

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable Brian M. Gibbons, Circuit Court Judge

ROBERT L. MOORE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000562

APPENDIX

JOANNA K. DELANY
Appellate Defender

ALAN WILSON
Attorney General

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

SUZANNE SHAW
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3372

ATTORNEY FOR PETITIONER

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit
180 Magnolia Street, Third Floor
Spartanburg, SC 29306
(864) 596-2386

ATTORNEYS FOR RESPONDENT

VOLUME I OF II
PAGES 1-500

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JULY 21-23, 2014.....	1
FINAL BRIEF OF APPELLANT	395
FINAL BRIEF OF RESPONDENT	423
COURT OF APPEALS OPINION NO. 5512	440
PETITION FOR REHEARING.....	455
ORDER DENYING PETITION FOR REHEARING	460
PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS	462
RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS ...	487
ORDER GRANTING CERTIORARI	514
BRIEF OF PETITIONER.....	515
BRIEF OF RESPONDENT	540
SUPREME COURT OPINION NO. 27948	573
REMITTITUR	595
APPLICATION FOR POST-CONVICTION RELIEF	597
RETURN	621
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	639
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 15, 2023.....	642
ORDER OF DISMISSAL.....	688
INDICTMENT.....	703
SENTENCE SHEET.....	705

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 ROBERT LEE MOORE,) 2013-GS-42-2965
8 DEFENDANT.)

9
10 July 21st - 23rd, 2014
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE R. KEITH KELLY, Judge, and a jury.
15

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

17 DERRICK BULSA
18 DEPUTY SOLICITOR
Attorney for the State

19 ANDREW JOHNSTON
20 ESQ.
Attorney for the Defendant

21
22 MAGGIE WOODS
23 Circuit Court Reporter
24 Seventh Judicial Circuit

25 Transcribed by Pamela E. Green, Circuit Court Reporter

1	<u>I N D E X O F W I T N E S S E S</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3		
4	Motion	10
5	LINDSEY MCGRAW	
6	Direct examination by Sol. Bulsa	17
7	Cross-examination by Mr. Johnston	23
8	TOM CLARK	
9	Direct examination by Sol. Bulsa	27
10	Cross-examination by Mr. Johnston	28
11	Redirect examination by Sol. Bulsa	32
12	Recross examination by Mr. Johnston	33
13	LORIN WILLIAMS	
14	Direct examination by Sol. Bulsa	34
15	Cross-examination by Mr. Johnston	37
16		
17	Jury selection	61
18	Opening by the Court	89
19	Opening by Sol. Bulsa	97
20	Opening by Mr. Johnston	99
21		
22	DEBRA HALL	
23	Direct examination by Sol. Bulsa	101
24	JOHN HUDSON	
25	Direct examination by Sol. Bulsa	109

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	MARY ADAMS	
4	Direct examination by Sol. Bulsa	118
5	Cross-examination by Mr. Johnston	121
6	TIM TULLOCK	
7	Direct examination by Sol. Bulsa	122
8	CARLA HUGHES	
9	Direct examination by Sol. Bulsa	128
10	ROBERT TALANGES	
11	Direct examination by Sol. Bulsa	133
12	Cross-examination by Mr. Johnston	145
13	Redirect examination by Sol. Bulsa	148
14	Recross examination by Mr. Johnston	149
15	MARILYN ARTHUR	
16	Direct examination by Sol. Bulsa	165
17	Cross-examination by Mr. Johnston	186
18	Redirect examination by Sol. Bulsa	188
19	LINDSEY MCGRAW	
20	Direct examination by Sol. Bulsa	189
21	CYNTHIA CROSBY	
22	Direct examination by Sol. Bulsa	197
23	GAIL MOFFITT	
24	Direct examination by Sol. Bulsa	200
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	LINDSEY DEWEESE	
4	Direct examination by Sol. Bulsa	206
5	WILLIAM GARY	
6	Direct examination by Sol. Bulsa	213
7	Cross-examination by Mr. Johnston	233
8	LORIN WILLIAMS	
9	Direct examination by Sol. Bulsa	236
10	Cross-examination by Mr. Johnston	244
11	Redirect examination by Sol. Bulsa	245
12	TEVIN THOMAS	
13	Direct examination by Sol. Bulsa	249
14	Cross-examination by Mr. Johnston	269
15	Redirect examination by Sol. Bulsa	288
16	TEVIN THOMAS	
17	Direct examination by Mr. Johnston	298
18	CHRIS BARNES	
19	Direct examination by Mr. Johnston	304
20	Cross-examination by Sol. Bulsa	312
21	Redirect examination by Mr. Johnston	327

22

23

24

25

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3		
4	Closing by Mr. Johnston	335
5	Closing by Solicitor Bulsa	350
6	Charge by the Court	367
7	Verdict	388
8	Sentencing	393
9	Certificate	394
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<u>E X H I B I T S</u>			
2	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	<u>State's Exhibits</u>			
4				
5	S-1	Photograph	11	141
6	S-2	Photograph	11	141
7	S-3	Photograph	22	
8	S-4	Photograph		106
9	S-5	Photograph		106
10	S-6	Photograph		106
11	S-7	Photograph		106
12	S-8	Photograph		111
13	S-9	Photograph		111
14	S-10	Photograph		111
15	S-11	Photograph		138
16	S-12	Photograph		138
17	S-13	Photograph		138
18	S-14	Blow-up of Fingerprints		171
19	S-15	Fingerprint Card		175
20	S-16	Fingerprint Card		175
21	S-17	Fingerprint Card		175
22	S-18	Fingerprint Card		175
23	S-19	Fingerprint Card		175
24	S-20	Fingerprint Card		175
25	S-21	Fingerprint Card		175

	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1				
2				
3	S-22	Fingerprint Card		176
4	S-23	Fingerprint Card		183
5	S-24	Fingerprint Card		183
6	S-25	Fingerprint Card		184
7	S-26	Photograph	190	191
8	S-27	Photograph	190	191
9	S-28	Photograph	190	191
10	S-29	Photograph	194	195
11	S-30	Photograph	194	195
12	S-31	Photograph	194	195
13	S-32	VHS Tape	204	208
14	S-33	VHS Tape	204	208
15	S-34	Receipt	204	
16	S-35	Photograph		215
17	S-36	Photograph		215
18	S-37	Photograph		215
19	S-38	Photograph		215
20	S-39	Diagram	314	317

1	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Defendant's Exhibits</u>		
3				
4	D-1	Photograph		234
5	D-2	Photograph		234
6	D-3	Statement - Tevin Thomas	274	
7	D-4	Statement - Tevin Thomas	277	
8	D-5	Taco Bell Receipt	306	307
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Court's Exhibits</u>		
3				
4	C-1	Search Warrant		25
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

P R O C E E D I N G S

THE COURT: This is the Moore case?

SOLICITOR BULSA: Yes, sir.

MR. JOHNSTON: Yes, sir, State versus Robert Moore.

THE COURT: Okay.

SOLICITOR BULSA: State versus Robert Moore.

Indictment 13-GS-42-2965. It's an indictment for attempted murder.

MR. JOHNSTON: Your Honor, for the purposes of this motion we're going to need any officers who were involved in the recovery of a cell phone. It's an AT&T flip phone which is attributed to the ownership of the defendant. We'll need the officers who recovered it, and we'll also need the officers who were involved in the forensic evaluation of the phone. I believe that's just Officer McGraw, but if there's somebody else, we need them as well. So, whoever got the phone and who performed the evaluations is who we would need.

THE COURT: Solicitor.

SOLICITOR BULSA: You don't need the affiant of the search warrant?

MR. JOHNSTON: For good measure, the affiant of the search warrant would be a good person to have as well.

THE COURT: All those people handy?

1 SOLICITOR BULSA: I have not -- Lorin Williams is the
2 detective.

3 MR. JOHNSTON: Lorin was here. I spoke to him.

4 SOLICITOR BULSA: Yeah, I don't know where he went.

5 THE OFFICER: He, he had to go get some additional
6 information and we was coming back. He said he'd be right
7 back.

8 SOLICITOR BULSA: We can start without him.

9 Your Honor, if I could brief the Court. This was a
10 shooting at the Taco Bell in February 25th of 2013. The
11 victim is Travis Hall. He was found by the police and
12 medical personnel draped out of his car driver's side door.
13 The door was opened. He was still seat belted in. When
14 they removed his body to treat him, his cell phone -- I can
15 have it marked for purposes of this hearing.

16 (WHEREUPON, two photographs were marked as State's
17 Exhibit Nos. 1 and 2 for identification purposes only at
18 this time.)

19 SOLICITOR BULSA: Your Honor, State's Exhibits 1 and 2
20 for this hearing. They show the positioning of the cell
21 phone. The cell phone is -- State's 1 is a close-up that's
22 the flip phone on the, the right-hand portion of the
23 picture. State's 2 shows the positioning in relation to the
24 driver's seat.

25 when personnel removed Mr. Hall to treat him, the cell

1 phone was found, which would of been under his body, based
2 on his position, hanging from the car. This scene was
3 secured by the police and technically an evidence technician
4 or forensic investigator recovered it, but gave it, at the
5 scene, to Lorin Williams. So, it basically -- that's,
6 that's the movement of, of the car from the -- of the phone
7 from the car.

8 So, Lorin Williams can testify that he collected it and
9 then turned it over to Lindsey McGraw who would of then
10 begun processing it to determine who owns it and what it
11 contained.

12 THE COURT: Let me ask this.

13 who, whose phone, whose phone is this?

14 Is this Mr. Moore's phone or Mr. Hall's phone?

15 SOLICITOR BULSA: This -- the State's contention is
16 there -- is the defendant's phone. He abandoned it at the
17 scene at the time of the crime. He fled the scene. It was
18 left in the victim's car.

19 THE COURT: Okay.

20 MR. JOHNSTON: Your Honor, we take issue with the
21 statement that, that it was abandoned. We don't think it's
22 abandoned for Fourth Amendment purposes.

23 THE COURT: All right. I'm new, I'm new to this. I
24 know nothing about this case as you well know. So tell me.

25 MR. JOHNSTON: Yes, sir.

1 THE COURT: Tell me -- help me here, gentlemen.

2 This -- Mr. Hall was seated here, is this right?

3 SOLICITOR BULSA: Yes, sir, that is the victim's car.

4 MR. JOHNSTON: Yes, sir.

5 THE COURT: This is the victim -- this is Mr. Hall's
6 car?

7 Mr. Hall was seated in the driver's seat?

8 SOLICITOR BULSA: In the driver's seat, yes, sir.

9 THE COURT: Mr. Hall was still buckled in?

10 SOLICITOR BULSA: He was shot in the head.

11 THE COURT: In the driver's seat.

12 SOLICITOR BULSA: He fell out of the car and he was
13 trying to get away, opened the car door, was shot and fell
14 out.

15 THE COURT: Okay. And the phone -- and are those two
16 phones or of one of them---

17 SOLICITOR BULSA: Yes, sir.

18 THE COURT: Another carrier?

19 SOLICITOR BULSA: They're two phones. One is the
20 victim's, the Iphone, and then the flip phone was determined
21 to be the defendant's.

22 MR. JOHNSTON: There's actually a total of three phones
23 found in the car.

24 THE COURT: Okay.

25 MR. JOHNSTON: But in the photograph, the Court is

1 correct, they're only two depicted.

2 THE COURT: Okay.

3 MR. JOHNSTON: But there were three found in the car.

4 THE COURT: Okay. All right.

5 Okay. So, your motion, Mr. Johnston, is --?

6 MR. JOHNSTON: Is to suppress the information that was
7 taken from the phone by the forensic examination.

8 THE COURT: The information taken from Mr. Moore's
9 phone?

10 MR. JOHNSTON: From what they alleged to be Mr. Moore's
11 phone, yes, sir.

12 THE COURT: Suppress info taken from --.

13 MR. JOHNSTON: There is a very recent case, Your Honor,
14 from the United States Supreme Court, Riley versus
15 California.

16 THE COURT: We have that on the computer right now.

17 MR. JOHNSTON: Yes, sir. So, that's issue number one.

18 Issue number two, the State says that the phone was
19 abandoned and that, therefore, a warrant is not necessary
20 because it's abandoned property. So, I guess there would be
21 two legal issues for Your Honor to rule upon, and I have
22 some cases about that as well and some information about
23 that as well that I'll be happy to share with the Court and
24 with the prosecution that might shed some light on the
25 abandonment question.

1 THE COURT: Okay.

2 MR. JOHNSTON: But what I was, what I was proposing is
3 that we take some testimony, if this is all right with the
4 Court, that we take some testimony so you can hear how the
5 phone was obtained and what they did with it and when, and
6 then -- that, that will aid you in trying to determine what
7 to do. For the Court's information, they did the forensic
8 examination, then they got a search warrant.

9 Am I correct?

10 SOLICITOR BULSA: Partially.

11 MR. JOHNSTON: I'm partially correct. Please -- it's
12 somewhat -- I'm the first to admit it's somewhat confusing.

13 So, they got some information before they got the
14 search warrant. Then they got the search warrant, got more
15 information.

16 SOLICITOR BULSA: Yes, sir, once they determined that
17 the phone believed to -- who they determined was a potential
18 suspect, then they went and got a search warrant to finish
19 the examination of the phone, which they followed the recent
20 Supreme Court case, but the State would present to the Court
21 that, that question is not even -- needed to be asked since
22 the phone was abandoned by the defendant at the scene of the
23 crime and fled leaving it there under the victim's body. I
24 don't know why we even need to question the search issue if
25 it was abandoned because abandonment is clearly an exception

1 to any search warrant requirement.

2 THE COURT: Well, let me go back to one, one step
3 behind that. Mr. Johnston said it's allegedly his phone.

4 So, I mean doesn't he have to assert that that is his
5 phone and therefore he's entitled to protection?

6 MR. JOHNSTON: For the purposes of this hearing, Your
7 Honor, yes, he does. But we're not stipulating that for the
8 purposes of the jury.

9 THE COURT: Okay. That's fine. But for the purposes
10 of this hearing---

11 MR. JOHNSTON: For the purposes of this hearing, yes,
12 we'll stipulate it's his phone.

13 THE COURT: Okay. So, he's stipulating now, for
14 purposes of this hearing, that that is his phone?

15 MR. JOHNSTON: Yes, for purposes of this hearing only,
16 yes, sir.

17 THE COURT: Cause you can't make a---

18 MR. JOHNSTON: Yes, sir, I understand.

19 THE COURT: ---privacy on my phone, right?

20 MR. JOHNSTON: I don't think so unless you gave it to
21 me or something.

22 THE COURT: Right. Well, as long as it's mine, you can
23 say -- hey, he's got to assert that it's his phone at least
24 for the purposes of this hearing---

25 MR. JOHNSTON: Yes, sir.

Lindsey McGraw - Direct examination
by Solicitor Bulsa

1 THE COURT: ---to be entitled -- okay.

2 MR. JOHNSTON: For the purposes of this hearing, Your
3 Honor's correct.

4 The other thing I would like to point out that the
5 information they got before the search warrant is the main
6 information we're asking to be suppressed.

7 THE COURT: All right. Mr. Bulsa.

8 SOLICITOR BULSA: I still argue that is not even
9 necessary if the Court deems that the phone is abandoned,
10 but, for the sake of record, I don't have any problem
11 putting up Mr. McGraw.

12 THE COURT: Okay.

13 SOLICITOR BULSA: I'm not sure why we need the officer
14 who actually collected it.

15 THE COURT: Well, let's put up some testimony.

16 SOLICITOR BULSA: Yes, sir.

17 THE COURT: It's his motion and I, I need to know
18 what's going on. So --.

19 SOLICITOR BULSA: Yes, sir.

20 State calls Lindsey McGraw.

21 LINDSEY MCGRAW, being first duly
22 sworn, testified as follows:

23 THE COURT: Sir, tell us your full name and where
24 you -- spell -- tell us your full name and spell your last
25 name.

Lindsey McGraw - Direct examination
by Solicitor Bulsa

1 THE WITNESS: Detective Lindsey McGraw. It's spelled
2 M-C-G-R-A-W. I'm a computer forensic investigator assigned
3 to the Spartanburg County Sheriff's Office.

4 THE COURT: Thank you.

5 Yes, sir.

6 DIRECT EXAMINATION

7 BY SOLICITOR BULSA:

8 Q And, Investigator McGraw, did you receive some phones
9 in relation to a shooting at the Taco Bell on February
10 25th, 2013?

11 A Yes.

12 Q And do you have an approximate time as to when you
13 would of received those?

14 A It's gonna be at -- I'll have to check my notes. It's
15 gonna be approximately 3:30 in the afternoon on February
16 25th, 2013.

17 Q And what were you asked to do with these phones?

18 A I was asked to perform a forensic examination of three
19 cellular telephones that were found at the scene primarily
20 to determine who owned the cell, the cell phones to
21 determine ownership.

22 Q Okay. And would you describe for the Court the three
23 phones that you received?

24 A I received a, an Apple Iphone 3, and Apple Iphone 4,
25 which was damaged, and a ZTE331 flip phone.

Lindsey McGraw - Direct examination
by Solicitor Bulsa

1 Q And, and for this hearing, the phone we're interested
2 in is the flip phone I believe, is that correct?

3 A Yes, sir.

4 Q And tell us, if you would, what you did with that phone
5 upon receipt.

6 A The first thing I did was perform a forensic
7 examination of the installed SIM Card. SIM Card is a
8 subscriber identity module card which is installed. GSM
9 phones primarily contains the assigned cell phone number,
10 excuse me, and a continuing call logs, stored contacts,
11 things of that nature. It just depends. It's limited
12 storage capacity.

13 Q And your object, at that point, was to determine the
14 ownership?

15 A Yes, sir.

16 Q Is there anything in the phone itself that identified
17 who owned it?

18 A It was in the SIM Card. I, I recovered a cell phone
19 number.

20 Q Okay. So, you were able to determine the cell phone
21 number that went with this cell phone?

22 A Yes, sir.

23 Q And that cell phone number doesn't identify who owns
24 it?

25 A No, sir, it's just the cell phone number assigned to

Lindsey McGraw - Direct examination
by Solicitor Bulsa

1 that cell phone.

2 Q Okay. And what did you do once you got the cell phone
3 number?

4 A Once I pulled a cell phone number up, I provided that
5 information to the investigators so that they could perform
6 further investigation to determine if they had any way of
7 identifying the person associated with that phone number.

8 Q So, at what point did you stop your investigation and
9 seek a search warrant?

10 A Once I provided the cell phone number to the
11 investigators, I believe it was Investigator Clark advised
12 me that the cell phone number did not belong to the victim
13 in this case at which point I requested a search warrant be
14 obtained. A search warrant was subsequently obtained for
15 this phone and I performed a full forensic examination on
16 that phone.

17 Q Okay. So we all understand, what is the information
18 you obtained before the search warrant?

19 A The information I obtained through the -- before the
20 search warrant was on the SIM Card itself. I recovered the
21 cell phone number as I explained before. That number was
22 864-494-2573. I recovered 34 contact entries that were
23 stored on the SIM Card. I also recovered three text
24 messages, which were dated the year previous. They were all
25 2012 cell phone or, excuse me, text messages, and that's the

Lindsey McGraw - Direct examination
by Solicitor Bulsa

1 extent.

2 Q That was the extent?

3 A Yes, sir.

4 Q So, when you say contact entries, what do you mean?

5 A Users can store contact information. In other words,
6 they can associate a name with a phone number. They can
7 then use that to look up -- it's basically a directory.

8 Q Okay. So, it's basically a phone directory that---

9 A That---

10 Q ---the person who owned it---

11 A ---the user put in the phone, yes, sir.

12 Q Okay. All right. And then subsequent to the search
13 warrant what did you then do?

14 A After that, excuse me, after we did have the search
15 warrant, I did a full forensic examination of the phone,
16 processed it. I processed it as a different model number
17 because the equipment I had wouldn't, wouldn't communicate
18 with that phone. So, I processed it as AZT221 and I was
19 able to obtain additional information.

20 Bear with me, Your Honor, while I pull out my -- okay.
21 I was able to recover stored contacts and some images off
22 the phone.

23 Q You say images---

24 A Stored images/pictures that were stored on the phone.

25 Q So did you determine like a call log?

Lindsey McGraw - Direct examination
by Solicitor Bulsa

1 A That's what I'm trying to find right now.

2 (Pause.)

3 A No, the extraction of call logs and text messages on
4 this phone was not supported by the equipment I used. So
5 basically I did what's -- we call camera on a stick. Fire
6 the phone up or power the phone up, and use a digital camera
7 to document any text messages or call logs. Any information
8 I could see on the phone I just documented it by taking
9 pictures of it.

10 Q And all that was done pursuant to the search warrant?

11 A Yes, sir, that was after the search or upon execution
12 of the search warrant.

13 (WHEREUPON, a photograph was marked as State's Exhibit
14 No. 3 for identification purposes only at this time.)

15 Q I show you what's been marked State's 3 for this
16 hearing.

17 Is that one of the pictures you took of the phone?

18 A Yes, sir.

19 Q And does that designate or identify the phone number
20 associated with that phone?

21 A Yes, sir.

22 Q And that essentially would of been the first
23 information you gave to the investigator?

24 A The -- that -- not from that information, no, sir.
25 That, that picture was taken subsequent to the search

Lindsey McGraw - Direct examination
by Solicitor Bulsa

1 warrant.

2 Q Right.

3 A The information -- basically I took that photo to
4 validate what the equipment recorded as the phone number for
5 the phone, which I had got from the SIM.

6 Q For purposes of this hearing, that confirmed and
7 corroborates that that number was associated with that
8 phone?

9 A Yes, sir.

10 Q Okay. Thank you. That's all I have at this time.

11 CROSS-EXAMINATION

12 BY MR. JOHNSTON:

13 Q Officer McGraw, you got the phone number before you had
14 this search warrant?

15 A Yes.

16 Q Just so I can make sure about that.

17 And you didn't actually get the search warrant?

18 Somebody else got the search warrant?

19 A Investigator Clark.

20 Q One of your other, one of your other officers?

21 A Yes, sir.

22 Q This phone has the capability of sending texts?

23 A Yes, sir.

24 Q It has the capability of receiving texts?

25 A It does.

Lindsey McGraw - Cross-examination
by Mr. Johnston

1 Q Does it have the capability of storing contacts?

2 A Yes, sir.

3 Q And for the purposes of the record, a contact is the
4 name of a person that the person knows information about
5 them, their phone number, possibly their physical address,
6 and email address?

7 A Depending on what information the user would want to
8 put in there. Typically it's a name and a phone number.

9 Q Right.

10 A But there can be additional information, yes.

11 Q All right. And this phone had a camera?

12 A Yes, sir.

13 Q And, in fact, there were even pictures on there?

14 A Yes, sir.

15 Q It also had a record of phone calls made and received?

16 A Yes, sir.

17 Q Am I correct?

18 A Yes, sir.

19 Q It doesn't have a lot of memory, but it does have
20 internal storage?

21 A It does.

22 Q What was the date and time that you performed the first
23 examination wherein you discovered the phone number that
24 goes to the phone?

25 A Be February 25th, 2013. I began the examination of

Lindsey McGraw - Cross-examination
by Mr. Johnston

1 the SIM Card at 3:25 and completed it at 3:26.

2 Q 3:25 in the afternoon?

3 A Yes, sir.

4 Q And the search warrant was signed 26th February?

5 A Yes, sir.

6 Q At 4:07PM?

7 A I don't know about that.

8 Q All right. Well, I'll show you this and---

9 A Oh, I see it now, yes, sir.

10 Q Yes.

11 Okay. Your Honor, at this time we'll introduce a copy
12 of this.

13 SOLICITOR BULSA: As a Court's Exhibit?

14 MR. JOHNSTON: As a Court's Exhibit if---

15 THE COURT: All right.

16 MR. JOHNSTON: ---if --.

17 (WHEREUPON, the search warrant was marked as Court's
18 Exhibit No. 1 and received into evidence for purposes of
19 this hearing only at this time.)

20 Q Showing you now what has been marked as a Court's
21 Exhibit.

22 You've seen that before?

23 A Yes.

24 Q That's the search warrant.

25 A Correct.

Lindsey McGraw - Cross-examination
by Mr. Johnston

1 Q And according to its face -- page there --

2 A Uh-huh. (Affirmative).

3 Q -- it says February 26th at 4:07PM?

4 A Yes, sir.

5 Q And it was subsequent to that that you got the rest of
6 the information?

7 A Correct.

8 Q Who made the decision to conduct the initial part of
9 the forensic evaluation without the warrant?

10 Was that your decision or were you directed by one of
11 the investigators?

12 A I wasn't directed, but I was---

13 Q Asked?

14 A ---asked, correct.

15 Q Okay. Who asked you?

16 A I don't recall which investigator specifically asked
17 me.

18 Q Was it---

19 A It was either Detective Williams or Detective Clark,
20 one of the two.

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

23 A Yes, sir.

24 SOLICITOR BULSA: No further questions.

25 THE COURT: All right, sir. You may step down.

Tom Clark - Direct examination
by Solicitor Bulsa

1 SOLICITOR BULSA: State calls Tom Clark.

2 TOM CLARK, being first duly sworn,
3 testified as follows:

4 THE COURT: Sir, tell us your name and spell your last
5 name for my court reporter please.

6 THE WITNESS: My name is Thomas Clark. C-L-A-R-K.

7 THE COURT: Solicitor.

8 DIRECT EXAMINATION

9 BY SOLICITOR BULSA:

10 Q Are you employed with the Sheriff's Office?

11 A Yes, sir.

12 Q As an investigator?

13 A Yes, sir.

14 Q Were you assisting in the investigation of the shooting
15 at the Taco Bell on February 25th, 2013?

16 A Yes.

17 Q Were you asked to obtain a search warrant on a -- an
18 AT&T flip phone?

19 A Yes, sir.

20 Q For what reason?

21 A Investigator Lindsey -- I was originally contacted by
22 Investigator Williams that there had been multiple phones
23 found in the vehicle, and that the -- they had been advised
24 that the victim had multiple phones, and the phones had been
25 forwarded to Investigator Lindsey. Investigator Lindsey

Tom Clark - Direct examination
by Solicitor Bulsa

1 did -- started doing some forensics work, as he, as he
2 testified. Later I was asked to do a search warrant on the
3 phone.

4 Q Okay. I show you Court's Exhibit No. 1.

5 Do you recognize that?

6 A Yes, sir.

7 Q Is that a copy of the search warrant you obtained?

8 A Yes, sir.

9 Q And was that signed by the magistrate?

10 A Yes, sir.

11 Q Pursuant to your affidavit?

12 A Yes, sir.

13 Q And was the search warrant then executed on that phone?

14 A Yes, sir.

15 Q By Investigator McGraw?

16 A Yes, sir.

17 Q Thank you.

18 Have you seen this, Your Honor?

19 THE COURT: I have not. Thank you.

20 SOLICITOR BULSA: Yes, sir.

21 Q Thank you, investigator. That's all I have.

22 CROSS-EXAMINATION

23 BY MR. JOHNSTON:

24 Q Was it you or, or Detective Williams who asked

25 Detective McGraw or Investigator McGraw to perform the first

Tom Clark - Cross-examination
by Mr. Johnston

1 forensic examination before the warrant was signed?

2 A It was not me. I believe it was Investigator Williams.

3 Q All right. Now, you went to see Judge Willingham in
4 this case?

5 Am I right?

6 A Yes, sir.

7 MR. JOHNSTON: Your Honor, do you -- where's the,
8 where's the search -- may I, may I?

9 THE COURT: Sure.

10 MR. JOHNSTON: I'll give it right back to you, sir.
11 You went to see Judge Willingham?

12 A Yes, sir.

13 Q Am I correct?

14 A Yes, sir.

15 Q And you asked to swear out a search warrant?

16 A Yes, sir.

17 Q Am I correct?

18 A Yes, sir.

19 Q Tell me what you told Judge Willingham.

20 A Told Judge Willingham that on February the 25th at
21 approximately 14:30 hours deputy responded to the
22 Spartanburg County -- well, excuse me. With the Spartanburg
23 County Sheriff's Office responded to 7680 Warren H.
24 Abernathy Highway in reference to a shooting. Upon arrival
25 they found the victim, Travis Hall, had been shot. Travis

Tom Clark - Cross-examination
by Mr. Johnston

1 Hall was transported to Spartanburg Regional Medical Center.

2 Through further investigation and processing of the,

3 processing of the vehicle, the victims AT&T ZTE model 7331

4 cell phone with serial number 322213371843 was found inside

5 the vehicle. Through further investigation it was found

6 that this phone number assigned to this phone was

7 864-494-2573. Through further investigation it was found

8 that this phone did not belong to the victim. Through

9 further investigation it was found that this phone belonged

10 to Robert Lee Moore, that a search warrant is needed for the

11 furtherance of this investigation to obtain information from

12 the phone that can either implicate or clear Robert Lee

13 Moore from any involvement in this incident.

14 Q Now, did you tell the judge or Magistrate Willingham

15 anything else other than what's in that search warrant?

16 A No, sir, I did not.

17 Q Did he have any other information about the case other

18 than what you told him?

19 A No, sir, he did not.

20 Q Okay. Now, one of the things that you based your

21 request on was information that had already been found

22 inside that cell phone?

23 Am I correct?

24 A In regards to?

25 Q The number.

Tom Clark - Cross-examination
by Mr. Johnston

1 A The phone number?

2 Q Yes.

3 Y'all already -- y'all got the phone number to tell the
4 judge about because Officer -- Detective McGraw had already
5 done a forensic examination, and you used the information
6 that Detective McGraw gave you to give to the judge?

7 Am I right?

8 A Correct. So he could do a complete forensics, yes,
9 sir.

10 Q All right. But you used the information that had been
11 obtained without a warrant to get the warrant?

12 Am I correct?

13 A Yes, sir.

14 Q I mean if I'm not correct tell me.

15 A No, sir, you're, you're correct.

16 Q Okay. So, you used the information that had been
17 obtained by a search without a warrant to get the warrant?

18 Am I correct?

19 A Yes, sir.

20 Q There's nothing in here that says why you think Robert
21 Lee Moore may or may not have shot the victim?

22 There's nothing in there about that, is there?

23 A No, sir.

24 Q In fact, what you said was that this search warrant is
25 needed for the furtherance of this investigation to obtain

Tom Clark - Cross-examination
by Mr. Johnston

1 information from your phone that can either implicate or
2 clear Robert Lee Moore from any involvement in this
3 incident?

4 A Yes, sir.

5 Q Please answer any other questions.

6 Your Honor, I'm gonna return that to you.

7 THE COURT: Thank you.

8 REDIRECT EXAMINATION

9 BY SOLICITOR BULSA:

10 Q I have -- did you go to the scene?

11 A No, sir.

12 Q So, you have no understanding of how this cell phone
13 was found?

14 A No, I was told it was found in the vehicle under or
15 near the victim and that was all the information that I was
16 given other than that the victim, according to the
17 investigation, owned several cell phones.

18 Q Okay. So, it's, for all y'all know, it's---

19 MR. JOHNSTON: Object to leading.

20 THE COURT: Sustained. Rephrase it.

21 Q The only information you had regarding the phone was
22 its phone number at the time the search warrant was sought?

23 A Correct, sir.

24 Q So -- but you have the name of Robert Moore in your
25 affidavit.

Tom Clark - Redirect examination
by Solicitor Bulsa

1 Did you determine that that number went with Robert
2 Moore?

3 A Yes, sir.

4 Q You did?

5 A Yes, sir.

6 Q Okay. And then a search warrant was properly sought by
7 a magistrate?

8 A Yes, sir.

9 Q Thank you. That's all I have.

10 RECROSS EXAMINATION

11 BY MR. JOHNSTON:

12 Q How -- what did you tell the judge how you know that
13 that was Robert Lee Moore's phone number?

14 Your Honor, I may have to -- sorry to bother you again.
15 what did you tell the judge about how you know, how you
16 knew that number belonged to Robert Lee Moore?

17 Not the phone, but the number.

18 A I don't recall really.

19 Q Okay. Well, all you could of told him was what's in
20 there?

21 A Yes, sir.

22 Q And it doesn't say?

23 A It doesn't say, yes, sir.

24 Q It doesn't say?

25 A No, sir.

Tom Clark - Recross examination
by Mr. Johnston

1 Q Please answer other questions.

2 SOLICITOR BULSA: I have no other questions.

3 THE COURT: Thank you. You may step down.

4 SOLICITOR BULSA: I feel like we're kind of going
5 backwards with this, but I'll call Lorin Williams now.

6 LORIN WILLIAMS, being first duly
7 sworn, testified as follows:

8 THE COURT: Investigator, please tell us your name and
9 spell your last name for madam court reporter.

10 THE WITNESS: Yes, sir. Lorin Williams.
11 W-I-L-L-I-A-M-S.

12 THE COURT: Thank you.

13 Solicitor.

14 DIRECT EXAMINATION

15 BY SOLICITOR BULSA:

16 Q Are you the lead, lead investigator in this case?

17 A Yes, sir.

18 Q Did you go to the scene?

19 A I did.

20 Q Did you recover a cell phone from the scene?

21 A Yes, sir.

22 Q Explain---

23 A Several cell phones.

24 Q Explain how you recovered those phones.

25 A They were observed in the vehicle. Two of them were.

Lorin Williams - Direct examination
by Solicitor Bulsa

1 One was actually found by ID, but we, we found two and they
2 were recovered by the --.

3 Q Was the victim still at the scene when you arrived?

4 A No, sir, he was not.

5 Q He had already been removed and taken by ambulance?

6 A He had.

7 Q Did you personally observe the location of the phones
8 in the car?

9 A Two of the phones.

10 Q Okay. Because the third one was not in view?

11 A I believe it was between the seats or down under the --
12 between the console and the driver's seat maybe. I can't
13 remember exactly.

14 Q And let me show you State's Exhibit 2 for this hearing.
15 Does that show the two phones you observed?

16 A Yes, sir, it does.

17 Q Okay. Are those -- where are those located in the
18 picture?

19 A Both of them are in the driver compartment floorboard
20 closer to the door.

21 Q Did you determine who owned this car?

22 A Yes.

23 Q And who was the occupant and driver of that car?

24 A The victim.

25 Q Travis Hall?

Lorin Williams - Direct examination
by Solicitor Bulsa

1 A Travis Hall.

2 Q What was your understanding as to where he was found in
3 relation to the victim, or excuse me, in relation to the
4 car?

5 where was Mr. Hall found?

6 A It was my understanding, from speaking to our deputies
7 who had arrived on scene before he was medically treated or,
8 or moved, he was hanging from the seatbelt out the passenger
9 side, I'm sorry, the driver side door.

10 Q Okay. So, he would of been seated somewhat in the
11 driver seat and these phones would of been up under his
12 body---

13 A Correct.

14 Q ---in this position?

15 A Correct.

16 Q Once you observed those phones, what did you then do?

17 A The phones were photographed and they were collected by
18 ID Officer Talanges, and once he collected them, put them in
19 the bag, signed them over to me, I took them to the
20 Sheriff's Office where I gave them to Investigator McGraw.

21 Q Was their collection pretty much done in your sight?

22 A Yes.

23 Q Okay. And was there anybody at the scene claiming
24 ownership of any of those phones?

25 A No, there was not.

Lorin Williams - Direct examination
by Solicitor Bulsa

1 Q And once you returned them over to Investigator McGraw,
2 what information did you receive from him?

3 A I don't have it documented there, but Investigator
4 McGraw had contacted and told us that he had gotten a phone
5 number from the flip phone I believe it was. That number
6 was run through our data system at the Sheriff's Office. It
7 was associated to Mr. Moore through that system as an, a
8 known phone number that he had used or given either in a
9 previous incident or when he was booked in at the jail or
10 something of that nature. It was associated to him.

11 At that point we realized that the phone did not belong
12 to the victim. Therefore, the, the exam was stopped in
13 order to obtain a search warrant before any further forensic
14 testing would be done on the phone.

15 Q Did you task that to Investigator Clark?

16 A I did.

17 Q Thank you. Answer any questions Mr. Johnston would
18 have.

19 CROSS-EXAMINATION

20 BY MR. JOHNSTON:

21 Q This phone was password protected, wasn't it?

22 A I could not answer that.

23 Q All right. Well, do you see in Investigator McGraw's
24 phone -- in his report, does he say it was password
25 projected?

Tom Clark - Cross-examination
by Mr. Johnston

1 A I don't see that it was.

2 Q All right. You did not see him drop this -- you did
3 not see Robert Moore in possession of this phone at anytime,
4 did you?

5 A No, sir, I did not.

6 Q You did not see him relinquish it at anytime, did you?

7 A No, sir, I did not.

8 Q You've been a police officer a long time, haven't you?

9 A Yes, sir.

10 Q Sometimes, when you're chasing somebody, some, a drug
11 dealer or suspected drug dealer, they'll get rid of things
12 while you're chasing them?

13 A Sure.

14 Q They'll throw it down, throw it in the bushes, right?

15 A Sure.

16 Q In the car, they'll throw it out the car window?

17 A Yes, sir.

18 Q Okay. That was not the situation here?

19 You didn't see Robert Moore throw the phone down or
20 throw it away, did you?

21 A No, sir, I never saw Mr. Moore at the scene period.

22 Q You don't know what Robert Moore's state of mind was
23 regarding the cell phone, do you?

24 A When he was in the car?

25 Q Yes, sir, or when the phone was left you don't know?

Tom Clark - Cross-examination
by Mr. Johnston

1 A No, I certainly don't.

2 Q All right. You don't know whether or not -- let me,
3 let me ask you this first.

4 There was apparently a struggle of some kind that went
5 on in this car?

6 Is that fair to say --

7 A At---

8 Q -- from your investigation?

9 A At the very bare minimum, yes.

10 Q Okay. Well, you can elaborate on that.

11 would you say it was a very big struggle?

12 A The victim was shot in the head. I would say it was a
13 significant struggle.

14 Q Well, somebody could be shot, there wouldn't
15 necessarily be a struggle?

16 A Okay.

17 Q I mean you could of shot me right now and there
18 wouldn't be any struggle to it?

19 A Okay.

20 Q I'd just fall over.

21 So, more than one bullet was fired?

22 A Correct.

23 Q Okay. Well, I mean am I right?

24 So, at least some time passed?

25 There were drugs all in the car---

Tom Clark - Cross-examination
by Mr. Johnston

1 A Absolutely.

2 Q ---right?

3 There was money all in the car, right?

4 A In the console.

5 Q well, that's in the car, isn't it?

6 A Uh-huh. (Affirmative).

7 Q Okay. So, if somebody had wanted to take that money
8 they could of taken it, couldn't they?

9 A If they'd known it was there.

10 Q All right. If they wanted to take the drugs, they
11 could of taken that?

12 A Sure.

13 Q All right. You could not exclude the possibility that
14 the cell phone was left by mistake, can you?

15 A Oh, I'm sure it was left by mistake.

16 Q Okay. You ever left your phone anywhere by mistake?

17 A Not during a drug deal.

18 Q well, I understand that.

19 How about if, how about if you're just moving around
20 doing your daily affairs?

21 A I try not to, but---

22 Q You try?

23 A ---I'm sure, I'm sure I've---

24 Q You've known people who've left their phones and forgot
25 their phones or mislaid their phones, haven't you?

Tom Clark - Cross-examination
by Mr. Johnston

1 A Sure.

2 Q They wanted them back, didn't they?

3 A I'm sure they did.

4 MR. JOHNSTON: All right. Your Honor, nothing more for
5 this witness.

6 THE COURT: Anything?

7 SOLICITOR BULSA: No, sir.

8 THE COURT: Please step down.

9 SOLICITOR BULSA: Your Honor, that's the State's
10 showing.

11 THE COURT: Mr. Johnston.

12 MR. JOHNSTON: Your Honor, I don't think we need
13 anymore testimony unless the State has something else it
14 wants to present.

15 THE COURT: Be happy to hear from you.

16 You said you had some case law?

17 MR. JOHNSTON: Yes, sir, Your Honor. The first case --
18 you already have Riley versus California?

19 You said---

20 THE COURT: I do.

21 MR. JOHNSTON: ---you pulled that up, and I'd like to
22 talk a little bit about that case if I could, but---

23 THE COURT: Please.

24 MR. JOHNSTON: But also mention State versus Dupree on
25 the issue of abandonment. Quoting from that case, "in the

1 law of search and seizure, however, the question is whether
2 the defendant has, in discarding the property, relinquished
3 his reasonable expectation of privacy so that its seizure
4 and search is reasonable within the limits of the Fourth
5 Amendment. In essence, what is abandoned is not necessarily
6 the defendant's property, but his reasonable expectation of
7 privacy therein." That comes, again, from State versus
8 Dupree, 319 SC 454.

9 Your Honor, in this case they don't know -- I mean I'm
10 just gonna deal with the issue of abandonment first.
11 There's no evidence here that would support the conclusion
12 that the cell phone was abandoned for Fourth Amendment
13 purposes. Illustrative of that would be you would know that
14 was the case if the officers were chasing someone, and the
15 person threw it, threw the object or the, the bag or
16 whatever, threw it down or if they threw it from their car
17 during the police chase. That to me, Your Honor, would be
18 an obvious indication that they've abandoned the property.
19 In fact, they don't want to get caught with it. So, they're
20 getting, they're getting rid of it. It is like as if
21 they're throwing it away.

22 In this case, that's not what we have. Rather than
23 abandonment, Your Honor, I would argue that the evidence is
24 more consistent with the concept of mislaid or having
25 forgotten it. Officer Williams -- Detective Williams summed

1 it up very nicely when he said I have no doubt that he
2 forgot it and left it behind.

3 If you leave something behind unintentionally you
4 haven't abandoned it. You haven't waived your Fourth
5 Amendment rights. It would be analogous to this situation.
6 If I go to McDonald's for lunch today, and I leave my phone
7 behind by mistake because I get in a hurry or not paying
8 attention or whatever, I haven't abandoned the phone. I've
9 just mislaid it.

10 This is the situation where apparently, according to
11 the evidence that you have before you, there was a struggle.
12 There were gunshots. It doesn't strike me as difficult to
13 think that a person might leave their phone behind in the
14 middle of a situation like that.

15 Also, you will see from the evidence in this case that
16 there was a large amount of money and a large amount of
17 drugs that were in this car, and if a person wanted -- was
18 thinking I'm gonna take certain things with me and I'll not
19 take certain things with me, certainly they would of at
20 least taken the money. So, I would argue again that the
21 facts of the case do not indicate that there was a conscious
22 abandonment, which is what the case law requires.

23 Now, as to the issue of the cell phone itself, we've
24 talked earlier about -- oh one other -- two other points,
25 Your Honor, if I may about abandonment.

1 The first thing is they must have not believed that
2 there was abandonment because they did, in fact, go and get
3 a search warrant later on. That, to me, is a concession by
4 the, by the police officers that they knew a warrant was
5 required because they went and got one.

6 Now, I would also like to point out a couple of points
7 about that warrant. The first problem with the warrant is
8 this. They used information that they had obtained without
9 a search warrant to get it. They said what was in the
10 phone, and the only way they knew what was in the phone was
11 because they had already done a forensic examination of it
12 and already gotten some information off of it. So, whatever
13 they got pursuant to the warrant would be tainted as fruit
14 of the poisonous tree from the information that they had
15 already improperly obtained.

16 The other thing I would point out, Your Honor, is that
17 this is a conclusionary search warrant. A classic example
18 of a conclusionary search warrant, cases on that, Your
19 Honor, are State v. Weston, 494 S.E.2d 801, State versus
20 Jenkins, 722 S.E.2d 761.

21 The cases say that mere conclusionary statements do not
22 support a finding of probable cause. No where in the
23 warrant does it say that they have some reason, any reason
24 at all to believe that Robert Lee Moore had committed a
25 crime and that evidence of that crime would be found inside

1 of the cell phone. It just says we found a number, it
2 belongs to Robert Lee Moore, and that the victim had been
3 shot.

4 There's no evidence in the search warrant that shows
5 Robert Lee Moore had anything to do with the shooting, and I
6 think, in what is classic conclusionary language and showing
7 no probable cause, the search -- it says the search warrant
8 is needed for the furtherance of this investigation to
9 obtain information from the phone that can either implicate
10 or clear Robert Lee Moore from any involvement in this
11 incident. That could not be a -- considered a showing of
12 probable cause.

13 Now, if I may, Your Honor, addressing the recent
14 Supreme Court case of Riley versus California. This phone
15 had the potential for a lot of private information. It had
16 an internal storage capacity. It was able to record texts,
17 private communications that had been sent or received. It
18 had the capability of showing who a person had been
19 contacting or who had attempted to contact him. It had the
20 names potentially of all of the person's associates, their
21 addresses, their telephone numbers, email addresses,
22 anything else that a person might decide to include with
23 their contact information.

24 It also had the capability of taking and storing
25 digital images. There are many many digital images that a

1 person could want to take and not want other people to see.

