he changed his recommendation based on the Batchelor case?

A Did, did he, when Mr. Moorman went to Court, they went up there, Ms. Wells testified at my trial before I had my sentencing and then Jim got up there, everything on the downward departure and then they just sentenced me.

Q Alright. So Mr. Moorman didn't do anything based on this case?

A I was facing mandatory life, I got 220 months, so yes, he did.

Q Okay. Alright. I'll move on. Yeah, I think you told Ms. Wells that you're expecting an additional downward departure. Are you, you want one anyway?

A I mean, yeah, yes, sir.

Q Alright. Have you and Jim talked about that?

A Has me and Jim talked about that?

Q Yeah.

A Yes, sir.

Q Alright. And what did Jim tell you that you should, that y'all should try for? Based on this case, here.

A What you mean we should try for?

Q Well, you told Ms. Wells that you were expecting, or you hope, you would like to get your sentence reduced some more.

A Yes, sir.

Q And you just told me that you and Jim talked about your testimony, he knows you're here today?

A That's right.

Q And that y'all talked about the fact that your testimony here today might help you get more of a downward departure?

A That's right. Jim says if I provide substantial assistance, then I could be eligible for a downward departure, but that was the extent of that.

Q And y'all didn't talk about what you would try for?

A No, sir.

Q Alright. And you're still hoping you get a downward departure for the, the, the cooperation that you gave about corruption in the Department of Corrections?

A Yes, sir.

Q Alright. Did you and Jim talk about what, what you all would try to get based on that cooperation?

A When you say try to get, what you mean by that?

Q Well, I mean, you got 220 months now, what do you want to end up with?

A Oh, he's never told me, oh if you do this, your sentence is going to be this, he never said that.

Q Well, but you have the hope that that can happen?

A Yes, sir.

Q Alright. And, and Jim has never thrown out a range?

A No.

Q Not even to Judge Childs when y'all went in front of her for sentencing?

A You talking about at my sentencing? Yeah, he said that he want, he argued the Court for a sentence and the prosecutor argued the Court for a sentence.

Q Alright. And, and forget what Jim's told you or not told you, what is it that you hope your number's going to end up at?

A I ain't never thought about a number, but I'm just hoping that ---

Q You never thought about a number?

A No.

Q You never thought about a number?

A I mean, one thing ---

Ms. WELLS: Asked and answered, he said no.

A --- I mean, it's one thing, like, see, one thing I know, the number I think of, it don't even matter because the only number that matters is when I go in front of the Judge and that's the number that matters.

Q It matters to this jury that you're going to talk today what number matters to you in your mind, what is that number?

A The number that matters to me is something closer to go home than where I'm at right now.

Q Alright. And what is that number?

MS. WELLS: Judge, he said he didn't have a number.

MR. GROSE: He said he did have a number, he said it didn't matter.

THE COURT: Let's see if he's got a number. Ask him if he has a number, yes or no.

A No. I mean, that even dealing reality because the number that I say don't matter.

Q Alright. So you do have a number?

A I just said no.

Q You, you said you have one, but it didn't matter.

A I said if I did have a number, it don't matter because what the number I got don't matter is what I said.

Q Okay. Okay. So you've never even thought about what that number might be?

A No.

MR. GROSE: Alright. That's all I have at this time, Your Honor. Oh, wait a minute.

Q On, on your prior convictions, you had a State Court conviction for trafficking, right?

A Yes, sir.

Q And a Federal Court conspiracy conviction, right?

A Two of them.

Q Alright. Two of them in Federal Court?

A That's right.

Q So how many, how many drug convictions do you have total?

A Three.

Q Three. Alright. So the one, the 2017 plea is one of them, right?

A That's right.

Q And then there's a prior in Federal Court, and there's a prior in State Court?

A That's right.

Q Okay.

MR. GROSE: That's all I have.

THE COURT: Solicitor?

REDIRECT EXAMINATION

BY MS. WELLS:

Q Mr. Grose asked you about when you talked to Mr. Bannister about Mr. Batchelor talking to you. When did you talk to him?

A After me and Batchelor talked and I felt like what he told me would be substantial for me to come to my lawyer to come to you.

Q So was it after he told you what he had done?

A Yes, ma'am.

MS. WELLS: That's all I have, Judge.

THE COURT: Anything as to that one question?

MR. GROSE: No, sir.

THE COURT: Thank you. Sir, you may step down, please be careful.

MS. WELLS: Judge, just due to manpower issues, they're going to have to take him back and then bring him back

this afternoon. In case the Court needs him or wants to make additional inquiry, I wanted to let everybody know that he's not going to be here.

THE COURT: I don't, I don't. Okay. Do you have any matters that we need to take up outside the jury before they get here?

MR. GROSE: Well, I mean, I still have a motion to exclude his testimony, I don't know if you want to hear additional arguments on that now or later on today.

THE COURT: Yes, sir. Let's do it now while we've got some time.

MR. GROSE: Okay. You have the memorandum, you have the ---

THE COURT: I do.