2 As the Court says in Riley, the sum of an individual's
3 private life can be reconstructed through a thousand
4 photographs labeled with dates, locations, and descriptions.
5 The same can not be said of a photograph or two of loved
6 ones tucked into a wallet. Third, the data on a phone can
7 date back to the purchase of the phone or even earlier. A
8 person might carry in his pocket a slip of paper reminding
9 him to call Mr. Jones. He would not carry a record of all
10 of his communications with Mr. Jones for the past several
11 months as would routinely be kept on a phone.

12 So, I would submit to the Court that this phone was not
13 abandoned, that the case law requires there be a clear
14 intention of abandonment, and that that does not exist in
15 this case, and that a warrant was required. And when they
16 did get a warrant or -- and they got some of the information
17 without a warrant, some of the most key information, and
18 when they did get a warrant, they used information that had
19 been improperly obtained to get the warrant and they only
20 used conclusory statements and did not set forth probable,
21 probable cause.

22 So, we would argue that all information which was
23 extracted from this phone should be suppressed. Both what
24 was taken before the search warrant and what was taken
25 after.

1 THE COURT: Solicitor.

2 SOLICITOR BULSA: As I sat there listening to
3 Mr. Johnston's argument, I thought maybe perhaps we might
4 need Mr. Moore to testify on how and why he left his phone
5 in the car. I would argue to the Court that it's as to the
6 why he left the phone in the car is because he had just shot
7 a man in the head. He fled the scene. He was not
8 apprehended for several weeks.

9 Your Honor, I must also admit that I did not anticipate
10 the left by mistake argument as opposed to abandonment.
11 Your Honor, this -- the question is whether this was a
12 reasonable search of this phone. This phone was left at a
13 crime scene. The police were trying to determine the
14 identity of the person who shot Travis Hall.

15 was this search reasonable?

16 It was reasonable for them to believe it was abandoned.
17 It had been left at the scene. No one came to claim it.
18 There were no other persons around it, but for bystanders
19 and the victim. The was -- phone was left under the
20 victim's body. I think it's clear to the Court that the
21 expectation of privacy and the owner of that phone was
22 extinguished when the person fled the scene.

23 was his -- was the police -- were the police reasonable
24 in searching that phone to determine the identity?

25 The only way they could determine the identity is to

1 open it up and look for the phone number, which they
2 certainly did, in the least intrusive manner. Once they
3 determined that phone number and determined the phone did
4 not belong to the victim, they acted in a reasonable fashion
5 to secure a search warrant, which I submit to the Court was
6 not necessary.

7 Riley versus California or California versus Riley,
8 however it's cited, does not exempt or remove the exceptions
9 to the requirements of a search warrant. Certain exceptions
10 still exist and I submit to the Court that abandonment is
11 certainly one of those exceptions that continue to exist.
12 But the police, acting in caution, stopped their search,
13 obtained a search warrant in a proper fashion, presented the
14 Court with the information they had to further investigate
15 and determine whether Mr. Moore was involved in this crime.

16 what didn't come out in this hearing, Your Honor, is
17 that information the State would present in Court is that
18 that phone showed numerous phone calls to the victim's phone
19 on the date in question. Many just moments before the
20 actual shooting occurred.

21 So, it is significant to the case.

22 was that search reasonable?

23 Your Honor, the State argues that it was. He had no
24 reasonable expectation of privacy because he left the scene,
25 did not come back to the scene, made no calls -- made no

1 attempts to try to recover that phone, and the police's
2 conduct was certainly reasonable in trying to investigate
3 this horrific shooting.

4 MR. JOHNSTON: Your Honor, I've taken the liberty of
5 emailing to your clerk, with a copy to Mr. Bulsa, Section
6 26(b) from Professor Lathom's search and seizure treatise on
7 the Fourth Amendment and his section on abandoned affects
8 generally. I think it'd be easier for the Court to review
9 that than to have me try to go through and say what I think
10 is important, but I just send it to you for your information
11 with a copy to Mr. Bulsa.

12 THE COURT: well, let me, let me ask something here,
13 Mr. Johnston.

14 MR. JOHNSTON: Yes, sir.

15 THE COURT: And, and forgive me if I get this all wrong
16 and straighten me out, but what I understand, when the
17 police arrived in this, this phone is here?

18 This---

19 MR. JOHNSTON: Yes, sir.

20 THE COURT: They don't, they don't have an idea whose
21 phone it is, is that correct?

22 MR. JOHNSTON: well --.

23 THE COURT: Or, or do they?

24 MR. JOHNSTON: This is what I would say. They found
25 three phones.

1 THE COURT: Yes, sir.

2 MR. JOHNSTON: So, I think that would lead them to a
3 conclusion not many people have three phones. Not many
4 people have two, but I do know some people with two. So, I
5 think that, by finding the third phone, that should tell
6 them that it doesn't necessarily belong to the man who
7 was -- shot him.

8 THE COURT: All right. But there was testimony that --
9 I think I heard testimony right off the bat that the victim
10 was known to have multiple phones.

11 MR. JOHNSTON: Yeah, I think he was---

12 THE COURT: I don't know how they know that, but that
13 was---

14 MR. JOHNSTON: I think they asked somebody. I think he
15 was known to have two.

16 THE COURT: Well, I don't, I don't know if there's two
17 or three or more than that or less than that. I'm just
18 saying what -- the testimony before the Court was that
19 they -- the victim was known to have multiple phones.

20 MR. JOHNSTON: Yes.

21 THE COURT: More.

22 MR. JOHNSTON: Yes.

23 THE COURT: Is that right?

24 So, so then it -- just like me, looking at this for the
25 very first time, they don't know whose phone that is. I

1 mean they're two phones laying on the floor. They don't
2 know if they belong to him or, or to any other person.

3 Is that, is that fair?

4 MR. JOHNSTON: Yes, and they didn't have anyone to
5 consent to the search of those phones. So, the lacking
6 anyone to consent, then what they should have done is
7 gathered their information, through their investigation as
8 best as they could, sought a search warrant and then got the
9 information out of it. Even if the phone belonged to the
10 victim, they would still have needed a search warrant to use
11 information from it.

12 For example, if the victim had sent a text saying that
13 he had committed a crime on an earlier occasion, it couldn't
14 be used against him if they'd searched it without a warrant,
15 and I've seen many cases with crime scenes where the, the
16 officers, before they conduct a thorough search of the crime
17 scene even though they're looking for evidence to see who
18 did the crime, they get a search warrant and that's what
19 they should of done in this case.

20 The, the other thing, Your Honor, is they tried to get
21 everything off of the phone without a warrant. The only
22 reason they didn't get that information was because it
23 didn't work, and the only thing they were able to get off of
24 it was the number, essentially the number. So then they
25 take the fact that they have the number and they're able to

1 associate that with Mr. Moore, although they don't bother to
2 tell the judge how they associate it with Mr. Moore, but
3 then they go and get a search warrant a day later.

4 THE COURT: I understood, from Investigator Williams
5 testimony, that they have their own database of some sort
6 that's been associated with a prior booking or something
7 like that?

8 Is that -- so, that's what---

9 MR. JOHNSTON: Yes, but---

10 THE COURT: ---what I understand?

11 MR. JOHNSTON: I don't know whether it's this fancy
12 database, but they went and got it. It was on a jail card
13 somewhere.

14 THE COURT: Right.

15 Okay. Mr. Bulsa.

16 SOLICITOR BULSA: I think Your Honor is seeing it
17 clearly. I still don't know how we reach the search warrant
18 issue when it was abandoned. But even if you do reach the
19 search warrant issue, the police stopped, once they realized
20 it did not belong to the victim, they took that extra step
21 forward to get a search warrant.

22 THE COURT: All right. Other motions that we're gonna
23 have?

24 MR. JOHNSTON: Your Honor, we have some general issues
25 if you want to take those up.

1 THE COURT: Yeah, let's take those up. Obviously I'm
2 gonna have to go do some reading here.

3 MR. JOHNSTON: Your Honor, we'd ask that the witnesses
4 be sequestered.

5 THE COURT: Any objection to that?

6 SOLICITOR BULSA: I, I don't really see a need, Your
7 Honor, but I'll -- they all have different views and
8 prospectives that they're gonna testify to. I don't know
9 how they could mirror their testimony with each other.

10 MR. JOHNSTON: Well, from an abundance of caution we'd
11 like them to be sequestered.

12 THE COURT: Okay. They're sequestered unless we got
13 some other reason not to. Obviously, your case agent, if
14 it's the -- if it's Williams or ever who that is is
15 certainly in the courtroom.

16 SOLICITOR BULSA: Yes, sir, we just ask that be
17 reciprocal.

18 THE COURT: It is reciprocal.

19 MR. JOHNSTON: Yes, sir, we don't have any witnesses.
20 So that won't be a problem for me.

21 THE COURT: Okay.

22 MR. JOHNSTON: But if we develop any, we'll keep them
23 sequestered.

24 Your Honor, I want to know if the State is going to
25 introduce -- there is some fingerprint evidence which we

1 believe is exculpatory in this case, and I need the State's
2 witnesses to be able to prove that. If -- I would like to
3 inquire do -- are they going to present the fingerprint
4 testimony. I would like to inquire are they going to
5 present it.

6 THE COURT: Mr. Bulsa.

7 SOLICITOR BULSA: Well, do you want to stipulate to it?

8 MR. JOHNSTON: We could probably stipulate to it, yes.

9 SOLICITOR BULSA: I'll probably have somebody come
10 testify where they were collected and---

11 MR. JOHNSTON: I just want to make sure I can get it in
12 evidence. If they'll do it by stipulation---

13 SOLICITOR BULSA: Yeah.

14 MR. JOHNSTON: ---or have the people here it's fine.

15 SOLICITOR BULSA: Your Honor?

16 MR. JOHNSTON: What I'm trying to get in is that the
17 codefendant's, as I read the report, a codefendant's
18 fingerprint are found on the victim's car and I'm trying to
19 get that in evidence.

20 THE COURT: Well, you can, you can subpoena those
21 people, right?

22 MR. JOHNSTON: Yes, sir, I, I certainly that -- and,
23 and I will, but if they're, if they're offering to stipulate
24 or if they'll make them -- if they're gonna put it in
25 themselves then that wouldn't be necessary.

1 SOLICITOR BULSA: We have all those people under
2 subpoena, Your Honor.

3 THE COURT: You have them?

4 SOLICITOR BULSA: Yes, sir.

5 THE COURT: They're under subpoena. Whether or not
6 they're gonna testify, I don't know. That's up to Solicitor
7 Bulsa, but they're under subpoena. Now, it's his subpoena
8 and he can release them. So --.

9 SOLICITOR BULSA: Yes.

10 MR. JOHNSTON: We would respectfully ask that they not
11 be allowed to be released until Your Honor---

12 SOLICITOR BULSA: I play fair, Your Honor. I won't
13 release them.

14 THE COURT: Okay. He won't release them.

15 MR. JOHNSTON: We appreciate that very much.

16 THE COURT: I know where you're going with that, by the
17 way, Mr. Johnston.

18 You don't have any other witnesses, right?

19 MR. JOHNSTON: Yes, sir. Yes, sir.

20 THE COURT: He gets the closing, right?

21 MR. JOHNSTON: Sometimes that's all you got.

22 SOLICITOR BULSA: Unless he wants to play fair and give
23 it to me.

24 THE COURT: Okay.

25 MR. JOHNSTON: Your Honor, there's the co -- I've been

1 told the codefendant is going to testify. If the
2 codefendant is going to testify, I wish to know what
3 incentives, offers, anything like that have been made to the
4 codefendant to secure his testimony.

5 SOLICITOR BULSA: We do anticipate the codefendant to
6 testify. We've not discussed the outcome of his charges
7 previous to his testimony.

8 THE COURT: All right. You can cross-examine him on
9 it.

10 MR. JOHNSTON: All right. So what I'm hearing him say
11 is they haven't discussed it?

12 THE COURT: They haven't discussed it. They, they --
13 there is no deal to reveal.

14 MR. JOHNSTON: All right, sir. Your Honor, I'm told
15 that the codefendant took a polygraph. I'm wondering if I
16 could have a copy of the results of that polygraph
17 information for my file. Also wonder if it was done, if it
18 was recorded in anyway, either audio or video recorded.

19 SOLICITOR BULSA: I don't know the answer to that, Mr.
20 Johnston. I have not received it myself, but I'll
21 inquire---

22 MR. JOHNSTON: We would---

23 SOLICITOR BULSA: ---over lunch.

24 MR. JOHNSTON: We would respectfully request could
25 inquiries be made if, if -- I'd like to have a copy of the

1 report, and I'd like to see if there were -- if they did
2 record him, I'd like to have a copy of that, and, of course,
3 I would make a motion in limine that no mention of the
4 polygraph be made or the results of the polygraph unless the
5 court should determine that that would be appropriate.

6 THE COURT: Mr. Bulsa.

7 SOLICITOR BULSA: I have no intention of going there,
8 Your Honor.

9 THE COURT: Good. Thank you.

10 He's not going there.

11 MR. JOHNSTON: All right, sir. Likewise, Your Honor,
12 I'm told that the victim, and this is all very recent, I'm
13 told that the victim is going or his most recent statement
14 is going to say that the codefendant is the one who shot
15 him. Mr. Bulsa and I already had this conversation the
16 other day, but I just want to put it on the record, and that
17 is that Mr. Bulsa would have the victim in Court and would
18 not release him unless the Court ordered he could be
19 released in case that I need to call him.

20 THE COURT: Mr. Bulsa.

21 SOLICITOR BULSA: He doesn't quite say that, Your
22 Honor. The victim is -- still has a bullet in his head. On
23 one prior occasion in my office earlier in the year, when
24 the case was previously scheduled for trial, we had a short
25 conversation, and I asked him just a -- the direct question

1 as to who shot him, and he told me Robert Moore. He knew
2 Robert Moore. He knew it was Robert Moore that shot him.

3 With that information we were preparing the case for
4 trial. There was information in the file that the
5 codefendant had cooperated with the police. We were seeking
6 his cooperation once the trial was gonna be heard, and
7 ultimately he did decide to cooperate and he's also
8 identifying Robert Moore as the shooter.

9 Earlier this, early last week, I believe it was on
10 Wednesday of last week, we brought the victim in to see
11 exactly how far he has, has recovered and whether he could
12 testify.

13 In going over some questions with him, when we asked
14 him who shot him, he said he didn't know, but he did
15 indicate that it was not Robert Moore because he knows
16 Robert Moore. That conflicting information, based on his
17 condition, and the other pieces of evidence that we have, we
18 decided not to call him as a witness and rely on the lay
19 witnesses and the police investigation and the codefendant
20 testimony to prove Mr. Moore was the shooter.

21 MR. JOHNSTON: Well, in that event, Your Honor, we
22 would like, as Mr. Bulsa and I talked in his office on
23 Friday, he said he would make him available to me, to me.

24 SOLICITOR BULSA: And he's gonna be here, Your Honor.

25 THE COURT: He's gonna be here?

1 SOLICITOR BULSA: He's gonna be here, yes, sir.

2 MR. JOHNSTON: That's all I can ask, and that he not be
3 released until the Court says so.

4 SOLICITOR BULSA: You want him sequestered?

5 MR. JOHNSTON: Well, you don't -- no, it's not
6 necessary. Plus he's doesn't fall under the sequestration
7 rules anyway. But that would be your call. If you want him
8 sequestered, sequester him. I don't require it.

9 THE COURT: He's gonna be here.

10 MR. JOHNSTON: All right, sir. Your Honor, I would
11 request that the State provide me with copies of the juror
12 information that they get that they have gotten from NCIC so
13 that I would have access to that information as well for
14 jury selection.

15 SOLICITOR BULSA: We object to that, Your Honor.
16 That's work product that the State's generated at some
17 expense.

18 MR. JOHNSTON: It's free to them, Your Honor. They use
19 public -- they use the public resource to get that
20 information. There's no reason that I shouldn't have access
21 to it as well. It would cost me \$25 a person. They get it
22 for free.

23 THE COURT: I don't know of a case on that, Mr.
24 Johnston, that authorizes the defense -- I have often wanted
25 it and asked for it. Never got it.

1 Can you give me a case?

2 MR. JOHNSTON: No, sir, there isn't -- there aren't any
3 reported cases on it. One never knows when such a case
4 might arise.

5 THE COURT: Okay. Then it's denied at this time.

6 MR. JOHNSTON: All right, sir.

7 THE COURT: Anything else?

8 MR. JOHNSTON: Not at this time, sir.

9 THE COURT: Mr. Bulsa.

10 SOLICITOR BULSA: Nothing from the State, Your Honor.

11 THE COURT: Okay. I've told the jury to be back at two
12 o'clock ready to go. It's 12:00 -- it's almost 12:30 now.
13 We'll be, we'll be close to that I'm sure.

14 (Pause.)

15 THE COURT: Anything further at this time?

16 All right. Then I'll go read.

17 MR. JOHNSTON: Your Honor, I would ask that the --
18 there not be a reference to what the codefendant is going to
19 say in Mr. Bulsa's opening until he actually says it because
20 I don't know whether he's really gonna say it or not. So, I
21 would request that that not be brought out until he actually
22 testifies.

23 SOLICITOR BULSA: Your Honor, I have no objection to
24 that.

25 THE COURT: Okay. Okay. We'll be in, we'll be in

1 recess until just a little before 2:00, and we'll take up
2 that plea. We'll be in recess on this case until 2:00.

3 (WHEREUPON, Court was in recess for the lunch hour.)

4 THE COURT: All right. Let's have our jury.

5 Strikes are --?

6 MR. JOHNSTON: Ten and five.

7 SOLICITOR BULSA: Ten and five, right.

8 THE COURT: Okay. I was gonna pick two alternates.

9 MR. JOHNSTON: Yes, sir.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: All right. Thank you, ladies and
13 gentlemen.

14 I trust you had a little, a lot more time to have a
15 little lunch than we, than we did. Of course, that's my own
16 fault up here. But, nonetheless, we had time for -- I had a
17 half of a sub that -- a half of a half of a sub sandwich.
18 But anyway we've been working in your absence is what I'm
19 telling you, and we're ready now to pick 14 of you. Okay.
20 we're gonna pick 12 with two alternates on the next case.

21 Before we begin that process I must remind you that you
22 are -- were previously placed under oath and that you remain
23 under oath. I'm also required to ask another series of
24 questions, but, again, I remind you that you are under oath,
25 previously placed under oath.

1 We are here on the matter of the State of South
2 Carolina in Indictment 2013-GS-42-2965, the State of South
3 Carolina versus Robert Lee Moore. Mr. Moore, who is seated
4 at counsel table and will be introduced to you momentarily,
5 has entered a plea of not guilty to the indictment, and,
6 therefore, the burden is on the State of South Carolina to
7 prove each and every element of the offense as charged. The
8 offense that he is charged with committing is attempted
9 murder.

10 Now, I remind you that something I told you very early
11 on is that you will see me throughout the trial of this case
12 stand, and I stand for a good long periods of times.
13 Sometimes I, I charge you and, and tell you that you are to
14 place no significance on the fact that I am standing or
15 seated as to whether or not a witness is testifying -- as to
16 when a witness is testifying. It does not mean that I
17 believe or disbelieve a witness' testimony if I stand or if
18 I sit. It just means that Keith Kelly's tired of sitting in
19 that chair and I'm not gonna do it anymore. So, I'm just
20 gonna stand for a little while.

21 I've also had one juror who indicated to me earlier
22 that, due to a medical condition, that that juror, if
23 selected, might also need to stand at some period of time,
24 and I told that juror, as I tell you, if that happens to be
25 you or, or, at some point you need to stand, if you would be

1 kind enough to maybe sit if you're selected to sit on the
2 back row of the jury box. If you would do that, you'd be
3 free to stand at that point in time if your feet go to
4 sleep. I had a juror tell me, I think, they get some
5 numbness in their feet if they sit for long periods of time.

6 As I told you, the defendant is here on indictment
7 before the State -- before the Court on attempted murder and
8 he has pled not guilty to that, and I remind you that the
9 indictment itself is absolutely no evidence of guilt and
10 that the defendant has entered a plea of not guilty.

11 Here are the questions I'm required to ask.

12 Has anyone ever been related by blood or marriage to
13 Robert Lee Moore, if so, please stand.

14 (No response.)

15 THE COURT: Does anyone have a close personal, social,
16 or other relationship with Mr. Robert Lee Moore, if so,
17 please stand.

18 In other words, you know him from church, you know him
19 from, from the community, or anything. You know him in
20 anyway.

21 (No response.)

22 THE COURT: Has anyone ever had a close or personal
23 relationship with one Travis Hall, if so, please stand.

24 (No response.)

25 THE COURT: Has anyone ever been related by blood or

1 marriage to Mr. Travis Hall, if so, please stand.

2 (No response.)

3 THE COURT: The following is a list of potential
4 witnesses in this case:

5 Chris Barnes.

6 Lesene Brannon.

7 Robert Brannon.

8 Cynthia Crosby.

9 Lindsey Deweese.

10 Debra Hall.

11 Travis Hall.

12 Carla Hughes.

13 Doris Moore.

14 Coley Peake.

15 Reginald Sanders.

16 Tevin Thomas.

17 Tim Tullock.

18 Barbara Waddell.

19 Max Wiles.

20 Mike Flynn.

21 Gail Moffitt.

22 Carolina Dunphy.

23 Mike Jones.

24 Brian Licurs.

25 Vincent Reed.

1 Mary Adams.

2 Marilyn Arthur.

3 Jason Bryant.

4 Megan Burrell or Burrell.

5 Chris Bush.

6 Richie Foster.

7 Brian Fraley.

8 William Gary.

9 Joey Guffey.

10 David Hosged.

11 John Hudson.

12 Matt Hutchins.

13 Lindsey McGraw.

14 Robert Tala -- tell me that.

15 SOLICITOR BULSA: Talanges.

16 THE COURT: Talanges.

17 Christopher Wilbanks.

18 Lorin Williams.

19 Alan Wood.

20 Is anyone on the jury panel ever been related by blood
21 or marriage to any of those potential witnesses, if so,
22 please stand.

23 (Juror responds.)

24 THE COURT: Yes, ma'am, your juror number please.
25 Stand please.

1 THE JUROR: 52. Alan Wood, is he the Detective Alan
2 wood?

3 THE COURT: He is.

4 THE JUROR: I was formerly married to his brother.

5 THE COURT: Formerly married to his brother.

6 The fact that you have a former relationship or family
7 relationship with him, would that interfere with your
8 ability to give both the State and the defense a fair and
9 impartial trial?

10 THE JUROR: No.

11 THE COURT: It would not. You may stay with us.
12 Anyone else?

13 (Juror responds.)

14 THE COURT: Yes, sir, your number please.

15 THE JUROR: 188.

16 THE COURT: One -- all right, sir.

17 THE JUROR: I'm not sure if I'm related to him or not.

18 THE COURT: Who?

19 THE JUROR: To Alan Wood.

20 THE COURT: Alan wood.

21 THE JUROR: I am---

22 THE COURT: If you are related to him, would that
23 affect your ability to give the State and the defense a fair
24 and impartial trial?

25 THE JUROR: No, sir.

1 THE COURT: And if you're not related to him, would
2 that interfere with your ability to give the State or
3 defense a fair trial?

4 THE JUROR: No, sir.

5 THE COURT: Thank you. Very good.
6 Anybody else?

7 (No response.)

8 THE COURT: The attorneys in this case I'm gonna ask to
9 introduce themselves.

10 Solicitor.

11 SOLICITOR BULSA: My name is Derrick Bulsa. I work
12 with the Solicitor's Office.

13 THE COURT: Mr. Johnston.

14 MR. JOHNSTON: Good afternoon, ladies and gentlemen.
15 My name is Andy Johnston. I practice law here in
16 Spartanburg.

17 THE COURT: Is there any member of the jury panel that
18 has ever been related by blood or marriage to either of the
19 lawyers or anyone associated with their law firms or law
20 staff, law office, if so, please stand.

21 (No response.)

22 THE COURT: Does anyone have a close personal or social
23 relationship with either of the lawyers or, again, anyone on
24 their staff, please stand.

25 (No response.)

1 THE COURT: Has anyone ever been represented by
2 Attorney Andy Johnston in any manner whatsoever, if so,
3 please stand.

4 (No response.)

5 THE COURT: Any member of the jury panel ever been a
6 prosecuting witness or testified on behalf of the State in a
7 matter handled by the Seventh Circuit Solicitor's Office, if
8 so, please stand.

9 (Juror responds.)

10 THE COURT: Yes, sir, your juror number.

11 THE JUROR: 31.

12 THE COURT: 31.

13 You've testified or --?

14 THE JUROR: Yes, sir.

15 THE COURT: Okay. would that interfere with your
16 ability to give the State and the defendant a fair and
17 impartial trial?

18 THE JUROR: No, sir.

19 THE COURT: It would not. You may stay with us.

20 Anyone related by blood or marriage to any of the staff
21 in the Seventh Circuit Solicitor's Office, please stand,
22 which would include attorneys, fellow attorneys, if so,
23 please stand.

24 (No response.)

25 THE COURT: Anyone have a personal or social or close

1 relationship with any of the attorneys or other staff
2 members in the Seventh Circuit Solicitor's Office, please
3 stand.

4 (No response.)

5 THE COURT: Is there any member of the jury panel that
6 was a member of the Grand Jury which issued the indictment
7 in this case?

8 The indictment was issued June 13th of 2013.

9 Anybody on the Grand Jury in June of 2013, if so,
10 please stand.

11 (No response.)

12 THE COURT: Is there any member, any member of the jury
13 panel now or formerly a member of or contributed to a
14 victim's advocacy group or anti-crime group such as Mothers
15 Against Drunk Driving, Students Against Drunk Driving,
16 Citizens Against Violent Crime, or any other similar
17 organization, if so, please stand.

18 (No response.)

19 THE COURT: Is there any member of the jury who has
20 ever been employed as a law enforcement officer?

21 whether that's in civilian service or military service.

22 Any member of the jury ever employed as a law
23 enforcement officer, please stand.

24 (No response.)

25 THE COURT: Is there any member of the jury panel

1 related by blood or marriage to a law enforcement officer of
2 this state, if so, please stand.

3 (Jurors responds.)

4 THE COURT: All right. We'll start right here.

5 Ma'am, yes, ma'am, your number.

6 THE JUROR: 22. My uncle is a sergeant at the
7 Spartanburg County Sheriff's Department.

8 THE COURT: Would that interfere with your ability to
9 give both the state and the defense a fair and impartial
10 trial?

11 THE JUROR: No, sir.

12 THE COURT: It would not. You may stay.

13 Yes, ma'am.

14 THE JUROR: My brother-in-law is Major Steve Lamb for
15 the City.

16 THE COURT: Would that interfere with your ability to
17 give the state and the defense a fair trial?

18 THE JUROR: No.

19 THE COURT: You may stay with us.

20 MR. JOHNSTON: Your Honor, could I get her juror
21 number?

22 I didn't get it.

23 THE COURT: Oh, I'm sorry.

24 Your number please?

25 THE JUROR: 85.

1 THE COURT: 85.

2 Yes, ma'am.

3 THE JUROR: 73. My son and daughter-in-law work at the
4 Spartanburg County Sheriff's Department and my son-in-law at
5 Campobello Police Department.

6 THE COURT: Okay. Your number is?

7 THE JUROR: 73.

8 THE COURT: 73.

9 would that interfere with your ability to give both---

10 THE JUROR: No, sir.

11 THE COURT: ---sides a fair and impartial trial?

12 THE JUROR: No, sir.

13 THE COURT: Thank you. You may stay.

14 Yes, ma'am.

15 THE JUROR: Number 94.

16 THE COURT: Yes, ma'am.

17 THE JUROR: I have a daughter that's a police officer
18 in Westminster. I have a daughter that's on the Highway
19 Patrol.

20 THE COURT: Okay. would that interfere with your
21 ability to give both the state and the defense a fair and
22 impartial trial?

23 THE JUROR: No, sir.

24 THE COURT: Thank you. You may stay.

25 Yes, ma'am.

1 THE JUROR: My nephew is a police officer.

2 THE COURT: Your number please?

3 THE JUROR: Number 11.

4 THE COURT: Number 11.

5 Your nephew is a police officer.

6 Would that interfere with your ability to give both the
7 state and the defense a fair trial?

8 THE JUROR: No, sir.

9 THE COURT: Thank you, ma'am. You may stay.

10 Yes, ma'am.

11 THE JUROR: Number 71. My brother-in-law's a sheriff's
12 deputy in Spartanburg County.

13 THE COURT: Would that interfere with your ability to
14 give both sides a fair and impartial trial?

15 THE JUROR: No, sir.

16 THE COURT: Thank you. You may stay with us.

17 Yes, sir.

18 THE JUROR: Prior military. In the Air Force I worked
19 security.

20 THE COURT: Your number, sir?

21 THE JUROR: 140.

22 THE COURT: 140.

23 Would that interfere with your ability to give both the
24 state and the defense a fair and impartial trial?

25 THE JUROR: No.

1 THE COURT: Thank you. You may stay with us.

2 Yes, ma'am.

3 THE JUROR: Number 72. My nephew is a police officer.

4 THE COURT: Would that interfere with your ability to
5 give both sides a fair and impartial trial?

6 THE JUROR: No, sir.

7 THE COURT: Thank you. You may stay with us.

8 Anybody else?

9 (No response.)

10 THE COURT: Has any member of the jury panel or their
11 immediate family been the victim of a violent crime, if so,
12 please stand.

13 (Jurors respond.)

14 THE COURT: All right. Well, we started over there
15 last time. We'll start over here this time.

16 Yes, ma'am.

17 THE JUROR: 71.

18 THE COURT: Yes, ma'am.

19 THE JUROR: Victim of CDV.

20 THE COURT: Okay. Would that interfere with your
21 ability to give both sides a fair and impartial trial?

22 THE JUROR: No.

23 THE COURT: Thank you. You may stay.

24 Yes, sir.

25 THE JUROR: I had a niece that was raped five years

1 ago.

2 THE COURT: Your number, sir?

3 THE JUROR: 140.

4 THE COURT: Would that interfere with your ability to
5 give both sides a fair trial?

6 THE JUROR: No.

7 THE COURT: Thank you. You may stay.

8 Yes, sir.

9 THE JUROR: Number 151. My brother-in-law had a
10 breaking and entering.

11 THE COURT: Would that interfere with your ability to
12 give both the State and the defense a fair and impartial
13 trial?

14 THE JUROR: No, sir.

15 THE COURT: You may stay with us.

16 Yes, ma'am, in the green.

17 THE JUROR: Juror Number 165. A long time ago, when I
18 was four years old, I was hit by a drunk driver. It broke
19 my leg in three places and messed up my hip.

20 THE COURT: Would that interfere with your ability to
21 give both sides a fair and impartial trial?

22 THE JUROR: No.

23 THE COURT: Thank you. You may stay.

24 Yes, ma'am.

25 THE JUROR: 25. Ex-husband, CDV against myself.

1 THE COURT: Okay. Would that interfere with your
2 ability to give both sides a fair and impartial trial?

3 THE JUROR: No, sir.

4 THE COURT: Thank you. You may stay.

5 Yes, sir, in the yellow.

6 THE JUROR: 93. My uncle was shot down at his business
7 three years ago.

8 THE COURT: Would that interfere with your ability to
9 give both sides a fair and impartial trial?

10 THE JUROR: Yes, sir.

11 THE COURT: It would?

12 THE JUROR: Yes, sir.

13 THE COURT: You are excused from the trial of this
14 case.

15 Yes, sir, in the blue.

16 THE JUROR: I was the victim of strong armed battery.
17 The initial charge was lynching.

18 THE COURT: Would that interfere with your ability to
19 give both sides a fair and impartial trial?

20 THE JUROR: No, sir.

21 THE COURT: All right. Mr. Bailiff.

22 MR. JOHNSTON: Can I get his number?

23 THE BAILIFF: Send him back.

24 THE COURT: Yeah, he needs to stay with us. He's just
25 excused from this trial. We got some more.

1 You're, you're excused from this trial, sir, but you
2 stay with us cause we got some more.

3 Yes, ma'am.

4 MR. JOHNSTON: Your Honor, if I could, could I get the
5 other gentleman's number?

6 THE COURT: In the blue, sir, what was your number?

7 THE JUROR: Me. Oh, I'm sorry. 31.

8 THE COURT: 31, Mr. Johnston.

9 MR. JOHNSTON: Thank you, sir.

10 THE COURT: Yes, ma'am.

11 THE JUROR: I'm 105. My current husband, his wife was
12 killed by a Anderson police car in Clemson.

13 THE COURT: Would that interfere with your ability to
14 give both sides a fair and impartial trial?

15 THE JUROR: I don't think so.

16 THE COURT: Thank you. You may stay with us.

17 Yes, ma'am.

18 THE JUROR: 89. My cousin was hit and killed by an
19 unlicensed driver who was under the influence.

20 THE COURT: Would that interfere with your ability to
21 give both sides a fair and impartial trial in this case?

22 THE JUROR: No, sir.

23 THE COURT: Thank you. You may stay.

24 Yes, ma'am.

25 THE JUROR: My adult son was robbed when he was

1 delivering pizza and with -- administered great bodily harm
2 on him.

3 THE COURT: Would that interfere with your ability to
4 give both the State and the defense a fair and impartial
5 trial?

6 THE JUROR: No.

7 THE COURT: Thank you.

8 MR. JOHNSTON: Could I get her number please?

9 THE COURT: Your number, please?

10 THE JUROR: I forgot. 138.

11 THE COURT: 138. Thank you. You may stay.

12 Anybody else?

13 (No response.)

14 THE COURT: Mr. Johnston, I think I covered it.

15 MR. JOHNSTON: Yes, sir, you did.

16 THE COURT: Okay.

17 MR. JOHNSTON: Thank you, sir.

18 THE COURT: Anything else from the State?

19 SOLICITOR BULSA: No, sir.

20 THE COURT: My final question to everyone always is, is
21 there any member of the jury panel know of any reason
22 whatsoever why he or she should not serve as a juror in this
23 case with particular emphasis being placed on your ability
24 to be fair and impartial to both the State and the defense,
25 if so, please stand.

1 Any reason whatsoever.

2 (No response.)

3 THE COURT: All right. Anything further,
4 Mr. Solicitor?

5 SOLICITOR BULSA: Can we approach?

6 THE COURT: Certainly.

7 (WHEREUPON, a bench conference was held out of the
8 hearing of the jury at this time.)

9 THE COURT: Are you ready to pick the panel?

10 MR. JOHNSTON: Defense is ready.

11 SOLICITOR BULSA: Yes, sir.

12 THE COURT: Okay. Madam Clerk, let's have our jury
13 please.

14 (WHEREUPON, the jury panel was selected at this time.)

15 THE CLERK: And this will be for the alternate, first
16 alternate.

17 (WHEREUPON, the first alternate juror was selected at
18 this time.)

19 THE CLERK: And this will be for the second alternate.

20 (WHEREUPON, the second alternate juror was selected at
21 this time.)

22 THE COURT: Okay. We're back on the record.

23 Any matters from the State at this point,
24 Mr. Solicitor?

25 SOLICITOR BULSA: No, sir.

1 THE COURT: Okay. Defense?

2 MR. JOHNSTON: No, sir, Your Honor, other than we do
3 want to -- well, never mind.

4 THE COURT: Yeah, I've, I've got that.

5 MR. JOHNSTON: Yes.

6 THE COURT: Okay. Anything regarding the jury?

7 MR. JOHNSTON: No, sir.

8 THE COURT: Okay.

9 MR. JOHNSTON: Not regarding selection.

10 THE COURT: Okay. All right. Thank you very much.

11 Ladies and gentlemen of the jury, it is my custom to
12 alternate between male and female persons to be the
13 foreperson or the foreman or forelady, foreperson, whatever
14 have you, to be the foreperson of the jury. We were trying
15 cases over in Cherokee County last week, and I had to go
16 back and forth. We ended up with some of each, but it is
17 the time to have a lady as a foreperson.

18 I don't know any of you, but Juror Number 155, a Nettie
19 Shull, where would you be, ma'am?

20 (Juror raises her hand.)

21 THE COURT: Ms. Shull, if you would stand?

22 (Juror complies.)

23 THE COURT: You are now the forelady, foreperson of
24 this jury. I will give you further instructions, but your
25 primary goal is to be the spokes-lady for the jury if you

1 will. If a juror has as an issue, has a problem, and I'll
2 talk with you more about it later here in open Court, but
3 if, if a juror has a problem or what have you, it would be
4 up to you to write a note or contact the bailiff and let the
5 bailiff know something along that effect or later, when
6 you're deliberating, if there's a question, you would be the
7 forelady who would write the note to send to the bailiff.

8 Madam Forelady, and my alternates, you have assigned
9 seating on the jury. Everybody here now is an honorary
10 Rotarian. I've been an honorary Rotarian for a very long
11 time, over 25 years, and when you go to Rotary Club you can
12 sit on the front. You can sit on the back. You can sit at
13 the table to the left, table to the right. So, the rest of
14 you are free to move around.

15 But, Madam Forelady, you and my alternates will be
16 shown where to sit and you would also sit in those seats so
17 that when I look up, Madam Forelady, if there's some reason
18 I need to address the jury, I know where you are seated. I
19 don't -- I won't have to look for you cause you're wearing
20 green and white today, but you might be wearing red and
21 white tomorrow, and I'll be looking for green and white. I
22 won't be able to find you. So, so, that's the way we're
23 gonna do that.

24 So, you can come now and take the seat of the
25 foreperson of the jury please.

1 (Juror complies.)

2 THE COURT: There we go.

3 And then, to my two alternates, if you would always sit
4 in those two seats, and I don't care if you sit to the left
5 or the right of each other, but if you -- I will always know
6 that my forelady is here and my two alternates are right,
7 right behind her.

8 Okay. With that, Madam Forelady, your first official
9 act is to take your jury duty out -- jury duty, jury duty.
10 Your jury out to the jury assembly room. This is a
11 different room. It's a room you've not seen at this point
12 in time. You may or may not, some of you, have personal
13 affects that was left in the other room, and, if so, you can
14 move them to this room. But this is the room that you're
15 going to right now, ladies and gentlemen, this will be the
16 room that will be your jury room during this entire trial.
17 That will be where you will come in tomorrow morning, and
18 when we break for lunch, it will be the room that you report
19 back to and, again, I take it, Mr. Bailiff, if they leave a
20 coat or a jacket or rain gear or something in there, and
21 it's locked up over lunch, is that pretty -- that's---

22 THE BAILIFF: Yes, sir.

23 THE COURT: So, it's secured to that effect. So, if
24 you were to leave a rain jacket or an umbrella or something
25 in there that would be quite all right.

1 All right. Madam Forelady, if you'd take your jury to
2 the jury assembly room. We'll be right with you, and
3 there's restroom facilities there too and maybe some water
4 available.

5 THE BAILIFF: Yes, sir.

6 THE COURT: Water and restroom facilities are available
7 back there.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: Okay. We're gonna be in recess for just a
11 couple of minutes here. If you'll -- if you would, just
12 everybody remain in place while we collect a couple
13 thoughts.

14 (WHEREUPON, a short recess was taken at this time.)

15 THE COURT: First of all, I want to just put on the
16 record that Juror Number 66 was called and Juror 66 is
17 disqualified, but he failed to disclose that to the Court,
18 but it's on our list provided by the Solicitor's Office, and
19 I met with the lawyers in -- by -- at the side bar and, by
20 agreement, we excused him for cause.

21 Is that correct, gentlemen?

22 SOLICITOR BULSA: Yes, sir.

23 MR. JOHNSTON: That is correct, Your Honor.

24 THE COURT: Okay. Also, gentlemen, what I've done, I
25 don't have a clue that anybody else, but what I've done is

1 I've provided that list to Madam Clerk and asked her, if
2 there's anybody else who did not disclose that, to simply
3 remove their number from being selected in the future to
4 some jury.

5 Is that -- does anybody object to that?

6 SOLICITOR BULSA: No objection.

7 MR. JOHNSTON: No, sir.

8 THE COURT: Okay. All right. Because what I've done
9 in the past, just so you know, is if they don't -- if they
10 don't disclose that to me on Monday, I make them come
11 everyday for not disclosing. They can never be picked.
12 It's just that, for whatever reason, I forgot today or
13 didn't do, I didn't ask the clerk to take and go through
14 that list and just take them out where is if they told me
15 they were disqualified on a prior conviction, I would
16 release them today, but---

17 MR. JOHNSTON: Your Honor, may I make a comment to
18 that---

19 THE COURT: Yeah.

20 MR. JOHNSTON: ---relates to that, but has to do with
21 something else?

22 THE COURT: Sure.

23 MR. JOHNSTON: Your Honor, I think this is an example
24 how it's unfair for the defense not to have access to that
25 material. They apparently don't have any problem with

1 giving it to the Court, but they won't give it to us. I
2 think it gives them an unfair advantage in jury selection,
3 and, for that reason, we, again, think that jury selection
4 should be done with us having access to that NCIC SLED
5 information.

6 THE COURT: All right. Thank you.
7 Anything else on that?

8 MR. JOHNSTON: No, sir.

9 THE COURT: Okay. The matter that's before the Court
10 pending right now that everybody's waiting to hear is the
11 motion by the State to suppress any and all information
12 taken from the defendant's cell phone. That is the, the
13 elephant in the room, and that, Mr. Johnston, that motion is
14 denied.

15 Part of the materials that you handed up, of course,
16 was -- contained the case of United States v. Oswald.
17 There's a case where the defendant left a burning car on the
18 side of the road, did not retrieve information, did not call
19 authorities, and the Court found that one who chooses to
20 leave property in an unlocked burned vehicle has a lower
21 expectation of privacy, and a flaming car certainly attracts
22 attention and invites examination.

23 In this case, assuming, and I'm not getting there, but
24 assuming that they -- we got there, the vehicle was left
25 here was a vehicle that was the scene of a crime with what I

1 understand multiple gunshots from inside the car, and that's
2 certainly attracted the attention, and, therefore, the
3 defendant has a lower expectation of privacy because, as we
4 all know, privacy expectation vary with the circumstances of
5 the case.

6 Also, the Court finds that that was abandoned property
7 under the meaning of the Fourth Amendment, and without
8 making that analysis, we all know what that is, but it's
9 different for property interest. But I've read that case
10 and that it was abandoned property. It can be abandoned
11 even momentarily.

12 Also, the Court finds that the information that was
13 retrieved was retrieved without a search warrant was limited
14 to a cell, a single cell phone number, not even a name.
15 Other investigation led to the name of the defendant in this
16 case, and thus far the Court has heard no -- nothing that
17 would indicate that anything that was obtained without a
18 search warrant would lead, or actually even with a search
19 warrant at this point, the Court's heard nothing that would
20 lead to the arrest of the defendant himself. It led to his
21 identity and certainly to a questioning as to why the cell
22 phone may of been there. Don't know that. But that's all
23 it does. The phone could of been abandoned a week ago or a
24 month ago. Don't know at this point in time.

25 Anything else, Mr. Johnston?

1 MR. JOHNSTON: Your Honor, if it, if it matters that
2 the record is or I think what the testimony is going to
3 develop that there are also records of calls that I believe
4 that the State is going to say occurred between Mr. Moore's
5 phone and the victim's phone, and that they were close in
6 time proximity to the events of this case if that changes
7 your mind.

8 THE COURT: It does not, but I'm -- I wrestled with
9 that a little bit, Mr. Johnston. Now help me with that
10 because the California Riley case, the newest case on cell
11 phones, had to do with what I often wrestled with and you
12 wrestled with in, in trying cases is the police would stop
13 and basically do a pat down and then take your client's
14 phone, and then would go through it, just stand there and go
15 through it, or download it without a warrant, and that's, to
16 my understanding, the Riley v. California case.

17 In that case, the defendant was already -- he was, he
18 was already arrested, okay, and that's certainly not the
19 case we have here. Mr. Moore was not arrested when this
20 occurred.

21 So, can you tell me something else?

22 MR. JOHNSTON: Your Honor, I -- well, I don't think
23 California Riley, California versus Riley hangs on whether
24 or not the person's arrested. I think it hangs on whether
25 or not he had an expectation of privacy there, and that it

1 was searched without a warrant.

2 So, I don't think the fact that they didn't take it off
3 of his person, while I agree that would be more egregious
4 had they done that, but it would be our position that
5 that -- that doesn't change the legal foundation here.

6 THE COURT: Well, at this point the only testimony that
7 the Court has heard is, is that they retrieved, without a
8 warrant, they retrieved his cell phone number. That's,
9 that's the only testimony that's before the Court. So, the
10 motion is denied on that basis, that that's not a violation.
11 It's abandoned property.

12 Anything further from the defense?

13 Anything from the defense?

14 MR. JOHNSTON: Oh, I'm sorry. No, sir, Your Honor.

15 THE COURT: Anything from the State?

16 SOLICITOR BULSA: No, sir.

17 THE COURT: Okay. Ready for -- to bring them in and
18 let me make a few opening remarks and charge?

19 I'm sorry. Not charge. But opening.

20 Ready?

21 MR. JOHNSTON: Your Honor, one point if I could?

22 THE COURT: Sure.

23 MR. JOHNSTON: It -- just for the record, so the record
24 will be clear, I had made a motion regarding the polygraph,
25 and I have now just been given a copy of the polygraph

1 report.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. JOHNSTON: Apparently there was also a videotaping
4 of the, the subject of the polygraph. I would respectfully
5 request that that gentleman not be called at least until
6 I've had a chance to review these materials overnight.

7 SOLICITOR BULSA: I don't anticipate reaching him until
8 tomorrow.

9 THE COURT: Okay. That's agreed.

10 MR. JOHNSTON: Yes, sir. Thank you very much.

11 THE COURT: Okay. Anything further?

12 (No response.)

13 THE COURT: All right. We ready to swear the jury
14 then?

15 We've not sworn them.

16 MR. JOHNSTON: Yes, sir.

17 THE COURT: Okay. We're ready to bring -- have our
18 jury.

19 (WHEREUPON, the following takes place within the
20 presence of the jury.)

21 THE COURT: Madam Forelady, any matters for the jury?

22 THE FOREMAN: No, sir.

23 THE COURT: Okay. Thank you very much.

24 All right. If you would please stand. Madam Clerk is
25 gonna administer the oath.

1 (WHEREUPON, the jury panel was placed under oath at
2 this time.)

3 THE COURT: Thank you. Please be seated.

4 Now, good afternoon, ladies and gentlemen.

5 Madam Forelady, we're here about to try the case of The
6 State of South Carolina versus Robert Lee Moore. Mr. Moore
7 is seated at counsel table with his lawyer. He is the
8 defendant in this matter, but I want to tell you that, at
9 this point, he has pled not guilty to the indictment and
10 that the burden rests with the State of South Carolina to
11 prove his guilt beyond a reasonable doubt.

12 Now, what I tell you at this time is gonna, is gonna
13 be -- what I tell you about this is a trial -- the conduct
14 of this trial will probably be different from anything that
15 you have seen or heard or read in a, in a book or a magazine
16 somewhere. Some people believe that trials are full of high
17 drama and intense action and such is not the case. These,
18 these things may be true at times in a trial, but they are
19 certainly not the norm.

20 However, this trial is not for entertainment purposes,
21 but is a fundamental part of our democracy. It's a search
22 for the truth and an effort to make sure that justice is
23 done between the parties in this Court. I tell you that
24 searching for the truth and making sure that justice is done
25 is often slow, deliberate, and repetitive, and quite the

1 opposite of what I just told you and reminded you that, for
2 entertainment purposes on TV, we often see a program that
3 begins and concludes within 30 minutes or an hour.

4 This courtroom is a place of honor dedicated to the
5 protection and preservation of citizen's right through what
6 many folks have referred to as the greatest justice system
7 ever created. The attorneys appearing before you are
8 advocates for the party they represent. But first and
9 foremost, they are officers of this Court, and they are
10 sworn to uphold the integrity and the fairness of our
11 judicial system, and to help you in your search for the
12 truth. You should expect them to be professional,
13 competent, and ethical in all that they do, and, again, we
14 thank you for accepting this important responsibility of
15 jury duty.

16 Now, what I say is not -- is intended to serve as an
17 introduction to the trial of this case, and my remarks are
18 not a charge on the law. I will instruct you on the law at
19 the end of this trial before you retire to consider the
20 verdict. My remarks are merely an explanation of the
21 procedure that will be followed in this case so that you may
22 understand better what is happening. I instruct you that
23 you are not to take notes during the trial of this case.

24 As I previously told you, the defendant is charged, by
25 indictment, with the crime of attempted murder and that he

1 is pled not guilty to the indictment. The indictment itself
2 is not, in any sense, evidence of any of the allegations
3 contained therein, and, therefore, once again, I tell you
4 that the State has the burden of proving each of the
5 elements of the indictment beyond a reasonable doubt.

6 Ladies and gentlemen, it will be your duty to decide
7 whether the State has met that burden of proof. Your
8 purpose, as jurors, is to find and determine the facts.
9 You, the jury, are the sole judge of the facts. If, at
10 anytime, I make any comment regarding the facts you must
11 disregard it. You are to determine the facts from the
12 testimony that you hear and the evidence introduced in this
13 courtroom.

14 It is up to you to determine the inferences which you
15 think may be properly drawn from the evidence presented in
16 this case. It is especially important that you perform your
17 duty of determining the facts diligently and conscientiously
18 because ordinarily there is no way to correct an erroneous
19 determination of facts by a jury.

20 On the other hand, and with equal emphasis, the law
21 that makes you the judge of the facts makes me the judge of
22 the law. The law, as given by the Court, is the only law
23 that you may consider and you must accept it and follow it
24 even if you disagree with it. I can not tell you what the
25 facts are, and you can not disagree with me about what the

1 law is or ought to be or should be. Your job is to take the
2 law as I give it to you, and apply it to the facts as you
3 find them to be from the testimony of the witnesses and any
4 other evidence that is properly introduced during the trial
5 of this case, and, after doing that, you will render a
6 verdict, a verdict, under your oath, that you just took as
7 jurors. But until I tell you that you may begin to
8 deliberate, you must not discuss this case with anyone
9 including your fellow jurors, family members, friends, or
10 anyone involved in this case.

11 The attorneys and the parties have been advised by me
12 that they are not to speak to you at all. So, if you see
13 anyone involved in this case, and they do not speak to you,
14 they are not being rude or unfriendly. They are merely
15 following my instructions and Court procedures.

16 You must decide this case based solely on the evidence
17 presented in this courtroom. During this trial you must not
18 conduct any independent research about this case, the facts
19 of the case, the evidence presented or the people or
20 organizations involved in anyway. Please do not try to
21 learn information from any source outside of this courtroom.
22 In other words, you must not look at dictionaries or other
23 reference materials, search the Internet, websites, blogs,
24 or use any electronic tools to discover or receive
25 information about this case or to help you decide the case.

1 You may not use computers, telephones, cell phones,
2 smart phones, tablets, the Internet, or other of technology
3 with communication capabilities at anytime while you are in
4 the courtroom or during your deliberation. During your
5 breaks for meals and overnight you may use those devices.
6 However, you must not use those devices to communicate with
7 anyone about the case until the case is ended.

8 This means you must not use phone calls, emails, text
9 messages, instant messages, Twitter, or any blog, chat room,
10 or website including Facebook, Google Plus, Myspace,
11 LinkedIn, YouTube, or any social media website to send or
12 receive information about this case. This information, this
13 information includes learning about a party, a witness, a
14 lawyer, a Court officer, news accounts about the case,
15 research on any topic raised, or any topic that you think
16 would be helpful in deciding the case or any testimony
17 presented by any witness.

18 During the trial, do not read, listen to, or watch any
19 news reports about the case. This includes anything that
20 may be in newspapers or on the Internet, radio, or
21 television. You must not consider anything you may have
22 read or heard about the case outside the courtroom whether
23 before or during the trial. Information on television,
24 radio, and the Internet or other sources might be wrong or
25 incomplete.

1 In our judicial system it is important that you are not
2 influenced by anything or anyone outside of this courtroom.
3 If you become aware of a fellow juror's violation of my
4 instructions, please inform me immediately. It is important
5 that you keep an open mind and not decide any issue in this
6 case until all of the evidence has been presented, the
7 parties have made their closing arguments, and I have
8 instructed you on the law. It is your solemn responsibility
9 to determine the guilt or innocence of the defendant, and
10 your verdict must be based solely on the evidence as it is
11 presented to you in this trial in this courtroom and on the
12 law as I instruct you during and at the close of this case.

13 Ladies and gentlemen, in just a moment the solicitor
14 will make what is called an opening statement in which the
15 solicitor will explain to you the issues in this case or at
16 least what the solicitor believes the issues to be. The
17 attorney for the defendant may also make an opening
18 statement although he is not required to do so.

19 What the lawyers tell you during their opening
20 statement is not evidence in this case. It is only their
21 contention as to what the issues are. The evidence in this
22 case will be presented to you by the testimony of sworn
23 witnesses from the witness stand and/or by exhibits that may
24 be introduced into evidence.

25 Now, from time to time during the trial you may hear

1 one of the lawyers says something like Your Honor, I believe
2 we have a question or a matter of law to discuss or Your
3 Honor may we approach the bench. Ladies and gentlemen,
4 sometimes I myself find it necessary to excuse you from the
5 courtroom for a short while so the lawyers and I can discuss
6 a matter of law.

7 The reason for this is, is because you are the judge of
8 the facts in this case, and sometimes, when I am discussing
9 a matter with the lawyers, it may be necessary for me to
10 make a comment as to certain facts in connection with ruling
11 on whether or not a particular law applies. I am not
12 suppose to tell you what I think the facts are. So, I will
13 excuse you from the courtroom while my discussions take
14 place so that, in no way, will you be influenced by anything
15 that I might say or do in connection with my ruling.

16 In determining what the true facts are in this case,
17 you must decide whether or not the testimony of a witness is
18 believable. It will be up -- it will be my responsibility
19 to rule, as a matter of law, as to whether certain testimony
20 is admissible. But once the testimony is admitted, whether
21 or not you believe it is solely for you to determine.

22 In deciding whether to believe a witness, you have the
23 right to consider the interest of the witness or the bias of
24 a witness, any prejudice the witness may have, or the
25 opportunity for the witness to have seen the matters about

1 which he or she is testifying, and the way the witness acts
2 on the witness stand. You have a right to consider anything
3 that is in the record that will help you evaluate the
4 testimony of the witnesses. That means, ladies and
5 gentlemen, it is your duty to pay close attention, to
6 observe the witnesses, to listen to them, and pay close
7 attention to the lawyers and to the Court. Please, I ask
8 you, please do not let your thought wonder, but give strict
9 attention to the testimony in this case so that, at the end
10 of the testimony, and after the arguments of counsel and the
11 charge on the law, you will be in a position to determine
12 what the true facts are and to apply the law to those facts
13 and thus render a verdict.

14 Once again, I ask that you be prompt. When we ask you
15 to be here at 9:00 or 9:30 or 1:30 or 2:00 or 2:30 or
16 whatever it is, please be prompt. I tell you, in the 1970's
17 there was a, there was a female group that had a hit, one
18 monkey don't stop no show, but, in this case, that one
19 monkey would stop a show. So, please be prompt.

20 Now, Madam Forelady, as I previously appointed you and
21 told you, you are to preside in the jury room. Your vote
22 counts no more, no less than anyone else's, but you are the
23 person that will preside in the jury room, and will also be
24 your duty to write the verdict, but I will give you further
25 instructions at the conclusion of this trial.

1 Once again, I ask that you and my two alternate jurors
2 sit in your assigned seats as indicated by our bailiffs.

3 Solicitor.

4 SOLICITOR BULSA: Thank you, Your Honor.

5 Please the Court?

6 THE COURT: Yes, sir.

7 SOLICITOR BULSA: Good afternoon, ladies and gentlemen.

8 On February 25th, 2013, Travis Hall, the gentleman in
9 the wheelchair, was at the Taco Bell on the west side of
10 town over there just past the mall. He had made
11 arrangements to meet some person there, and a result of that
12 meeting was a gunshot to his head.

13 You're gonna hear about that crime. You're gonna hear
14 about the investigation. You're gonna hear from some lay
15 witnesses, those are persons that are not associated with
16 law enforcement, about what they saw and observed.

17 I submit to you that night everybody saw and heard the
18 same thing. They all had their different perspectives,
19 whatever they were doing that day, whatever drew their
20 attention to this incident. But listen to everybody as they
21 testify, and we're gonna try to build a case for you. We're
22 trying to do it as simple, straightforward fashion through
23 witness testimony, through a little bit of forensics. It's
24 not gonna be like CSI you might see on television, but
25 there's gonna be a little bit of the investigation involving

1 the cell phone along with some fingerprints to help identify
2 the persons that were involved in this crime.

3 The crime, I submit to you, is one of attempted murder.
4 The victim was shot in the head and is fortunate to be
5 alive. In fact, I believe they wanted to terminate life
6 support, but his mother didn't want them to. She stuck by
7 him and he pulled through. So, you can see his condition.
8 I don't believe he'll ever get out of that wheelchair and
9 won't ever be whole again.

10 The crime of attempted murder is the attempt to kill
11 someone with malice aforethought. The judge will describe
12 all those legal definitions to you, but it's essentially
13 someone having anyone -- an evil intent, evil ill will in
14 their mind, and heart, and they shoot somebody with
15 disregard with no good intention, and I submit to you
16 whenever you point a gun at someone's head that that's
17 malice aforethought.

18 Now, the issue in this case, the judge told you I will
19 tell you, is whether the defendant, Mr. Robert Moore, was at
20 the Taco Bell that day. This was about 2:10 in the
21 afternoon. And whether he was a participant in this crime.
22 I submit to you, as we build our case, you will begin to see
23 how he was there, and how he was involved, and his role in
24 this crime.

25 At the close of this case I'll come back and summarize

1 the evidence, and ask you to do your duty, and I submit to
2 you that duty would be to find him guilty of attempted
3 murder.

4 Thank you.

5 THE COURT: Thank you, solicitor.

6 Mr. Johnston.

7 MR. JOHNSTON: May it please the Court?

8 THE COURT: Yes, sir.

9 MR. JOHNSTON: Madam Forelady, ladies and gentlemen of
10 the jury, the State has the power to charge a person with
11 the crime that they think that they can prove in Court. In
12 this particular case the State has sought an indictment
13 against Robert Lee Moore. An indictment, ladies and
14 gentlemen, puts the defendant on notice as to what it is the
15 state of South Carolina says that he did, what crime it is
16 that he's accused of committing.

17 The indictment is something that you will have to
18 determine at the end of the case whether or not the State
19 has proven it beyond any reasonable doubt. The indictment
20 in this case reads as follows:

21 That Robert L. Moore did, in Spartanburg County, on or
22 about February 25th, 2013, with malice aforethought,
23 attempt to kill Travis Hall by shooting him in the head in
24 violation of Code Section 16-3-29.

25 I submit to you, ladies and gentlemen, that the State,

1 in this case, will not be able to prove that Robert Lee
2 Moore shot Travis Hall. I submit to you that they will not
3 be able to prove that he was otherwise a participant in any
4 attempted murder against Travis Hall.

5 The evidence, in fact, in this case, ladies and
6 gentlemen, is going to show that someone else shot Mr. Hall,
7 someone that will be known to you by the end of this case.

8 Remember they chose the charge. They've made the
9 indictment. The charge says that they're undertaking to
10 prove that Robert Moore shot Mr. Hall in the head. They're
11 not gonna be able to do that beyond a reasonable doubt, and
12 that's why, ladies and gentlemen, at the conclusion of this
13 case, I'll ask you to return a verdict of not guilty.

14 Thank you.

15 THE COURT: Thank you, Mr. Johnston.
16 Solicitor.

17 SOLICITOR BULSA: State calls Debra Hall.

18 DEBRA HALL, being first duly sworn,
19 testified as follows:

20 THE COURT: Mrs. Hall, I'm gonna ask you to speak
21 loudly and tell us your name for my court reporter please.

22 THE WITNESS: Okay. My name is Debra Jean Hall.

23 THE COURT: And spell your last name.

24 THE WITNESS: My last name is H-A-L-L.

25 THE COURT: Thank you.

Debra Hall - Direct examination
by Solicitor Bulsa

1 Solicitor.

2 DIRECT EXAMINATION

3 BY SOLICITOR BULSA:

4 Q Mr. Hall, are you related to Travis?

5 A Yes, sir.

6 Q How so?

7 A That's my son.

8 Q How old is he?

9 A Travis 34 years old.

10 Q Now, when did he get shot?

11 A He got shot February 25th, 2013.

12 Q Where was he living at that time?

13 A He was living -- he was coming from my house back and
14 forth to living in motels.

15 Q All right. Now, did you see him the day he was shot?

16 A Yes, sir.

17 Q Where did you see him?

18 A At my home.

19 Q Where?

20 A On Little Mountain Road. Little Mountain Road, yes,
21 sir. He came to my house on Little Mountain Road.

22 Q Little Mountain Road.

23 What community is that in?

24 A That's in Wellford, South Carolina.

25 Q Okay. And what time did you see him at your, at your

Debra Hall - Direct examination
by Solicitor Bulsa

1 house?

2 A Travis arrived at my house around about like maybe
3 12:30 or something till 1:00, in-between that time.

4 Q Okay. And how long did he stay at your place?

5 A Travis probably stayed at my house for probably around
6 about like 20 minutes, 25, somewhere along in that time.

7 Q So, he would of left your house around what time?

8 A Travis left my house -- it had to be like after 1:00 or
9 somewhere in that range.

10 Q Okay. And did anything occur while he was there?

11 A Yes, sir.

12 Q Now, did he receive a phone call?

13 A He kept receiving several phone calls from the same
14 person.

15 Q Okay. Now, you can't tell us what you overheard, but
16 did Travis leave as a result of those phone calls?

17 A Yes, sir.

18 Q And do you know where he was going?

19 A He was going to pick up his daughter from down near off
20 29 from school, but he said that he had---

21 MR. JOHNSTON: Object to what he said, Your Honor.

22 THE COURT: Sustained.

23 Q Okay. You can't tell us what he said, but---

24 A Okay.

25 Q ---do you know where he was going---

Debra Hall - Direct examination
by Solicitor Bulsa

1 A Yes, sir.

2 Q ---before he picked up his daughter?

3 A Yes, sir.

4 Q Okay. And do you know if he was suppose to meet
5 someone?

6 A Yes, sir.

7 Q Okay. Now, what was the next thing you heard about
8 your son?

9 A That I had got a phone call that he had got shot in the
10 head from the Sheriff's Department.

11 Q Were you at your house?

12 A I was at my home. I know -- I had left my home to go
13 to my mother's house.

14 Q But you got the phone call?

15 A And I got the phone call.

16 Q And what did you do?

17 A I came straight to the hospital and that's where I saw
18 him.

19 Q Did they let you actually see him?

20 A Yes, sir.

21 Q What do you recall his condition to be?

22 A He was on life support and they, they -- he was just
23 laying there on life support and they told me, you know,
24 what I---

25 MR. JOHNSTON: Your Honor, I'm gonna object to what

Debra Hall - Direct examination
by Solicitor Bulsa

1 someone told her as hearsay.

2 SOLICITOR BULSA: That's not being offered for the
3 truth of the matter asserted, Your Honor.

4 THE COURT: Rephrase it a little bit.

5 Q Okay. Was he, was he gonna get better?

6 A Was he gonna get better?

7 Q Yes, ma'am.

8 A Well, to say for the Lord my praying that's what I was
9 leaning on.

10 Q Okay. And how long was he in ICU?

11 A He stayed in there probably around like maybe a month
12 and some change. Somewhere like that.

13 Q Did they ever try to take him off life support?

14 A Yes, sir.

15 Q And what did you say about that?

16 A I would not let them do it. I had them move the trach
17 from his mouth to the throat. So, he had set up pneumonia
18 and they told me that he would never be any good, and I said
19 well, I, I put that in the Lord's hands.

20 Q Okay. So, he eventually was able to be released from
21 ICU?

22 A Yes.

23 Q About how long did he spend in the hospital total?

24 A Travis probably stayed in the hospital I assume and I
25 mean -- it was like maybe about two or three months or

Debra Hall - Direct examination
by Solicitor Bulsa

1 longer, something like that maybe between that time. It's
2 been -- I been going through so much at the time.

3 Q Yes, ma'am.

4 And where did he come home to?

5 A He had come home to my mom's house cause I didn't have
6 anyone to help me at my home to take care of him.

7 Q Okay. And what is his condition now?

8 A His condition now is still we doing everything from
9 head to feet, and he's able to talk a little, and that's
10 about all, you know, tell me that he has to use the restroom
11 or I have to pick him up and lift him to do everything that
12 he needs to be done.

13 Q What was his wound?

14 A Sir?

15 Q What was the wound he suffered?

16 A He suffered from the wound from the, the shot from the
17 head that injured him badly. He will never be Travis again.

18 Q Does he still have a bullet in his head?

19 A He still carrying a bullet in the back of his head that
20 can't be removed.

21 Q Ma'am, how familiar are you with the vehicle he was
22 driving?

23 A That he was driving?

24 Q Yes, ma'am.

25 A Very.

Debra Hall - Direct examination
by Solicitor Bulsa

1 Q what kind of car was it?

2 A It was a gray Impala. Chevy.

3 Q Do you know if it had any damage to it?

4 A There was no damage to the vehicle that he was driving.
5 I didn't see any damage down to the vehicle.

6 SOLICITOR BULSA: Okay. Can I get these marked without
7 objection?

8 MR. JOHNSTON: That is correct, sir. Without
9 objection.

10 THE COURT: Okay. Without objection.

11 Marked or marked them into evidence?

12 SOLICITOR BULSA: I'm gonna -- being marked for
13 admission without objection.

14 MR. JOHNSTON: That is correct, sir.

15 (WHEREUPON, four photographs were marked as State's
16 Exhibit Nos. 4 through 7 and received into evidence at this
17 time.)

18 Q Mrs. Hall, let me show you some photographs which are
19 marked State's 4, 5, 6, and 7.

20 If you would, look those over and see if you can
21 recognize what those pictures show. Just look them over and
22 I'll ask you some specific questions.

23 A (Witness complies.)

24 Q Do you recognize that vehicle?

25 A Yes, sir.

Debra Hall - Direct examination
by Solicitor Bulsa

1 Q That's your son's vehicle?

2 A Yes, sir.

3 Q Okay. I'm gonna put this up on the screen and make
4 sure you keep your voice up when you talk.

5 State's Exhibit No. 4, I'll turn this back on.

6 Okay. All right. Is that the Chevy Impala?

7 A Yes, sir.

8 Q That's the vehicle your son drove?

9 A Yes, sir.

10 Q Just one view. Here's a second view of it.

11 Okay. Now, I got a couple pictures of some damage.

12 State's Exhibit No. 6 appears to be the driver's seat.

13 Can you see that damage on it?

14 A Yes.

15 Q Do you recall whether that was there before this
16 incident?

17 A No, sir.

18 Q Okay. Show you State's Exhibit No. 7. Appears to be
19 some damage to that window behind the driver's seat.

20 Was that damage there prior to this incident?

21 A No, sir.

22 Q Okay. Mrs. Hall, what, what are you having to do for
23 your son right now?

24 A What I have to do now for him, like I say, take care of
25 him with everything. Everything that he needs to be done.

Debra Hall - Direct examination
by Solicitor Bulsa

1 I have to feed him. I have to clothe him, bathe him.

2 Everything that it takes that a human being that needs to be
3 taken care of himself, I'm doing it and my family that pitch
4 in to try to help me when I try to work.

5 Q And where are you working?

6 A I work at McDonald's in Inman, South Carolina.

7 Q And who takes care of Travis when you're at work?

8 A My niece, my mother's there to do the best she can to
9 try to help him.

10 Q How old is your mother?

11 A My mother is 79 -- 69, 69 years old, and she barely can
12 do, but she do what she can and I have a guy there named
13 Michael Moore that helps me when he come -- help her when --
14 he comes in the evening from work, and I mean it's been hard
15 on me, and I, you know, I'm just, I'm just hanging in there
16 the best I can still holding my head high.

17 Q You mentioned a Michael Moore.

18 Is he related in anyway to the defendant?

19 A No, sir, it's a different set.

20 Q And you know the defendant?

21 A I know the defendant?

22 Q Yes.

23 A I know of him. I ever seen him -- he come in my yard.
24 I don't know anything about him.

25 Q Do you know what kind of vehicle he drove?

Debra Hall - Direct examination
by Solicitor Bulsa

1 A I never seen him in a vehicle.

2 Q Okay.

3 A Other than he was -- he use to come in -- I remember
4 when he was in my car or my son's car.

5 Q Okay. Was your understanding that he knew your son?

6 A How he got to know him, through my family, his family.

7 Q Okay. Thank you, ma'am. That's all I have.

8 MR. JOHNSTON: I have no questions of this lady and no
9 objection to her being excused.

10 THE COURT: Ma'am, you may step down. Please be
11 careful.

12 SOLICITOR BULSA: Deputy Hudson. Deputy Hudson.

13 JOHN HUDSON, being first duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY SOLICITOR BULSA:

17 Q Deputy, introduce yourself to the jury please.

18 A My name is John Hudson. I've been working for the
19 Sheriff's Office for a little over 20 years.

20 Q What are your duties with the Sheriff's Office?

21 A Currently I'm assigned to the warrant division.

22 Q And how about last year, excuse me, February of 2013,
23 what were your duties?

24 A I was still assigned to the warrant division at that
25 time and working my normal shift during the, during the day

John Hudson - Direct examination
by Solicitor Bulsa

1 in question.

2 Q This occurred on February the 25th at approximately
3 2:10?

4 A That's correct.

5 Q Did you respond to the Taco Bell on the west side?

6 A Yes, I did. I received a radio call that a shooting
7 had taken place at the Taco Bell on -- which is Highway 29,
8 Warren Abernathy Highway, and I left my regular duties,
9 which was looking for people on arrest warrants and
10 responded to assist.

11 Q Okay. And for the record, that is in Spartanburg
12 County---

13 A Yes, that is correct.

14 Q ---within the city limits?

15 A Yes, that is correct.

16 Q Okay. Did it fall under the jurisdiction of the
17 Sheriff's Office?

18 A Yes, that's correct.

19 Q Okay. Were you one of the first officers to arrive?

20 A I believe I was a close second actually, but I was
21 absolutely one of the first.

22 Q Okay. And upon your arrival, what did you observe?

23 A Upon my arrival I saw the -- what I found later to be
24 the victim's vehicle parked in a parking place. I placed my
25 patrol unit behind that vehicle and approached that car from

John Hudson - Direct examination
by Solicitor Bulsa

1 the passenger side. What that enabled me to do was see
2 inside the vehicle, all of it, and I was looking for
3 other -- any other victims, any weapons, things of that
4 nature that might harm either myself or bystanders that were
5 near by, and seeing none, I approached the, the victim who
6 would -- to try to render assistance.

7 Q And did it appear that anybody was around the victim?

8 A Yes, sir, there was one of our other deputies who was
9 standing in fairly close proximity to basically protect the
10 scene. Also saw a number of bystanders that were looking on
11 very concerned. No one approached him or spoke to him or
12 anything else. There were people probably within easy, easy
13 line of sight to him.

14 Q Did anybody appear that they were going through the
15 car?

16 A No. No.

17 Q I show you a photograph, State's Exhibit No. 5.
18 Is that the vehicle you observed?

19 A Yes, that's correct.

20 SOLICITOR BULSA: Can I get this marked for admission
21 without objection?

22 MR. JOHNSTON: That is correct, sir.

23 THE COURT: All right.

24 (WHEREUPON, three photographs were marked as State's
25 Exhibit Nos. 8 through 10 and received into evidence at this

John Hudson - Direct examination
by Solicitor Bulsa

1 time.)

2 Q Officer, when you arrived at the Taco Bell, which route
3 did you take into the parking lot?

4 A I was on Reidville Road when the call came in. What I
5 did is I made a left off of Reidville Road, went down Oak
6 Grove, which heads north. Oak Grove then intersects
7 directly with Highway 29, approximately 400 yards away from
8 the Taco Bell itself. At that point I turned right onto
9 Highway 29 and approached the Taco Bell from -- well, from
10 the south, which is actually coming from Greer at which
11 point I was able to see the group of people across the
12 parking lot, which is where you see the, the victim's car.
13 I was able to see the people and the vehicle in question at
14 which point I turned in onto Franklin Avenue, which is
15 in-between the Applebee's and the Taco Bell and then pulled
16 in directly behind where you see the victim's car.

17 Q So, this would of been the view you came -- you had
18 coming up Franklin?

19 A Yes, sir, that's correct.

20 Q Okay. Now, when you were on this route to the
21 location, were you looking out for any certain kind of
22 vehicles?

23 A Yes, sir, I was. We had received an update of the, of
24 the vehicle that was involved. It was a silver Chrysler
25 protect -- a 300 I believe, which is a fairly large four

John Hudson - Direct examination
by Solicitor Bulsa

1 door sedan, and the -- making note of that as we get radio
2 updates. Obviously we wanted to try to look for that
3 vehicle while in route. I did not encounter it while
4 responding to the call.

5 SOLICITOR BULSA: Okay. Can I get this marked for
6 admission without objection?

7 MR. JOHNSTON: That is correct, sir.

8 THE COURT: All right. Without objection.

9 (WHEREUPON, a photograph was marked as State's Exhibit
10 No. 10 and received into evidence at this time.)

11 Q Let me first show you State's Exhibit No. 10. This is
12 an aerial photograph of the area.

13 Does that appear to be accurate?

14 A Yes, sir, that's correct.

15 Q The -- only publish it to the jury, and have you answer
16 a few more questions about it.

17 State's Exhibit No. 10, I hand you a pointer if you
18 would, and you told us your route.

19 With this picture in view, kind of give us the basic
20 route.

21 A May I stand?

22 Q Yes, sir, you may.

23 A (Witness comes down from the stand.)

24 This is actually reverse of the, the way that I
25 approached. When -- the McDonald's is here, and the

John Hudson - Direct examination
by Solicitor Bulsa

1 Applebee's is here. I came from this direction and then
2 turned this way.

3 Q Okay.

4 A This way is actually closer to the city proper. So---

5 Q Okay.

6 A You see Dorman Center here.

7 Q I think that might be---

8 A No, that's, that's -- this isn't Dorman Center itself.

9 This is an accurate depiction. I did come from this
10 direction. My apologies. I came from this way and then
11 turned in here.

12 Q Okay.

13 A Dorman Center, I know where I came -- I turned in from
14 this direction, traveled this way. When I got to here I
15 looked across the parking lot and saw where the victim's
16 vehicle was.

17 Q Okay. There we go.

18 A There we go. Which was in one of these straight lots.
19 I came in this way, turned, and then came to the parking lot
20 this direction as quick as I could safely without obviously
21 wrecking the car and still being able to see the parking lot
22 from that direction.

23 Q Okay. You can have a seat.

24 A (Witness returns to the stand.)

25 Q State's No. 8, this would of been the view as you

John Hudson - Direct examination
by Solicitor Balsa

1 turned into the lot?

2 A Yes, sir, that's correct.

3 Q Was the car door opened?

4 A Yes, it was.

5 Q And what else did you observe about the car when you
6 arrived?

7 A After I looked, I visually inspected from the
8 passenger's side, which is what we're also trained to do in
9 traffic stops, but after I inspected that I went around to
10 the rear of the vehicle and deployed a tourniquet which
11 would be used for emergency medical purposes. Just in case
12 the gentleman had a, a gunshot wound in the, in the
13 extremity, the arm or the leg, this would enable us to try
14 to stave off the bleeding to save his life. However, as I
15 could see him, I could see it wasn't necessary.
16 Unfortunately he had sustained a wound to the side of his
17 head, the left side of his head by the way.

18 The gentleman was, for lack of a better term, splayed
19 out. He was leaning out of the vehicle and the seatbelt was
20 supporting his weight. He was making an attempt, it looked
21 to me, to get out of the vehicle, but was hampered by the
22 seatbelt because it was holding him in. He was kind of half
23 in and half out of the vehicle.

24 Q Okay. Let me show you State's No. 9, a closer shot of
25 the vehicle. We see the, the passenger restraint, the

John Hudson - Direct examination
by Solicitor Bulsa

1 seatbelt, laying out on the ground.

2 Could you describe what, what occurred there?

3 A Yes, in an attempt to render aid to him, and to look
4 for other injuries that we could, felt, prior to EMS
5 arrival, I cut the seatbelt using a tool that I keep on my
6 person for that very reason. I cut the seatbelt and
7 assisted him to the, to the ground, and that's why the
8 seatbelt was cut. It was hampering his -- EMS would not be
9 able to effectively treat him the way that he was positioned
10 in the vehicle partially in and out. That would of been
11 impossible.

12 Q How closely did you look at the wound?

13 A I was less than a foot away from him.

14 Q Did you do anything to try to treat him or help him
15 other than lay him---

16 A No, I did not. At that point I'm, I'm just simply
17 not -- that's a bit out of my scope of expertise.

18 Q About how long did it take for EMS to arrive?

19 A It wasn't long. I would, I would put it -- might put
20 it less than five minutes.

21 Q After you laid him on the ground to assist him, what
22 did you then do?

23 A He was, he was breathing rather labored. I asked him
24 if he knew that he had been shot. He actually nodded his
25 head very slowly and said yes. It was hard for me to hear.

John Hudson - Direct examination
by Solicitor Bulsa

1 so, I had to get very close to him. I then asked him
2 further do you know who shot you. Excuse me. Do you know
3 who hurt you.

4 I couldn't understand what he said. It was very -- he,
5 he croaked an answer, for lack of a better term, I'm sorry,
6 but he -- it was -- I couldn't understand anything he said
7 at that point, and then after that, that's when I, that's
8 when I helped him assist EMS basically with their, with
9 their medical call at that point.

10 Q Once EMS took over treatment of Mr. Hall, what did you
11 do?

12 A At that point I helped secure the scene for the crime
13 scene. Other patrol deputies and other patrol supervisors
14 had arrived, and once they stabilized the situation with the
15 crime scene log per our standard operating procedure, then
16 I, then I left the scene.

17 Q Okay. Thank you, deputy. That's all I have. Answer
18 any questions Mr. Johnston may have.

19 MR. JOHNSTON: I have no question for the gentleman.

20 THE COURT: All right.

21 SOLICITOR BULSA: No objection to him being excused.

22 SOLICITOR BULSA: Thank you.

23 Officer, you may step down.

24 THE WITNESS: Thank you.

25 THE COURT: Please be careful.

Mary Adams - Direct examination
by Solicitor Bulsa

1 SOLICITOR BULSA: Call Mary Adams.

2 MARY ADAMS, being first duly
3 sworn, testified as follows:

4 THE COURT: Ms. Adams, have a seat right up here, and
5 once you're seated and comfortable, if you would tell us
6 your name and spell your last name for madam court reporter.

7 THE WITNESS: Mary Adams. A-D-A-M-S.

8 THE COURT: Thank you.

9 Solicitor.

10 DIRECT EXAMINATION

11 BY SOLICITOR BULSA:

12 Q Good afternoon, Ms. Adams.

13 A Hi.

14 Q What is your occupation?

15 A I'm a paramedic with Spartanburg EMS.

16 Q How long have you been a paramedic?

17 A Twenty-five years.

18 Q Were you on duty February 25th of 2013?

19 A Yes, I was.

20 Q What were your hours of work that day?

21 A I came in at 8:00AM that morning and worked 24-hour
22 shifts to 8:00AM the prior morning, the next morning.

23 Q Did your unit get a call to the Taco Bell on the west
24 side of town?

25 A Yes, sir.

Mary Adams - Direct examination
by Solicitor Bulsa

1 Q Do you remember approximately when that was?

2 A It was out right off at around six or seven o'clock
3 probably that night I'm thinking.

4 Q Okay. Did you have a copy of your report?

5 A Yeah, that would be great.

6 Q Okay.

7 A Thank you.

8 Q Use that to refresh your memory if you would.

9 A Thank you.

10 Oops. I was totally off. That one was at two o'clock
11 in the afternoon.

12 Q Okay. You got a closer timeframe?

13 Can you be more accurate?

14 When did you arrive?

15 A I got on the scene at 14:23, 2:23 in the afternoon.

16 Q Okay. 2:23.

17 What did you observe when you arrived?

18 A When I arrived I observed a male patient laying beside
19 a vehicle in the parking lot. The county was already on
20 scene when I arrived. The fire department was already on
21 scene.

22 I approached him. He -- just doing a, a primary
23 survey, he was at -- breathing about six times a minute. He
24 was not responding. He also had -- appeared to have a lot
25 of blood draining out of his, his mouth at the time. So, I

Mary Adams - Direct examination
by Solicitor Bulsa

1 took a C-spine and I, with help of some of the firemen,
2 rolled him to try to help clear his airway till I could get
3 him suctioned.

4 Q You were concerned primarily about his airway?

5 A His airway, his airway. He did not have a secure
6 airway and I knew that if we didn't secure it --.

7 Q Did you look at his -- the wound to his head?

8 A I had saw a wound to his head. My more -- I didn't see
9 it.

10 Can I sit this here?

11 When I was doing C-spine I could feel it.

12 Q Did you document where the wound was?

13 A Hold on just a second. Let me find that page.

14 (Pause.)

15 A It was more in the right temporal region, and I also
16 felt a wound behind the left ear.

17 Q Okay. Did you attempt to treat him there for the head
18 wound?

19 A I just used a -- basically a four-by-four and secured
20 him, spine board. Like I said, the airway was the main
21 concern at that time because he -- his breathing and his
22 airway.

23 Q Okay. You said four-by-four, what do you mean?

24 A It's a gauze. It's a gauze pad.

25 Q Okay.

Mary Adams - Direct examination
by Solicitor Bulsa

1 A Just direct pressure and a four-by-four and we got him
2 secured.

3 Q Okay. Tried to stop some of the bleeding?

4 A Yes.

5 Q All right. And then you rushed to the hospital?

6 A Yes.

7 Q About how long, how long were you actually on scene?

8 A I got on the scene at 14:23, which is 2:23, and I was
9 in route to the hospital at 14:26.

10 Q You were pretty quick?

11 A Yeah, it, it -- we were lucky. We were able to get out
12 very quickly.

13 Q Thank you, ma'am. Answer any questions the attorney
14 may have.

15 CROSS-EXAMINATION

16 BY MR. JOHNSTON:

17 Q You saw a wound to his right temple, is that correct?

18 A There was blood right there and I, I, I felt---

19 Q Okay.

20 A ---blood in -- all on his right temporal and also
21 behind the left ear, and come back with blood on, on my
22 hands.

23 Q Okay. Okay. Did it appear to you to be one gunshot,
24 two gunshots, or you didn't look for that?

25 A I, I, I knew I had two wounds. That's all I knew.

Mary Adams - Cross-examination
by Mr. Johnston

1 Q You really weren't focused on that?

2 A I wasn't at the time. His airway was the most
3 important thing at that time.

4 Q Is it certainly possibly that both wounds that you were
5 talking about there came from one?

6 A It could possibly be.

7 Q That one---

8 A Yes, I---

9 Q From one gunshot?

10 A It, it could be, yes, sir.

11 Q Yes, ma'am. Thank you very much.

12 THE COURT: Anything?

13 SOLICITOR BULSA: Nothing further.

14 THE COURT: Ma'am, you, you may step down. Please be
15 careful.

16 SOLICITOR BULSA: Ask that she be excused.

17 MR. JOHNSTON: No, objection, sir.

18 THE COURT: Yes, ma'am. You may be excused or you may
19 stay.

20 THE WITNESS: Thank you.

21 SOLICITOR BULSA: State calls Tim Tullock.

22 TIM TULLOCK, being first duly sworn,
23 testified as follows:

24 THE COURT: Sir, once you get seated and situated, if
25 you would tell us your full name and spell your last name

Tim Tullock - Direct examination
by Solicitor Bulsa

1 for my court reporter please.

2 THE WITNESS: It's Timothy Edward Tullock. It's
3 T-U-L-L-O-C-K.

4 THE COURT: Thank you, sir.
5 Solicitor.

6 DIRECT EXAMINATION

7 BY SOLICITOR BULSA:

8 Q Okay. Mr. Tullock, tell us where you're from.

9 A I'm -- Piedmont.

10 Q Okay.

11 A South Carolina.

12 Q Okay. And is that where you live?

13 A Yes, sir.

14 Q And did you have -- do you have occasion to come over
15 to Spartanburg on business?

16 A Yes.

17 Q What is your line of work?

18 A HVAC service.

19 Q Heating and air?

20 A Yes.

21 Q And what kind of things do you work on?

22 A Just air conditioning, refrigeration equipment.

23 Q Is it for like stores?

24 A Mostly commercial.

25 Q Commercial?

Tim Tullock - Direct examination
by Solicitor Bulsa

1 A Yes.

2 Q Okay. And you remember February the 25th of 2013?

3 Do you recall being in the Spartanburg area?

4 A Yes, sir.

5 Q Okay. Do you remember where you were working that day?

6 A I was working at the Salon Centric there off of Warren
7 Abernathy.

8 Q And let me get you to look at this map that I'm gonna
9 put up here, State's Exhibit No. 10.

10 Can you see, see that where you're seated?

11 A Yes.

12 Q We have Taco Bell.

13 Where is the -- where would the Salon Centric be?

14 A Right across where it says Asian groceries.

15 Q Yes, sir.

16 A Up towards the end there.

17 Q What is that -- pull that down.

18 A It's in the second little slot right here.

19 Q Okay. And where would your truck or van have been
20 parked?

21 A I was parked right here at the end facing in towards
22 the building.

23 Q Okay. Do you remember anything occurring about around
24 two o'clock that evening?

25 A Well, I was doing paperwork in my van, and the boy that

Tim Tullock - Direct examination
by Solicitor Bulsa

1 was riding with me, we, we heard some popping sounds, and I,
2 I was -- I actually was buried down in my Ipad, and he said
3 something about some gunshots, and I just looked up and kind
4 of scanned the horizon, and looked over towards the Taco
5 Bell and seen a young man hanging out of his car.

6 Q Okay. Whereabouts was that car that you saw?

7 A I believe he was in this second spot right here at the
8 Taco Bell.

9 Q Okay. Now, this picture's not taken the day of the
10 incident. It's a picture off the computer.

11 Is that pretty much accurate about where everything
12 was?

13 A Yes.

14 Q This might not of been the view you had, but let me
15 show you State's Exhibit No. 8.

16 would that have been the vehicle you saw?

17 A Yes, sir.

18 Q Using State's Exhibit No. 5, does that look familiar?

19 A Yes, it does.

20 Q Does that actually show about where you would of been
21 parked?

22 A Yes, you can see my van up here in the corner right
23 there.

24 Q Okay. You're looking back across the parking lot
25 over -- when you looked over -- after you heard the noise

Tim Tullock - Direct examination
by Solicitor Bulsa

1 and you looked over there, were there any cars in your way
2 blocking your view?

3 A No.

4 Q Okay. And what did you do when you heard that noise
5 and saw the man hanging out of the car?

6 A I got out of my vehicle and proceeded across the
7 parking lot to see if we could help him out.

8 Q Did you call anybody?

9 A Yes, dialed 9-1-1 as soon as I got over there and seen
10 that he was beyond my help.

11 Q Did you give a description to 9-1-1 of the vehicle that
12 was seen fleeing the area?

13 A Yes.

14 Q What kind of vehicle was it?

15 A It was a white Chrysler 300 with some rather large rims
16 on it.

17 Q Okay. And how quickly did that vehicle leave the area?

18 A It's squealing its tires. It pulled out on the side
19 street and went right in front of that gray car and went
20 over to Warren Abernathy and turned and went on up the
21 highway.

22 Q Okay. Could you tell how many people were in that car?

23 A No, I could not.

24 Q Did you, did you render any assistance to the man?

25 A Well, I tried to, but it's kind of beyond my medical

Tim Tullock - Direct examination
by Solicitor Bulsa

1 expertise.

2 Q Okay. Well, you mean you went and looked at -- you
3 went up and looked at him---

4 A Yes.

5 Q ---closely?

6 Okay. All right. Did you know if anybody else was
7 trying to treat him before the police got there?

8 A No, there was a young lady in the parking lot that was
9 rather frantic. She pulled in right straight in behind the
10 car, a little, the best I can recall it might of been like a
11 teal colored, young girl, got out, was screaming and
12 hollering about they shot him, they shot him. I kind of got
13 the impression she might of known him, but she kept asking
14 me to do something, and I just told her there wasn't nothing
15 I could do, that help was on its way.

16 Q How long did you stay in the area?

17 A Until I was released by the officers.

18 Q Okay. You actually met with the officers?

19 A Yes.

20 Q Did you see anybody going into the car prior to the
21 police getting there?

22 A No.

23 Q Thank you, sir. That's all I have.

24 MR. JOHNSTON: I have no questions for the gentleman.
25 No objection to him being excused.

Carla Hughes - Direct examination
by Solicitor Bulsa

1 THE COURT: Sir, you -- that's it. You may step down
2 and you may stay with us or leave, whichever you choose to
3 do.

4 THE WITNESS: Okay. Thank you.

5 THE COURT: Please be careful.

6 SOLICITOR BULSA: You're free to leave. Thank you,
7 sir.

8 Carla Hughes.

9 CARLA HUGHES, being first duly
10 sworn, testified as follows:

11 THE COURT: Ma'am, as soon as you get situated there,
12 if you'd pull that microphone around and tell us your full
13 name and spell your last name please.