MR. GROSE: --- plea transcripts that was attached to the pretrial brief. You know, it's, it's very clear that, in that transcript, that Andy Moorman changed his recommendation from 240 months to 220 months, which is, you know, Mr. Tiller, I think, was intentionally trying to create an impression that he didn't get any more of a benefit out of his cooperation in this case. You know, it's, it's also clear from the transcript that Mr. Bannister had a range in mind based upon what other co-defendants had gotten in the case, acknowledging the reality that Mr. Tiller was the, the lead person, leading Defendant on the indictment and that just the way the practice often goes,

that he wasn't going to get lower than, you know, any of the people on the, that were lower than him on the conspiracy. So for Mr. Tiller to suggest here today that he's never thought about a number lower than 220 is just so incredible that it's beyond belief. I've listed in the memorandum some factors that the Innocent Project recommends considering as far as due process is concerned before a jailhouse snitch is allowed to testify. One of them is, you know, the complete criminal history of the informant who has, in this case, has three substantial drug convictions. Any deal, promise, inducement, or benefit that the offering party has or will make in the future to the jailhouse informant. I understand that on one level they're saying that no, no promises have been made, but at the same time, there's sort of the wink and the nod that if he's helpful in this case, Ms. Wells will go to Court in some future sentencing proceeding for, for a downward departure. And it's very clear that, at the time that Mr. Tiller was sentenced, it's very clear that he was already expecting to come back on a rule 35 motion independent of this, and now he has that additional expectation. With regard to the substance of the statements that he's testified to, quite frankly, a lot of that's common knowledge, and he's not able to provide anything about the location of the store or the location of the gun or anything that anybody would actually be able to follow up and lead to any verification on. And we, we don't know the

extent to which he's ultimately going to be testifying. What we do know from that plea agreement or from that sentencing hearing is is that Mr. Tiller cooperated against other inmates and employees of the South Carolina Department of Corrections to provide information that is, is potentially, and probably is leading to, you know, additional prosecutions. And so we don't know to what extent at this point he's going to be called on or not called on to be a witness. And then you can consider anything that is, is relevant to his credibility which is why I point out, you know, some of the things that I find to be just unbelievable about what he said here this morning. And I think that, you know, due process in this case requires that the court exclude this testimony.

THE COURT: Thank you. Solicitor?

MS. WELLS: Thank you, Your Honor. Your Honor, just a couple of things. First, I think it's misconstruing Mr. Tiller's testimony to say that he has a number. He was adamant that he didn't have a number and his reasoning is sound. It's because it doesn't matter, like, exactly what he said, it doesn't matter, it's pointless to think of a number because he has no control over that. He recognizes and understands that the only person who has control over that is Judge Michelle Childs. And while he would like something closer to being able to get out, I don't think that's a dishonest answer, I think that's absolutely an honest answer, he doesn't know and it's

pointless to think of something because he has zero control over that. There's no evidence of inducement, there's no evidence of promise, there's no evidence of future promises. I literally, cannot go to Federal Court and ask for anything. I cannot file a motion before Judge Childs, that's, I don't have standing to do that. The only person who can do that is the federal prosecutor who is assigned to that case now, and as I told the Court last week, as we sit here, I don't even know who that is. Mr. Moorman is now in private practice, he is no longer with the US Attorney's Office. So I, I don't even know who the AUSA is, who would be the person who has the standing to file that, but I can tell the Court it's not me. And we discussed at length, and I don't think there's any reason to rehash the fact that, yes, I was at sentencing, is that appropriate for the jury to hear, absolutely not, because then we'd have to answer why I was at sentencing. But as the Court will recall, I was there only because I was subpoenaed. And only, and I was there, absolutely, against my, I did not want to be there at all. I, literally, had a child come home from the hospital, I think, 48 hours, possibly, before this who was very, very sick, and I did not want to be there. So as to the rule 35, to, I'm sure that the Court's aware, but I'll just kind of walk through it. A rule 35 is a motion that the government can make after co-sentencing to reduce a Defendant's sentence for any cooperation they might have provided

subsequent to that sentencing. And it's really, we don't, I mean, I don't know anything, Mr. Grose knows more about that than I do as to the rule 35, and of course, as I said on Friday, it's absolutely appropriate for the government to advise the sentencing Judge that there may be a rule 35 coming. To my knowledge, there has been no rule 35, I'm not aware of that, and I'm sure if one existed, Mr. Grose would have brought it for us. But who knows what the status of that investigation is, and it's really of no moment here. The only thing that matters is what Mr. Tiller said. And Mr. Grose had an opportunity to cross examine him, the Court had an opportunity to see that, he did his best to tell, to answer Mr. Grose's questions honestly and to understand the questions he was being asked. He talked about his conversations with his attorney who is well-known, you know, longtime Defense attorney in Greenville, and, you know, he's been in the Bureau of Prisons since 2018, I mean, I can't imagine what he's got left to give in an investigation into the South Carolina Department of Corrections when he's been a federal inmate for a number of years now. So Judge, the Court's had an opportunity to view all of this, that he has walked through the plea agreement, he said that Mr. Bannister explained everything to him, he understands the risk that he is taking here today if he gives non-truthful, or if he lies on the stand, he understands that he's facing life in prison. And that's, I mean, I think that's

significant for the Court to understand, too, and certainly that Mr. Tiller understands that. And I don't think it's any due process violation for the Court to allow a witness who has knowledge of this and who the Defendant confessed to to testify before this jury. Now, I would object to some, as I said, I would object to some of the cross examination as to Mr. Tiller should the Court rule that it's appropriate, and I think that it is appropriate for Mr. Tiller to testify. But he'll be subject to cross examine and Mr. Grose can ask him about what, within reason, anything he wants to about it. But Judge, I don't think it's a due process violation at all to allow this witness to testify.

THE COURT: Anything?

MR. GROSE: Well, you know, while the sentence is ultimately up to Judge Childs in Federal Court, I think it's, you know, not a fair characterization to say that, you know, nobody else has the ability to influence what that is. You know, because she's certainly going to hear information from the government, potentially Ms. Wells whether she wants to be there or not. If a rule 35 motion's made and this is part of it, I feel certain that she'll probably be subpoenaed again. So you know, the, the fact that he does hold out some type of hope with and has a hope that he and his lawyer will be able to influence what that number is, I do think it's fair game and something that Your Honor needs to consider as far as this