14 THE WITNESS: Carla Lee Hughes. H-U-G-H-E-S.

15 THE COURT: Thank you, ma'am.
16 Solicitor.

17 DIRECT EXAMINATION

18 BY SOLICITOR BULSA:

19 Q Thank you, Ms. Hughes. Good afternoon.

20 How old are you?

21 A Twenty-three.

22 Q Twenty-three.

23 And are you employed?

24 A I am.

25 Q Where?

Carla Hughes - Direct examination
by Solicitor Bulsa

1 A I work at the YMCA downtown, Limestone College, and
2 MAU.

3 Q Three jobs?

4 A Yes, sir.

5 Q Now, we're here about an incident that occurred
6 February 25th, 2013, at the Taco Bell on the west side of
7 town.

8 Were you at that store --

9 A I was.

10 Q -- that day?

11 Okay. Tell us about what you saw that day.

12 A I went to meet up with my boyfriend at the time to eat
13 and we came out. We went to his truck to listen to music
14 for a little bit, and when we were getting ready to leave I
15 walked from his truck to my car, and I was walking -- as I
16 was walking to my car, a white cream colored Chrysler 300
17 pulled out of a parking place and went against traffic,
18 almost hit me, and kept going.

19 Q Okay. Let me show you -- if you would, look up here at
20 the screen. We'll zoom in a little bit on this picture, and
21 this is not a picture of the -- I lost my focus. Move it
22 this way.

23 Can you see that?

24 A Yes.

25 Q Okay. You -- if you would, use that pointer there,

Carla Hughes - Direct examination
by Solicitor Balsa

1 that little red button.

2 Point where the, where you were walking and you saw the
3 car. The little red button on the top.

4 Go ahead.

5 A Where I was walking?

6 Q Yes, ma'am.

7 A I was walking from over here to over here.

8 Q So, your car would of been parked in one of those
9 separate parking slots?

10 A Yes, sir.

11 Q Okay. And where did you see this car?

12 A This car was right here.

13 Q You remember it being the third spot over?

14 A Yes.

15 Q Okay. And what did it do again?

16 A It pulled out this way and came this way.

17 Q Okay. And how fast was it going?

18 A Pretty fast for a parking lot.

19 Q Okay. Did you -- were you afraid that you might get
20 hit?

21 A Very. He slammed on the brakes and came within a few
22 feet of hitting me.

23 Q Could you tell how many people were in the car?

24 A I only saw one.

25 Q And where was that, the driver?

Carla Hughes - Direct examination
by Solicitor Bulsa

1 A The driver.

2 Q Okay. Could there have been more but you just didn't
3 notice?

4 A There could of been.

5 Q Okay. And what did you do after that happened?

6 A I walked to my car.

7 Q And did you leave?

8 A I tried to leave, but there were cars backed up at the
9 exit at the top keeping me from leaving.

10 Q And you mean the top---

11 A Yes.

12 Q ---up here where you would exit onto Franklin Avenue?
13 So, did you, did you have to stay there?

14 A Yes.

15 Q Were you there when the police arrived?

16 A Yes, sir.

17 Q Did you see what the gentleman at the car, the silver
18 car, did?

19 A I didn't see him.

20 Q I show you State's Exhibit No. 5.

21 Okay. We see that silver car.

22 Do you remember that being there?

23 A Yes.

24 Q Okay. Did you go anywhere near it?

25 A No.

Carla Hughes - Direct examination
by Solicitor Bulsa

1 Q You didn't.

2 Okay. Now, based on your description to us, you put
3 the white car being in the third space?

4 A Yes.

5 Q Which would of been right next to this one?

6 A Uh-huh. (Affirmative).

7 Q Is that, is that correct?

8 A Yes, sir.

9 Q Okay. All right. Did you hear any of the gunshots?

10 A I did not.

11 Q So, the first thing you noticed was the car speeding
12 away?

13 A Yes, sir.

14 Q But you said, before that, you actually were in your
15 boyfriend's truck listening to some music?

16 A Yes.

17 Q Okay. All right. What, what was everybody else doing?

18 A I didn't notice anyone that was in the parking lot.

19 Q And how about around the car?

20 A I didn't see anybody.

21 Q Where did you wait for the police?

22 Where were you standing?

23 A I was standing over by my car.

24 Q Which would of been where?

25 A It got moved over to the side.

Carla Hughes - Direct examination
by Solicitor Bulsa

1 Q Okay. All right. Did you see other bystanders waiting
2 also?

3 A Yes.

4 Q And about how long later did the police get there?

5 A They were there within a minute or two. Not long at
6 all.

7 Q All right. Thank you, Ms. Hughes. That's all I have
8 for you.

9 MR. JOHNSTON: I have no questions for the lady and no
10 objection to her being excused.

11 THE COURT: Ma'am, you may step down. You may stay
12 with us or you may leave the courthouse, whichever you
13 choose. Please be careful.

14 SOLICITOR BULSA: State calls Robert Talanges.

15 ROBERT TALANGES, being first duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY SOLICITOR BULSA:

19 Q Okay. Officer Talanges, would you introduce yourself
20 to us?

21 A Robert Talanges, Spartanburg County Sheriff's Office.
22 work for the forensics department.

23 Q All right. How long have you been an officer?

24 A Just about 25 years.

25 Q How long have you been a forensics officer?

Robert Talanges - Direct examination
by Solicitor Bulsa

1 A About -- since -- started about 1997.

2 Q And what exactly is a forensics officer?

3 A We do crime scene ID which consists of photographing
4 and documentation, collection, and preservation of all the
5 evidence, submitting it for analysis to the proper agencies
6 for testing.

7 Q Did you collect all the evidence at the scene?

8 A Yes, sir.

9 Q Did you do any of the processing of the evidence as
10 well?

11 A We processed -- at that scene, yes, I did vehicle
12 processing.

13 Q Okay. Meaning what?

14 A That would be for latent prints, searching for, since
15 it was a shooting scene, cartridge casings, bullets, and any
16 type of weapons.

17 Q Okay. We actually see a picture on the screen, State's
18 Exhibit 5.

19 Is that one of your photos?

20 A Yes, it is.

21 Q Okay. Now, do you recall approximately when you would
22 of gotten on the scene?

23 A It was a few minutes or I'd say 15 minutes after the
24 incident took place. 2:30ish if I recall.

25 Q And what was, what was going on when you arrived?

Robert Talanges - Direct examination
by Solicitor Bulsa

1 A You had two officers that were actually standing at the
2 vehicle securing it. It was -- she's a sergeant now, Erlene
3 Jones.

4 Q And was the victim still there?

5 A There was no victim at all.

6 Q What was the first thing you did when you arrived?

7 A The first, first thing I do is I start to document the
8 scene the way it is and everything that I observe.

9 Q All right. And what in particular did you observe
10 about this car?

11 A The vehicle is got the driver's door open, seatbelt
12 hanging out, which had been cut. You had clothing outside
13 the vehicle and there's blood on the outside of the driver's
14 door. There's a bullet hole in the, in the rear driver's
15 door in the window.

16 Q State's Exhibit No. 9. Use that pointer and point out
17 what you noticed to us.

18 A Driver's vehicle opened. Driver's side. This is the
19 bullet hole in the passenger rear door. Seatbelt had been
20 cut and this is -- that substance here is blood and we got
21 clothing over in this area.

22 Q Okay. And State's Exhibit No. 7 appears to be a closer
23 shot of the window?

24 A Yes, sir.

25 Q What is that tape substance on the window?

Robert Talanges - Direct examination
by Solicitor Balsa

1 A Scaling tape. It's to scale the bullet hole. That is
2 normal practice that we do.

3 Q Trying to determine the caliber?

4 A No, sir, it's just to scale it. You -- glass
5 fragments, so it's kind of hard to tell a -- if you shoot a
6 small caliber, it could be a larger caliber because of
7 glasses blowing out. So, it's making a bigger hole.

8 Q It appears that the glass is sort of marbled there.
9 what does that tell us?

10 A It's where the bullet actually penetrated through it.

11 Q And did the whole window break?

12 A No, it appears it had window tint on it. Window tint
13 actually holds your window in. So, it's gonna stop the
14 glass from really -- most of the time a vehicle without
15 window tint will shatter and drop down, but the window tint
16 holds everything in place.

17 Q Okay. That's why we're able to see a bullet hole?

18 A That's correct.

19 Q Otherwise the whole window would be missing?

20 A Yes, sir, that's right.

21 Q Okay. And then, based on your experience, could you
22 tell which direction that shot came from?

23 A Inside vehicle out.

24 Q From the inside to the out?

25 A Inside coming out, yes.

Robert Talanges - Direct examination
by Solicitor Balsa

1 Q Okay. Did you observe any other what appeared to be
2 bullet holes to you in the vehicle?

3 A After processing the vehicle there's one in the center
4 driver's seat that looks to be a burn mark you might call it
5 or a, a powder burn on the seat.

6 Q I show you what's been marked State's Exhibit No. 6.
7 Does that show what you just described?

8 A Yeah, this is your -- the front of the driver's seat.
9 There's the floorboard area here. It's right there.
10 Appeared to be a 90-degree I guess a shot if you were to
11 call it.

12 Q Did you determine whether it was an actual shot?

13 A Yes, I did.

14 Q How?

15 A After photographing it, the sheet was cut. It had -- a
16 projectile was found in there.

17 Q Were there any other projectiles found in the vehicle?

18 A No.

19 Q Were there any shell casings found in the vehicle?

20 A No.

21 Q Okay. What other processing of the vehicle did you do?

22 A Other than the latent prints, collected several items
23 out of the vehicle as in cell phones and also a, a gun was
24 found in the back passenger floor area.

25 Q Okay. Did that appear to have been used?

Robert Talanges - Direct examination
by Solicitor Bulsa

1 A No, it had not.

2 Q Okay. Why, why not?

3 A The magazine was full which had sixteen rounds in it,
4 it was an extended mag, and also there was one still in the,
5 the chamber you want to call it.

6 Q Okay. Was the vehicle still on safety?

7 A The vehicle?

8 Q I mean the weapon still on safety?

9 A It's a double action. So, I can't say it was on safe
10 or not.

11 SOLICITOR BULSA: Okay. Any objection?

12 MR. JOHNSTON: No.

13 SOLICITOR BULSA: Can I get these three photos marked
14 for admission without objection?

15 MR. JOHNSTON: That is correct, sir.

16 THE COURT: Okay. Without objection.

17 (WHEREUPON, the three photographs were marked as
18 State's Exhibit Nos. 11, 12, and 13 and received into
19 evidence at this time.)

20 Q Let me show you and look at these marked State's
21 Exhibit Nos. 11, 12, and 13 and see if you recognize that
22 vehicle and those markings.

23 A Yes, I do. This is the Chevrolet vehicle that was
24 processed for prints.

25 Q And was this done at Taco Bell?

Robert Talanges - Direct examination
by Solicitor Bulsa

1 A No, this was done at our storage facility at the county
2 shop.

3 Q So, you towed it into the shop to give you a little bit
4 more time to look it over?

5 A Getting out of the weather, getting out of the
6 elements, that's correct.

7 Q Okay. State's Exhibit 11.

8 what part of the vehicle are we seeing?

9 A You're looking at the passenger side. It appears my
10 fingerprint brushing cannister right there, and all the
11 scaling tape is a location of any latent print showing ridge
12 detail, and ridge detail identifies or it can, it can, it
13 can't -- you identify it by ridge detail to a specific
14 individual.

15 Q So, you're attempting to identify someone who might of
16 touched the vehicle?

17 A That's correct.

18 Q State's Exhibit No. 12.

19 what part of the vehicle is this?

20 A That's just -- it's just the same side of the vehicle,
21 passenger side. It's just a different angle that the
22 photograph was taken from.

23 Q Okay. State's 13 appears to just be a close-up view of
24 some of the markings?

25 A Marked the scaling tape where they were located, that's

Robert Talanges - Direct examination
by Solicitor Bulsa

1 correct.

2 Q Okay. Now, back up to this second picture. Go to the
3 first one.

4 All right. How many prints or latent prints did you
5 lift off of this vehicle?

6 A I think, per my report, it was like 18 or more.

7 Q Okay. Eighteen or more?

8 A Yeah.

9 Q Who actually examines those?

10 A They would go to our AFIS operator.

11 Q And what's that person's name?

12 A Marilyn.

13 Q So, it's her job to take your latent prints and examine
14 them to see if she can identify somebody?

15 A That is correct.

16 Q Now, is -- each one of these tapes, does that indicate
17 one single print?

18 A No, it does not. It indicates like looking at this
19 print here, you can see there's two areas. So, it's -- so
20 there's two latent prints.

21 Q Okay.

22 A So, one, one latent print card could have multiple
23 prints on it.

24 Q Okay. Cause we only see about seven or eight pieces of
25 tape there, but you said you lifted around 18 or more?

Robert Talanges - Direct examination
by Solicitor Bulsa

1 A Yes.

2 Q Now, this isn't a complete picture of everything that
3 you processed, right?

4 A No, it's not.

5 Q Okay. So, you actually did this around the whole
6 vehicle?

7 A The whole vehicle.

8 Q Do you know if any of the prints were identified?

9 A From my understanding some were.

10 Q Okay. And where were those prints identified from?

11 A The passenger side of the vehicle.

12 Q Okay. Now, I have some pictures here. Get these
13 marked for admission without objection.

14 MR. JOHNSTON: That is correct, sir.

15 THE COURT: They're admitted.

16 SOLICITOR BULSA: These were previously marked for a
17 hearing and I'll reference them.

18 (WHEREUPON, State's Exhibit Nos. 1 through 2 were
19 received into evidence at this time.)

20 Q Officer, did you recover any phones, cell phones from
21 this vehicle?

22 A I recovered -- initially recovered two. Then after a
23 search of the vehicle I recovered a third one.

24 Q A third one, was that found on the scene or at the---

25 A It was also found on the scene, but it was some time

Robert Talanges - Direct examination
by Solicitor Bulsa

1 later.

2 Q Okay. So two of them were in ready view?

3 A Correct.

4 Q Okay. And you recall where those two were?

5 A Passenger floor area if I'm not mistaken.

6 Q Okay. Show you State's Exhibit No. 2.

7 Point to those if you would.

8 A This area right here.

9 Q Okay. And what did you just point to?

10 A The cell phone. The cell phone in this area.

11 Q Okay. This is a close-up view, State's Exhibit No. 1,
12 of that area.

13 what are we seeing?

14 A Seeing your cell phone here.

15 Q what's the other object?

16 A Another cell phone.

17 Q Okay. Do you know what type of cell phones these were?

18 A From the report, one's an Iphone and one's a flip
19 phone.

20 Q Okay. So, the Iphone would be the one lower in the
21 floorboard?

22 This one here.

23 A The Iphone was actually struck, but it was struck by
24 something. It was damaged.

25 Q And the flip phone was right there almost up under the

Robert Talanges - Direct examination
by Solicitor Bulsa

1 seat?

2 A Correct.

3 Q Okay. And this is the same seat where this seatbelt
4 was cut from shown in State's No. 9 --

5 A Yes, sir.

6 Q -- correct?

7 So, that's on the driver's side of the seat?

8 A Driver's side.

9 Q From your experience, did it appear that there was a
10 struggle inside this car?

11 A No, I can't say there was a struggle.

12 Q All right.

13 A I mean you're looking at an item sitting in the
14 passenger seat. The glove box wasn't opened. You know,
15 when I got there, the center console was opened, but there
16 was a large quantity of items in there. Didn't look to --
17 appear to be a struggle.

18 Q Okay. Well, you at least saw two bullet holes --

19 A Yes.

20 Q -- right?

21 And you saw -- some two phones in an unusual area of
22 the car?

23 A Correct.

24 Q Okay. And now you, yourself, could you identify who
25 owned those cell phones?

Robert Talanges - Direct examination
by Solicitor Bulsa

1 A No, I could not.

2 Q Okay. What did you do with those cell phones?

3 A After collection, contacted Detective Lorin Williams.
4 He said he wanted them for processing to find out who owns
5 the phones. So, I turned them over to them. They signed
6 the back of the, the evidence envelope with the time that
7 they received them and they took them from there.

8 Q All right. Did you have any contact with the victim
9 himself?

10 A None.

11 Q Now, can you describe to us the processing of his car?

12 A Correct.

13 Q Did you process any other vehicle?

14 A Just -- it was a Chrysler 300 with a -- I processed
15 that vehicle.

16 Q Do you have any record of when you processed that
17 vehicle?

18 A I think it was the 26th if I'm not mistaken. On the
19 26th.

20 Q Do you know where that car was found?

21 A No, I do not.

22 Q Okay.

23 A I just know it was at the county jail.

24 Q And do you know who the owner of that car was?

25 A No.

Robert Talanges - Cross-examination
by Mr. Johnston

1 Q All right. Thank you. Answer any questions

2 Mr. Johnston may have.

3 CROSS-EXAMINATION

4 BY MR. JOHNSTON:

5 Q You were able to develop some latent prints from the
6 victim's Chevy automobile, is that right?

7 A That is correct.

8 Q And they were located on the passenger side, is that
9 correct?

10 A That's right.

11 Q You found two phones in the car?

12 A Three phones.

13 Q All right. Well, you first found two phones that you
14 showed in the photograph, but was there another car, another
15 phone found somewhere else?

16 A Yes, there was.

17 Q Where was that?

18 A Between the driver's seat and the center console area.

19 Q Okay. And what kind of phone was that?

20 A Another Iphone found.

21 Q There were no shell casings found in the car, correct?

22 A That's correct.

23 Q Now, would you agree with me that there are basically
24 two types of pistols?

25 One is a revolver and one is a semiautomatic pistol.

Robert Talanges - Cross-examination
by Mr. Johnston

1 Would you agree that those are very general
2 classifications of pistols?

3 A Yes, I do.

4 Q And would you agree with me also that semiautomatics,
5 as the gun is fired, it is designed to expel the shell
6 casing from the gun?

7 A That's correct.

8 Q A revolver, however, is not so designed.

9 It does not expel the shell casing automatically at the
10 time of the firing of the gun?

11 A Correct.

12 Q In fact, one could fire all of the bullets in a
13 revolver and no shell casings would ever leave the gun?

14 A That is correct.

15 Q Automatically?

16 A Correct.

17 Q In fact, one must manually eject the shell casings from
18 the revolver --

19 A That's correct.

20 Q -- when you go to reload it?

21 A Yes, sir.

22 Q So, the fact that there's no shell casings found in the
23 car leads us to the conclusion of either it was a
24 semiautomatic used, but someone picked up the shell casings,
25 or that it was a revolver and no shell casings were ejected?

Robert Talanges - Cross-examination
by Mr. Johnston

1 Fair to say?

2 A Yes, it is.

3 Q How many shots did your examination show were fired?

4 A We had one bullet or one shot that exited the rear
5 driver's door window, and I had -- there was a marking in
6 the seat, driver's seat from another shot.

7 Q All right. And that's just from the physical
8 inspection of the car?

9 A Correct.

10 Q Do you know whether or not there was also a bullet
11 lodged inside the victim's body?

12 A At that time I did not know.

13 Q Well now, now do you know that?

14 A Yes.

15 Q Okay. Based on that information, do you think there
16 were two shots or three shots fired in the car?

17 A I would have to say two shots because I could not
18 determine or can't determine when the one in the seat had
19 taken place. I can't say if it's an old one. I had no
20 idea.

21 Q Okay. So, if the one in the seat is old, then you --
22 we're looking at two shots having been fired?

23 A Correct.

24 Q If the one in the seat is new or was contemporaneous
25 with the events we're talking about, then we're talking

Robert Talanges - Cross-examination
by Mr. Johnston

1 about three shots?

2 A That's correct.

3 Q And there's no way to tell, from that fabric
4 immediately, whether or not it's a fresh shot or been there
5 a week or been there a year, is it?

6 A Can not tell.

7 Q Please answer any other questions.

8 SOLICITOR BULSA: Your Honor, just briefly.

9 REDIRECT EXAMINATION

10 BY SOLICITOR BULSA:

11 Q Was the gun ever recovered so you could compare the
12 bullet in the seat?

13 A No, sir.

14 Q So, other than -- if you don't know the condition of
15 the car, you don't know when that shot was fired?

16 A That is true.

17 Q Is that what you're saying?

18 You can say that same thing for the one in the window,
19 right?

20 A For the window?

21 Q Uh-huh. (Affirmative).

22 A The window looks -- appeared to be fresh cause the
23 glass on the outside, it's a --.

24 Q Okay. Okay. So, you're counting the bullet in the
25 head and the bullet through the window, at least two shots

Robert Talanges - Redirect examination
by Solicitor Bulsa

1 were fired?

2 A Minimum two, that's correct.

3 Q Potentially three?

4 A Possibly three.

5 Q But none of those shots appeared to have come from the
6 pistol found in the back floorboard?

7 A That pistol like -- that Taurus pistol was fully
8 loaded, which was the magazine was, was full to capacity
9 plus one in the chamber.

10 Q And also that's a semiautomatic which would of ejected
11 the round?

12 A That's correct.

13 Q And no shell casings were found?

14 A None.

15 Q Okay. Thank you.

16 RECROSS EXAMINATION

17 BY MR. JOHNSTON:

18 Q And tell me again where the Taurus semiautomatic
19 9-millimeter was found?

20 A How -- both front and driver's seat and passenger's
21 seat, they were reclined.

22 Q Yes, sir.

23 A And it was found behind the passenger's seat as though
24 you could reach over to grab it.

25 Q From the driver's side?

Robert Talanges - Recross examination
by Mr. Johnston

1 A From the driver's side, yes, sir.

2 Q All right. Thank you, sir.

3 THE COURT: Anything---

4 Q Or -- I'm, I'm sorry. I didn't mean to interrupt you,
5 sir.

6 THE COURT: Yes.

7 Q Drop it or pick it up---

8 A Correct.

9 Q ---in that position?

10 Am I correct?

11 A That's correct.

12 MR. JOHNSTON: I'm sorry, Your Honor.

13 THE COURT: No, that's fine.

14 Anything else?

15 SOLICITOR BULSA: No, sir.

16 THE COURT: Okay. Officer, you may step down.

17 Is he excused or you need him---

18 SOLICITOR BULSA: We'd ask him be excused.

19 MR. JOHNSTON: We have no objection.

20 THE COURT: You may stay or go, whichever you choose.

21 THE WITNESS: Thank you.

22 THE COURT: Thank you, officer. Be careful. Thank
23 you.

24 Gentlemen, let me see y'all just for a moment please
25 before you call a witness.

1 SOLICITOR BULSA: Yes, sir.

2 MR. JOHNSTON: Yes, sir.

3 (WHEREUPON, a bench conference was held at this time.)

4 THE COURT: Madam Forelady, and ladies and gentlemen of
5 the jury, I was conferring with the lawyers here. The Clerk
6 of Court is sent a note. Of course, they need to know about
7 your fellow brothers and sisters who are on the jury. They
8 have been instructed to call back after 6:00PM this evening.
9 So, we got to put a message in the next 60 minutes or
10 thereabouts on the recorder as to what time they might be
11 needed, and I'll have to check with, check with these
12 lawyers and check with Judge Hocker next door to get an
13 answer for that.

14 But having said that, that's gonna take about -- a
15 little bit of my time here trying to coordinate that. I
16 never knew that, as a judge, you know, I had all of these
17 coordinating things to do, but I do.

18 With that, I promised you and we promised you, all of
19 us here, not to waste your time and then keep you here
20 unnecessarily. So, we are going to stop for the day.

21 Madam Forelady, I'm gonna ask you to be back at 9:15 or
22 9:20 in the morning to be ready to go at 9:30. I have a
23 matter that is already set for nine o'clock AM. As I
24 previously told you, the lawyers are real good about joining
25 me here about eight o'clock in the morning to take care of

1 administrative matters, and I have a matter already set for
2 9:00. So, I don't want you sitting back there wondering
3 what is, what is that judge doing, why am I still sitting
4 here.

5 So, I'm gonna ask you to be here -- you can be here
6 anytime you choose in the morning after 8:30 because the
7 doors open at 8:30. But we would ask you and be required to
8 be here after about 9:20 because we will be ready to go. I
9 will already have been on the bench taking care of something
10 else. So, I'll be calling for you right at 9:30 sharp.

11 With that, I remind you or charge you and tell you that
12 you are not to discuss this case with anyone at home or your
13 friends, neighbors. Please don't try to do any research.
14 As I told you previously, all of your evidence must come
15 from this courtroom from the witnesses that testify and the
16 exhibits that are properly put before you.

17 So, do not try to do any research. Do not talk with
18 your family or friends about the case. You can talk with
19 them about sports or about a -- your favorite show or
20 whatever it is that you'd like to talk about, but please,
21 please don't talk about this case because it's not over and
22 you haven't seen any -- all of the evidence, and so,
23 therefore, it will be improper for you to begin deliberating
24 about this matter.

25 I even tell you, Madam Forelady, and ladies and

1 gentlemen, to not even deliberate within your own mind, and
2 I'll -- I get asked sometime well, how can I not think about
3 it, and I say well, just think about anything else besides
4 what you did here today because you're at work today. This
5 is work. So, you don't want to go home and think about
6 work. You want to go home and talk with your family,
7 friends, and loved ones about something besides work cause
8 that's what you're doing here today.

9 With that, I'm gonna let you go, Madam Forelady, with
10 the, with the bailiffs back to -- you want them to go?

11 You go to your room, jury room?

12 THE BAILIFF: Right.

13 THE COURT: Okay. You will always use the jury room
14 that you're in now, this small jury room where you are now.
15 That's where you'll be in the morning. So, I'm gonna
16 release you, Madam Forelady. If you'll go to that room. I
17 think they're gonna collect those badges from you and we'll
18 see you tomorrow morning.

19 Thank you.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: Anything from the State?

23 SOLICITOR BULSA: No, sir, Your Honor.

24 THE COURT: Anything from the defense?

25 MR. JOHNSTON: No, sir.

1 THE COURT: Okay. We'll be -- we will be in recess
2 here until 9:00 -- till 9:30 on this case, but nine o'clock.

3 I have that other matter to take care of, Madam Court
4 Reporter, and Madam Clerk, nine o'clock on something I
5 already set, and let's talk just off the record here.

6 MR. JOHNSTON: Yes, sir.

7

8 (WHEREUPON, Court was in recess for the evening.)

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1 Tuesday, July 22nd, 2014

2
3 THE BAILIFF: Juror 187.

4 THE COURT: 187.

5 (WHEREUPON, a discussion was held off-the-record with
6 Juror Number 187 at this time.)

7 (Pause.)

8 THE COURT: You ready?

9 MR. JOHNSTON: Yes, sir.

10 May I put a little background---

11 SOLICITOR BULSA: Yes. Sure.

12 MR. JOHNSTON: Well---

13 THE COURT: Will that mess you up?

14 COURT REPORTER: Nope, I'm good.

15 THE COURT: Okay.

16 MR. JOHNSTON: May it please the Court, Your Honor?

17 Yesterday, and I, I congratulate Mr. Bulsa for being
18 very honest in telling us about this situation, apparently
19 Mr. Bulsa realized that the forelady of the jury was someone
20 that he had taught in Sunday School while the young lady was
21 in the first grade, and that he goes to church with her
22 family. I think he told me that he knew her father.

23 This caused me some concern and I think that we need to
24 make some inquiries into it. The first thing I'm going to
25 ask is that if we could play back the voir dire wherein the

1 Court asked about knowledge of the lawyers in this case.

2 THE COURT: Okay. Mr. Bulsa.

3 SOLICITOR BULSA: Your Honor, yes, that's correct. I
4 attend First Baptist Church of Spartanburg. Been going
5 there for approximately 22 years. One of the duties I had
6 was assisting in Sunday School first grade. I don't
7 remember all my students, but Nettie Catherine had a unique
8 name. So, when she -- her name was called and I saw her in
9 the courtroom I did recognize her.

10 When the question was posed I believe it was whether
11 she had a close personal or social relationship with any of
12 the attorneys. That certainly is not true. We do not. I'm
13 not even sure she remembers who I am. I do know who her
14 parents are. I haven't really spoken to them, but for
15 saying hello maybe in -- during the welcoming in the
16 sanctuary or wherever the service was. We've not really had
17 any conversations.

18 So, I have no relationship with any of them. I'm not
19 sure any of them even know my name or remember me, and I
20 just caution the Court questioning her because it may
21 actually spark a memory.

22 THE COURT: Sure.

23 Well, just to be clear then on the record, as I
24 understood it when we were off-the-record in chambers,
25 the -- it's not that, that, Mr. Bulsa, you or your family

1 have a personal relationship with her or any of her family.
2 You don't -- First Baptist, First Baptist Church is a very
3 large church.

4 SOLICITOR BULSA: Yes, sir.

5 THE COURT: Very well attended.

6 So you don't socialize, go out to dinner or belong to
7 some social club or otherwise affiliate with each other, is
8 that right?

9 SOLICITOR BULSA: No, sir.

10 THE COURT: Got you.

11 Madam Court Reporter, can we listen to it?

12 (WHEREUPON, a portion of the jury selection process was
13 played back at this time.)

14 THE COURT: That's good.

15 MR. JOHNSTON: Your Honor, I don't need to hear any
16 more of the questions unless the Court wants to listen to
17 some more of them.

18 THE COURT: No, the rest of it talks about Grand Jury
19 and other things.

20 MR. JOHNSTON: Yes, sir.

21 THE COURT: I think the pertinent part is on the
22 record.

23 MR. JOHNSTON: Your Honor, I certainly do not think
24 this young lady was willfully concealing this information
25 from the Court. However, I do think that this is

1 information that I should have known in exercising my
2 peremptory challenges on behalf of my client.

3 We do have an alternate who could take this young
4 lady's place. So, I would respectfully request, from an
5 abundance of caution, so that this matter doesn't come up
6 again, that she be removed and replaced with one of the
7 alternates.

8 THE COURT: Mr. Bulsa.

9 SOLICITOR BULSA: Your Honor, the State would disagree.
10 She answered the questions posed to her in a correct
11 fashion. Your Honor's thought enough of her to make her the
12 forelady of this jury. So, to remove her would be a -- sort
13 of a tarnish against her.

14 MR. JOHNSTON: Well, Your Honor, I, I, I don't think it
15 would be -- as you said, you have a policy of how you pick.
16 It wasn't like you selected her for some particular quality.
17 I don't want to hurt the young lady's feelings either, but
18 I've got a man here who his right to a fair trial is in
19 question, and I think that far outweighs any possible
20 feelings being hurt to the young lady.

21 I don't want to see anything, any repercussions to her,
22 but I just think she should -- she be -- she should be
23 removed to remove this taint or potential taint.

24 THE COURT: Well, Mr. Johnston, the Court inquired as
25 to any member who had a social relationship, and you heard

1 the questions in the record is complete, and, and she did
2 not respond to any of that. And, finally, I -- the Court
3 asked, as I always do, does any member of the jury panel
4 know of any reason whatsoever why he or she should not serve
5 as a juror in this case with particular emphasis, emphasis
6 being placed on that juror's ability to be fair and
7 impartial to both the State and the defendant.

8 So, assuming, and I'm not conceding that she does
9 remember who her assistant first grade teacher in Sunday
10 school was, and she may not, but assuming that she did, if,
11 if she thought that the, by any stretch of the imagination,
12 that that, that that would interfere with her ability to be
13 fair and impartial to both the State and the defense, she
14 certainly could of raised that at that point. It's a
15 catchall question I always try to ask.

16 MR. JOHNSTON: Well, Your Honor, with all due respect,
17 I don't think that is the issue. I don't think the issue is
18 whether or not she could be impartial. I think the issue is
19 should I have known about this so I could have exercised a
20 peremptory challenge because if I had known this information
21 that is been shared here this morning, I would have
22 exercised a peremptory challenge on her.

23 THE COURT: Well, let me ask you this.

24 Do you want me to question her as to whether or not she
25 remembers who her first grade Sunday School teacher was?

1 MR. JOHNSTON: No, sir, I do not wish you to ask that
2 question. I think it would only make things -- I think that
3 would only make things worse. If you could give me just a
4 moment to consider this, about whether or not I want you to
5 ask her anything, but I would not want you to ask her that
6 if that's all right with you.

7 THE COURT: Yes, sir.

8 MR. JOHNSTON: If I could have just a moment?

9 THE COURT: Sure.

10 (Pause.)

11 MR. JOHNSTON: Your Honor, this is what I would
12 respectfully ask the Court to do. I would respectfully ask
13 that you question her, but not in a way that -- about Mr.
14 Bulsa in specific because I think that would not be helpful.

15 I would ask you to just make a general inquiry of her
16 something to this effect. We just want to ensure that you
17 don't know any of the people that are involved in this case.
18 Do you know any of the people that are involved in this
19 case.

20 THE COURT: Well, Mr., Mr. Johnston, I'm not sure
21 that's really the question to ask.

22 MR. JOHNSTON: Yes, sir.

23 THE COURT: It's not that she's disqualified from
24 knowing Mr. Bulsa.

25 MR. JOHNSTON: Well, I think that then if she says yes,

1 then the next question is why didn't you tell us that during
2 jury selection and we see what her response is because,
3 again, I don't think the question is whether or not she's
4 capable of being impartial. The question is, is this
5 information that I should of known in exercising my
6 peremptory challenges because, again, I assure you, had I
7 known this information, I would have used a peremptory
8 challenge on her.

9 THE COURT: Mr. Bulsa.

10 SOLICITOR BULSA: Your Honor, that's an interrogation
11 of this young lady that's unnecessary. The proper question,
12 as the Court pointed out, was asked. The issue is whether
13 she can be fair and impartial and she---

14 THE COURT: Yes, sir.

15 SOLICITOR BULSA: ---answered that she could.

16 THE COURT: Yes, sir. I have your motion and you're on
17 the record and you're protected, but I'll deny that.

18 MR. JOHNSTON: All right, sir. Thank you very much,
19 sir.

20 THE COURT: Thank you.

21 MR. JOHNSTON: Your Honor, should we also put on the
22 record what happened in, not in chambers, but in the hallway
23 about the other juror that -- what happened?

24 THE COURT: Oh, yes. Yes. Let's -- thank you. Juror
25 number -- is it 187?

1 THE BAILIFF: Yes.

2 THE COURT: Juror Number 187 advised the Court, through
3 the bailiffs, that she needed to speak to, to the judge and
4 I did that in chambers with the prosecutor and defense
5 lawyers present. Juror 187 relayed that her son, four years
6 ago, do I have that right, her son, four years ago, that he
7 killed himself?

8 Is that what she said?

9 SOLICITOR BULSA: I believe so, yes, sir.

10 MR. JOHNSTON: I believe she said that he shot---

11 THE COURT: He shot himself.

12 MR. JOHNSTON: He shot himself in the head.

13 THE COURT: In the head.

14 MR. JOHNSTON: That---

15 THE COURT: And when that was recounted yesterday, she
16 became quite emotional about that and she asked to be
17 excused, and both lawyers have consented to that. So, I,
18 with their consent, have dismissed her from serving in this
19 case due to her emotional state having to recount that.

20 MR. JOHNSTON: That is correct, sir.

21 THE COURT: Okay. Mr. Bulsa, anything on that?

22 SOLICITOR BULSA: I believe that's my recollection of
23 the conversation.

24 THE COURT: Okay. All right. Are we, are we ready for
25 our jury now?

1 SOLICITOR BULSA: We did have the issue about the
2 evidentiary matter regarding the defendant's---

3 THE COURT: Oh, the record.

4 SOLICITOR BULSA: Your Honor, the State was intending
5 to link the defendant to the phone, the phone number found
6 in the victim's vehicle via some jail records and Court
7 records. I believe we've reached a compromise that I'll be
8 asking Detective Williams whether she was able to determine
9 if that phone number belonged to Robert Moore and not go
10 into the actual documents that he used.

11 We also have a -- we're intending to introduce a bond
12 sheet from a more recent case. I've got the deputy clerk of
13 court here to testify to that, but I will limit my question
14 to her whether she has Court records that show that this
15 defendant acknowledged that phone number by his signature on
16 any Court records.

17 THE COURT: Okay. Those are gonna be a public record?

18 MR. JOHNSTON: Yes, sir, that, that, that was what I
19 had suggested.

20 SOLICITOR BULSA: Okay. Public record.

21 THE COURT: Yes, sir, a public record.

22 MR. JOHNSTON: There is a difference. There is a
23 difference.

24 SOLICITOR BULSA: I'll try to remember that.

25 MR. JOHNSTON: Public records, if they use that, that's

1 fine. We're okay with that.

2 THE COURT: Okay. Very good.

3 So that's -- you can talk to your witness about that.

4 It's a public record and without saying more.

5 SOLICITOR BULSA: Yes, sir.

6 THE COURT: All right.

7 SOLICITOR BULSA: She's right here and she knows.

8 THE COURT: I know.

9 MR. JOHNSTON: We don't think she needs to be
10 sequestered.

11 THE COURT: I understand.

12 Are we ready now?

13 MR. JOHNSTON: Defense is ready.

14 SOLICITOR BULSA: May I speak with Ms. Moffitt?

15 THE COURT: Sure.

16 (Pause.)

17 THE COURT: Ready?

18 SOLICITOR BULSA: Yes, sir.

19 THE COURT: Okay. Ready for our jury.

20 (WHEREUPON, the following takes place within the
21 presence of the jury.)

22 THE COURT: Good morning, ladies and gentlemen.
23 Welcome back.

24 The first matter of business -- we have a sheet on the
25 jurors?

1 The first, the first alternate, Mr. McCloud, James
2 McCloud?

3 THE JUROR: Cloud.

4 THE COURT: I'm sorry?

5 THE JUROR: It's just Cloud.

6 THE COURT: James Cloud.

7 THE JUROR: Yes, sir.

8 THE COURT: Sir, you are now part of the 12 membered
9 jury.

10 okay?

11 THE JUROR: Yes.

12 THE COURT: Okay. You're no longer serving as an
13 alternate. One juror has, has been excused.

14 And, ma'am, you remain as our alternate at this point
15 in time. That's the first matter of business.

16 Madam Forelady, anything else from the jury?

17 THE FORELADY: No, sir.

18 THE COURT: All right. Very good.

19 We're ready, ready to resume the trial.

20 SOLICITOR BULSA: Thank you, Your Honor.

21 State calls Marilyn Arthur.

22 MARILYN ARTHUR, being first duly
23 sworn, testified as follows:

24 THE COURT: Ms. Arthur, would you tell us your name and
25 spell your last name for the court reporter please.

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 THE WITNESS: Marilyn Arthur. Last name is
2 A-R-T-H-U-R.

3 THE COURT: Thank you.
4 Solicitor.

5 DIRECT EXAMINATION

6 BY SOLICITOR BULSA:

7 Q Ms. Arthur, where are you employed?

8 A Spartanburg County Sheriff's Office.

9 Q And what are your duties there?

10 A I am their latent examiner and their AFIS operator.

11 Q Are you a police officer?

12 A Yes, sir.

13 Q How long have you been a police officer?

14 A Since 2009.

15 Q And how long have you been involved with the
16 fingerprint analysis?

17 A Two years.

18 Q What kind of training do you have in that area?

19 A I received four certifications. I went through
20 introduction of latent fingerprints, basically fingerprint
21 operations, advanced latent palm prints, advanced latent
22 ridgeology, and also certified through SLED.

23 Q Okay. And about how much -- how long were each of
24 those courses?

25 A I took all the courses in 2012.

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 Q Okay. And were those like week long courses?

2 A They are 40 hours course each.

3 Q And did you take any kind of tests to pass those?

4 A Each course you have to take a test, and you have to
5 identify several prints.

6 Q Did you receive some sort of certification?

7 A Yes.

8 Q And who certifies you?

9 A Johnny Learner with Shersey Laboratories in North
10 Carolina.

11 Q Okay. And when did you receive that certification?

12 A I got my first one in June 20th -- I mean
13 July 20th, 2012. The second one in March 23rd, 2012.
14 The third one in April 27th, 2012, and the fourth on May
15 18th, 2012, and the one with SLED I received it in July,
16 2012.

17 Q Now, have you, have you ever testified in Court?

18 A No, sir.

19 Q So this is your first time?

20 A Yes, sir.

21 Q Okay. In your years as a fingerprint analyst with the
22 Sheriff's Office, approximately how many cases have you
23 handled, handled?

24 A Over 3,000 already.

25 Oh, cases?

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 Q Yes, ma'am, just cases.

2 A Over 1,200 cases.

3 Q Where's the 3,000 number come from?

4 A That's the latents that come. In each case I receive
5 an envelope with latent prints in it, and it can be from one
6 latent to 20 or 30 latents per envelope.

7 Q So you've examined a lot of prints?

8 A Yes, sir.

9 SOLICITOR BULSA: Your Honor, the State would offer
10 Officer Arthur as an expert in the area of fingerprint and
11 palm print examination and analysis.

12 MR. JOHNSTON: Your Honor, we think she's qualified to
13 offer her opinion.

14 THE COURT: Okay. It's without objection.

15 Ladies and gentlemen of the jury, Madam Forelady,
16 normally a person can not give opinion testimony. When a
17 person testifies they must testify as to what they either
18 saw, heard, or sensed by smell or something of that nature.
19 However, there is an exception when someone's qualified
20 because of education, experience, knowledge, skill, or
21 training. That person is permitted to give their opinion in
22 certain areas if the Court so qualifies them.

23 This witness is now qualified in the area of
24 fingerprint and palm print analysis to give an opinion and
25 to give opinion testimony in that area. That does not mean

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 that you must accept her opinion, but it is evidence for you
2 to use in anyway you see fit and give the weight or
3 credibility that you believe is appropriate.

4 Solicitor.

5 SOLICITOR BULSA: Thank you, Your Honor.

6 Now, Officer Arthur, we're talking about a specific
7 case here. You probably know your cases by case number --

8 A Yes, sir.

9 Q -- is that right?

10 Okay. Case Number 2013-021140, does that involve a
11 victim named Travis Hall?

12 A Yes, sir.

13 Q Okay. Now, in that case were you provided any items to
14 analyze?

15 A Yes, sir, I received two packages with latent prints.

16 Q Okay. Let me stop you there and explain to the jury
17 what latent prints are.

18 A The latent prints are the prints are collected on the
19 scene. They are invisible to the naked eye. So unless they
20 are developed by a fingerprint powder or with a chemical you
21 won't be able to see them, and the officers on the field are
22 the ones that collect these prints, the ones that work with
23 the crime scene unit and they collect these prints. They
24 label them, they put them in this envelope, and they put it
25 in a secure box that is located in my office located at the

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 Sheriff's Office.

2 After I receive these prints I analyze them. I verify
3 them. I place it on a AFIS system, which is the system that
4 holds all the prints that are for the State of South
5 Carolina for either criminals or people who are like
6 concealed weapons permits, or teachers, nurses, lawyers, and
7 all those prints are in the system and that's where I do my
8 identifications with.

9 Q It's a big database you would compare that---

10 A Yes, sir.

11 Q ---those latent prints to?

12 Okay. You, you said that you were given two packages?

13 A Yes, sir, the first package I received from
14 Investigator Talanges came from the exterior of the Chevy
15 Impala.

16 Q Okay.

17 A And the other package came from the exterior of the
18 white Chrysler.

19 Q Okay. All right. So basically two vehicles were
20 processed and those latent prints were provided to you?

21 A Yes, sir.

22 Q Okay. Let's talk specifically about the Impala.

23 A Okay.

24 Q When you examined those prints, did you have any idea
25 who you were looking for?

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 A No, sir.

2 Q So you just put them into your database and saw what
3 the database kicked out?

4 A Yes, sir.

5 Q And what would you do then once you got that print---

6 A When I placed---

7 Q ---got that back?

8 A When I placed the latent on the system it will give me
9 up to 20 matches. So it will be up to 20 prints that look
10 alike, and I have to go one-by-one, and I have to search all
11 the points to match it. If -- can you pass me the board?

12 Q I'm gonna show it to Mr. Johnston first.

13 Okay. I believe we should get this marked.

14 MR. JOHNSTON: No objection, sir.

15 (WHEREUPON, the blowup of the fingerprint card was
16 marked as State's Exhibit No. 14 and received into evidence
17 at this time.)

18 Q Okay. You're gonna be referencing what marked State's
19 Exhibit 14.

20 THE COURT: It's without objection.

21 Q I don't know how to best display it.

22 A (Witness comes down from the stand.)

23 This is prints collected from the scene. This one was
24 latent 002 and here we have what was collected from the
25 scene and this is---

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 Q That's on the left side of the diagram we're looking
2 at?

3 A Uh-huh. (Affirmative).

4 This one was the one collected from the scene, and this
5 one right here is the one that came through the AFIS system.
6 When we receive this possible matches, before we make a
7 conclusion, we have to go and verify all the points. The
8 points are gonna be the ending ridges is where a ridge
9 finish that line, and we also gonna check what they call
10 bifurcations. It's where two ridges are gonna turn into
11 one. It's like a fork and it will turn into one ridge, and
12 we have those examples here, and you got to make sure that
13 all those details match. As you see in this one, I mark
14 about 14 -- 17 points on each one.

15 Q And---

16 A And that's an identical match.

17 Q How many points do you need to have a match?

18 A To have a match through AFIS they usually require 12
19 points, but you don't need an exact number of points to
20 identify a print. As to say identical, they're gonna be,
21 they're gonna be identical in each one. You don't need an
22 exact number of points.

23 Q So, that's a misconception that you need a certain
24 number of points?

25 A Yes.

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 Q Okay. But, in your opinion as an expert, you
2 determined at least that fingerprint belonged to who?

3 A To Thomas Teddy Marcus.

4 Q Okay. So, Tevin Thomas?

5 A Uh-huh. (Affirmative).

6 Q Okay. Thank you. You can set that down.

7 A (Witness returns to the stand.)

8 Q That's the process you would of undertook with each of
9 the prints?

10 A Yes, sir.

11 Q Okay. The envelope from the Impala, how many latent
12 prints did you actually receive?

13 A Eighteen.

14 Q Eighteen prints.

15 Now, is there a single print per latent or---

16 A No.

17 Q ---more than one?

18 A We have more than one.

19 Q Okay.

20 A Uh-huh. (Affirmative).

21 Q So about how many?

22 A So, total prints, 23 total.

23 Q Twenty-three total actual prints that you were trying
24 to match?

25 A Yes, sir.

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 Q On 18 latent points?

2 A Yes.

3 Q And from what parts of the vehicles were those latent
4 prints recovered?

5 A From the exterior rear passenger door, and they were
6 all from the exterior of the vehicle. Most of them were
7 from the passenger side of the vehicle.

8 Q Okay. Now let's use Mr. Thomas since he's a subject---

9 A Yes, sir.

10 Q ---in this case.

11 How many of those -- if you would pull out those latent
12 prints that would match Mr. Thomas?

13 A Ten.

14 Q Ten actual prints?

15 A Yes, sir.

16 Q How many cards?

17 A Six cards.

18 Q Six cards.

19 Okay. May I have those?

20 A Yes, sir. I'm sorry. Seven cards.

21 Q Seven cards.

22 A Uh-huh. (Affirmative).

23 Q All right. And you've actually identified his name on
24 the -- each card?

25 A Yes, sir.

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 Q So, the red writing is writing that you put on the
2 card?

3 A Yes, sir.

4 Q And then on the back of that contains a diagram. Looks
5 like a drawing of a car door.

6 A Looks like a car door, yes, sir.

7 Q And it also has information written on it as to where
8 the---

9 A Where the prints were collected, uh-huh, and the date.

10 Q And that would of been Officer Talanges---

11 A Talanges.

12 Q ---that did that?

13 A Yes, sir.

14 SOLICITOR BULSA: Okay. I'd like to get these marked.

15 I guess we can do each one -- I don't want to get them

16 messed up though. Let's do each one individually.

17 (WHEREUPON, the fingerprint cards were marked as
18 State's Exhibits Nos. 15 through 21 and received into
19 evidence at this time.)

20 Q Okay. Now I handed you a chart --

21 A Yes, sir.

22 Q -- that lists out fingerprints, and location, the
23 vehicle, what the actual print is that you identified it as,
24 and the identity of the person.

25 A Yes, sir.

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 Q Is that chart accurate?

2 A Yes.

3 Q So, does it accurately list all the prints that you
4 matched to Mr. Thomas?

5 A Yes, sir.

6 SOLICITOR BULSA: Your Honor, I would like to get this
7 marked and entered without objection.

8 MR. JOHNSTON: That is correct, sir.

9 THE COURT: Okay. Without objection.

10 (WHEREUPON, the chart was marked as State's Exhibit No.
11 22 and received into evidence at this time.)

12 Q So the jury has an understanding of what we've been
13 looking at, State's Exhibit 10, the first -- this side
14 showing the red writing, is that -- it's red on this.

15 You can't see it on that, right?

16 They'll have it in the jury room.

17 Now -- but the writing on that bottom, that's for
18 something you wrote?

19 A Yes, sir.

20 Q And there also would appear to be numbers?

21 A Yes, sir.

22 Q Actually describe what those numbers are and what they
23 mean.

24 A Those numbers are assigned, assigned from the AFIS
25 machine. Every time I take a picture or a photograph of the

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 latent print to enter in the system they will assign me a
2 number starting with 000.

3 Q All right. And you have 012 and 013?

4 A Yes, sir.

5 Q why are there two numbers on this sheet?

6 A This one is -- I can't see it from here.

7 Can I see the card?

8 I believe -- that is two separate impressions.

9 Q Two separate impressions?

10 A Yes.

11 Q When it was left -- they were left at two separate
12 times?

13 A Yes, sir. Well, not on two straight times. They were
14 left, left by the suspect in two separate times or by the
15 person in two separate times.

16 Q Okay. Just so the jury has an understanding, you see
17 where this was actually recovered. It appears it was
18 recovered off of the door.

19 A Yes.

20 Q Exterior rear passenger door on the glass?

21 A Yes.

22 Q Okay. So, this person touched the glass on one
23 occasion and then we don't know how much later---

24 A They touched the other.

25 Q ---he would of put his hand there again?

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 A Uh-huh. (Affirmative).

2 Q And they would of overlapped each other?

3 A Yes, sir.

4 Q Okay. It's not like it was just one single touch?

5 A No.

6 Q Okay. All right. And are both of those palm prints?

7 A Number 013 is a left palm.

8 Q And what is 012?

9 A It was not identified.

10 Q Okay. But it's identified to Mr. Thomas?

11 A Only 013. That's why I have the LP for left palm

12 only---

13 Q Okay.

14 A ---on one.

15 Q Okay. So, you don't know -- we don't know who left

16 012?

17 A No, sir.

18 Q Cause it wasn't good enough to identify?

19 A That's correct.

20 Q Okay. Got you.

21 All right. So, it could of been somebody else?

22 A Yes, sir.

23 Q All right. Now, State's 16, the latent print, looks
24 like it has two numbers also?

25 A Yes.

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 Q And---

2 A The reason this one have two numbers is because it's
3 too small to determine what part of the palm it was. So, I
4 took a picture and then I flip it around and took another
5 picture.

6 Q Okay. So, which one of those is a match?

7 A It would be the bottom one.

8 Q 011?

9 A Yes, sir.

10 Q And that's also a left palm?

11 A Yes, sir.

12 Q And looking at the location found by Mr. Talanges,
13 that's taken actually from the rear passenger door?

14 A Yes, sir.

15 Q Not the glass door?

16 A Yes, sir.

17 Q And go through maybe one more of these.

18 Let's talk about State's No. 18. Looks like you have a
19 seven and an eight.

20 A Yes, sir, and this is a complete left palm on the
21 bottom, and I took two picture because it was more detail
22 008 and sometimes, when they take your prints either at the
23 jail or when you go for a job, if they don't have the
24 complete impression it will not give me a match. So, I took
25 two pictures. 008 was the actual one that came up. They

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 have more ridge details on that side.

2 Q But you, you identified both seven and eight as prints?

3 A Yes, sir.

4 Q Both -- now would that have been placed at one time?

5 A That is -- yes.

6 Q Okay. So that's a single touching print of the car?

7 A Yes, sir.

8 Q And that was taken also off the glass?

9 A Yes, sir.

10 Q All right. Put in a separate location in, State's 15,
11 which is also a left palm.

12 So, this person touched the glass at least in two
13 separate places?

14 A Yes, sir.

15 Q Okay. We got, got a lot of palms. Let's talk about
16 some fingers.

17 State's 19, what does that show us?

18 A That is 004 and 005 and we have finger number nine and
19 number eight, which is the left middle, which is number
20 eight, and the left ring finger is number nine.

21 Q If you would, identify each finger for the jury, how
22 you come up with a number.

23 A We start counting with the right thumb, one, two,
24 three, four, five, six, seven, eight, nine, and ten.

25 Q Okay. So those are from the left-hand?

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 A Yes, sir.

2 Q All right. They came from a piece of glass from the
3 rear passenger door?

4 A That's correct.

5 Q Could State's 15, State's 19, could they have been left
6 potentially at the same time given the location noted by
7 Investigator Talanges?

8 A It's a possibility.

9 Q Okay. But they appear to be in a similar location on
10 the glass?

11 A Yes.

12 Q Okay. And go to the summary now if we may.

13 State's 22, do you recall listing the finger number,
14 and you said that's the number actually assigned by the
15 computer?

16 A Yes, sir.

17 Q Okay. And then we get the location, which is taken
18 from the --?

19 A From the back of the latent card.

20 Q -- latent card, which was provided by Investigator
21 Talanges?

22 A Yes, sir.

23 Q Okay. And then the vehicle is also provided by
24 Investigator Talanges?

25 A Yes, sir.

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 Q And then the print, identification of what those prints
2 are, that's information you would of determined from this---

3 A Yes, sir.

4 Q ---examination?

5 So, looking at each of these, it appears that we just
6 have fingers or palms of the left-hand?

7 A Yes, sir.

8 Q Is that right?

9 Okay. And in this case all the ones that were examined
10 today are from Mr. Tevin Thomas?

11 A That's correct.

12 Q Okay. Did you find any prints of Mr. Moore's on that
13 vehicle?

14 A No, sir.

15 Q And do you have any records whether any prints were or
16 any latents were collected from the hand, handle of any of
17 this car or that car, any of the handles?

18 A No, sir, it appeared they were all collected from the
19 doors.

20 Q So, they were not---

21 A But not the handles.

22 Q So that means Investigator Talanges was not able to
23 lift any prints or---

24 A No, he wasn't.

25 Q ---latents from the handles?

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 okay. All right. And you also got a second package?

2 A Yes, sir.

3 Q That is from a Chrysler?

4 A Yes, sir.

5 Q Do you have any idea who owned that Chrysler when you
6 were examining for prints?

7 A No, sir.

8 Q All right. If you would identify any of Mr. Moore's
9 fingerprints on that Chrysler?

10 A Yes, sir.

11 Q How many prints were his off the Chrysler?

12 A Two.

13 Q Okay. So there were two?

14 A Two latents.

15 Q May I have the card?

16 A Yes, sir.

17 Q Okay. Why do we have a bigger card on this one?
18 You just used a different one?

19 A Yeah, they come in different sizes.

20 SOLICITOR BULSA: Okay. Get these marked in evidence
21 without objection.

22 MR. JOHNSTON: That is correct, sir.

23 THE COURT: Without objection.

24 (WHEREUPON, the fingerprint cards were marked as
25 state's Exhibit Nos. 23 and 24 and received into evidence at

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 this time.)

2 Q Showing you State's Exhibit 23 and 24.

3 The item number three would be a fingerprint on the
4 right-hand. It shows a fingerprint of Mr. Moore's.

5 A Yes, sir.

6 Q Okay. Actually the diagram where it came from he says
7 it was on the exterior top of the driver's door?

8 A Yes, sir.

9 Q Okay. Somewhere -- look at State's 24. Looks like
10 it's of the left palm.

11 A Yes, sir.

12 Q In the hood area of the Chrysler.

13 Okay. Now, did you find any of Mr. Thomas' prints on
14 the Chrysler?

15 A Yes, sir.

16 Q All right. Can I have that card or cards?

17 A (Witness complies.)

18 One.

19 Q Okay. There was one?

20 A Yes.

21 SOLICITOR BULSA: Okay. Have this marked for evidence
22 without objection.

23 MR. JOHNSTON: That is correct, sir.

24 THE COURT: Without objection.

25 (WHEREUPON, the fingerprint card was marked as State's

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 Exhibit No. 25 and received into evidence at this time.)

2 Q Okay. State's 25, finger number nine.

3 So, that would be from the left---

4 A Left, yes, sir.

5 Q ---on the left hand.

6 Exterior of the white Chrysler?

7 A Yes, sir.

8 Q Right on the side door.

9 Okay. So, we put Mr. Thomas at both vehicles. At
10 least Mr. Moore at the white Chrysler.

11 A At the white Chrysler, yes, sir.

12 Q Okay. Before we go, just to give the jury a little
13 more information as to how a fingerprint is left and what's
14 the likelihood of recovering the print.

15 A A fingerprint is left when you touch a surface. It's
16 more likely to leave it on a flat surface like glass. It's
17 very hard to leave it behind on rust and metal or if you
18 have galvanized metal, it's hard to leave prints there. The
19 likelihood is dependent on the weather. If it's a hot area,
20 if it's cold, if it rains, if it gets wet, it, it varies on
21 how long it can stay in there.

22 Q How about on surfaces such as the interior of a car?

23 A It's, it's not impossible to collect one, but, again,
24 it's just depend how clean the vehicle is or how dirty the
25 vehicle is. If it's a lot of dust on the top of the

Marilyn Arthur - Direct examination
by Solicitor Bulsa

1 vehicle, you're not gonna leave your print. You will lift
2 the dust and just leave the mark on there. You will not
3 leave your actual prints there.

4 Q What if there were cloth type seats?

5 A No, you won't leave a mark there.

6 Q Or they're kind of plastic that's on the dashboard or
7 something?

8 A You can possibly leave one and it's, it's very hard to
9 leave. You can use certain chemicals, and you probably can
10 develop one. It's not impossible, but it's very hard to do
11 it.

12 Q Okay. All right. Thank you, ma'am. Answer any
13 questions Mr. Johnston may have.

14 A Okay.

15 THE COURT: Mr. Johnston.

16 CROSS-EXAMINATION

17 BY MR. JOHNSTON:

18 Q Ma'am?

19 A Yes, sir.

20 Q They're two suspects identified in this case---

21 A Yes, sir.

22 Q ---is that right?

23 That would be the Tevin Marquez Thomas and Robert Lee
24 Moore?

25 A That's correct.

Marilyn Arthur - Cross-examination
by Mr. Johnston

1 Q Am I correct?

2 A Yes, sir.

3 Q Now, you found Robert Lee Moore's fingerprint and Tevin
4 Marquez Thomas' fingerprints on the white -- as coming from
5 the white Chrysler 300?

6 You identified those?

7 A Yes, sir.

8 Q As to the Chevy, the victim's car, you found---

9 A Yes, sir.

10 Q ---fingerprints from the victim, Mr. Hall?

11 A I -- no, sir.

12 Q Did you find any from him?

13 A No, sir.

14 Q All right. You found them from Tevin Marquez Thomas---

15 A Yes, sir.

16 Q ---the other codefendant in this case?

17 A Yes, sir.

18 Q You did not find any fingerprints on that car from
19 Robert Lee Moore?

20 A No, sir.

21 Q But you do have Mr. Moore's prints available to you
22 because you were able to develop them as having been on the
23 other car?

24 A Yes, sir.

25 Q Please answer any other questions.

Marilyn Arthur - Redirect examination
by Solicitor Bulsa

1 REDIRECT EXAMINATION

2 BY SOLICITOR BULSA:

3 Q Mr. Johnston just made a good point.

4 You didn't even find Travis Hall's prints on the Chevy
5 Impala, did you?

6 A That's correct.

7 Q Do you know he was the owner of that vehicle?

8 A No, sir.

9 Q Okay. But as the owner, you didn't even find any of
10 his?

11 A No, sir.

12 Q Is that an example of how hard it is to find prints?

13 A Yes.

14 Q Thank you, ma'am.

15 THE COURT: Anything---

16 MR. JOHNSTON: That's all.

17 THE COURT: ---from the defendant?

18 MR. JOHNSTON: No, sir.

19 THE COURT: All right. Ma'am, you may step down.
20 Please be careful.

21 SOLICITOR BULSA: I ask that she be excused.

22 THE COURT: Any objection?

23 MR. JOHNSTON: No, sir.

24 THE COURT: You may be excused now. You may stay or
25 go, whichever you choose.

Lindsey McGraw - Direct examination
by Solicitor Bulsa

1 THE WITNESS: Okay. Thanks.

2 SOLICITOR BULSA: Lindsey McGraw.

3 LINDSEY MCGRAW, being first duly
4 sworn, testified as follows:

5 THE COURT: Sir, tell us who you are and spell your
6 last name for madam court reporter please.

7 THE WITNESS: Lindsey McGraw. M-C-G-R-A-W.

8 THE COURT: Thank you.
9 Solicitor.

10 DIRECT EXAMINATION

11 BY SOLICITOR BULSA:

12 Q All right. Mr. McGraw, who are you employed with?

13 A Spartanburg County Sheriff's Office.

14 Q In what capacity?

15 A I'm the assigned computer forensics investigator.

16 Q How long have you worked with the Sheriff's Office?

17 A With the Sheriff's Office, for about nine years.

18 Q And as the computer forensic person, what do you do?

19 A I examine -- I perform forensic examinations on
20 computers, cell phones, GPS units. Basically anything that
21 contains digital data.

22 Q So, you sort of assist in investigations with any type
23 of electronic device?

24 A Yes, sir.

25 Q Okay. And in this case specifically, the shooting at

Lindsey McGraw - Direct examination
by Solicitor Bulsa

1 Taco Bell on February 25th, 2013, did you receive any
2 electronic devices to---

3 A I did. I received three cellular telephones for
4 examination.

5 Q Okay.

6 MR. JOHNSTON: Your Honor, please note our earlier
7 objection to this line of testimony, and I would ask that
8 you note that we do have a continuing objection to
9 everything about the issues that we dealt with in pretrial.

10 THE COURT: So noted.

11 Q Get these marked for identification at this time.

12 (WHEREUPON, the photographs were marked as State's
13 Exhibit Nos. 26 through 28 for identification purposes only
14 at this time.)

15 Q Okay. Officer McGraw, let me show you three exhibits
16 for identification, 26, 27, and 28.

17 Can you identify what those objects are in those
18 photographs?

19 A Yes, sir, these are photographs of the three
20 telephone -- cell phones that were submitted to me for
21 examination.

22 Q Okay. And that's how they looked before you examined
23 them?

24 A Yes, sir.

25 SOLICITOR BULSA: Your Honor, the State would offer

Lindsey McGraw - Direct examination
by Solicitor Bulsa

1 those exhibits into evidence.

2 MR. JOHNSTON: Subject only to the prior objections.

3 THE COURT: Yes, sir, they're admitted.

4 SOLICITOR BULSA: Thank you.

5 (WHEREUPON, State's Exhibit Nos. 26 through 28 were
6 received into evidence at this time.)

7 Q What were you asked to do with these phones?

8 A Basically to perform a forensic examination and
9 identify the telephone numbers and possibly the owners of
10 the phones that were recovered.

11 Q Okay. Were you given any background information on the
12 incident?

13 A I was told that the three phones were recovered from
14 a -- the scene of a shooting and recovered from the victim's
15 vehicle.

16 Q Okay. So, you're trying to identify who the phones
17 belonged to?

18 A Yes.

19 Q And how do you go about trying to identify them?

20 A Basically I will, excuse me, use the equipment that I
21 have, the software that I have to recover any telephone
22 numbers that might be associated with the phone, any
23 identifying data such as names, recover contact lists, text
24 messages. Anything that would help in identifying the owner
25 of the cell phone.

Lindsey McGraw - Direct examination
by Solicitor Bulsa

1 Q Okay. So maybe if we find the number belonging to the
2 phone you can find out whose phone it is?

3 A Yes, sir, you can do a search for or associate the
4 telephone number with an individual by getting the
5 subscriber information assigned to that telephone number.

6 Q Okay. I show you first State's 26.
7 what type of phone is that?

8 A That is a ZTE331 AT&T flip phone.

9 Q Were you able to identify what phone number is
10 associated with that?

11 A I was.

12 Q What, what is that number?

13 MR. JOHNSTON: And, Your Honor, we would ask you again
14 to note our objections.

15 THE COURT: Yes, sir.

16 A I pulled the phone number from the SIM Card, the
17 subscriber identity module card which is installed in the
18 phone. The examination disclosed that the phone number
19 assigned to that SIM Card was (864)494-2573.

20 Q Okay. Can I get you to write that on the top of that
21 photograph?

22 A (Witness complies.)

23 Q Okay. Look at, look at State's 27.
24 what type of phone is that?

25 A It appears to be an Iphone 4.

Lindsey McGraw - Direct examination
by Solicitor Bulsa

1 Q Okay. And were you able to identify the number
2 belonging to that phone?

3 A Yes, sir, I pulled the SIM Card from that phone. That
4 was a track phone SIM Card. The phone number assigned to
5 that phone was (864)384-1774.

6 Q Can you write the number on that photograph?

7 A (Witness complies.)

8 Q Now State's 28, what type of phone is this?

9 A That is an Apple Iphone 3.

10 Q Were you able to identify that number associated with
11 that?

12 A Yes, sir, let me get my notes here. That number was
13 (864)494-4101.

14 Q Okay. Write that number on this picture.

15 A (Witness complies.)

16 Q Now you personally -- were you -- did you actually
17 identify which person went with which number?

18 A No, sir.

19 Q Okay. Once you identified the phone numbers, did you
20 also try to identify any other information?

21 A Basically to pull any call logs that may be in the
22 phone that would show communication between different --
23 that phone and the other -- any other phone.

24 Q All right. And the phone in question, the flip phone,
25 State's 26, were you able to pull any phone calls off of

Lindsey McGraw - Direct examination
by Solicitor Bulsa

1 that log?

2 A I wasn't actually able to pull them off electronically
3 because the ZTE331 phone would not communicate with the, the
4 device that I was using to examine it. I documented any
5 call logs that were in that, stored in that phone with a
6 digital camera.

7 Q So, what do you do, you pull it up on a screen and took
8 a snapshot?

9 A Yes.

10 Q All right.

11 MR. JOHNSTON: Subject only to our earlier objections.

12 THE COURT: Yes, sir.

13 SOLICITOR BULSA: Get this marked for identification at
14 this time.

15 (WHEREUPON, the three photographs were marked as
16 State's Exhibit Nos. 29 through 31 for identification
17 purposes only at this time.)

18 Q Officer McGraw, let me show you a series of exhibits
19 for identification, 29, 30, and 31.

20 Do you recognize this photographs?

21 A Yes, sir, these are photographs that I took recording
22 the display in the cell phone, the LCD display, which would
23 show the call logs. These are selected call logs.

24 Q Call logs from the, the flip phone --

25 A Yes, sir.

Lindsey McGraw - Direct examination
by Solicitor Bulsa

1 Q -- that's shown in State's 26?

2 And, Your Honor, the State would move these into
3 evidence.

4 MR. JOHNSTON: Subject only to our earlier objection.

5 THE COURT: Yes, sir, they're admitted.

6 (WHEREUPON, State's Exhibit Nos. 29 through 31 were
7 received into evidence at this time.)

8 Q Okay. Let's look at State's 29.

9 what's your -- watch the mic there, officer.

10 A Sorry.

11 Q what does that tell us?

12 A That's gonna be an out -- excuse me. It's gonna be an
13 outgoing call to area code (864)491-4101. That's showing
14 that there were five calls made to that number, and it shows
15 the or at least the first two calls, the call time, date,
16 and duration of the call.

17 Q Okay. Started -- it looks like they're going in
18 reverse order?

19 A Yes, sir, the most recent would be the first one on the
20 list.

21 Q Okay. And State's 30, what does it show?

22 A That would be also a continuation of that call list.

23 Q All right.

24 A It shows the calls to that number.

25 Q Looks like some of it's overlapping.

Lindsey McGraw - Direct examination
by Solicitor Bulsa

1 A Yes, sir, I would overlap the phone, the display to
2 show that there was nothing deleted between the screens.

3 Q Okay. And then State's 31.

4 A That is a continuation of that same call list.

5 Q Okay. So, on May 25th, 2013, did State's 26 place
6 calls to (864)494-4101?

7 A I'm not sure I heard you correct.

8 Did you say May 25th or---

9 Q Oh, excuse me. February 25th.

10 A February 25th, yes, sir.

11 Q So, it placed a total of five calls?

12 A Yes, sir.

13 Q From your examination of the phone, the first call
14 would of been placed at 1:03PM?

15 A Yes, sir.

16 Q And the last one at 2:06PM?

17 A Yes, sir.

18 Q And that 494 number, is it associated with one of the
19 other phones that you recovered or that was recovered and
20 provided to you?

21 A Yes, sir, that was the phone that was ultimately
22 associated with the victim.

23 Q Iphone 3?

24 A Yes, sir, the Iphone 3 that was submitted for
25 examination.

Lindsey McGraw - Direct examination
by Solicitor Bulsa

1 Q Okay. And so from this testimony it shows that the
2 phones spoke to each other?

3 A Yes, sir, based on that phone.

4 Q Okay. Thank you, investigator. Answer any questions
5 Mr. Johnston may have.

6 A Yes, sir.

7 MR. JOHNSTON: I have no questions for this gentleman.

8 THE COURT: All right.

9 MR. JOHNSTON: No objection to him being excused.

10 THE COURT: Sir, you may step down. You're excused.
11 You may stay or leave, whichever you choose.

12 SOLICITOR BULSA: Cynthia Crosby.

13 CYNTHIA CROSBY, being first duly
14 sworn, testified as follows:

15 THE COURT: Ms. Crosby, pull that microphone up there,
16 there you go, and tell us your full name and spell your last
17 name for my court reporter please.

18 THE WITNESS: Cynthia Crosby. C-R-O-S-B-Y.

19 THE COURT: Thank you.

20 Solicitor.

21 DIRECT EXAMINATION

22 BY SOLICITOR BULSA:

23 Q Good morning, Ms. Crosby.

24 A Morning.

25 Q Do you know Mr. Moore?

Cynthia Crosby - Direct examination
by Solicitor Bulsa

- 1 A Yes.
- 2 Q How do you know him?
- 3 A Relative, cousin.
- 4 Q Mr. Robert Moore is your cousin?
- 5 A Yes.
- 6 Q What -- how distant of a cousin is he?
- 7 First cousin, second cousin?
- 8 A Second.
- 9 Q Okay. How well do you know him?
- 10 A We family. We family. That's my family.
- 11 Q Are you older than him or younger?
- 12 A Older.
- 13 Q Older.
- 14 Do you have another cousin or daughter named Courtney?
- 15 A Daughter.
- 16 Q Daughter named Courtney?
- 17 A Uh-huh. (Affirmative).
- 18 Q Okay. Is she around his age?
- 19 A She's a little older.
- 20 Q A little older than him?
- 21 A Uh-huh. (Affirmative).
- 22 Q Okay. Is she around the age of Mr. Hall?
- 23 A I don't know his age.
- 24 Q Okay. Did your daughter ever date Mr. Hall?
- 25 A Yes.

Cynthia Crosby - Direct examination
by Solicitor Bulsa

1 Q Okay. Did you ever obtain a phone or phone number and
2 provide it to Mr. Moore?

3 A Yes.

4 Q Okay. When would you have done that?

5 A This been some years ago.

6 Q Okay. Been a few years ago?

7 A Uh-huh. (Affirmative).

8 Q Do you remember at least part of that number, the phone
9 number that was attached to the phone you gave him, right?

10 A Uh-huh. (Affirmative).

11 Q Okay. Tell us the part that you remember.

12 A 2573.

13 Q 2573.

14 Do you know what kind of phone you gave him?

15 A It's been a while. I know the phone I initially gave
16 him he no longer had that phone---

17 Q All right.

18 A ---due to breaking it or whatever.

19 Q Okay. Do you know if he kept that phone number?

20 A Well, I don't know.

21 Q You don't know if he kept the phone number?

22 A I mean he probably transferred out to -- the phone
23 number to another phone.

24 Q To another phone.

25 Okay. All right. That's what I'm asking.

Cynthia Crosby - Direct examination
by Solicitor Bulsa

1 A Okay.

2 Q Okay. Thank you, ma'am. That's all I have.

3 MR. JOHNSTON: I have no questions for the lady.

4 THE COURT: All right.

5 MR. JOHNSTON: No problem with her being excused.

6 THE COURT: Ma'am, you may step down. Please be
7 careful. You may stay or go, whichever you like.

8 SOLICITOR BULSA: Ms. Moffitt is outside.

9 GAIL MOFFITT, being first duly sworn,
10 testified as follows:

11 THE COURT: Ms. Moffitt, if you tell us who you are and
12 spell your last name please.

13 THE WITNESS: Gail Moffitt. The last name is
14 M-O-F-F-I-T-T.

15 THE COURT: Thank you.

16 Solicitor.

17 DIRECT EXAMINATION

18 BY SOLICITOR BULSA:

19 Q Ms. Moffitt, where are you employed?

20 A Office of the Clerk of Court.

21 Q Been there quite a while, haven't you?

22 A Forty-seven years.

23 Q The Clerk of Court handles public records, is that
24 correct?

25 A That is correct.

Gail Moffitt - Direct examination
by Solicitor Bulsa

1 Q Okay. And I asked you to search those public records
2 for any documents relating to Robert Moore, is that right?

3 A You did.

4 Q And did you determine a public record that identified
5 him signing acknowledging a phone number?

6 A I did. It is a surety bond.

7 Q Yes, ma'am.

8 MR. JOHNSTON: Your Honor?

9 Just tell us---

10 MR. JOHNSTON: Your Honor, I have a matter of law.

11 THE COURT: Okay. Madam Forelady, as I told you
12 earlier, I would, I would have to, from time to time, send
13 you out and this is one of those times. So, you are not to
14 discuss anything about this case. You've not heard anything
15 about this case at this -- I mean not all of it. You don't
16 know all the facts yet. So, with that, don't discuss
17 anything.

18 But, Madam Forelady, if you'd take everybody to the
19 jury room please.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 MR. JOHNSTON: May it please the Court, Your Honor?

23 THE COURT: Yes, sir.

24 MR. JOHNSTON: Your Honor, our understanding was that
25 they were going to elicit this information with our

Gail Moffitt - Direct examination
by Solicitor Bulsa

1 agreement so long as the term public record was used, and I
2 know this certainly was not intentional on Ms. Moffitt's
3 part. I think well of her. But nonetheless, she is now
4 said a surety bond. So, I would ask for a mistrial.

5 THE COURT: Solicitor.

6 SOLICITOR BULSA: Your Honor, the Court -- the
7 solicitor was cautious in how we asked our question. The
8 term surety bond does not necessarily equate to a criminal
9 offense. I don't know if this jury would make that
10 connection, and, if they did, he's on trial for a criminal
11 offense. I don't think that's so prejudicial that would
12 warrant a mistrial.

13 MR. JOHNSTON: And we don't think the solicitor
14 intentionally elicited it either, Your Honor. We think it
15 was just a mistake. But nonetheless, it is a mistake.

16 THE COURT: I understand. But a surety bond could be a
17 surety bond for someone else. Not necessarily himself. Of
18 course, he is on trial. Even if that connection were made,
19 it might be his own bond or it may be a surety bond for
20 someone else or it may be a surety bond for property.
21 They're all sorts of bonds that are put up.

22 So, I'm gonna overrule -- I'm not -- I'm gonna deny
23 your motion, but if you, if you want me to, and I'll ask
24 you, Mr. Johnston, I'll be happy to give a curative
25 instruction to disregard the last comment and I'll strike

Gail Moffitt - Direct examination
by Solicitor Bulsa

1 it.

2 MR. JOHNSTON: I -- if Your Honor would, I would ask
3 you to, to explain to the jury that a surety bond can be a
4 bond for property. It can be a bond in a criminal case. It
5 can be a bond for a person that we're talking about or for
6 another person.

7 THE COURT: Solicitor.

8 SOLICITOR BULSA: No objection to that, Your Honor.

9 THE COURT: Well, I'm gonna decline to do that, and the
10 reason I am is I'm afraid that might well be a comment on
11 the facts of the case, and, as all the lawyers in this room
12 know, as the trial judge I am not allowed, by State Law, to
13 make any comment as to any fact in a case. So, for that
14 reason I would decline that, but I'd -- but I will be happy
15 to give a curative instruction that they are to disregard
16 the last comment, and I will strike that from the record,
17 but I will not do that unless you ask me to do it,
18 Mr. Johnston.

19 MR. JOHNSTON: May I have just a moment?

20 THE COURT: Absolutely. Of course, I understand the
21 dilemma. You see that may even call more attention to it.

22 MR. JOHNSTON: Yes, sir.

23 (Pause.)

24 MR. JOHNSTON: Your Honor, if the Court declines to
25 give a mistrial, we will not ask for a curative instruction.

Gail Moffitt - Direct examination
by Solicitor Bulsa

1 THE COURT: Okay.

2 All right. I tell you what let's do. We've been
3 running now -- we, we got here at 9:00, and most of us did,
4 and so let's take a -- about a 15-minute break while we have
5 the jury out so we can use the facilities, get a drink of
6 water, and then we'll reconvene at 11:30, and we'll run up
7 till about 1:00.

8 MR. JOHNSTON: Yes, sir.

9 THE COURT: For planning purposes.

10 MR. JOHNSTON: Okay.

11 SOLICITOR BULSA: Ms. Moffitt, you can step down.

12 THE COURT: You can step down, Gail.

13 (WHEREUPON, a short recess was taken at this time.)

14 (WHEREUPON, two VHS tapes were marked as State's
15 Exhibit Nos. 32 and 33. A receipt was marked as State's
16 Exhibit No. 34. All of the above exhibits were for
17 identification purposes only at this time.)

18 THE COURT: Yes, sir.

19 MR. JOHNSTON: One point if I may, Your Honor?

20 THE COURT: Yes, sir.

21 MR. JOHNSTON: Your Honor, the solicitor is very
22 courteously agreed not to release one Chris Barnes from
23 their subpoena.

24 THE COURT: Okay.

25 MR. JOHNSTON: Mr. Barnes is on the witness list. I

Gail Moffitt - Direct examination
by Solicitor Bulsa

1 don't think they were planning to call him. They are gonna
2 keep him under their subpoena until the Court releases him.

3 THE COURT: Okay. All right.

4 SOLICITOR BULSA: That's correct.

5 THE COURT: All right. Anything else?

6 MR. JOHNSTON: No, sir.

7 THE COURT: All right. We'll have our jury.

8 Mr. Bulsa, we, we square now on what---

9 SOLICITOR BULSA: Yes, sir.

10 THE COURT: You talked to Gail?

11 SOLICITOR BULSA: Yes, sir.

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE COURT: Thank you.

15 Madam Forelady, any matters from the jury?

16 THE FORELADY: No, sir.

17 THE COURT: All right. Solicitor.

18 CONTINUED DIRECT EXAMINATION

19 BY SOLICITOR BULSA:

20 Q We were talking about a public record you found.

21 The -- does that document you found show Mr. Moore
22 acknowledging his phone number and address?

23 A It does.

24 Q And what phone number did he list as being his?

25 A Area code (864)494-2573.

Gail Moffitt - Direct examination
by Solicitor Bulsa

1 Q Okay. And what did he list his address as being?

2 A [REDACTED], Spartanburg, South Carolina, 29306.

3 Q And what is the approximate date or when did he
4 actually sign that document?

5 A December the 31st, 2012.

6 Q Okay. At least in 2012 he acknowledged that phone
7 number and address?

8 A He did.

9 Q Okay. Thank you, ma'am. That's all I have.

10 MR. JOHNSTON: I have no questions for the lady. No
11 problem with her being excused.

12 THE COURT: All right. Ms. Moffitt, you may be
13 excused. Please be careful.

14 THE WITNESS: Okay.

15 SOLICITOR BULSA: State call Lindsey Deweese. Lindsey
16 Deweese.

17 LINDSEY DEWEESE, being first duly
18 sworn, testified as follows:

19 THE COURT: Ma'am, tell us your name and spell your
20 last name please.

21 THE WITNESS: Lindsey Deweese. D-E-W-E-E-S-E.

22 THE COURT: Thank you.

23 Solicitor.

24 DIRECT EXAMINATION

25 BY SOLICITOR BULSA:

Lindsey Deweese - Direct examination
by Solicitor Bulsa

1 Q Ms. Deweese, where are you employed?

2 A RL Jordan Oil Company.

3 Q And---

4 A Hot Spot Number 2011.

5 Q That company owns the Hot Spots in town?

6 A Yes, sir.

7 Q Hot spot 2011, where is that located?

8 A 318 North Blackstock Road, Spartanburg.

9 Q So that's out towards the mall area?

10 A Yes, sir.

11 Q And how long have you been employed there?

12 A At that location I've been there four years.

13 Q How long you been with RL Jordan?

14 A About 20 years.

15 Q Okay.

16 A It's my family's company.

17 Q Okay. And do you recall meeting with police officers
18 on February 26th, 2013?

19 A Yes, sir.

20 Q And was the purpose for you -- for them to obtain some
21 video?

22 A Yes, sir.

23 Q Video from your store?

24 A Yes, sir.

25 SOLICITOR BULSA: Your Honor, these have been marked

Lindsey Deweese - Direct examination
by Solicitor Bulsa

1 for admission without objection during the break.

2 MR. JOHNSTON: That is correct, sir.

3 THE COURT: Okay. Admitted without objection.

4 (WHEREUPON, State's Exhibit Nos. 32 and 33 were
5 received into evidence at this time.)

6 Q State's 32 and 33, are those videos that you had given
7 to William Gary at the Sheriff's Office?

8 A Yes, those are videos.

9 Q And you previously reviewed those and they showed the
10 occurrences that day?

11 A Yes, sir.

12 Q Now, on those videos, one's from the outside cameras,
13 and one's from the inside, is that right?

14 A Yes, sir.

15 Q The one on the outside actually has four pictures.
16 Why is that?

17 A It's the four different views of the camera angles.

18 Q And they record all at the same time?

19 A Yes, sir.

20 Q Okay. Now, the inside one is a single view?

21 A Uh-huh. (Affirmative).

22 Q Is that just a single camera recording?

23 A That's just the B tape. That is of the register area
24 only, yes, sir.

25 Q Okay. Now, these tapes also have time and date stamps

Lindsey Deweese - Direct examination
by Solicitor Bulsa

1 that, that are running along with the video?

2 A Uh-huh. (Affirmative).

3 Q Is that right?

4 A Yes, sir.

5 Q Are those times accurate?

6 A I'm sorry. I didn't hear you.

7 Q Are those times accurate?

8 A They are not synchronized on one VCR. The times may
9 vary within a few minutes --

10 Q Okay.

11 A -- according to the actual times and the VCR times.

12 Q And in reviewing those, the outside video appears to be
13 recorded earlier than the inside video, is that right?

14 A Yes.

15 Q But when you compare the activity of the two, they are
16 actually shown in the same time?

17 A Yes, it was actually the---

18 Q Shown in the---

19 A ---same time. It's the same, yes, sir, frame time --

20 Q Okay.

21 A -- timeframe.

22 Q Now, when Investigator Gary collected those videos, did
23 he also collect a part of a register tape?

24 A Yes, sir.

25 Q I show you what's been marked State's 34. It's in a

Lindsey Deweese - Direct examination
by Solicitor Bulsa

1 plastic envelope.

2 Do you recognize that?

3 A I do. That's our transaction.

4 Q Okay. And how many transactions are shown on that
5 sheet?

6 A There's four transactions shown on the sheet -- on the
7 sheet.

8 Q Okay. Would you take my pen and separate those
9 transactions with a line?

10 A Sure.

11 Q And you may need a better pen, don't you?

12 A Yes.

13 Q Let me get you a pen. Let's try it again. Maybe it's
14 the paper.

15 A Okay. And that one is the fourth transaction.

16 Q Okay. And we'll play the video through Mr Gary, but
17 since you're here I want you to explain, if you see this, on
18 this -- I'm sure it's gonna show us. I wonder what
19 happened.

20 THE JUROR: You have the cap still on.

21 SOLICITOR BULSA: Okay. Thank you, sir. We got that
22 so it won't shine if y'all's eyes.

23 Okay. You've drawn three lines separating four
24 transactions.

25 Just so we have an idea of what we're looking at, point

Lindsey Deweese - Direct examination
by Solicitor Bulsa

1 out the store number for us.

2 A Okay. 2011. Store Number is 111.

3 Q All right. And the date and time?

4 A I can't see it up here.

5 THE COURT: Ma'am, you may step down.

6 Q Step down.

7 THE COURT: Step down please.

8 THE WITNESS: Thank you.

9 Q It's not really in the best spot.

10 A (Witness comes down from the stand.)

11 Okay. The date, there's the date right there, and then
12 there's the time of the transaction.

13 Q That's in military time?

14 A Yes, sir, so it will be 2:16.

15 Q 2:16PM?

16 A PM, yes, sir.

17 Q Is that time pretty accurate?

18 A It's relatively accurate, yes, sir.

19 Q Okay. Cause that may even differ from the video?

20 A A couple minute here and there.

21 Q Okay. All right. So all these transactions occurred
22 within a short timeframe that afternoon?

23 A Yes, sir, they're consecutive transactions. Like this
24 one was at 14:16:07. That was 14:16:39. So, it was in a
25 matter of seconds, the next transaction.

Lindsey Deweese - Direct examination
by Solicitor Bulsa

1 Q why does that second one show us customer ID verified?

2 A Anytime a customer purchases tobacco or alcohol
3 products, if they look older than the age to buy alcohol or
4 tobacco, we still have to ask them their birthdate. At that
5 time he -- the customer did say that his birthdate was
6 [REDACTED] 88 after he purchased the pack of Newports. That's why
7 the birthdate is there.

8 Q Okay. All right. So we can actually use that to help
9 identify who purchased the---

10 A Yes, sir.

11 Q ---cigarettes.

12 Okay. Thank you.

13 A (Witness returns to the stand.)

14 Q Now, the videos -- I'm sorry.

15 A I'm sorry. My -- okay.

16 Q The videos, are they recorded in real time?

17 A As far as what kind of -- what is the---

18 Q Do they run the normal speed?

19 A Yes, they do.

20 Q Okay. Cause it looked like the outside tape ran a
21 little faster.

22 A It -- they do run at the same speed.

23 Q But it's the machine?

24 A Uh-huh. (Affirmative).

25 Q Okay. Thank you.

Lindsey Deweese - Direct examination
by Solicitor Bulsa

1 Okay. Thank you, ma'am. That's all I have.

2 A Okay.

3 MR. JOHNSTON: I don't have any questions for the lady,
4 and no objection to her being excused.

5 THE COURT: Ma'am, you may step down. Please be
6 careful. You're free to go or stay, whichever you like.

7 SOLICITOR BULSA: William Gary.

8 Thank you, ma'am.

9 THE WITNESS: Thank you.

10 WILLIAM GARY, being first duly
11 sworn, testified as follows:

12 THE COURT: Sir, tell us your name please and spell
13 your last name.

14 THE WITNESS: William Gary. G-A-R-Y.

15 THE COURT: Thank you.

16 Solicitor.

17 SOLICITOR BULSA: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY SOLICITOR BULSA:

20 Q Mr. Gary, who are you employed with?

21 A Spartanburg County Sheriff's office.

22 Q In what capacity?

23 A I'm in investigations assigned to the violent crimes
24 division.

25 Q How long have you been assigned to that division?

William Gary - Direct examination
by Solicitor Bulsa

1 A Currently since -- I've been there nine and a half
2 years, and I have been there about a year and a half before
3 that.

4 Q How long -- so you had two different stents?

5 A Yeah, I been in the Sheriff's Office for 19 and a half
6 years, and worked investigations, total of that, about 14 or
7 so.

8 Q Okay. As part of your duties, I guess you kind of
9 developed into sort of the technical kind of IT guy to go
10 to?

11 A I'm assigned to the investigations for the cases that
12 come in. A couple of other things that I do is working
13 videos to collect video to, if it's a DVR system or VHS
14 system, and try to convert that to digital, and if there's
15 an enhancement that needs to be done, I do that as well as
16 cell phone investigation.

17 Q Is that something you just picked up from your
18 experience or did you go to---

19 A Yes, I've been to a couple different schools for that
20 and a lot of on-the-job training. Trial by fire.

21 Q Okay. You extended your expertise into that area?

22 A Yes.

23 Q Did you assist in this investigation of the shooting of
24 the Taco Bell on February 25th to try to identify any
25 videos that might be useful?

William Gary - Direct examination
by Solicitor Bulsa

1 A Yes, I did.

2 Q And in that investigation did you have occasion to go
3 to the Hot Spot on Blackstock Road?

4 A Yes, I did.

5 Q Tell us where that Hot Spot is in relation to the Taco
6 Bell where the shooting occurred.

7 A The Taco Bell is on Highway 29, which basically is
8 right here where Sam's and Academy Sports and all that area
9 is. I came out of the Taco Bell on 29, take a right at the
10 next red light where Blackstock, North Blackstock Road
11 crosses Haddens Crossings. There's an Ingle's there,
12 Westview Fire Department, strip mall on the other corner,
13 and Suntrust Bank. Turn right coming from that direction on
14 North Blackstock Road, and you stay and follow that road out
15 to the next intersection, which is where Hayne Street,
16 Fairforest Clevedale, Fairforest Road, and North Blackstock
17 continues from there. The Hot Spot is in the corner of that
18 intersection there.

19 (WHEREUPON, four photographs were marked as State's
20 Exhibit Nos. 35 through 38 for identification purposes only
21 at this time.)

22 Q I show you what's been marked State's Exhibit 38.
23 Can you identify what that is?

24 A Yes, this looks like a Google Earth map showing that
25 area of the Taco Bell location as well as the Hot Spot.

William Gary - Direct examination
by Solicitor Bulsa

1 Q Okay. State's 38 being published to the jury on the
2 overhead, the blue spot, does that appear to be where the
3 Taco Bell is on Warren Abernathy?

4 A Yes, it's right there in that area.

5 Q And the purple spot, is that where the Hot Spot is?

6 A Yes, it is.

7 Q Do you know the approximate distance?

8 A I do not right off hand. But my estimation on it would
9 be a mile and a half or so.

10 Q Okay. All right. Pretty straight shot?

11 Essentially just one turn?

12 A You turn -- yes, sir.

13 Q All right. And State's 37, what is that a picture of?

14 A That is a close-up aerial picture of the Hot Spot.

15 Q Okay. That shows a fairly well traveled intersection?

16 A It is very heavily traveled.

17 Q During the investigation of this case, the initial
18 officers going to the Taco Bell, did they take the route
19 from Hayne Street to North Blackstock to Warren H.
20 Abernathy?

21 A I know that several of them did.

22 Q How do you know that?

23 A From talking to the officers at the scene and on the
24 video at the Hot Spot you can see hear the sirens and see
25 the cars go by.

William Gary - Direct examination
by Solicitor Bulsa

1 Q Okay. Several police cars came down that road?

2 A Correct.

3 Q Okay. Now, what did you actually collect from the Hot
4 Spot?

5 A I collected three items. I collected two videotapes.
6 One of the tapes shows outside cameras. It's a quad picture
7 of it. The other is a single camera that shows the back of
8 the sales counter where the customers come up and it has
9 audio on it, and then part of the register transaction roll
10 that stays in the register and just runs all the sales. So,
11 a section of that showing a transaction there.

12 Q Now, the investigation of this case identified a
13 possible suspect vehicle being a Chrysler 300?

14 A Correct, the white one with bigger wheels on it.

15 Q Okay. And were you looking specifically for a vehicle
16 of that type in the video?

17 A Yes.

18 Q And in your reviewing of the video, did you identify
19 that?

20 A Yes.

21 Q And have you marked those locations on videotapes?

22 A Yes, sir.

23 Q Okay. I'm gonna ask you to step down and help me
24 publish this to the jury first showing the outside video.

25 A (Witnesses comes down from the stand.)

William Gary - Direct examination
by Solicitor Bulsa

1 Q Let's pause it there and let me ask you a question
2 first.

3 Okay. We see the four cameras and they actually show a
4 date and a time.

5 Okay. 2/25/13. 14:06.

6 A Yes, sir.

7 Q 14:06 actually is before the call came in?

8 A Correct.

9 Q All right. So, based on your investigation, did you
10 determine that time to be inaccurate?

11 A The -- correct. The time's not accurate. For some
12 reason I didn't make a note on these two videos as far as
13 the difference in the video time versus the actual time,
14 which I normally do. But I don't know why I didn't in this
15 one.

16 Q But when we see the indoor videos, there's even a
17 different time than this one?

18 A Yes, sir.

19 Q In fact, it's probably more accurate than this time, is
20 that right?

21 A It's, it's gonna be closer. There's -- it's two
22 different VCR's and systems that record the cameras. So,
23 the VCR themselves weren't the same. Plus they weren't
24 exact with actual time, and the only -- from doing this, the
25 only time I ever find an exact time, probably 90 percent of

William Gary - Direct examination
by Solicitor Bulsa

1 the time, is when it's on a computer's DVR system. Even
2 self-contained DVR systems, a lot of times the time is not
3 correct.

4 Q Okay. And I just, as we play this, would you use the
5 pointer and point out items and pause the camera if you need
6 to?

7 A Before I start, just to -- the way the road is set up
8 starting at the top, this is going up North Blackstock Road
9 back towards the intersection near the Taco Bell, which
10 would be the direction traveling from the Taco Bell. You
11 would come down this direction. This parking section here
12 is actually this side of the building over here.

13 Q And I know they can't -- it's gonna be hard for them to
14 see it, but let's look on 37.

15 A This right here, this area here is what you're seeing
16 with the camera one.

17 Q So everybody see.

18 A It's that direction coming this, this way here. On
19 camera two, what you're looking at is the section where
20 these cars are parked here. Camera three is a camera that's
21 showing at an angle from the -- looking at the front of the
22 building from the road, the camera's on the right side of
23 the building, and it's pointing at an angle back towards
24 this intersection here showing the -- like this intersection
25 here is the main intersection where all the roads -- there's

William Gary - Direct examination
by Solicitor Bulsa

1 five roads that come together right there, and then this
2 camera here -- I'm sorry. This camera's on the left side of
3 the building showing that intersection. This one goes
4 across the front from the right side towards that
5 intersection. But you see the intersection in both cameras.
6 It's here and here.

7 This is the -- this is Hayne Street coming this way.
8 Over here, North Blackstock. Fairforest Road turns off a
9 hard right here across the tracks. North Blackstock
10 continues on the other side of the railroad tracks back to
11 the left, and then the road that comes this direction is
12 Fairforest Clevedale Road just to show you how the roads run
13 here.

14 Q Let me ask you one more question about that.

15 A Yes, sir.

16 Q It might be hard to see, but if we're gonna see police
17 cars like you described, we would see them in which camera?

18 A You would actually see them in two cameras. You'll see
19 them come up Hayne Street, they turn left on North
20 Blackstock here, which continues in this direction, which
21 you can't really see them up here at the top, and you also
22 see them on this camera coming in and taking the left there
23 as well. It's the direction that you see them. I think you
24 see two and three.

25 Q All right.

William Gary - Direct examination
by Solicitor Bulsa

1 A And also this video was recorded at 24-hour speed for
2 this VCR to play it at the exact times. So, it's gonna play
3 a little slower than normal so it doesn't play too fast.
4 It's gonna actually play a little slower than normal would
5 be.

6 The first time the white 300 comes in you see it barely
7 on this camera at the very top and it actually parks in this
8 parking space here, and it's gonna be about another 20
9 seconds before it comes.

10 Q All right. I want you to -- I'm gonna ask you to stop
11 it when you first see the vehicle pull up.

12 A I missed it coming in, but it's pulling in the spot
13 right there.

14 Q Okay. Now, we don't see the full vehicle. We see
15 the -- only see the front.

16 A Correct.

17 Q But---

18 A You only see the right front of the car.

19 Q Okay. You can't see the doors or the passengers or the
20 driver?

21 A You can't see the passenger. You never see the driver
22 here. You see the passenger when he gets out of the car and
23 he walks to this area and walks around for just a second.

24 Q Based on your understanding of the case and the
25 suspects, this is the first view of the car in question?

William Gary - Direct examination
by Solicitor Bulsa

- 1 A Yes.
- 2 Q So that's marked at 14:07:41?
- 3 A Correct.
- 4 Q Okay. This is actually running a little slow.
- 5 Can we maybe run it on a little bit faster speed?
- 6 A I'll try.
- 7 Q We can pause it on occasion.
- 8 A Okay. It just puts a lot of tape noise is what it's
- 9 called.
- 10 Q Well, we haven't seen anybody get out yet.
- 11 A The door's opening right there. I just saw.
- 12 Q Pause it right there.
- 13 A (Witness complies.)
- 14 Q Okay. So, they arrive at 14:07:41, and it appears that
- 15 someone's getting out at 14:08:12?
- 16 A Yes, sir.
- 17 Q Thirty seconds later.
- 18 A Approximately.
- 19 Q Okay. Go ahead.
- 20 A (Witness complies.)
- 21 Q Which camera are we gonna move to now?
- 22 A From here they're gonna come in the camera -- view of
- 23 camera one where two subjects -- two of them come walking
- 24 down the sidewalk --
- 25 Q Uh-huh. (Affirmative).

William Gary - Direct examination
by Solicitor Bulsa

1 A -- and throw something away in this trash can, and then
2 they walked past -- back down the sidewalk towards the car
3 and then turn around and come back and actually go inside
4 the store at that point.

5 Q It appeared up in camera two he was just walking around
6 --

7 A Correct.

8 Q -- the passenger.

9 Okay.

10 A This is when they're coming down the sidewalk.

11 Q Okay. Would you pause it there?

12 A (Witness complies.)

13 Q Just a few seconds before that, 14:09:05 --

14 A Yes, sir.

15 Q -- they kind of hung out almost a minute there by the
16 car --

17 A Yes, sir.

18 Q -- and then they come to another view of camera one.

19 Okay. Play it.

20 A (Witness complies.)

21 That's where they're throwing the bag in the trash can.

22 Q Now -- so, it appears we see two individuals---

23 A Correct.

24 Q ---together?

25 A Yes, sir.

William Gary - Direct examination
by Solicitor Bulsa

1 Q And now they're walking -- they're putting something in
2 the trash and they're walking back down the sidewalk?

3 A Yes, sir, they go past the entry doors to the trash can
4 and go back past the entry doors, and then now they're --
5 looks like they're standing there for a second and they come
6 back and actually go inside the store.

7 Q Okay. Pause it when they go in the store please.

8 A (Witness complies.)

9 Yes, sir, that's gonna be around the time the first
10 officer comes by.

11 Q 14:09:48?

12 A Yes, sir.

13 Q They're around, hanging around out front, 40, 45
14 seconds.

15 Okay. Now, this won't show us any of the activity in
16 the store, but we will see something later when they leave,
17 right?

18 A Right. When they leave, they come out, they go to the
19 car, and then they cut across the parking lot at an angle
20 through here, and they actually come out this direction and
21 come in kind of off this camera. They come across here,
22 come out onto Hayne Street, and turn left and get in the
23 right lane, and then once they get through the intersection
24 there they turn right and continue up Fairforest Road.

25 Q And in your initial testimony you commented about

William Gary - Direct examination
by Solicitor Bulsa

1 hearing some sirens.

2 You can't hear them on this tape?

3 A No, this, this tape here does not have any audio on
4 them.

5 Q Okay. You see cars coming, but not hear them?

6 A Yes, sir.

7 Q Okay. Go ahead and play it through to where we see
8 them leaving. Point out anything -- the police cars that
9 you will see.

10 A It might be hard. Slow it down just a touch here. It
11 might be hard with that noise in it to see some of it.

12 Q It's gonna be a little slow.

13 A Well, I -- there's one right there. That one came up
14 Fairforest Road going by. There's another one there. That,
15 that one came up Hayne Street and turned left. You can see
16 his blue lights flashing there and he's running probably --
17 another one is coming across the tracks here. Probably the
18 one with us is running lights and siren on a call.

19 That's the car there, but now they've come out to the
20 car here. The car's about to pull out.

21 Q Do we see another police car go by?

22 A Right there there's one. There. Sitting either in the
23 car, about to get in the car. I think they're in the car
24 cause I don't see them now. The car's backing out. You see
25 it coming into view here. Slowed it down again because it

William Gary - Direct examination
by Solicitor Bulsa

1 doesn't take that long for it to go across.

2 That's the car coming through there. That's down here
3 also, and then coming across the camera through here.

4 Q And leaving the parking area around 12 -- 2:12:25?

5 A This is where it pulls out on Hayne Street and gets in
6 the right lane behind that vehicle.

7 Q And actually turns in which direction and they leave,
8 right?

9 A Yes, when it pulls out, this here is the car in front
10 of it in camera four. You'll see him go across and they --
11 you can kind of see it here as well where it turns right and
12 goes up. You can tell it stays on Fairforest Road because
13 it doesn't come across Blackstock here. It comes to the
14 other side of the tracks. He actually got in front of that
15 vehicle. So, it looks like the second one in line there.

16 Q Okay.

17 A It's gonna pull out and turn right. The red light's
18 about to change here. That's where it's pulling off here.
19 That's the car in front of them. It goes straight and then
20 they pull and turn right. That's the Chrysler there.

21 Q Okay. Will you stop that video and let's put in the
22 inside video?

23 A (Witness complies.)

24 Q This one actually has sound?

25 A Yes, sir.

William Gary - Direct examination
by Solicitor Bulsa

1 Q Okay. You can play it now.

2 A (Witness complies.)

3 This is sound. That's where they walk right past and
4 put something in the trash can.

5 Q Pause that.

6 A (Witness complies.)

7 Q We have a different time stamp on this. This is --
8 looks like at 14:16:52?

9 A Yes, sir.

10 Q And 10:16.

11 So that's about a two minute difference?

12 A Yes.

13 Q Is that right?

14 Okay. You saw the two gentlemen walk from the video?

15 A Right, they walk past the doors to the trash can, turn
16 around in the back just like you see.

17 Q Okay. Continue playing.

18 A (Witness complies.)

19 That's when -- that's when our K-9 unit's going by
20 there.

21 Q Pause it.

22 A (Witness complies.)

23 Q Okay. Tell us about that.

24 A That's one of our K-9 officers going by, Deputy Brian
25 Fraley. You can tell -- at the time, he was -- they were

William Gary - Direct examination
by Solicitor Bulsa

1 one of the only ones in a Tahoe. So, you can -- kind of
2 could tell who it was when we talked to him. That's who it
3 was going by there. So, we were able to ascertain his
4 direction coming through, and his -- from one of the initial
5 responding officers.

6 Q All right. Officer, pause it.

7 A (Witness complies.)

8 Q The gentleman in the dark, he was one of the two men
9 that came in, did the investigation identify who that was?

10 A Yes, sir.

11 Q Who was that?

12 A Tevin Thomas.

13 Q Tevin Thomas.

14 And the person that walked in with him in the red
15 jacket was whom?

16 A Robert Moore.

17 Q Okay. We actually saw Mr. Moore approach the counter
18 and then back away?

19 A Yes.

20 Q All right. Continue playing.

21 A (Witness complies.)

22 Q Pause that.

23 A (Witness complies.)

24 Q Rewind it and let's hear that again.

25 A (Witness complies.)

William Gary - Direct examination
by Solicitor Bulsa

1 Q It appears he's purchasing cigarettes and a Ruffles
2 bag?

3 A Bag of potato chips and cigarettes.

4 Q Okay. Let me show you State's 34.

5 Is that designated on that receipt?

6 A It is. This is the printout that I took into evidence
7 on there, and it has that -- this purchase on it.

8 Q Be the second purchase that has the date of birth
9 attached to it?

10 A Correct.

11 Q Okay. And the date's -- time stamped 2:18.

12 A Yes.

13 Q Okay. From the store, you'd be able to see the cars,
14 is that correct?

15 A Yes, sir, you will be able to see a little bit of the
16 car coming from left to right and going through the parking
17 area.

18 A The -- that's the car from the back. I don't think
19 with the glare they can see.

20 Q Okay. Stop that.

21 A (Witness complies.)

22 Q Let me refer back to State's 37, the aerial photograph
23 of the Hot Spot.

24 A Yes.

25 Q If you would -- pointer?

William Gary - Direct examination
by Solicitor Bulsa

1 A Sorry.

2 Q Watch that mic in turn.

3 Point out where that car would of pulled into?

4 A The car would of been coming on Blackstock Road in this
5 direction, and then this direction would of turned into the
6 parking lot right around in here, and then parked right
7 around here.

8 Q Okay. Then we saw him walk down that sidewalk?

9 A Right, walked down this sidewalk this direction. The
10 front door is your -- under this awning here, and walked
11 down this sidewalk here.

12 Q When they left, they would of left where?

13 A Left out and came down through the front underneath
14 this awning and then out in this direction --

15 Q Okay.

16 A -- to the -- to Hayne Street.

17 Q No way to make that right back---

18 A Right back to here.

19 Q ---to Blackstock?

20 A well, they actually, when they make this right, they
21 stayed right cause Blackstock continues left this direction.

22 Q Okay.

23 A Fairforest Road is what continues straight, and you'd
24 be able to see from the outside camera if they had taken a
25 left on Blackstock. You would of been able to see the car

William Gary - Direct examination
by Solicitor Bulsa

1 go that direction. That's how we knew it kept going up
2 Fairforest Road.

3 Q Did you try to identify any other videos on that route?

4 A Yes, sir.

5 Q And did you recover any other videos?

6 A One from the, on Fairforest Road, the Cracker Barrel.
7 It has some outside cameras that shows that car pull in the
8 parking lot of it.

9 Q Okay. What kind of activity did it show?

10 A It pulled in on the side of the building out of the
11 camera view. It comes back in that camera. Comes across in
12 front of the store, and the way their motion was set on
13 their cameras it went out, say to the parking lot, but went
14 far out of the motion area where it quit recording. So, you
15 can't tell exactly what the car did from there. Then I
16 think we saw a glimpse of it on Fairforest Road come back up
17 and the motion kicked in later. That way -- at that point
18 it was heading towards Business 85.

19 Q So, it wasn't always on camera at the Cracker Barrel?

20 A It was not.

21 Q Okay. About how long did it stay at Cracker Barrel?

22 A I don't remember exactly how long it was there. It's
23 just a, a minute or so. It wasn't, it wasn't a very long
24 time.

25 Q Okay. So, you never were able to see them get out of

William Gary - Direct examination
by Solicitor Bulsa

1 the vehicle?

2 A No.

3 Q And how about -- did you find any other cameras?

4 A Later on, several miles up the road, there's, on Mt.
5 Pleasant Road, there's a business -- nothing between there
6 and Mt. Pleasant Road, and Mt. Pleasant Road is up near 221
7 and 85, and on Mt. Pleasant Road there's a business there
8 where people, they buy like used catalytic converters and
9 all, and they have a video camera there, and a couple of
10 outside cameras. We were able to get that camera -- that
11 car on video at that location followed by another vehicle
12 that we were told about.

13 Q That's a pretty far distance away?

14 A It's a pretty good ways. I'm not sure the exact
15 mileage, but I would say it's probably eight miles or so.

16 Q Was the car found at some point in that location?

17 A It was. There's a neighborhood right up through there,
18 and the car was found at a house in that neighborhood which
19 is just up the road from the business that was captured on
20 video.

21 Q Is that anywhere near Wheeler Court or Wheeler Street?

22 A Yes, that's in that neighborhood. No, wait a minute.
23 No, it's not in that.

24 Q You know where Wheeler Street is?

25 A I say that doesn't sound like one of the streets in

William Gary - Direct examination
by Solicitor Bulsa

1 that neighborhood --

2 Q Okay.

3 A -- out there.

4 Q Okay. So, it wasn't there, was it?

5 A No, no.

6 Q Okay. We saw something being thrown into the trash at
7 the Hot Spot.

8 A Yes, sir.

9 Q Did you do anything to investigate what might have been
10 thrown away?

11 A We did. Once we saw this we went back to the store to
12 ask about their trash pickup, and went and looked in the
13 dumpster, and it didn't appear that the trash had been
14 collected. So, we had someone bring a -- the pickup to the
15 Hot Spot and we emptied the dumpster into the pickup, took
16 it to our office, and went through every bag in the dumpster
17 to see if we could identify what might have been thrown in
18 there.

19 Q Did you recover anything?

20 A There was nothing that we found to tell us that was the
21 exact bag that was thrown in there.

22 Q So, you didn't find a gun or anything?

23 A No, we did not.

24 Q All right. Thank you. Answer any questions
25 Mr. Johnston may have.

William Gary - Cross-examination
by Mr. Johnston

1 CROSS-EXAMINATION

2 BY MR. JOHNSTON:

3 Q Detective, get you to take a look at these two and see
4 if you agree that those are stills from one of the videos
5 that we were just watching?

6 A Yes, sir, it looks like the stills from the inside
7 video from the Hot Spot.

8 Q Do they appear to fairly and accurately reflect at
9 least that portion of the video?

10 A Yes.

11 MR. JOHNSTON: Your Honor, at this time we would offer
12 this into evidence.

13 THE COURT: Solicitor.

14 SOLICITOR BULSA: No objection.

15 THE COURT: Be admitted without objection.

16 (WHEREUPON, the photographs were marked as Defendant's
17 Exhibits Nos. 1 and 2 and received into evidence at this
18 time.)

19 Q State's Exhibit 1 or, I'm sorry, Defendant's Exhibit 1,
20 the gentleman in the orange -- in the reddish orange shirt
21 is who?

22 A Robert Moore.

23 Q And in Defendant's Exhibit No. 2, the gentleman in the
24 toboggan hat?

25 A Yes, sir.

William Gary - Cross-examination
by Mr. Johnston

1 Q This person here, who is that?

2 A That's Tevin Thomas.

3 Q I don't have any other questions for this gentleman.

4 THE COURT: Anything?

5 SOLICITOR BULSA: No, sir.

6 THE COURT: Thank you, officer. You may step down.

7 Is he excused?

8 SOLICITOR BULSA: Yes, sir.

9 THE COURT: Okay.

10 SOLICITOR BULSA: If he could be.

11 MR. JOHNSTON: No objection.

12 THE COURT: Okay. You may go, leave or stay, whichever
13 you choose.

14 THE WITNESS: I'll choose to leave. Thank you, sir.

15 SOLICITOR BULSA: You want me to keep going, Your
16 Honor?

17 THE COURT: Yes, sir.

18 SOLICITOR BULSA: Okay. State calls Lorin Williams.

19 LORIN WILLIAMS, being first duly
20 sworn, testified as follows:

21 THE COURT: Sir, please tell us your name and spell
22 your last name for my court reporter.

23 THE WITNESS: My name is Lorin Williams. It's
24 W-I-L-L-I-A-M-S.

25 THE COURT: Thank you.

Lorin Williams - Direct examination
by Solicitor Bulsa

1 Solicitor.

2 SOLICITOR BULSA: Thank you.

3 DIRECT EXAMINATION

4 BY SOLICITOR BULSA:

5 Q Mr. Williams, what is your occupation?

6 A I'm a violent crime investigator with the Spartanburg
7 County Sheriff's Office.

8 Q How long have you been with the Sheriff's Office?

9 A Since 2005.

10 Q How long have you been a violent crime investigator?

11 A Since 2007.

12 Q Were you the lead investigator in this case?

13 A Yes, sir, I was.

14 Q Did you actually go to the scene on February the
15 25th of 2014?

16 A I did.

17 Q What was taking place at the scene when you arrived?

18 A When we arrived on the scene there was -- the victim
19 had already been transported. Basically, at that point, we
20 were trying to determine, you know, who was involved, who,
21 who the victim was, things of that nature. There was a car
22 there. It wasn't a whole lot to go on. A few people that
23 had witnessed some things we were told that, that we would
24 need to speak with them. Uniform patrol had already secured
25 the scene, and we begin to try to, you know, go through the

Lorin Williams - Direct examination
by Solicitor Bulsa

1 process of starting to develop some information.

2 Q Do you know what time 9-1-1 was called on that day,
3 sir?

4 A The dispatch time, which is usually within just a few
5 minutes of -- usually not even a minute especially on a
6 situation where it's a violent crime or a shooting or
7 something of that nature. It was at 2:13 in the afternoon.

8 Q Okay. So, someone calls 9-1-1, they send an ambulance,
9 and they send the police?

10 A That's correct.

11 Q Now -- and then you would of arrived approximately how
12 much later?

13 A Actually, on, on this particular incident, myself and
14 another investigator were in the car and we actually
15 overheard the radio traffic. So, instead of actually us,
16 like it would normally be where we would be called and then
17 asked to go, since we heard the radio traffic and because of
18 the nature of the incident, we just -- we went ahead and
19 responded to the scene. So, we were there within just a few
20 minutes.

21 Q Okay. The victim was already gone?

22 A Correct.

23 Q Was Investigator Talanges there already?

24 A I, I don't recall whether he was there or not, but he
25 would of gotten there within, within a short amount of time.

Lorin Williams - Direct examination
by Solicitor Bulsa

1 Q would anybody have been doing anything with the car
2 prior to Mr. Talanges getting there?

3 A No, what -- the way that our protocol with the
4 Sheriff's Office is on, on incidents such as this is the on
5 call investigator or the lead investigator in this case
6 would of been myself. Uniform patrol would get there.
7 Their number one priority is scene security and, and
8 victim's care.

9 In this situation the, the scene was contained pretty
10 much to the car or right around the car in the parking lot,
11 and, and they, they went straight to the victim to try to
12 start assisting him, getting him the care that he needed.

13 Once that has been done, nothing else is done. The
14 scene is taped off. The scene's secured. Anybody that's
15 inside that scene will be escorted out, and everything is
16 pretty much just locked down until we get there.

17 Q Did you observe the phones in the floorboard?

18 A I did.

19 Q And what, if anything, did that make you think?

20 A Well, you know, typically it's, it's not---

21 MR. JOHNSTON: Your Honor, I'm gonna object to that
22 question, what did it make you think. I don't think that's
23 a proper question.

24 SOLICITOR BULSA: I'll rephrase.

25 THE COURT: Okay.

Lorin Williams - Direct examination
by Solicitor Bulsa

1 Q what did you do when you saw those phones?

2 A well, due to the situation and, and the fact that the
3 victim had not been positively identified nor had any
4 suspect been identified, you know, it's -- I want to know
5 who they are. I want to know who the phone belongs to. I
6 want, I want to be able to get my hands on those phones as
7 quick as possible where I can see who the victim was talking
8 to. I mean cause typically they're gonna know who, who did
9 this. And by us -- the quicker we can get our hands on
10 those phones to have a forensic examination done on them,
11 the, the, the quicker it helps us with the investigation.

12 Q And we heard Investigator McGraw identify the flip
13 phone as being -- well, he identified the numbers.

14 The number associated with the flip phone, were you
15 able to determine who that belonged to?

16 A Yes, sir.

17 Q And through the records, did you determine that
18 belonged to Robert Moore?

19 A That -- the phone number associated with that phone
20 belonged to the defendant.

21 Q Okay. And did you begin to look for Mr. Moore?

22 A we did.

23 Q Okay. And did you find him?

24 A Not in the beginning, no.

25 Q How long did it take to find him?

Lorin Williams - Direct examination
by Solicitor Bulsa

1 A If I can refer back to my notes. I believe it was
2 the -- March the 8th. On March the 8th.

3 Q This occurred February 25th?

4 A That's correct.

5 Q So, some -- February has---

6 A Twenty-eight.

7 Q ---28 days. So, we got 11 days. It took you 11 days
8 to find him?

9 A Yes, sir.

10 Q And what were you doing to try to find him?

11 A Everything that we possibly could. We had been to all
12 the known addresses. We had everybody looking for him.

13 Q The two iPhones, did you learn those were the victim's
14 phones?

15 A Yes, sir, we did.

16 Q And we saw Investigator McGraw show that calls from
17 these two phones were used to talk to each other?

18 A That's correct. They were, they were communicating
19 right up just, just minutes before the incident happened.

20 Q Do you recall when Mr. Thomas was identified as the
21 other person?

22 A Not exactly. It would -- was not, it was not a long --
23 there was not a long period of time before they were both
24 identified.

25 Q And Mr. Thomas was -- did you continue looking for him?

Lorin Williams - Direct examination
by Solicitor Bulsa

1 A We did.

2 Q And when did you find him?

3 A We located him the following day.

4 Q So, on February 26th?

5 A Correct.

6 Q And did you interview him?

7 A I did.

8 Q And did he give you information about Mr. Moore?

9 A He did.

10 Q And we saw the video of the Hot Spot, two men together
11 and the car, and then we also had the description of the car
12 from bystanders.

13 Did you begin looking for that type of a vehicle?

14 A Yes, sir, we did.

15 Q Did you determine that Mr. Moore had access or drove
16 that type of vehicle?

17 A Yes, we did.

18 Q Did you find what you believed to be the vehicle that
19 would of been at the scene?

20 A Yes, we did.

21 Q Where did you find it?

22 A We -- actually it was located in Lake View Manor, which
23 is up off of Mt. Pleasant Road. As you heard Investigator
24 Gary when he showed or told you about the video from
25 Southeastern Converters, it is right up the road. Just

Lorin Williams - Direct examination
by Solicitor Bulsa

1 several hundred yards, the way the crow flies, from that
2 video.

3 Q Do you know the address where it was found?

4 A It was in the yard at, at [REDACTED],
5 which is in the Lake View Manor subdivision.

6 Q Did you determine if there was anybody at that address
7 associated with Mr. Moore?

8 A No, sir, there -- well, there was some people there
9 that knew the vehicle and knew that it was his vehicle.

10 Q Okay. Is that near an area where Mr. Moore was known
11 to stay?

12 A Not, not the addresses that we had for him.

13 Q Okay. I show you what's been previously marked State's
14 35 and 36.

15 Do you recognize those photos?

16 A Yes, sir, that's the -- that's the white Chrysler 300.

17 Q At the location where it was found?

18 A That's correct.

19 Q State's 35, that appears to be during the nighttime?

20 A Yes, sir, it was late in the evening when we recovered
21 the car.

22 Q And that -- when would you have recovered this car?

23 A The car was recovered on the same night as the
24 incident, the 25th.

25 Q Okay. So, you -- the incident happens. You get the

Lorin Williams - Direct examination
by Solicitor Balsa

1 information about Mr. Moore, and you're looking for him,
2 looking for Mr. Thomas, looking for the car.

3 You find the car first --

4 A Correct.

5 Q -- right?

6 And then the next day you find Mr. Thomas?

7 A Correct.

8 Q It takes 11 days to find Mr. Moore?

9 A That's correct.

10 Q Okay. Here's a, here's a frontal view, State's 36.
11 Is that the same vehicle in the same location?

12 A It is.

13 Q Okay. And what was done with this car?

14 A It was taken by the county rollback to our impound at
15 the county shop and it was taken there to be processed.

16 Q We heard about the fingerprints being found on it.
17 Were you looking for any weapons of such sort?

18 A Sure.

19 Q Was anything found?

20 A No, sir.

21 Q I don't know that we actually heard about it, but what
22 was the defendant's date of birth that you determined to be?

23 A Mr. Moore's?

24 Q Yes, sir.

25 A Oh, Mr. Moore's date of birth is [REDACTED] 88.

Lorin Williams - Direct examination
by Solicitor Bulsa

1 Q And is that the same date of birth we heard on the
2 video --

3 A It is.

4 Q -- at Hot Spot?

5 So, that helped you confirm that that was him on the
6 video?

7 A Yes, it did.

8 Q So, all that kind of came together initially and it
9 gave you some suspects to look for?

10 A It did.

11 Q Based on all that information, did you obtain arrest
12 warrants for him and -- Mr. Moore and Mr. Thomas?

13 A Based on that information and some other else, that's
14 correct, yes, sir.

15 Q All right. Thank you. That's all I have. Answer any
16 questions Mr. Johnston may have.

17 CROSS-EXAMINATION

18 BY MR. JOHNSTON:

19 Q Do you have a report about how you found Mr. Moore?

20 A No, sir.

21 Q You have a report?

22 A No, sir.

23 Q Do you know whether or not he turned himself in?

24 A He did. He did.

25 Q To the Sheriff's Office?

Lorin Williams - Cross-examination
by Mr. Johnston

1 A I'm not sure where he went to, but I do know that he
2 was -- I was notified.

3 Q Some, somewhere where some police were?

4 A Correct.

5 Q All right. I don't have any other questions for the
6 gentleman.

7 THE COURT: Anything?

8 SOLICITOR BULSA: Just briefly.

9 REDIRECT EXAMINATION

10 BY SOLICITOR BULSA:

11 Q Now, when your were searching for Mr. Moore, were you
12 putting the word out that you were looking for him?

13 A I'm sorry?

14 Q When you were searching for Mr. Moore, were you leaving
15 information about that you were looking for him, wanting to
16 speak to him?

17 A Absolutely.

18 Q Okay. And Mr. Johnston stated he turned himself in,
19 but it wasn't until---

20 MR. JOHNSTON: Your Honor, I object to leading. Object
21 to leading.

22 THE COURT: Sustained.

23 Q Okay. Mr. Johnston referred to him turning himself in.
24 Did he turn himself in the next day?

25 A No, sir, he did not.

Lorin Williams - Redirect examination
by Solicitor Bulsa

1 Q The next day?

2 A No, sir.

3 Q The next day?

4 A No, sir.

5 Q The next day?

6 A No, sir.

7 Q The next day?

8 A No, sir.

9 Q How many days did it take him to turn himself in?

10 A I was trying to get where we were on the next days.

11 Q Okay. How many times -- days?

12 A It took 11.

13 Q Eleven days.

14 Okay. Thank you.

15 MR. JOHNSTON: I don't have any questions.

16 THE COURT: Okay. Thank you, Mr. Williams. You may
17 step down, sir.

18 You think this is a good place to stop, gentlemen?

19 SOLICITOR BULSA: Yes.

20 THE COURT: Madam Forelady, ladies and gentlemen of the
21 jury, this is a good place to stop. As I told you
22 yesterday, we try to stop between 12:30 and 1:00. It's
23 about 12:37 or eight or thereabouts. So, this is a perfect
24 time to stop. I try very hard not to break up testimony.

25 So now that he's finished, before the next witness

1 comes, cause we don't know if that will be a 15 minute
2 witness or an hour and 15 minute witness cause I don't know
3 who they're gonna call. So this is a very good time to
4 stop.

5 I tell you again that you are not to begin deliberating
6 or discussing this matter with anyone. Not even within your
7 own mind. There again, think about something else. This is
8 work and you don't want to think about work while you're
9 enjoying your lunch.

10 So, with that, we're gonna stand in recess until two
11 o'clock. That's a little -- that's an hour and 20 minutes
12 worth of lunch there, but, but I think the, the lawyers need
13 a little time, and so we're gonna take -- we're gonna recess
14 until two o'clock. We're gonna begin promptly at two
15 o'clock though please. So, be back about five or eight
16 minutes till so you can get that last drink of water and
17 whatever it is you might need to do.

18 Madam Forelady, you can take your jury out please.

19 (WHEREUPON, the following takes place outside the
20 presence of the jury.)

21 THE COURT: All right. You need everybody to remain
22 seated while you---

23 THE BAILIFF: Until he gets---

24 THE COURT: ---till he leaves?

25 THE BAILIFF: Until he leaves the room.

1 THE COURT: Until the defendant leaves.

2 Everybody remain seated please until the defendant
3 leaves.

4 SOLICITOR BULSA: May Mr. Johnston and I approach while
5 he's leaving?

6 THE COURT: Absolutely.

7 (WHEREUPON, a bench conference was held at this time.)

8 THE COURT: Two o'clock.

9 (WHEREUPON, Court was in recess for the lunch break.)

10 THE COURT: Solicitor, we ready?

11 SOLICITOR BULSA: Yes, sir.

12 THE COURT: Mr. Johnston, you ready?

13 MR. JOHNSTON: Yes, sir.

14 THE COURT: Okay. Very good. We'll have our jury.

15 (WHEREUPON, the following takes place within the
16 presence of the jury.)

17 THE COURT: Thank you.

18 Madam Forelady, any matters for the jury?

19 THE FORELADY: No, sir.

20 THE COURT: We're ready to proceed then.

21 Solicitor.

22 SOLICITOR BULSA: State calls Tevin Thomas.

23 TEVIN THOMAS, being first duly
24 sworn, testified as follows:

25 THE COURT: Sir, tell us your full name and spell your

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 last name please.

2 THE WITNESS: Tevin Marquez Thomas. T-H-O-M-A-S.

3 THE COURT: Thank you. Pull that mic -- pull your
4 chair up a little bit and get close to that microphone
5 please. This lady's recording. She has to be able to hear
6 everything.

7 Okay. Thank you, sir.

8 DIRECT EXAMINATION

9 BY SOLICITOR BULSA:

10 Q Mr. Thomas, how old are you, sir?

11 A Twenty-one.

12 Q Twenty-one.

13 where do you live?

14 A I stay in Lake View Manor community.

15 Q You stay in Lake View Manor?

16 A Uh-huh. (Affirmative).

17 Q Do you know Travis Hall?

18 A No.

19 Q You don't know him?

20 Do you know Mr. Moore?

21 A Yes.

22 Q How do you know him?

23 A We use to be together when I was on the streets.

24 Q Did you call him a friend?

25 A Uh-huh. (Affirmative).

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 Q Is that a yes?

2 A Yes.

3 Q Answer yes or no.

4 Okay. How long did you know Mr. Moore?

5 A I knew him, I knew him since I been living in Lake View
6 Manor community all my life.

7 Q About all your life.

8 So, is he close to your age?

9 A A couple years, a couple years older than me.

10 Q Okay. Now, your life had an awful turn on
11 February 25th, 2013, didn't it?

12 A Yes, sir.

13 Q In fact, you messed up a couple of weeks before that,
14 didn't you?

15 A Yes, sir.

16 Q You got charged with some burglaries, right?

17 A Uh-huh. (Affirmative).

18 Q And you're actually doing time for that now, right?

19 A Yes, sir.

20 Q Burglary and grand larceny?

21 A Yes, sir.

22 Q And then, two weeks after that, you went to Taco Bell
23 out near Westgate?

24 A Yes, sir.

25 Q Tell us who you went there with.

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 A Mr. Robert.

2 Q Robert Moore?

3 A Uh-huh. (Affirmative).

4 Q How is it that you and he went to the waffle House or,
5 excuse me, to the Taco Bell?

6 A I, I was at my grandmother house and I received a call
7 from Reginald to come over there, come over to his house at
8 Idlewood Circle, and him and Robert was already over there,
9 and they had already been in contact with Travis about going
10 to -- well, basically just going to give Reggie some money
11 to go purchase the crack from him and they was gonna rob
12 him.

13 Q All right. Let's, let's flush that out a little bit.
14 Reginald is who?

15 A Sanders.

16 Q Reginald Sanders.

17 Okay. So, he and Mr. Moore were together you say?

18 A Yes, sir.

19 Q And you were up at your house earlier?

20 A Uh-huh. (Affirmative).

21 Yes.

22 Q And you came to be over there at whose house?

23 A Sanders, Reginald Sanders' house.

24 Q How did you get there?

25 A He came and got me from my grandmother apartment in

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 Three Oaks.

2 Q Okay. So, Reginald Sanders brought you to his house
3 where Mr. Moore was?

4 A Yes, sir.

5 Q And they had an -- they had a conversation?

6 A Yes, sir.

7 Q Was that in front of you?

8 A They had already talked to him before I even got there.

9 Q Okay. So how did you know what was gonna happen?

10 A Because, when I arrived, they had already -- they was
11 talking about it, waiting on Travis to call back to let them
12 know to come, and I had already been informed of what was
13 going on when I, when I arrived to Reginald house.

14 Q Okay. So there was an arrangement for who to meet
15 Travis?

16 A Robert.

17 Q Robert to meet Travis?

18 A Uh-huh. (Affirmative).

19 Q Now, were they calling him Travis?

20 A No, sir.

21 Q What were they calling him?

22 A Turk.

23 Q Is Turk a street name?

24 A Yes, sir.

25 Q Did you know who they were talking about?

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 A I knew who they was talking about.

2 Q Okay. You knew of the, the name, but did you -- you
3 didn't know Mr. Hall?

4 A No, I have never seen him before until that day.

5 Q Okay. All right. So, something had been arranged and
6 then what happened?

7 A Well, we -- Reginald had suppose to drive Robert over
8 there and I was gonna go with them, but he was taking long
9 to call back. So, Reginald had to take his baby mother to
10 work, and so by the, by that time we was leaving, he was
11 taking his baby mother to work. So, I left with Robert to
12 go meet him and he called Travis and let him know he was on
13 the way. Travis telling him it would take a couple minutes
14 for him to get there. So, when we arrived at Taco Bell we
15 sat for a little second and then he arrived.

16 Q All right. Let me stop you there. Make sure the
17 record is clear and everybody else understands.

18 The first plan was for all three of you to go?

19 A Uh-huh. (Affirmative).

20 Q But because of the timing of Mr. Hall calling back,
21 Reginald Sanders had something else to do?

22 A Yes, sir.

23 Q Okay. So he wasn't able to go and it wound up being
24 you and Mr. Moore?

25 A Yes, sir.

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 Q How did y'all get to the Taco Bell?

2 A Well, we was leaving -- we was suppose to go in
3 Reginald car. But when we was leaving, he took Robert car
4 and, when we was leaving, Reginald asked him did you need --
5 do you need this, and tossed him a gun.

6 Q Reginald tossed who a gun?

7 A Robert.

8 Q What kind of gun?

9 A It was a revolver.

10 Q And why did they need a revolver?

11 A I guess to complete the robbery.

12 Q So, the plan was to meet with Travis and rob him?

13 A Yes, sir.

14 Q Rob him of what?

15 A Crack.

16 Q Drugs?

17 A Yes, sir.

18 Q Okay. You knew that was gonna happen?

19 A Yes, sir.

20 Q You chose to go with him?

21 A Yes, sir.

22 Q All right. Now I show you what's been marked into
23 evidence, a couple of pictures, State's 35 and 36 of two
24 different views.

25 Do you recognize that vehicle?

Tevin Thomas - Direct examination
by Solicitor Bulsa

- 1 A Yes, sir.
- 2 Q What is it?
- 3 A Chrysler.
- 4 Q Whose car is it?
- 5 A Robert.
- 6 Q Is that the car y'all drove over there?
- 7 A Yes, sir.
- 8 Q Who actually drove the car?
- 9 A Robert.
- 10 Q And you sat where?
- 11 A The passenger.
- 12 Q And where did y'all leave from?
- 13 A Idlewood Circle.
- 14 Q Idlewood Circle.
- 15 What part of town is that in?
- 16 A Near Mary Black.
- 17 Q Near Mary Black?
- 18 A Uh-huh. (Affirmative).
- 19 Q Do you recall how y'all got to the Taco Bell?
- 20 A Do I -- well --.
- 21 Q On the interstate?
- 22 A Yes, sir.
- 23 Q Okay. And do you remember where you parked at the Taco
- 24 Bell?
- 25 A Yes, sir.

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 Q Whereabouts?

2 A It was in the -- when you came to the red light, make a
3 right and come in the entrance. I guess it would be on the
4 right-hand side facing towards the parking lot coming
5 towards the mall. So, it would be -- we pulled -- the Taco
6 Bell's sitting right here. We pulled in this way facing
7 back towards the red light.

8 Q Okay.

9 A So, our back -- the back of the car leads to the Taco
10 Bell.

11 Q Okay. And the front of your car would of been facing
12 Applebee's?

13 A Yes, sir.

14 Q Okay. You remember where you parked at, up close to
15 the entrance, the parking lot entrance?

16 A Yes, sir.

17 Q I show you what's been marked State's Exhibit No. 5.
18 Do you recognize that car?

19 A Yes, sir.

20 Q Whose car is that?

21 A Travis.

22 Q Okay. And do you recall getting there first?

23 A Uh-huh. (Affirmative).

24 Q So---

25 A So we was parked right there.

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 Q All right. We're going to show this to the jury.

2 where did Travis pull in relation to your car?

3 A To the driver -- well, his, his passenger door would be
4 to the driver's side.

5 Q Okay. Did he pull in just like you did?

6 A Yes, sir.

7 Q So both cars were facing the Applebee's?

8 A Yes, sir.

9 Q All right. So that puts the driver's door of the
10 Chrysler to the passenger door of Travis' car?

11 A Yes, sir.

12 Q I'll get this down.

13 We have this picture on the overhead, State's Exhibit
14 No. 5 again.

15 Are you telling the jury that the Chrysler would of
16 been pulled in here?

17 A Yes, sir.

18 Q Facing the same direction, right?

19 A Yes, sir.

20 Q All right. Tell us what happened when Travis pulled
21 up.

22 A When Travis pulled up Robert went and got in the car
23 with him, and when I was looking, as soon as he -- the door
24 closed, he pulled the gun on him, and I, I was listening to
25 music. So I just sat in -- there in the car for a second,

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 and I noticed that it was -- I seen them -- not at Travis
2 back though cause it was two o'clock in the evening. So, it
3 was a lot of cars, but then the car's in the parking lot.

4 So, I get out the car, and I, and I notice that they
5 tussling real heavy. So, I go to the back, the back of the
6 car, and I look in, but -- and I try to open the door, but
7 the door locked.

8 Shortly, when I try to open the door, I see Robert
9 trying to get out, but Travis had, Travis had a hold of him
10 pulling him back. So, when he pulled him back, I'm, I'm
11 communicating with him, let him know that there's a lot of
12 people watching, calm down.

13 So, that doesn't work. They still tussling. And when
14 I look around and see, and, you know, look back at them, I
15 noticed that he gets -- the gun shot, it go off and he gets
16 shot, and Roberts gets out the car, and so I run back to the
17 car. And when we, when we get back in the car, he pulled
18 off and leave, and headed towards the Hot Spot going
19 towards -- I guess it would be Fairforest area.

20 Q Okay. I'll stop there.

21 Okay. Let's go back through that in a little more
22 detail.

23 You said that Mr. Moore got in the car with Travis.

24 A Uh-huh. (Affirmative).

25 Q Which door did he get in?

Tevin Thomas - Direct examination
by Solicitor Bulsa

- 1 A The passenger door front.
- 2 Q All right. The door we see in the picture?
- 3 A Uh-huh. (Affirmative).
- 4 Q This door right here?
- 5 A Uh-huh. (Affirmative).
- 6 Q Did he get in and close the door?
- 7 A Yes, sir.
- 8 Q All right. And you're still seated in the Chrysler --
- 9 A Yes, sir.
- 10 Q -- looking across the seat --
- 11 A Yes, sir.
- 12 Q -- at the car?
- 13 A Yeah.
- 14 Q All right. And at some point you get out and how do
- 15 you get to that car?
- 16 A I go, I go around from the passenger door around the
- 17 back.
- 18 Q Around the back of the Chrysler?
- 19 A Yes, sir.
- 20 Q And where do you come to on this car?
- 21 A I stopped between the, the -- where I stop between the
- 22 gas tank on the Chrysler and right in front of the, the back
- 23 passenger door of the Impala.
- 24 Q So, you're somewhere in here?
- 25 A Yes, sir.

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 Q All right. What are you doing?

2 A I'm look -- first I'm looking through the back to see
3 like if they were really -- if they were fighting or at
4 least have the gun on him, but they on top of each other.
5 So you really couldn't tell. So, I try to open the door,
6 but the door's locked. So, I couldn't---

7 Q You tried to open the back-door?

8 A Uh-huh. (Affirmative).

9 Q Okay. And then what, what -- what do you do then?

10 A When I see the door locked, so I'm looking around and I
11 see the -- I look -- keep my eyes on the traffic that's
12 coming in to see how many people are noticing it. So, I'm
13 looking around and then I see him, Roberts, getting out the
14 car trying to get out, but---

15 Q So this door opens?

16 A Yes, sir.

17 Q Okay. Are you bending down looking in?

18 A No, I'm still standing up.

19 Q All right. Are you touching the car?

20 A The window part like in the door, but I ain't touching
21 the car when they -- I'm not even close when he's getting
22 out. I'm about -- I'm leaning against the Chrysler.

23 Q Okay. But you said he couldn't get out cause Travis
24 was---

25 A Right.

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 Q All right. And then what happened?

2 A And then -- I mean after the, after the shots, you
3 know, we, we came back in the car and when we leave and then
4 we going -- we come out and we going---

5 Q Wait a minute. Let me stop you before you leave.

6 All right. The door is opened?

7 A Yes, sir.

8 Q This back-door?

9 A Yes, sir.

10 Q You're watching what's going on?

11 A Yes, sir.

12 Q And then you heard a shot?

13 A Yes, sir.

14 Q How many shots did you hear?

15 A I really -- I heard one shot because it was, it really
16 was like a lot of noise from cars and traffic coming in.
17 So, I only got to hear -- when I heard it, I was -- that's
18 when I took off running to getting back on my side.

19 Q So, which route did you take?

20 A Sir?

21 Q Which route -- how did you get back to your car?

22 A Back around.

23 Q The same way you went?

24 A Yes, sir.

25 Q So you're leaving the passenger side and you're coming

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 around here?

2 A Yes, sir.

3 Q How is Mr. Moore getting back in his car?

4 A He just coming -- he backs out cause he's on his knees
5 in the seat. So, he backs out and just goes straight back
6 to the driver's side door.

7 Q He just comes right over here?

8 A Yes, sir.

9 Q Okay. Did you see this driver's door, did you see it
10 over here?

11 Look at the picture.

12 Did you see it ever open?

13 A Yes, sir.

14 Q And who opened it?

15 A Moore. Robert.

16 Q Mr. Moore opened the driver's door of this car?

17 A Yes, sir.

18 Q How did he do that?

19 A When he was on top of Travis I guess to attempt to push
20 him off, push him out off of him.

21 Q Okay. All right. You hear the shots and you run and
22 get in and Mr. Moore gets in.

23 Do you know -- do you recall knowing whether Mr. Hall
24 got shot?

25 A Did, did I know?

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 Q Yes, sir.

2 A I guess -- not at the time I didn't know exactly that
3 he got shot because I wasn't looking down in the car.

4 Q All right.

5 A But when I got in the car I asked him. I said did you
6 shoot him, he said, he said yeah, I seen blood coming out of
7 his head.

8 Q And you asked who that?

9 A Robert.

10 Q And that's what he told you?

11 A Yes, sir.

12 Q All right. And did y'all leave in a hurry?

13 A Yeah, quick.

14 Q what did you say?

15 A Quick.

16 Q Quick.

17 And then you went to the Hot Spot?

18 A Yes, sir.

19 Q why did y'all go to the Hot Spot?

20 A I really can't answer that question cause I tried to
21 avoid that. I was wondering the same thing, why did we go
22 to the Hot Spot, but he, he was like because we have to
23 ditch the car, and I was like ain't no way we can ditch the
24 car here cause we have no phone, and I can't walk from here.
25 I got a little transportation. So, he was still advising

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 that we leave the car there. So, he pulled in front --
2 right in front of the camera. So, I notice after he still,
3 I was still trying to convince him that don't leave the car
4 there. So, he, he was like we have to leave the car here
5 cause it's gonna be a lot of polices.

6 So, I got out the car and I just stand on the curb and
7 I -- he stayed in the car, and he was getting stuff together
8 in the bag. I don't really know exactly cause I wasn't
9 paying attention cause I seen polices coming. So, he get
10 out the car, go to the trash can, and he go inside the
11 store. He go inside the store. He buys a bag of Lays
12 potato chips and a pack of cigarettes, and I was standing
13 behind him and I couldn't come back out and still cars,
14 police cars going towards the Taco Bell, that direction, and
15 I say -- I asked him can we, can we just go, can we just
16 leave because ain't no way we gonna get from here.

17 So, he finally takes my advice and we leave, and we
18 get -- we leave and go across the tracks towards the, the
19 apartments. I don't really know the name, but I know it's
20 like either a Cracker Barrel or some, some type of
21 restaurant, but I believe it was a, a little old motel --
22 hotel that was behind it beside the restaurant. You turn
23 beside the restaurant, and he tried to leave the car there
24 too, and I, I notice it was cameras on that building.

25 So, I tell him you can't leave the car here either. We

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 still can't have no way to leave it here. So, he ride
2 around the parking lot, circled around like two or three
3 time, and then we leave, and we get on the highway. And
4 when we get on the highway, when we get off, we getting off
5 of it to get on the Asheville Highway, the, the little ramp
6 part, we get on -- I think it's 85, but if I'm not mistaken,
7 and we see Reginald behind us, and that's -- follow us all
8 the way back to---

9 Q Reginald Sanders?

10 A Uh-huh. (Affirmative).

11 Q Okay. All right. So, Reginald gets behind you on 85?

12 A Yes.

13 Q And where do y'all drive to?

14 A Back to the Lake View Manor community.

15 Q Okay. That's not where you started from?

16 A No, sir, but that's, that's where my -- that's where I
17 was going cause that's where I stay and he have people that
18 stay, stays over there too.

19 Q So, where did he drive to in Lake View Manor?

20 A To the, to his relative that stays over there.

21 Q Do you know their names?

22 A Brandon.

23 Q Did you go to Mr. and Mrs. Brandon's house?

24 A Yes, sir.

25 Q All right. And he left the car?

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 A Yes, sir.

2 Q And what did you two do then?

3 A I got out the car and went -- it's a path you can take.
4 I took the path to my, my grandmother's house and him and
5 Sanders went -- Reginald went, I don't know where they went
6 to.

7 Q Okay. When did the police find you?

8 A The next day around say about five o'clock.

9 Q Where were you?

10 A At a friend's house.

11 Q Did he find you at the friend's house and arrested you?

12 A Yes, sir.

13 Q Took you down to the police station?

14 A Yes, sir.

15 Q Did they talk to you?

16 A Yes, sir.

17 Q What did you tell them then?

18 A I tried -- I told them some bogus thing to try to save
19 the both of us.

20 Q Okay. How many actual statements did you give?

21 A Two.

22 Q Two written statements?

23 A Uh-huh. (Affirmative).

24 Q Did you write those yourself?

25 A Yes, sir.

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 Q Okay. So, you wrote one statement and what did you say
2 in that first statement?

3 A That we was at Linview Hills at the -- and we got a
4 call that he needed somebody to drive for him because he was
5 seeing enough -- a numerous amount of cars, but he didn't
6 have a license, that he needed somebody to drive for him.

7 Q So you lied about even being at the Taco Bell?

8 A Yes, sir.

9 Q All right. And what happened when you wrote that
10 statement?

11 A He -- the officer, the officer got upset and he knew it
12 was a lie, and he kept talking to me, kept talking to me,
13 and at first I was ignoring him. He kept getting mad, kept
14 getting mad. So, he left and I, I went -- I laid on the
15 floor, and he came back, and he had a picture from the Taco
16 Bell from what, what I had on. I mean not the Taco Bell,
17 the Hot Spot of what I had on, and he showed me like that.

18 So, he said we know you, we know you was there. So, I
19 still was denying it and he was questioning me like if it
20 was them, they would tell, they already told where you was
21 at and all this, all these things about how they told which
22 house I was at. So, I -- then I begin to write another one.

23 Q So you wrote a second statement?

24 A Uh-huh. (Affirmative).

25 Q And in that second statement did you put in it what you

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 just told this jury about?

2 A No, sir.

3 Q You didn't?

4 what did you say the second time?

5 A I, I told, I told that -- started off telling that how
6 that we was at, that I met with Reginald at his house, but I
7 told -- I basically summarized it as in a self-defense as in
8 he started it with Robert.

9 Q You're saying that the second statement you wrote you
10 were trying to give Robert a self-defense claim?

11 A Yes, sir.

12 Q How?

13 A By saying that he started, provoked the fight.

14 Q Who is he?

15 A Travis.

16 Q Travis provoked the fight?

17 A Provoked the fight.

18 Q Oh.

19 A And he was trying to fight with him, and he was trying
20 to defend himself.

21 Q First you lied about either one of you being there, the
22 second time you put both of you there, but you try to put it
23 off on Travis Hall as being the aggressor?

24 A Yes, sir.

25 Q Did you even say in your second statement that Robert

Tevin Thomas - Direct examination
by Solicitor Bulsa

1 Moore shot him, shot, shot Travis?

2 A No, sir.

3 Q You didn't even say he had a gun, did you?

4 A No, sir.

5 Q And what happened after you gave that statement?

6 A The officer -- I believe that the officer kind of
7 believed it, but he didn't. But he wouldn't even say
8 nothing about it. He just took the statement. He looked,
9 looked at it, looked at me, and just left, and I laid back
10 on the floor, and then he came and arrested me.

11 Q Okay. So, he finished the interview with you giving a
12 statement at least admitting to being at the scene?

13 A Yes, sir.

14 Q Now, why are you here testifying differently today?

15 A Because at first I really wasn't gonna tell, but I was
16 thinking -- I mean I was -- I talked to my family, and, and
17 I really ain't -- I already have time for something that I
18 did do, and I, I was thinking that I refused to take some
19 more time, a lot of -- more time for something that I
20 actually didn't do.

21 Q Are you telling the truth?

22 A Yes, sir.

23 Q All right. Answer any questions Mr. Johnston has.

24 THE COURT: Mr. Johnston.

25 CROSS-EXAMINATION

Tevin Thomas - Cross-examination
by Mr. Johnston

1 BY MR. JOHNSTON:

2 Q Now, Mr. Thomas, in addition to the multiple burglaries
3 that you've been convicted of, are you the same Tevin
4 Marquez Thomas who was convicted of receiving stolen goods
5 on February the 18th of 2013?

6 A Yes, sir.

7 Q And, in addition to that, are you the same Tevin
8 Marquez Thomas that was convicted of obtaining signature or
9 property under false pretenses on that same date, February
10 the 18th, 2013?

11 A Yes, sir.

12 Q How much time you got that you're doing right now?

13 A I have two tens nonviolent running consecutive with two
14 fives and one year ran concurrent.

15 Q Okay. Now what's that nonviolent mean?

16 A It means after, after tens I do 51 percent, but it will
17 be 65 without work credits. So, I do six -- about five and
18 a half, six years of each, each ten. But I have to max out
19 one ten, one six before I can make parole on the second ten.

20 Q Wow, that sounds like you know a lot about sentencing.
21 You been studying on that, haven't you?

22 A Yes, sir.

23 Q All right. You're also eligible for parole after 25
24 percent on that cause it's nonviolent probation eligible,
25 isn't it?

Tevin Thomas - Cross-examination
by Mr. Johnston

1 A Yes, sir.

2 Q So, on those sentences you could of been, you could be
3 out in two and a half years, couldn't you?

4 A No, sir.

5 Q You couldn't?

6 All right. And why is that?

7 A Because you have to max out when you have two
8 consecutive, two consecutive sentences.

9 Q Oh, they're consecutive?

10 A Yes.

11 Q Okay. So, you've got to max out the first one, right?

12 A Uh-huh. (Affirmative).

13 Yes, sir.

14 Q Well, what, what do you like best about jail?

15 SOLICITOR BULSA: Objection, Your Honor. That's not
16 relevant.

17 MR. JOHNSTON: Your Honor, it goes to his bias.

18 THE COURT: I'm gonna let him go just a little ways on
19 that.

20 Overruled.

21 Q What do you like best about the penitentiary?

22 A Nothing.

23 Q You don't like anything about it, do you?

24 A No, sir.

25 Q And you certainly don't want 30 years --

Tevin Thomas - Cross-examination
by Mr. Johnston

1 A No, sir.

2 Q -- that you're looking at in this case, do you?

3 A No, sir.

4 Q Now, since you know a little bit about sentencing, I
5 guess you know that the 30---

6 SOLICITOR BULSA: Objection, Your Honor.

7 Can we approach?

8 THE COURT: Yes.

9 (WHEREUPON, a bench conference was held out of the
10 hearing of the jury at this time.)

11 Q And on that 30 years that you face, you'd be ineligible
12 for parole, isn't that right?

13 A Correct.

14 Q And, as you said, you don't like anything about jail?

15 A Yes, sir.

16 Q And you think you're in the clear here because you say
17 you didn't shoot anybody, is that right?

18 A No, sir.

19 Q You're not in the clear?

20 A I don't, I don't think I'm in the clear. I'm just not
21 been to -- about to go down for something I didn't do.

22 Q Okay. well, if you didn't do it, does that mean that
23 you are innocent?

24 A Of the attempted murder?

25 Q Yeah.

Tevin Thomas - Cross-examination
by Mr. Johnston

1 A Correct.

2 Q Okay. And that's because you say you didn't shoot this
3 man over here?

4 A Correct.

5 Q And as long as you didn't shoot him, you think you're
6 not guilty?

7 A Of attempted murder?

8 Q Yes, sir.

9 A Correct.

10 Q All right. Now, when you mentioned Reginald Sanders,
11 where's Reginald Sanders?

12 A I don't know.

13 Q Is he walking the street?

14 SOLICITOR BULSA: Objection, Your Honor. It's not
15 relevant.

16 MR. JOHNSTON: It may be relevant.

17 SOLICITOR BULSA: Objection, Your Honor. May we---

18 THE COURT: Relevance?

19 MR. JOHNSTON: Your Honor, I'd like to ask him if knows
20 what happened with---

21 SOLICITOR BULSA: May we approach?

22 THE COURT: Yes. Yes. Yes, sir.

23 (WHEREUPON, a bench conference was held out of the
24 hearing of the jury at this time.)

25 THE COURT: That's sustained, Mr. Bulsa.

Tevin Thomas - Cross-examination
by Mr. Johnston

1 Q Now, the first time they brought you in for questioning
2 you gave a written statement, is that right?

3 A Yes, sir.

4 MR. JOHNSTON: Like to have this marked for
5 identification.

6 (WHEREUPON, the statement was marked as Defendant's
7 Exhibit No. 3 for identification purposes only at this
8 time.)

9 Q Showing you what has been marked as Defendant's Exhibit
10 No. 3 for identification.

11 Have you seen that before?

12 A Yes, sir.

13 Q When have you seen it?

14 A When I wrote it.

15 Q And is that the first lie you told in this case?

16 A The first -- can you repeat that?

17 Q I said was that the first lie you told?

18 A Yes, sir.

19 Q And, in fact, you knew the police were questioning you
20 about a man that had been shot?

21 A Yes, sir.

22 Q Is that correct?

23 And what did -- and you knew they were taking down what
24 you said?

25 A I mean I didn't know they was taking down what I said

Tevin Thomas - Cross-examination
by Mr. Johnston

1 because I figured that they would have what I said after I
2 wrote it.

3 Q Okay. well, you put down what you said so they could
4 have it.

5 Am I correct?

6 A Yes, sir.

7 Q And it was a total what?

8 A what do you mean?

9 Q It was a total lie, wasn't it?

10 A Oh, yes, sir.

11 Q Now, will you please read what is printed above -- is
12 that your signature?

13 A Yes, sir.

14 Q will you please read what is written, written above
15 your signature?

16 A I have read this statement consisting of three pages,
17 and I swear that the statement I have just given is the
18 truth, the whole truth, and nothing, nothing but the truth
19 so help me God. I also swear this statement is given freely
20 and voluntary and I have received a copy of my statement.

21 Q You swore before God that you had just told the truth,
22 the whole truth, and nothing but the truth, right?

23 A Correct.

24 Q When, in fact, you had just told a lie, a complete lie,
25 and nothing but a lie?

Tevin Thomas - Cross-examination
by Mr. Johnston

1 A Considering that is my first time writing a statement,
2 I did not read the bottom before I wrote the statement. So
3 --.

4 Q Well that doesn't change the fact that the rest of what
5 you wrote is a lie, does it?

6 A No, sir.

7 Q Okay. Now, you tried to say you weren't even there,
8 right?

9 A Yes, sir.

10 Q Then the detective shows you a photograph, right?

11 A Yes, sir.

12 Q And where was that photograph taken?

13 A Hot Spot.

14 Q And who was in it?

15 A Me.

16 Q You.

17 Well, you knew they had you then, didn't you?

18 A Did I know?

19 Q Yeah. They had a picture of you at the Hot Spot.

20 A I knew they knew something, but I didn't---

21 Q Oh, okay. You knew that they knew something. So, you
22 decided to change your story.

23 Isn't that right?

24 A Yes, sir.

25 Q Now, the first time you told this lie because you

Tevin Thomas - Cross-examination
by Mr. Johnston

1 thought it would help you?

2 A Yes, sir.

3 Q Right?

4 Now, like to have this marked as well for
5 identification.

6 (WHEREUPON, the statement was marked as Defendant's
7 Exhibit No. 4 for identification purposes only at this
8 time.)

9 Q Now, after they showed you the photograph wherein you
10 realized they knew something, you decided to tell another
11 story --

12 A Yes, sir.

13 Q -- different than what you've told today?

14 A Yes, sir.

15 Q Now, there's some truth in this statement, right?

16 A Yes, sir.

17 Q But it's far from the whole truth?

18 A Yes, sir.

19 Q At least as how you've told it today.

20 Isn't that true, sir?

21 A Yes, sir.

22 Q You didn't tell anything on yourself in this, did you?

23 You didn't tell them that you knew what was gonna
24 happen when you got there, did you?

25 A I didn't know.

Tevin Thomas - Cross-examination
by Mr. Johnston

1 Q Well, you just told this jury that you knew that you
2 got -- that you say it was gonna be a robbery?

3 A Yeah, but he got shot. So, I didn't know that.

4 Q Okay. But did you say in this statement that you knew
5 there was gonna be a robbery?

6 A No, sir.

7 Q Did you say in the statement you knew there was gonna
8 be a drug deal?

9 A No, sir.

10 Q Okay. So, those were what?

11 A Lies.

12 Q Lies. Lies.

13 Because you knew the police knew something, but you
14 didn't know what exactly they knew?

15 A Yes, sir.

16 Q True?

17 A (Witness nods affirmatively.)

18 Q So, you told this lie, right?

19 A Yes.

20 Q Now, just like last time, is this your, your signature?

21 A Yes, sir.

22 Q Please read what it says.

23 A I, I have read this statement and consisted of two
24 pages and I swear this statement that I have just given is
25 the truth and the whole truth and nothing but the truth so

Tevin Thomas - Cross-examination
by Mr. Johnston

1 help me God. I also swear the statement was given freely
2 and voluntarily and I have received a copy of my statement.

3 Q Okay. Once again, you swore to God that this was the
4 truth, but it was a lie?

5 A Yes, sir.

6 Q At least part of it?

7 A Yes, sir.

8 Q Once again, you said that you were telling the whole
9 truth, but you didn't tell the whole truth because you
10 partially told a lie?

11 A Yes, sir.

12 Q And you left important details out that would have
13 implicated you?

14 You left those out, didn't you?

15 A Yes, sir.

16 Q Even though you said the truth, the whole truth, and
17 nothing but the truth.

18 Did you take an oath here today?

19 A We---

20 Q When you went up to that witness stand?

21 A Yes, sir.

22 Q You put your hand on this book. This. This is the
23 Holy Bible.

24 A Yes.

25 Q You remember that?

Tevin Thomas - Cross-examination
by Mr. Johnston

1 A Yes, sir.

2 Q And they said do you swear to tell the truth, the whole
3 truth, and nothing but the truth.

4 A Yes, sir.

5 Q And you said yes.

6 A Yes.

7 Q Just like on these two papers that you signed.

8 Now, you told that second statement filled with lies
9 because you thought it would help you, didn't you?

10 A Yes, sir.

11 Q What do you call somebody who tells lies when they
12 think it will help them?

13 A A liar.

14 Q So what does that make you?

15 A At the time I write the statement---

16 Q So what does that make you?

17 A It made me a liar.

18 Q Okay. You know they got your fingerprint on that car,
19 don't you?

20 A Yes, sir.

21 Q In either of those two statements did you say you ever
22 touched that car?

23 A No, sir.

24 Q But now they know you touched the car?

25 A Yes, sir.

Tevin Thomas - Cross-examination
by Mr. Johnston

1 Q So when you come here today, you say oh, yeah, I
2 touched the car, but I was just looking in, right?

3 A Yes, sir.

4 Q You know all the phone calls at the jail that inmates
5 make are recorded?

6 You know that, don't you?

7 A Yes, sir.

8 Q Do you recall making a statement, words to this effect,
9 you're asked, just imagine going to prison. You say I don't
10 want to though, and you say, and you're talking about the
11 other charges that you had at that time, you say, and excuse
12 my language, ain't no mother fucking way I can do that time.
13 That's a long time. I'm not gonna be able to do it.

14 Did you say that?

15 A Yes, sir.

16 Q You don't want to go to the penitentiary for any longer
17 than you have to, do you, Mr. Thomas?

18 A Correct.

19 Q And as we know, you will lie when you think it will
20 help you, don't we?

21 A Yes, sir.

22 Q Okay. And you think your testimony today is gonna help
23 you?

24 A No, sir, I don't think it helps me. I'm just telling
25 the truth whether it helps me or not.

Tevin Thomas - Cross-examination
by Mr. Johnston

1 Q You don't think -- you're just the kind of person that
2 wants to tell the truth?

3 A Yes.

4 Q Right?

5 Like when you lied in this statement, were you that
6 kind of person then?

7 A No, sir.

8 Q When you lied in this statement, were you that kind of
9 person then?

10 A No, sir.

11 Q When did you share this story that you've told us today
12 with the police or the prosecution?

13 When did these new revelations come to light?

14 A Well, I been telling my lawyer. So, I didn't know.

15 Q I'm not asking you about what you talked to your lawyer
16 about.

17 I want to know when you told Detective Williams or one
18 of his other officers or Mr. Bulsa, the prosecutor, I want
19 to know when you told them?

20 A I -- well, I didn't tell him because I never seen
21 anymore---

22 Q I didn't ask you why.

23 A I say---

24 Q I said when.

25 A I say I never told them because I never seen him

Tevin Thomas - Cross-examination
by Mr. Johnston

1 anymore.

2 Q Okay. You never told anybody.

3 Okay. Well, when is the first time that this
4 information was sent to them that you sat down and talked to
5 them and told them what happened?

6 A To -- never.

7 Q Never?

8 You've never told them anything before?

9 A No, sir.

10 Q This is the first time. This is the first -- you don't
11 have to keep looking back there. You can look at me.

12 SOLICITOR BULSA: I think he's confusing him by using
13 the word them.

14 Are you talking about Mr. Williams cause he said he
15 never saw Mr. Williams again?

16 Q Any police officer or anyone from the prosecution's
17 office, when is the first time you told them this story?

18 A I have never told a detective, but I have been told the
19 prosecution.

20 Q All right. Who did you tell and when?

21 A Derrick Bulsa and it's been a while ago.

22 Q How while ago?

23 A I don't know the exact time, but --.

24 Q Six months ago?

25 A It's been a month ago, yes, sir.

Tevin Thomas - Cross-examination
by Mr. Johnston

1 Q Okay. Well I said six.

2 A I mean if I, if I agreed to you and it wasn't correct,
3 that mean I be lying, wouldn't it?

4 Q Well, I'm just asking you to give me your very best
5 recollection.

6 A I said months ago.

7 Q How many months?

8 Has it been more than six?

9 A I would say it would of been close.

10 Q About six months ago --

11 A Yes, sir.

12 Q -- you've told them this story that you've told us
13 today?

14 A Yes, sir.

15 Q And how did this meeting come about?

16 A I contacted my lawyer.

17 Q You contacted your lawyer and you -- your lawyer said
18 they needed to talk to you, right?

19 A Yes, sir.

20 Q And your lawyer's to help you, right?

21 A Correct.

22 Q That's what you hired him for?

23 That's what you paid him for --

24 A Yes, sir.

25 Q -- to help you?

Tevin Thomas - Cross-examination
by Mr. Johnston

1 Did you ever write it down?

2 A No, sir.

3 Q You never wrote it down.

4 So, when you tell the truth, you don't write it. When
5 you lie, you write it.

6 Is that what you're telling me?

7 A Yes, sir.

8 Q You thought you were going to trial in this case this
9 week, didn't you?

10 A I mean I, I knew it was a trial, but I didn't know
11 exactly that I was going to trial because I never sat down
12 with my lawyer and he knew -- I knew the trial was coming
13 up.

14 Q Okay.

15 A So, I didn't know that we would be tried together. I
16 knew I was going to trial, but I didn't know that my -- I
17 would be tried at the same time he was.

18 Q All right. All right. Do you know what an accomplice
19 is?

20 A Can you explain it?

21 Q Do you know what an accessory after the fact is?

22 A Yes, sir.

23 Q What is it?

24 A Somebody that knows about something that, that doesn't
25 tell after a situation happens?

Tevin Thomas - Cross-examination
by Mr. Johnston

1 SOLICITOR BULSA: Your Honor, I think we're getting a
2 little far afield. He's asking legal definitions now that I
3 don't know---

4 MR. JOHNSTON: Well, he stated it accurately.

5 THE COURT: Let's see where we go with it.

6 Q And you're aware that accessory after the fact carries
7 a much lower penalty than if you're a principal, don't you?

8 A I'm not aware.

9 Q You're not aware?

10 You don't know anything about that?

11 A No, sir, I don't know what it carries. I didn't know
12 what my charges carry because I been searching when I, when
13 I was at the penitentiary.

14 Q Yes.

15 So you know how much charge -- how much time you're
16 looking at?

17 A Yes, sir.

18 Q And you know that accessory after the fact is less
19 serious?

20 A I mean---

21 Q Right?

22 A I don't know, but I think accessory would be -- that
23 means you know about it. It should be the same.

24 Q Is that what you consider yourself to be, an accessory?

25 A Do I consider myself that?

Tevin Thomas - Cross-examination
by Mr. Johnston

1 Q Yeah.

2 A Yes, sir.

3 Q All right. And you're hoping they'll let you plead to
4 accessory after the fact, aren't you?

5 A I'm not hoping. I mean --.

6 Q You -- you're not hoping?

7 A I don't know. I don't know anything about that.

8 Q Well, you looked it up you just told me.

9 A I never told you I looked it up.

10 Q You told me you knew what an accessory was.

11 A I didn't look it up, but---

12 Q Okay. Well, you know what it is.

13 All right. And you say that's what you consider
14 yourself to be. So, you must have some knowledge of it.

15 A Yes, sir.

16 Q So, if they offer you accessory after the fact, are you
17 gonna plead guilty?

18 A I ain't -- it depends on what the plea would be.

19 Q Oh, it depends on what the plea would be.

20 Well, you've already got some time that you're doing
21 anyway, right?

22 A Correct.

23 Q And you know about that consecutive and concurrent
24 thing cause you explained it to me?

25 A Correct.

Tevin Thomas - Cross-examination
by Mr. Johnston

1 Q If you get your time concurrent, you don't have to
2 spend any extra time in there, do you?

3 A No, sir.

4 Q Who can recommend that for you?

5 A Who?

6 Q Yeah.

7 Who?

8 A My lawyer.

9 Q Well, your lawyer can.

10 Can the prosecutor do that?

11 A I guess.

12 Q Okay.

13 Beg the Court's indulgence one moment.

14 THE COURT: Yes, sir.

15 (Pause.)

16 Q Please answer any other questions.

17 THE COURT: Solicitor.

18 REDIRECT EXAMINATION

19 BY SOLICITOR BULSA:

20 Q Mr. Thomas, have you been made any promises?

21 A No, sir.

22 Q Mr. Johnston went into your two statements pretty much
23 in detail, and you told us, in the first statement, that you
24 were trying to protect yourself, right?

25 A Yes, sir.

Tevin Thomas - Redirect examination
by Solicitor Balsa

1 Q You were also trying to protect your friend, Robert

2 Moore --

3 A Yes, sir.

4 Q -- by telling them, the police, that neither one of you
5 were even there?

6 A Yes, sir.

7 Q Right?

8 But they confronted you with some evidence and you said
9 I better come up with another story?

10 A Yes.

11 Q So then you wrote another statement?

12 A Yes, sir.

13 Q And this time you did tell the police that it was over
14 a drug deal?

15 A Yes, sir.

16 Q Not a drug deal set up to a robbery, but a drug deal?

17 A Yes, sir.

18 Q Okay. And, and you're still trying to protect yourself
19 when you wrote this second statement?

20 A I mean I really wasn't because I put myself there, but
21 at the, the same time I was trying to protect both by
22 putting self-defense as in he started with us, with us.

23 Q Right.

24 So, you were protecting yourself in this one trying to
25 keep you out of it completely?

Tevin Thomas - Redirect examination
by Solicitor Bulsa

1 A Yes.

2 Q And the police are telling you we know you were there.
3 So, you're trying to protect yourself by making Mr. Hall be
4 the culprit.

5 A Yes, sir.

6 Q Right?

7 So, you're trying to protect yourself as well as trying
8 to protect your friend, Robert Moore?

9 A Yes, sir.

10 Q Is that right?

11 But you did write this second statement that Robert
12 Moore was the one that went in the car?

13 A Yes, sir.

14 Q Was that part of the statement true?

15 A Yes, sir.

16 Q And you did write in this statement that you went over
17 to the passenger side and you were looking in the car,
18 right?

19 A Yes, sir.

20 Q So, you gave the police the information that they've
21 got the two people now that they believe were at the scene
22 --

23 A Yes, sir.

24 Q -- you and Mr. Moore, and they've got the person who --
25 well, not who they believe, but they have the person that's

Tevin Thomas - Redirect examination
by Solicitor Bulsa

1 in the car?

2 A Yes, sir.

3 Q All right. And you hired a lawyer like everybody does?

4 A (Witness nods affirmatively.)

5 Q You got to answer me?

6 A Yes, sir.

7 Q And did you talk over your case with him?

8 A The first one.

9 Q With your lawyer?

10 A The first lawyer?

11 Q You've had two lawyers?

12 A Yes, sir.

13 Q Okay. Well, the first one?

14 A Yes.

15 Q Did you talk over your case with him?

16 A No, sir.

17 Q Why not?

18 A Because I thought he was over the case, but he had --
19 when my grandmother had went to talk to him he had
20 misunderstood.

21 MR. JOHNSTON: Your Honor, I'm gonna object to this
22 hearsay between his grandmother and his other attorney.

23 SOLICITOR BULSA: Well, I'm not sure that's being
24 offered for the truth, to prove anything. Mr. Johnston went
25 into conversations with the lawyers, the reason he's doing

Tevin Thomas - Redirect examination
by Solicitor Bulsa

1 what he's doing. I think it's---

2 MR. JOHNSTON: I'll withdraw the objection, Your Honor.

3 THE COURT: Okay.

4 A When they come -- I, I -- he misunderstood what, what
5 charges that he would be taking upon. So, when he came and
6 seen me, he only talked, talked about the burglary. So, I
7 mentioned I had attempted murder and he said he would check
8 on it. I -- it took a long time for him to come, six months
9 to get my motion, and, when I came back, when he came back
10 to talk to me, I mentioned it again and he tell me he wasn't
11 aware of the attempted murder. He only know about the
12 burglary.

13 So, I then contacted my grandmother and told her what's
14 going on, and I told her that I would be, I would be firing
15 him because there's no need for me to hire him for my
16 burglary cause I intend to plead to the burglaries with a
17 public defender. I only need representation on my serious
18 charge.

19 Q So, you plead to the burglaries?

20 A Yes, sir.

21 Q Okay. That means you admit your guilt in those?

22 A Yes, sir.

23 Q And then you hired a new lawyer for this attempted
24 murder?

25 A Yes.

Tevin Thomas - Redirect examination
by Solicitor Bulsa

1 Q So he could speak to the prosecution on your behalf?

2 A Yes, sir.

3 Q He discussed with you the best course of action to
4 take?

5 A Yes, sir.

6 Q And you and he reached the decision to meet with the
7 solicitor's office?

8 A Yes, sir.

9 Q And for you to come clean and tell the whole truth?

10 A Yes, sir.

11 Q Is that what you do --

12 A Yes, sir.

13 Q -- in previous meetings with the prosecution?

14 A Yes, sir.

15 Q Is that what you did tell this jury today?

16 A Yes, sir.

17 Q Thank you.

18 THE COURT: Mr. Johnston.

19 MR. JOHNSTON: Your Honor, may we approach?

20 THE COURT: Certainly.

21 (WHEREUPON, a bench conference was held out of the
22 hearing of the jury at this time.)

23 Q Let me, let me ask you this, Mr. Thomas.

24 Do you recall when you pled guilty for the burglaries?

25 A December 17th.

Tevin Thomas - Redirect examination
by Solicitor Bulsa

1 Q 2013?

2 You immediately went to the Department of Corrections?

3 A Yes, sir, the 18th.

4 Q So, you were no longer housed in Spartanburg County?

5 A No, sir.

6 Q And do you remember about when you got Mr. Campbell?

7 Was it before you pled guilty?

8 A No, sir, it was, it was before, but it's around the
9 same time because when I, when I was scheduled to -- for
10 trial on the 17th, but I, I talked to Snyder, who was my
11 public defender at the time, to plead because I really
12 didn't want to go to trial because I know I was gonna catch
13 the time because I know that I did it and they had strong
14 evidence. But at the same trial date, if I'm not mistaken,
15 Campbell came to see me, and he told me, he told me that we
16 would be talking because he, he was in Court, but he was
17 aware that I was his client.

18 So, he would -- that was my first time seeing him. He
19 sort of came to see me at the jail, but he knew I was going
20 to trial that day. So, he came to see me to get a
21 meeting -- I mean to meet each other. So, he was my lawyer
22 for the time that I caught it.

23 Q Okay. Well, we're kind of getting far afield, but just
24 so the jury has a good timeframe of when you began talking.

25 You had the two sets of charges and you were gonna go

Tevin Thomas - Redirect examination
by Solicitor Bulsa

1 to trial on the first set of charges cause they occurred
2 first in time?

3 A Yes, sir.

4 Q And you pled guilty to those?

5 A Yes, sir.

6 Q And then you started having conversations with
7 Mr. Campbell about this case?

8 A If I'm not, if I'm not mistaken, I knew that when -- I
9 wrote him from -- I wrote him from Kirkland, and it was, it
10 was beginning -- it was toward the end of December, a little
11 bit after Christmas, or between the middle of January when I
12 wrote him the letter---

13 Q Okay.

14 A ---telling him that we need, we need to talk about the
15 cases coming up.

16 Q All right. And you didn't actually come back to
17 Spartanburg until May of this year, right?

18 A Yes, sir.

19 Q And that's when you met with the prosecution --

20 A Yes.

21 Q -- about cooperating and testifying?

22 A Yes, sir.

23 Q Okay. So when you told Mr. Johnston months, six
24 months, was that in reference to when you were in Court or
25 the burglary or when---

Tevin Thomas - Redirect examination
by Solicitor Bulsa

1 A When I was, when I was at Kirkland.

2 Q Okay. And you were starting to conversate with
3 Mr. Campbell?

4 A My lawyer. Because I, I, I figured that he had already
5 told you about the letters. So, I figured that you knew
6 about it already.

7 Q Okay. Okay. So, you left it up to your lawyer to
8 contact the prosecution about meeting you?

9 A Yes, sir.

10 Q All right. Thank you.

11 MR. JOHNSTON: I don't have any further questions for
12 him, Your Honor.

13 THE COURT: All right. Sir, you may step down. Please
14 be careful.

15 Solicitor.

16 SOLICITOR BULSA: Your Honor, the State rests at this
17 time.

18 THE COURT: Okay. Madam Forelady, and ladies and
19 gentlemen of the jury, the State has now rested its case,
20 and this is one of those important times that I have some
21 things to attend to with the lawyers that actually it is
22 improper for you to be here during this time period.

23 So, with that, I'm gonna again remind you please do not
24 begin deliberating even amongst yourselves or within your
25 own mind about this case, and, with that, we're gonna let

1 you have a break for a little bit.

2 This, this might be 30 minutes or so?

3 MR. JOHNSTON: Yes, sir.

4 THE COURT: We might be 30 minutes with this. So,
5 we'll take -- this will be a good break for you right here.

6 Madam Forelady, if you'd take your jury out.

7 (WHEREUPON, the following takes place outside the
8 presence of the jury.)

9 THE COURT: Anything from the State?

10 SOLICITOR BULSA: No, sir.

11 THE COURT: Mr. Johnston.

12 MR. JOHNSTON: Nothing from me, Your Honor.

13 THE COURT: I wrote down we need to do that proffer.

14 MR. JOHNSTON: Oh, we do want to do that proffer.

15 SOLICITOR BULSA: We'll bring him back, Your Honor. We
16 need to get him back.

17 MR. JOHNSTON: Yes, sir.

18 (Pause.)

19 THE COURT: Okay. Well, you ready?

20 COURT REPORTER: Yes, sir.

21 THE COURT: We are back on the record, Mr. Johnston.

22 MR. JOHNSTON: Your Honor, at this time we're gonna
23 make -- proposed to make an offer of proof or a proffer
24 about the particular point that we attempted to raise during
25 cross-examination of Mr. Thomas, and I would just ask the

Tevin Thomas - Direct examination
by Mr. Johnston

1 questions now if I may?

2 THE COURT: Yes, sir.

3 TEVIN THOMAS, having been previously
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. JOHNSTON:

7 Q Do you know Reginald Sanders?

8 A Yes, sir.

9 Q Reginald Sanders was arrested with you or not with you,
10 but as a part of this case, wasn't he?

11 A Yes, sir.

12 Q And you've told the jury that Reginald Sanders was a
13 coconspirator in this case?

14 A Yes, sir.

15 Q Do you know what that means?

16 A No, sir.

17 Q That he was helping plan this whole deal --

18 A Yes, sir.

19 Q -- about the robbery and whatnot?

20 That's what you told the jury?

21 A Yes, sir.

22 Q Do you know where Reginald Sanders is now?

23 A No, sir.

24 Q Do you know what happened to his charges?

25 A No, sir.

Tevin Thomas - Direct examination
by Mr. Johnston

1 MR. JOHNSTON: Okay. In that event, Your Honor, our
2 proffer was not successful. So, I don't think it really
3 matters.

4 THE COURT: Okay. Anything, Mr. Bulsa?

5 SOLICITOR BULSA: No, sir.

6 THE COURT: I didn't think so.

7 okay. Anything else from anybody?

8 (No response.)

9 THE COURT: Sir, you may step down and please go with
10 the officer.

11 MR. JOHNSTON: May we approach, Your Honor?

12 SOLICITOR BULSA: Any objection to him going back to
13 the DOC?

14 MR. JOHNSTON: None whatsoever.

15 SOLICITOR BULSA: We ask that he go back.

16 (Pause.)

17 THE COURT: Okay. Everybody ready?

18 MR. JOHNSTON: Defense is ready.

19 THE COURT: Okay. We're back on -- Mr. Bulsa, you
20 ready?

21 SOLICITOR BULSA: Yes, sir.

22 THE COURT: We're back on the record.

23 Mr. Johnston.

24 MR. JOHNSTON: May it please the Court, Your Honor. I
25 wanted to announce about Mr. Moore's intentions.

1 THE COURT: Yes, sir, whatever you want to do.

2 MR. JOHNSTON: Your Honor, I've had a conference with
3 Mr. Moore, and, of course, we've talked throughout the
4 process about his right to testify. I've explained things
5 to him. I've explained that he has an absolute right to
6 testify if he so chooses, but that if he chooses not to, the
7 Court will instruct the jury not to discuss that fact in
8 their deliberations, and that fact can not be held against
9 him.

10 It is my belief that he's going to ask that he does not
11 wish to testify, testify, but I would invite the Court to
12 question him on that on the record about that.

13 THE COURT: Okay. Mr. Moore, I'm gonna ask you to
14 stand and be sworn, sir.

15 Madam Clerk.

16 (WHEREUPON, the defendant was placed under oath at this
17 time.)

18 THE COURT: Sir, you are Robert Lee Moore?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Moore, you are represented by Mr. Andy
21 Johnston in this matter?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Johnston is advised the Court that you
24 do not intend to testify in this case, and you have the
25 right to do that, but I'm gonna ask you if -- I'm gonna tell

1 you a few things and ask you a few questions to ensure that
2 you understand your right and then you can waive it or not
3 waive it.

4 okay?

5 THE DEFENDANT: (Nods affirmatively.)

6 THE COURT: Mr. Moore, at this time I'm gonna explain
7 to you what rights you have, and if you do not understand
8 something that I tell you, please let me know, and if you
9 want me to explain anything in detail I'll be happy to do
10 that.

11 Do you understand that?

12 THE DEFENDANT: (Nods affirmatively.)

13 THE COURT: And, sir, you have to answer verbally.
14 This lady's recording.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Thank you.

17 Also, Mr. Moore, let me tell you that anytime, while
18 I'm speaking here, if you need to speak with your lawyer, if
19 you'd just indicate that, I'll be happy to stop and take
20 whatever time you need to speak to Mr. Johnston.

21 okay?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Sir, we have reached the stage of this
24 trial where you may present your defense. You have the
25 right to claim the protections given to you by the Fifth

1 Amendment of the Constitution to the United States, and this
2 amendment states, in part, no person shall be compelled, at
3 any criminal case, to be a witness against himself.

4 Also, you have the right to claim the protections given
5 to you by Article 1, Section 12 of the South Carolina
6 Constitution which states, in part, no person shall be
7 compelled, in any criminal case, to be a witness against
8 himself. This means that you can not be required to testify
9 in this case. You have the right to testify on your own
10 behalf. However, no one can make you testify. This is a
11 personal right and no person can waive this right except
12 you.

13 If you decide to testify, you will be subject to the
14 same rules that govern other witnesses, and you may be
15 examined and cross-examined on any relevant issue in this
16 case. In addition, if you have any convictions involving
17 dishonesty or false statement or for crimes punishable by
18 imprisonment for more than one year, and this Court
19 determines that the probative value of admitting the
20 evidence outweighs its prejudicial effect to you, this
21 solicitor will be able to introduce your record to attack
22 your credibility.

23 If you decide to testify, this decision, on your part,
24 must be freely, intelligently, and voluntarily made with
25 knowledge of the protections given to you by the

1 Constitutions of the United States and the State of South
2 Carolina, and the consequences of your decision to testify.
3 If you decide not to testify, I will instruct jurors that
4 they can not give the fact that you did not testify any
5 consideration whatsoever and that there is to be absolutely
6 no prejudice to you because you did not testify.

7 It is left entirely up to you as to whether or not you
8 testify. You may speak with your lawyer, your family, and
9 friends, or anyone else, but the final decision will be left
10 entirely up to you.

11 Do you understand what I told you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have any questions about what I have
14 explained to you?

15 THE DEFENDANT: No, sir.

16 THE COURT: Have you discussed with your lawyer whether
17 you should or should not testify?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you wish to talk to your lawyer anymore
20 at this time?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you wish to testify?

23 THE DEFENDANT: No, sir.

24 THE COURT: You are not testifying in this case?

25 THE DEFENDANT: No, sir.

1 THE COURT: And that is your decision and your decision
2 alone?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Thank you, sir. You may be seated.
5 Mr. Johnston.

6 MR. JOHNSTON: Your Honor, defense is ready for the
7 jury. We're going to call witnesses.

8 THE COURT: Okay. Very good.
9 We'll have our jury, Mr. Bailiff.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: Madam Forelady, any matters for the jury?

13 THE FORELADY: No, sir.

14 THE COURT: All right. Please give your attention to
15 Mr. Johnston.

16 Mr. Johnston.

17 MR. JOHNSTON: Your Honor, at this time the defense
18 calls Chris Barnes.

19 CHRIS BARNES, being first duly
20 sworn, testified as follows:

21 THE COURT: Mr. Barnes, once you're seated there, if
22 you would tell us your full name and spell your last name
23 for my court reporter please.

24 THE WITNESS: Christopher Adam Barnes. B-A-R-N-E-S.

25 THE COURT: No problem. Thank you, sir.

Chris Barnes - Direct examination
by Mr. Johnston

1 DIRECT EXAMINATION

2 BY MR. JOHNSTON:

3 Q And, Mr. Barnes, you don't have to get too close to
4 that microphone

5 A Yeah.

6 Q That's, that's fine. Where you are probably sounds
7 good. If there's a problem we'll tell you to adjust.

8 How old are you, Mr. Barnes?

9 A Thirty-one.

10 Q You live here in Spartanburg?

11 A Yeah.

12 Q And I see by your shirt that you're employed at
13 Harris---

14 A Automotive.

15 Q Harris Automotive.

16 And that's here in Spartanburg too as well?

17 A Yeah.

18 Q Did you have the occasion to visit the Taco Bell on
19 Warren H. Abernathy Highway back on February 25th, 2013?

20 A Yeah.

21 Q And other than the obvious, for what reason did you go
22 there?

23 A It was on my way home from work. At the time I was
24 working at a place in Greer. I was coming down 29 all the
25 way through Spartanburg to get where I live in and it's just

Chris Barnes - Direct examination
by Mr. Johnston

1 on the way. So---

2 Q All right.

3 A ---I stopped there to get to some food and get---

4 Q Now, did you go inside the restaurant or did you go
5 through the drive through?

6 A Drive through.

7 Q And did you place an order?

8 A Yeah.

9 Q And was your order filled?

10 A Yeah.

11 Q Did you keep the receipt --

12 A Uh-huh. (Affirmative).

13 Q -- from that transaction?

14 A Yeah, I gave it to whoever gave the statement to at the
15 Sheriff's Department.

16 Q All right. You gave it to a representative of the
17 Sheriff's Office, is that right?

18 A Yes.

19 MR. JOHNSTON: Please mark this for identification.

20 (WHEREUPON, the receipt was marked as Defendant's
21 Exhibit No. 5 for identification purposes only at this
22 time.)

23 Q Showing you now what has been marked as Defendant's
24 Exhibit No. 5 for identification.

25 Can you identify what that is a photocopy of?

Chris Barnes - Direct examination
by Mr. Johnston

1 A My receipt from Taco Bell.

2 Q And is that from the date and time in question?

3 A Yeah.

4 MR. JOHNSTON: Your Honor, at this time we would move
5 that into evidence.

6 THE COURT: Solicitor.

7 SOLICITOR BULSA: I have no objection.

8 THE COURT: It's admitted without objection.

9 (WHEREUPON, Defendant's Exhibit NO. 5 was received into
10 evidence at this time.)

11 Q Tell us what time the receipt shows that you did your
12 food transaction.

13 A It says 2:07:48PM. I don't know what the 48 is, but---

14 Q It's probably seconds, but---

15 A It looks like 2:07.

16 Q And is that generally consistent with your recollection
17 of what time it was?

18 A Yeah.

19 Q Now, after you got your food, did you stop to eat?
20 What was your plan?

21 A I was gonna take it -- I was gonna go get my son from
22 day care but then take it home and eat it.

23 Q All right. So, did something unusual happen as you
24 were leaving the drive through?

25 A Yeah, as I, as I was leaving, I circled around the

Chris Barnes - Direct examination
by Mr. Johnston

1 building to go out the entrance where I came in and out of
2 the corner of my eye I saw this car rocking back and forth.
3 I was thinking like what's going on in that car because it
4 was swinging around, and then I heard a pop, and then I saw
5 somebody slumped over and blood like squirting. It was like
6 a water pistol, and then somebody popped out of the
7 passenger side of that car and jumped in another car and
8 left and I was like---

9 Q Let me slow you down right there.

10 Somebody hopped out of the passenger side --

11 A Yeah.

12 Q -- of the vehicle where the man who had been shot was?

13 A Yeah.

14 Q Is that correct?

15 A Yeah.

16 Q Do you have a recollection of what kind of motor
17 vehicle it was?

18 A Or the---

19 Q Where the---

20 A The one the victim was in?

21 Q Yes --

22 A It was an Impala.

23 Q -- where the man had been shot in.

24 A It was a Chevy Impala.

25 Q All right. I'm showing you now what has been marked as

Chris Barnes - Direct examination
by Mr. Johnston

1 State's Exhibit No. 4, and ask if that looks familiar to
2 you.

3 A Yeah, that was the model of the car it was.

4 Q Okay. You can't tell us for sure it's that car---

5 A Yeah.

6 Q ---but it is the model and color that---

7 A Yeah.

8 Q ---you recall from that occasion, am I correct?

9 A Yeah, it's the car, yeah. It's the model, the color.

10 Q And you saw someone exiting the passenger door of this
11 vehicle?

12 Am I correct?

13 A Yeah.

14 Q All right. And I assume that your attention was called
15 to that person because you knew somebody had been shot?

16 A Yeah. Well, I saw -- I heard a pop and then I saw
17 blood and I put two and two together, but I never saw
18 anybody get shot and I never saw a gun.

19 Q You put two and two together though, you heard a pop,
20 you saw somebody with blood coming out of them.

21 That's certainly not an everyday occurrence for---

22 A No.

23 Q ---for you?

24 A No.

25 Q All right. So, again, is it fair to say that your

Chris Barnes - Direct examination
by Mr. Johnston

1 attention was called to the events that were happening
2 there?

3 A Oh, yeah.

4 Q All right. Now, did you have occasion to look closely
5 at the person that got out of the car?

6 A It was a -- all that -- it sounds like a lot of stuff
7 happened, but, in real time, it was like a split second. My
8 car never even stopped. I was just cruising by and all this
9 went on. I only saw the person for a second and then they
10 ran -- from the time they ran around from where they were
11 at, and they ran around and got in the car they were took
12 off in, that's all and I only saw their face for a second.
13 I remember what they were wearing.

14 Q You remember what they were wearing?

15 A Yeah.

16 Q And you remember that well, don't you?

17 A Yeah, that's why---

18 Q And you put that in a written statement that you gave
19 to the police not too long after the events---

20 A Yeah.

21 Q ---that we're describing today?

22 Am I correct?

23 A Yeah.

24 Q Tell us what that person was wearing.

25 A Dark colored sweatshirt and a dark colored toboggan.

Chris Barnes - Direct examination
by Mr. Johnston

1 Not -- I don't know if it was Navy blue or black, but it was
2 dark. Both of them were dark. I only saw -- from their
3 neck to their eyebrows was the only part of them I actually
4 saw cause they had a toboggan on that came up to like here
5 and they had on a sweatshirt.

6 Q All right. The sweatshirt was not red, was it?

7 A No.

8 Q And I believe you also said that you locked eyes with
9 that person.

10 That's how---

11 A Yeah.

12 Q ---close contact you gave -- you were with that person?

13 A Yeah, cause I probably drove by less than ten feet away
14 from where the cars were parked. So, I was just cruising
15 past where they were parked and --.

16 Q So -- and you're, you're sure about what -- that, that
17 person was wearing a toboggan?

18 A Yeah.

19 Q And not a red sweatshirt?

20 A No, not red.

21 Q Did you see anyone else other than the man who had been
22 shot?

23 A I only saw part of the person who had been shot like
24 cause they were like slumped over.

25 Q Yes, sir.

Chris Barnes - Direct examination
by Mr. Johnston

1 But other than those two individuals, did you see
2 anybody else?

3 A Oh, no, no, no. I never saw who was driving the
4 getaway car or anything cause it had really dark tinted
5 windows and --.

6 Q Please answer any questions that the prosecutor has for
7 you.

8 THE COURT: Solicitor.

9 SOLICITOR BULSA: Thank you.

10 CROSS-EXAMINATION

11 BY SOLICITOR BULSA:

12 Q Chris, we met before, right?

13 A Yeah.

14 Q The -- you were -- when we talked you were kind of
15 scared of this process, right?

16 A Yeah.

17 Q In fact, you didn't want to have to testify, did you?

18 A No.

19 Q Okay. So, we decided not to call you?

20 A Yeah.

21 Q Right?

22 Okay. Now I'm going to go into a little further about
23 what you and I talked about and what your statement is.

24 okay?

25 A Yeah.

Chris Barnes - Cross-examination
by Solicitor Bulsa

1 Q So the jury can understand your prospective of what you
2 saw, I'm gonna use this, this machine right here and show
3 you some pictures and a diagram that you actually drew.

4 Do you remember that?

5 A Yeah.

6 Q Do you remember what kind of car you told the police
7 that you saw?

8 A The getaway car or the car the person was---

9 Q Yes, sir, the getaway car.

10 A Yeah, I told them it was a Dodge Magnum.

11 Q Okay. And is that similar to a Chrysler 300?

12 A Yeah, it's pretty -- it's a hatchback wherein --.

13 Q Okay.

14 A Other than that they're identical.

15 Q What's -- which one's the hatchback version?

16 A The Magnum.

17 Q The Magnum.

18 Okay. So, from your, from your short view of what you
19 saw, you thought the getaway car was a hatchback?

20 A Yeah.

21 Q Okay. Let me start with State's Exhibit 36. That's
22 actually a white 300 Chrysler.

23 Does that look similar to the car you saw?

24 A Yeah.

25 Q Okay. Here's a view of it from the rear, State's 35.

Chris Barnes - Cross-examination
by Solicitor Bulsa

1 okay. Could that have been the vehicle you saw?

2 A Yeah.

3 Q okay.

4 A It's possible.

5 Q okay. But it's not a hatchback, is it?

6 A No.

7 Q okay. Now, let me get this, Mr. Johnston.

8 Have this marked for identification.

9 (WHEREUPON, the diagram was marked as State's Exhibit
10 No. 39 for identification purposes only at this time.)

11 Q Now I'm gonna show you what's been marked for
12 identification as State's 39.

13 Do you recognize that diagram?

14 A Yeah.

15 Q okay. Did you draw that in your own hand?

16 A Yeah.

17 Q okay. Where were you when you drew that?

18 A When I gave -- when I drew the picture?

19 Q Yes, sir.

20 A Sheriff's Department.

21 Q okay. You didn't actually stop at this scene and wait
22 for the police, did you?

23 A No.

24 Q okay. You actually went to the Sheriff's Office later?

25 A I did. Yeah, I went to the Sheriff's Office a couple

Chris Barnes - Cross-examination
by Solicitor Balsa

1 days later.

2 Q Okay. why didn't you stop and wait?

3 A Because somebody saw me, the person who -- one of the
4 people involved looked at me, and I don't want to stick
5 around if people are getting shot and stuff.

6 Q All right. So, you were scared and wanted to get out
7 of there?

8 A Yeah.

9 Q Okay. We're gonna talk about you getting out of there
10 and what happened.

11 But how is it that you came to the Sheriff's office?

12 Did they look -- track you down?

13 A No, I, I thought they were looking for the wrong car
14 cause I saw on the news they said it was a Chrysler 300, and
15 I was, I was like I think it was a Dodge Magnum. I just
16 went down there to tell them that.

17 Q Okay. So, the day after the incident they were
18 displaying -- were they showing a picture of it or were they
19 just calling it a Dodge or a Chrysler 300?

20 A I don't remember. I think I remember hearing them say
21 a Chrysler 300.

22 Q Okay. But in your recollection you thought it was a
23 Dodge Magnum, which was a hatchback car?

24 A Yeah.

25 Q Okay. Would you be surprised to find out that this is

Chris Barnes - Cross-examination
by Solicitor Bulsa

1 the actual car that was there?

2 A Well, if you take that car and put it with a picture of
3 a Dodge Magnum directly from the back, you -- the back
4 windshields look the same. So, you can't really tell if
5 it's a -- from directly from the back, and I remember seeing
6 the car leaving and that was the last thing I remember
7 seeing.

8 Q Did the car leave in a hurry?

9 A Yeah.

10 Q It did.

11 Did it come behind you?

12 A Let's see. I, I kept going and I went out. I went out
13 to the intersection to turn left and I can't remember where
14 they went, but they didn't go left. I can't remember if
15 they went straight or right or where they went.

16 Q Okay. And did you actually -- did you see -- how many
17 people did you see in the car?

18 A I only -- in the car I couldn't see anybody cause the
19 windows are so dark, but I saw one person get in it and---

20 Q Okay.

21 A ---and go.

22 Q Now, you saw that person get in the passenger side?

23 A Yeah.

24 SOLICITOR BULSA: Okay. Now, I want to introduce
25 State's Exhibit 39.

Chris Barnes - Cross-examination
by Solicitor Bulsa

1 MR. JOHNSTON: The drawing, I have no objection.

2 THE COURT: Okay. It's admitted without objection.

3 (WHEREUPON, State's Exhibit No. 39 was received into
4 evidence at this time.)

5 Q All right. Before I show that I want to show you
6 State's No. 10.

7 Is that Taco Bell there?

8 A Yeah.

9 Q Right here and we have Applebee's across the street.
10 Is -- the drive through is right here?

11 A Yeah.

12 Q Okay. This is a photo from a computer. You see a lot
13 of cars in the drive through.

14 Were there that many cars that day in the drive
15 through?

16 A I don't think so.

17 Q Okay. Did you have to wait a long time for your food?

18 A No.

19 Q So, if I'm hearing you right, you came up Franklin and
20 you turned left, got in the drive through lane---

21 A Uh-huh. (Affirmative).

22 Q ---got your order and right here where did you go?

23 A Can I stand up and show you?

24 Q Sure. You want to use this pointer. Use that pointer.
25 See that red button?

Chris Barnes - Cross-examination
by Solicitor Bulsa

1 (Witness comes down from the stand.)

2 A Yeah.

3 Q Click on that. It's up there towards the front?

4 A Okay. I come in here. I go to the drive through and
5 get my food and I need to go this way, but there's no way
6 you can turn left out of right there. So, I come around
7 here and I go back out the way I come and go to the light
8 and go that way.

9 Q Okay. Where were you -- do you recall being when you
10 heard the -- what's the first thing that drew your
11 attention?

12 I think you said you saw the car shaking.

13 A Yeah, I was probably right about here. This is where
14 about -- somewhere in these were probably where the cars
15 were parked. Yeah, cause these parking lots are straight
16 and these are slanted. It was over here near the exit
17 somewhere and these were straight.

18 Anyway, out of -- you know, I was driving right around
19 in here and I saw a car rocking back and forth, and like I
20 was like what's going on over there, and then I heard a pop.
21 And then I saw the guy slumped over and I saw blood, and
22 then I saw a guy jump out of the passenger side of that car
23 and run around the front of the car and get in the passenger
24 side of what I thought was a Magnum, and I'm looking back at
25 them. They probably came -- they came out right after me---

Chris Barnes - Cross-examination
by Solicitor Bulsa

1 Q Okay.

2 A ---and I went to here. I went to the light and was
3 sitting there waiting to turn left cause I know one of them
4 saw me and I was like ducked down and I was like -- but I
5 saw them. They didn't go left where I went. I don't know.
6 I can't remember now.

7 Q Okay. Have a seat back up there.

8 A (Witness returns to the stand.)

9 Q So, you're telling this jury that it was somewhere in
10 these parking areas?

11 A Yeah.

12 Q Okay.

13 A That's where the car was parked.

14 Q I want to show this diagram that you drew for the
15 police and I appreciate you doing that cause it helps tell
16 your story. State's 39.

17 All right?

18 A Yes.

19 Q You don't claim to be an artist, do you?

20 A No.

21 Q You got what you call an Impala --

22 A Uh-huh. (Affirmative).

23 Q -- facing towards the Applebee's?

24 A Yeah.

25 Q And you have the Magnum facing towards the Applebee's,

Chris Barnes - Cross-examination
by Solicitor Bulsa

1 right?

2 Okay. And you have the Impala closest to the entrance?

3 A Yeah.

4 Q And the Magnum on the other side?

5 A Yeah.

6 Q So, you would of been driving past?

7 A Uh-huh. (Affirmative).

8 Q And which -- do you remember which door was opened on
9 the Impala?

10 A The driver's door would of been right here if they're
11 facing the, the road, and then I saw the person bleeding
12 right there, and then I saw the -- somebody hop out of the
13 passenger side and they ran around the front of the other,
14 the Magnum and got in the passenger side of it and then take
15 off.

16 Q So, you actually saw them go around the front?

17 A Yeah.

18 Q I thought you testified you saw them go around the
19 back?

20 A I remember, I remember them going around the front.

21 Q Where would your car have been along this line when you
22 saw all this?

23 A That little line is the -- my path I would of been.

24 Q Uh-huh. (Affirmative).

25 Cause you would of had to of been over here---

Chris Barnes - Cross-examination
by Solicitor Bulsa

1 A Yeah.

2 Q ---to see the guy slumped out of the car, right?

3 A Yeah.

4 Q And the blood gushing?

5 A Yeah.

6 Q So, you were somewhere in this area when you saw
7 somebody leave the passenger side and get into the Magnum?

8 A Yeah.

9 Q So, the car was between you and the person you saw?

10 A which car, the Impala?

11 Q The Impala would of been between you and the person you
12 saw.

13 A I guess.

14 Q I'm just -- you were there.

15 Okay?

16 A I know.

17 Q I'm just trying to understand -- that's kind of the way
18 you wrote it too.

19 A Yeah.

20 Q You said that you saw a couple young black males
21 struggling, wrestling around in the silver Chevy Impala, so
22 much that the car was rocking back and forth, and then you
23 said you heard a pop sound like a firecracker, and you saw a
24 young black male in a slumped position with the driver's
25 door opened.

Chris Barnes - Cross-examination
by Solicitor Bulsa

1 A Yeah.

2 Q Okay. And then you, then you say, right after that,
3 you say another young black male wearing a dark colored
4 sweatshirt and darked colored toboggan emerged from the
5 passenger side of the silver Impala?

6 A Yeah.

7 Q So all you could of seen this over here is you would of
8 had to been past the car, right, cause if---

9 A Yeah, I would of had to of been past it to see the
10 person bleeding, but---

11 Q Right. Right. So---

12 A I don't know---

13 Q You can't superimpose the Chrysler there or the Magnum,
14 but that's where it would of been, right?

15 A Yeah.

16 Q So, you would of had to of been past it, and then on
17 the other side of this car to give you more, I guess State's
18 No. 8, give you more this kind of a view?

19 A Yeah.

20 Q Is that right?

21 A Uh-huh. (Affirmative).

22 Q Okay. So, this car would of been between you and the
23 Magnum?

24 A Yeah.

25 Q when you say you saw somebody use -- you use the word

Chris Barnes - Cross-examination
by Solicitor Bulsa

1 emerge to the jury?

2 A Yeah.

3 Q In fact, you actually used it twice. Emerge from the
4 passenger side.

5 A Uh-huh. (Affirmative).

6 Q You, you couldn't actually see them get out of the car,
7 could you?

8 A I -- no, I guess not.

9 Q So, what you saw is somebody running from this side of
10 the car, whether it be the front of the Magnum or behind it,
11 you somebody---

12 A Well, that---

13 Q ---somebody from that side of the car -- somebody from
14 that side of the car running around to the other side of the
15 Magnum car?

16 A Yeah.

17 Q Okay. So, it's not like you saw somebody open the door
18 and climb out of the door---

19 A Hu huh. (Negative).

20 Q ---and run around the car?

21 A No, I just saw---

22 Q To give you---

23 A ---from this level up above like the roof area, area of
24 the car.

25 Q So, if there was somebody in that passenger side---

Chris Barnes - Cross-examination
by Solicitor Bulsa

1 A I couldn't tell you what kind of pants they were
2 wearing.

3 Q Right.

4 But we got a Magnum right here beside it or you call it
5 a Magnum, but the Chrysler, and the driver's door to that
6 Chrysler is there.

7 A Uh-huh. (Affirmative).

8 Q Somebody could of easily slid from the passenger right
9 into the driver's side?

10 MR. JOHNSTON: Your Honor, objection. That calls for
11 speculation.

12 SOLICITOR BULSA: I'm asking him. He's -- he was
13 there.

14 THE COURT: well, just ask him what he saw.

15 SOLICITOR BULSA: Yes, sir.

16 Q Okay. So---

17 MR. JOHNSTON: It's asking what he could have seen.

18 THE COURT: Yes, sir.

19 Ask him what he saw.

20 Q well, would you have been in a position to see somebody
21 doing that, sliding over into the driver's seat?

22 A I mean I didn't see that.

23 Q Okay. But I mean -- and maybe one of the reasons you
24 didn't see it is because this car was in your way, is that
25 right?

Chris Barnes - Cross-examination
by Solicitor Bulsa

1 A I guess.

2 Q Okay. It's important.

3 A Yeah.

4 Q I don't want to trip you up. I'm just trying to let
5 this jury have a good prospective of what you could see.

6 A Yes, sir.

7 Q Okay?

8 A Right, I could have, but, yeah, I couldn't tell you if
9 it did or not.

10 Q You-all -- you just saw a man run around the car and
11 get in?

12 A Yeah.

13 Q Okay. And you know that man was wearing black and came
14 from the passenger side of this car?

15 A Yeah.

16 Q And got in the passenger side of the other car?

17 A Yeah.

18 Q Okay. And then that car sped away?

19 A (Witness nods affirmatively.)

20 Q And, in fact, I think you wrote in your statement that
21 you thought he saw you. You said you locked -- I locked
22 eyes with the young black male that emerged from the
23 passenger's side. So, I got scared and ducked down and
24 started to drive faster and you drove faster yourself, and
25 then actually looked back you said.

Chris Barnes - Cross-examination
by Solicitor Bulsa

1 So, were you actually, back to State's No. 10, you were
2 already out in the roadway at that point, right?

3 A Yeah.

4 Q And you're looking back.

5 Okay. So now we know from the pictures that it
6 occurred in these second and third spaces. So you're there
7 looking back and you're seeing the guy in the passenger
8 seat.

9 A Yes.

10 Q So, you actually -- there was a time where you weren't
11 even watching it because you were afraid and you were
12 ducking?

13 A (Witness nods affirmatively.)

14 Q Okay. So something could of happened that you didn't
15 see?

16 A Yeah.

17 Q Okay. And you did the right thing. You called 9-1-1.

18 A Yeah, I felt bad cause, you know, somebody's bleeding.
19 You know, I would like to stick around and help, but, you
20 know, one person looked right at me and they saw me and they
21 saw my car and everything and I was like, you know, I better
22 keep going, and I called 9-1-1. I probably had to be the
23 first 9-1-1 caller cause I mean it was seconds after the pop
24 that I called. Somebody else -- it had, had to be real
25 close. So, within seconds of it happening.

Chris Barnes - Cross-examination
by Solicitor Bulsa

1 Q Right.

2 would you have been on Highway 29 when you were making
3 that call?

4 A I was probably still at the intersection waiting to
5 turn left onto the---

6 Q You're thinking about stepping down---

7 A Yeah, I was probably -- yeah, you have to wait forever
8 at that intersection to turn.

9 Q Had the other car already driven past you?

10 A Most likely. I mean---

11 Q You don't remember?

12 A I don't remember.

13 Q All right. Okay. Cause you took a, a left out of
14 here?

15 A Yeah.

16 Q So, you had to wait for the light to turn left?

17 A (Witness nods affirmatively.)

18 Q Okay. No doubt about it they were wanting to get out
19 of there fast?

20 A Yeah, they weren't sticking around to help you know.

21 Q Okay. All right.

22 (Pause.)

23 Q Okay. Thank you, Chris.

24 THE COURT: Mr. Johnston.

25 REDIRECT EXAMINATION

Chris Barnes - Redirect examination
by Mr. Johnston

1 BY MR. JOHNSTON:

2 Q And the one person that you saw emerge from the
3 passenger side and get into the other passenger side that
4 you locked eyes with had on a dark sweatshirt and he was
5 wearing a toboggan?

6 A Yeah.

7 Q You're sure of that, aren't you?

8 A Yes.

9 Q Is that a yes?

10 A Yeah.

11 Q I'm gonna show you what's been marked as Defendant's
12 Exhibit No. 1. Please come down in front of the jury.

13 A (Witness comes down from the stand.)

14 MR. JOHNSTON: I'm gonna put this cap back on --

15 SOLICITOR BULSA: Sure.

16 MR. JOHNSTON: -- so it's not blinding.

17 Please come forward.

18 A (Witness complies.)

19 Q Take a look at that. This is the Hot Spot area, but
20 I'm gonna call your attention to this individual here, and I
21 want to -- I'll leave it this way.

22 SOLICITOR BULSA: You want to use the overhead,
23 Mr. Johnston?

24 MR. JOHNSTON: Yeah, that would be great. I don't know
25 if I can operate it.

Chris Barnes - Redirect examination
by Mr. Johnston

1 SOLICITOR BULSA: Take that cap off and put it up
2 there.

3 MR. JOHNSTON: All right.

4 SOLICITOR BULSA: Just set it, set it up there.

5 MR. JOHNSTON: Just set it on there.

6 Okay. Let me focus it now.

7 Thank you so much, Mr. Bulsa.

8 All right. And I'm gonna avail myself of your---

9 SOLICITOR BULSA: Okay.

10 Q Now, see this?

11 A Yeah.

12 Q would that be the gentleman you saw with the toboggan?

13 A It could be, but that's the worst picture I've ever
14 seen.

15 Q well, I understand. It's a still from a video.

16 A Yeah.

17 Q Did the police ever show you the whole video of this?

18 A I never knew there was a video.

19 Q Okay. Let me ask you one other thing.

20 Showing you now what has been marked as Defendant's
21 Exhibit No. 2. I want to ask you about this individual
22 here.

23 A Yeah.

24 Q He's clearly wearing a red or orange sweatshirt.

25 A Yeah.

Chris Barnes - Redirect examination
by Mr. Johnston

1 Q You can say conclusively that wasn't the person you saw
2 unless he changed clothes?

3 A Yeah, unless he changed clothes cause it wasn't --
4 there wasn't -- I didn't see him in any red or orange.

5 Q All right. And he doesn't have a toboggan?

6 A No.

7 Q All right. You can return to your seat.

8 A (Witness returns to the stand.)

9 Q And I don't have anymore questions for you. Please
10 answer any other questions Mr. Bulsa may have.

11 THE COURT: Anything, Mr. Bulsa?

12 SOLICITOR BULSA: I have nothing further.

13 THE COURT: All right. Sir, you may step down.

14 Is he released?

15 MR. JOHNSTON: We would ask for this gentleman to be
16 excused with our thanks.

17 SOLICITOR BULSA: No, no objection.

18 THE COURT: Sir, you may step down. You may stay with
19 us or you may leave, whichever you choose.

20 THE WITNESS: Okay. I got to go back to work.

21 THE COURT: Okay.

22 MR. JOHNSTON: Thank you very much for your time, sir.
23 Your Honor, the defense rests.

24 THE COURT: Defense rests.

25 Okay. Madam Forelady, ladies and gentlemen, the

1 defense is now rested and it's my understanding there's
2 no---

3 SOLICITOR BULSA: No reply, Your Honor.

4 THE COURT: No reply by the State, which means that
5 both sides have now presented all of the evidence that they
6 are going to present in this case. It's late in the day.
7 Not many judges will, will go to the -- what's called
8 closing arguments and jury charges this late in the day
9 because that takes about 90-minutes. That's about an hour
10 and a half by the time the lawyers speak for about 20 to 25
11 minutes each, and then the instructions that I have to give
12 you on the law. That's about a 90-minute process. That
13 would put us into six o'clock or so if my math is correct,
14 and I'm not a math major either. But nonetheless, that puts
15 us up to six o'clock.

16 So, with that, having said that, we are going to recess
17 on this case for today. I've got a couple things I can do
18 that don't require a jury. It has nothing to do with this
19 case whatsoever. I've got some other lawyers that, that
20 need to talk to me about other cases because we have plenty
21 more on the docket to handle.

22 So, with that, we're gonna stop on this trial for
23 tonight. We are gonna reconvene tomorrow morning on this
24 case at ten o'clock AM, at ten o'clock AM.

25 So, if you would be here ready to go at 10:00, I should

1 be ready by then. I will be here again in the morning, the
2 lawyers will be here about 8:00, but I've got some other
3 matters that were previously lined up for me to handle first
4 thing, and they have nothing to do with this case.

5 So, if you'll be here at 10:00 tomorrow morning, and
6 the way it's gonna go, just so you know, is, again, the
7 lawyers have presented all that they are going to present.
8 So, tomorrow morning you will expect to hear from the
9 lawyers in what's called closing arguments or summations,
10 which will last a good 20, 25 minutes, something like that,
11 each lawyer, and then I will charge you on what the law of
12 South Carolina is after which time I will send you to your
13 jury room while the lawyers and I confer about all of the
14 exhibits.

15 These exhibits belong to you, the jury, and, Madam
16 Forelady, I'm sorry, Madam Court Reporter has numbered them.
17 So, we'll take a few minutes to go through them to make sure
18 we're not missing anything because, as you can see, the
19 lawyers use them and then they lay them down on their table,
20 and it's very easy to stick something in your own file and
21 walk away with it, but we'll make sure we have all the
22 exhibits and then we will forward those exhibits to you at
23 which time you will then begin your deliberation process.

24 So, with that, I remind you, again, not to watch any
25 news accounts or read any news accounts if you happen to see

1 anything or hear anything. Please do not talk to your
2 friends, family, neighbors, or anyone else about this case,
3 and please do not -- and not each other, and please do not
4 consider it within your own mind, and we will see you
5 tomorrow morning at 10:00AM back in your jury room, Madam
6 Forelady.

7 Thank you.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: Anything from the State?

11 SOLICITOR BULSA: No, Your Honor.

12 THE COURT: From the defense?

13 MR. JOHNSTON: No, sir.

14 THE COURT: Okay. I think Tray sent an email to you
15 and I need to look at it myself, but if you would look at
16 your emails on the proposed jury charge this evening,
17 afternoon, evening, and if you'll let me know first thing in
18 the morning as to if we need to meet. I'll be here -- I'm
19 here before eight o'clock, slightly before eight o'clock.
20 Chris makes good coffee and you're welcome to join me.

21 So, if you need to talk about anything like that, let's
22 talk about that in the morning. I'm gonna take a couple of
23 pleas that were previously lined up in the morning, and then
24 we'll have this jury ready to go at 10:00.

25 Any questions?

1 MR. JOHNSTON: No, sir.

2 SOLICITOR BULSA: No, sir.

3 THE COURT: All right. Okay. We'll be in recess on
4 this matter.

5

6 (WHEREUPON, Court was in recess for the evening.)

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1 wednesday, July 23rd, 2014

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3 THE COURT: we're ready.

4 (Pause.)

5 THE COURT: we're ready?

6 MR. JOHNSTON: Yes, sir.

7 SOLICITOR BULSA: Yes, sir.

8 THE COURT: Let's have the jury.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: Madam Forelady, any matters for the jury?

12 THE FORELADY: No, sir.

13 THE COURT: Very good. Thank you.

14 All right. we ready to proceed, gentlemen?

15 SOLICITOR BULSA: Yes, sir.

16 MR. JOHNSTON: Yes, sir.

17 May it please the Court?

18 THE COURT: Yes, sir.

19 MR. JOHNSTON: Opposing counsel, Madam Forelady, ladies
20 and gentlemen of the jury, the prosecution, by choosing to
21 charge in this case as it has, has limited your choices. It
22 is as if they set the menu for a dinner and on that menu is
23 not the choice of beef, chicken, or the vegetarian plate,
24 but only one item. One item of soup. It's soup or nothing.

25 The prosecution had, within its power, the right to

1 charge Robert Lee with being an accessory after the fact as
2 well as charging him with being a principal as they have
3 done in this case. Even His Honor, with all of the power
4 and authority that he has, can not submit to you a choice of
5 finding Robert guilty only of accessory after the fact
6 because it is the prosecutor's sole discretion in our system
7 as to what charges to make. Now, this will not prohibit
8 Robert Lee from being charged in the future as an accessory
9 after the fact. If you find him not guilty of this offense
10 today, the one that you have before you, he can still be
11 charged and tried as an accessory after the fact later.

12 So, the way they've made the menu in this case, you can
13 choose to find Robert guilty of being a principal, guilty of
14 attempted murder, or you can find him not guilty. The
15 theory of the State's case though has always been that
16 Robert Lee Moore was the shooter of this man, Travis Hall.

17 I read to you the language of the indictment. The
18 indictment that they chose, the indictment that they
19 brought, that language was that Robert L. Moore did, in
20 Spartanburg County, on or about February 25th, 2013, with
21 malice aforethought, attempt to kill Travis Hall by shooting
22 him in the head. They never said in the indictment that
23 Robert Lee was an accomplice, that because someone else's
24 hand fired the bullet, that, under the theory of the hand of
25 one is the hand of all, when engaged in a common criminal

1 enterprise, that, therefore, Robert Lee Moore must be guilty
2 under that theory.

3 But that's what I believe Mr. Bulsa's gonna argue to
4 you today. Oh, well, well maybe we didn't prove that Robert
5 Lee Moore shot Travis Hall, but you should still find him
6 guilty. You should still find him guilty as a principal
7 because he aided and abetted.

8 That's not justice, ladies and gentlemen, and I submit
9 to you that one of the reasons that you're here today is to
10 do justice.

11 whose hand is it that they will say that Robert Lee
12 Moore is guilty under the hand of one is the hand of all
13 theory?

14 That hand, ladies and gentlemen, can be no other than
15 Tevin Thomas who I call Mon. They're going to say oh, well,
16 even if Mon did shoot Mr. Hall, Travis was there -- Robert
17 Lee was there helping and so you just ought to go ahead and
18 find him guilty. Yet, you see the hand that I submit to you
19 is the one who pulled the trigger that shot Travis Hall,
20 that hand was here in this courtroom, and it was attached to
21 a body that they had brought forth from the bowels of the
22 South Carolina Department of Corrections and dressed in a
23 shirt and tie to make him presentable.

24 And they have told you, laughably I submit to you, that
25 oh, we haven't talked about his charges or what's going to

1 happen to him. I'd submit to you, ladies and gentlemen,
2 that the hand that pulled the trigger is going to get a slap
3 upon it, a slap upon the hand. That's what's going to
4 happen here unless you say no.

5 In order to convict Robert Lee in this case, the State
6 has literally made a deal with the devil, a deal with Mon.
7 Mon.

8 Do you think that he came here and testified to you
9 because he wanted to do the right thing without
10 consideration for his future?

11 Ladies and gentlemen, that's an insult to your
12 intelligence. This is a man whose been convicted of crimes
13 of dishonesty, receiving stolen goods, obtaining property by
14 false pretenses, multiple burglaries in the second degree.

15 SOLICITOR BULSA: Your Honor, objection. That -- two
16 is not multiple.

17 MR. JOHNSTON: All right. I stand corrected. Merely
18 two burglaries.

19 I submit to you, ladies and gentlemen, that this man
20 does not know the truth from a lie when it comes to his
21 common interest.

22 When Travis Hall was first -- I mean when Mon was first
23 confronted by the police about what happened in this case,
24 what did he do?

25 He lied.

1 He lied in order to protect himself and what he says
2 was his friend Robert Lee Moore. The officer fusses at him
3 about it. Goes and get -- goes and gets the picture from
4 the Hot Spot. Probably something not that dissimilar to
5 this one here, Defendant's Exhibit 1.

6 There's good old Mon right there. Mon realizes, well,
7 as he told you, I knew they knew something. I knew they
8 knew something. So, within a few minutes of saying he don't
9 know nothing about nothing, he conjures up the totally,
10 totally different story. This time he says Robert Lee shot
11 Mr. Hall, but that Robert Lee did it in self-defense, and,
12 of course, Mon is careful, careful to keep himself out of
13 any guilty knowledge or any participation.

14 He tells another big lie. This time at least partially
15 throwing Robert Lee under the bus, but carefully keeping
16 himself out from under the path of the bus. Months go by.
17 Months go by. He says that six months ago his lawyer went
18 to the prosecution, told them of his willingness to now come
19 forward with the third tale he's told in this case, but he
20 does keep with one consistent theme, and that is to try to
21 minimize his own involvement, but he now admits that he
22 touched the car. He touched the car.

23 well, what happened between the time that he told his
24 second lie and the time that he sent his lawyer to talk to
25 the prosecutor?

1 He realized they had his fingerprints on Mr. Hall's
2 car.

3 So now we go from we knew or I knew they knew something
4 to I knew they had my fingerprints. This man told you,
5 admitted, in one of the truthful things that he said, I
6 don't like anything about prison. He's a man whose been to
7 prison and he doesn't like it. Most people do not like
8 prison. The food is bad. The sex is even worse.

9 From his own mouth, when talking about how, in his mind
10 he knew he faced up to 30 years in prison without parole,
11 his own words, excuse my language, ain't no mother fucking
12 way I can do that time. That's a long time. I'm not gonna
13 be able to do it. Captured on a jail recording.

14 His testimony, ladies and gentlemen, is based on an
15 expectation of reward. He knows what an accessory after the
16 fact is, he knows it's less serious, and he knows about time
17 running concurrent or running consecutive. I submit to you,
18 ladies and gentlemen, that what Mon is doing is positioning
19 himself to try to get the lesser charge of accessory after
20 the fact and have it run concurrent with the time that he is
21 already doing.

22 That, ladies and gentlemen, is not justice. He has
23 proven that he will lie when it is in his interest to do so.

24 What do you call somebody who lies when it will help
25 you?

1 A liar.

2 So what does that make you?

3 A liar.

4 From his own mouth, he is a self-proclaimed felon and
5 liar. You see the sole item on the menu that the solicitor
6 has served to you, the soup which waits in the pot for you,
7 has rancid meat in it. That rancid meat is Tevin Mon
8 Thomas.

9 Now, you can either swallow that soup, swallow that
10 piece of rancid meat with it or you can swallow part of the
11 soup and spit that rancid meat on the floor or you can say I
12 think I'll hold off on this particular bowl of soup right
13 here. I'm gonna send it back to the kitchen till they get
14 it right.

15 What have they proven in this case?

16 At most they have proven that Robert Lee was at the
17 scene of the crime at the time of the shooting of Travis
18 Hall. I submit to you -- and that he drove the car away
19 from that scene. I submit to you that that is more in line
20 with the role of an accessory after the fact than the role
21 of a principal who is there with knowledge of what's going
22 to happen. An accessory after the fact is someone who aids
23 the principal felon in getting away. Among other things.

24 On this hand of one hand of all, it's not the complete
25 problem solver that I think Mr. Bulsa's gonna argue to you.

1 oh, we didn't prove he shot him, but just find him guilty
2 anyway because hand of one, somebody shot him, he was there.
3 The judge is gonna instruct you, among other things, that
4 mere presence at the scene of a crime is not sufficient to
5 convict a person of a crime. Mere presence is not
6 sufficient to convict the person of a crime.

7 He's going to instruct you as follows:

8 Prior knowledge that a crime is going to be committed
9 without more is not sufficient to make the person guilty of
10 that crime. The mere knowledge that another person is going
11 to commit a crime, even if the defendant is present when the
12 crime is committed, is not sufficient to convict the
13 defendant as a principal. Guilt as a principal is shown by
14 actual or constructive presence, presence at the scene as a
15 result of a prior arrangement. The State must prove, beyond
16 a reasonable doubt by competent evidence, the theory of the
17 hand of one is the hand of all.

18 I submit to you that the evidence in this case is more
19 consistent with Robert Lee being an accessory after the fact
20 rather than being a principal. If you find him not guilty
21 today, they can still prosecute him for accessory after the
22 fact.

23 Now, let's talk about the other evidence in the case.
24 They found Robert's cell phone in the car where the victim
25 was shot. They also found that that phone was used to call

1 the victim's phone a couple of times shortly before this
2 whole incident.

3 There's at least one way that a cell phone is like a
4 gun, and that is that you can use somebody else's. I can
5 use somebody else's gun to shoot somebody. I can use
6 somebody else's cell phone to call somebody. I can carry
7 someone's cell phone with me and either, by mistake or by
8 design, I can leave it behind.

9 Mon didn't have a phone.

10 How do we know that?

11 Because he let something slip. He was talking about
12 them ditching the car. They were having a problem talking
13 about where they were going to ditch the car. Mon says that
14 they didn't ditch the car ultimately because they had no
15 phone. Without a phone they had no way to call anyone to
16 come pick them up because the only phone that they had
17 between them had been left behind.

18 So, if Mon didn't have his own phone, is it really a
19 stretch to think that he either used it to call this man or
20 that he had it in his hand and either, by mistake or by
21 design, Mon left it behind?

22 A lot of fingerprint evidence in this case. One of the
23 things they didn't fingerprint was that phone. We don't
24 know who touched that phone, but we do know they only had
25 one phone between them. So, I submit to you that Mon could

1 have easily been using and carrying Robert's phone.

2 The evidence shows that Mon, Tevin Thomas, is the
3 triggerman in this case. His fingerprints are on the
4 victim's car. His fingerprints are on the victim's car.
5 Not on -- not Robert Lee's. Robert Lee's fingerprints are
6 not on that car.

7 Now, Mr. Hall's fingerprints are not even on that car,
8 and that was a mystery to me for a little bit until I begin
9 to consider, excuse me, until I began to consider something
10 that Officer Arthur said, the fingerprint lady. She said
11 whether or not you can get prints off of something has to do
12 with, among other things, the cleanliness of the area sought
13 to be fingerprinted.

14 Well, we know that Mr. Hall would have touched his car.
15 The trunk, the roof, the hood, side, doors. But no prints
16 of his are found.

17 Is it because the car had just been washed?

18 Look at this car. The exterior of it is quite clean.
19 We don't know that it hasn't been -- that it was just
20 washed. But I submit to you its condition is consistent
21 with the exterior having been recently washed. So -- and a
22 lot of people are very particular about their cars. Put
23 accessories on them, clean them up, put stereos in them.
24 So, I submit to you that it's not unusual or it's not hard
25 to believe that Mr. Thomas -- Mr. Hall had recently washed

1 his car, and that the only touch he had was when he opened
2 his driver's door and got in. Notice no fingerprints found
3 on any of the handles, and certainly Mr. Hall had to get in
4 his car.

5 That leaves only the people who touched the car after
6 the car was washed, and who do we know touched that car
7 after it was washed?

8 Mon. Tevin Thomas.

9 He touches the back window with his left-hand. He
10 opens the door with his right-hand on the handle. That's
11 why his prints are there, and why Robert Lee's are not.

12 Now, they know Robert Lee's fingerprints. They found
13 Robert Lee's fingerprints all over that Chrysler 300. All
14 over it. Perhaps Robert was not as fastidious in the
15 cleanliness of the exterior of his vehicle as was Mr. Hall.

16 That brings me to the most important witness I submit
17 to you in this case, Mr. Chris Barnes. Mr. Chris Barnes, a
18 witness the defense had to bring to you, either because the
19 prosecution felt his testimony wasn't important enough or
20 because it wasn't consistent with what they wanted to build
21 in this case. Chris Barnes, a man with a job, a man with a
22 kid, a man without interest or -- in this case or without
23 knowledge of the parties in this case, as they say, no
24 friends to reward, no enemies to punish. Simply a man who
25 wants to tell what happened. A man who called 9-1-1. A man

1 who was scared even for his own safety, but still made
2 careful observations. A man who was at exactly the right
3 place and the right time to see what happened, but they
4 didn't bring him. We had to bring him.

5 A man who went to the Sheriff's Office to give a
6 statement because he thought they might be looking for the
7 wrong car, and let's, let's get this car business right out
8 of the way. Chrysler 300, Dodge Magnum, sister cars, made
9 by the same company. One's a wagon, hatchback type thing.
10 The other's a Sedan. But other than that, the same car.
11 Looked very similar. Easily confused. Dodge is part of
12 Chrysler. From even a modest difference -- distance they
13 would look the same.

14 Mr. Barnes works in the car business. So, I expect he
15 had -- at least has knowledge of what cars, various types of
16 cars that are on the market these days. Remember his
17 testimony. He said he locked eyes with the man that he saw
18 emerging from the passenger's side of Mr. Hall's car and
19 entering the passenger side of what he called the getaway
20 car. Emerging from the passenger, entering the passenger
21 side of the car.

22 He only saw the man from the neck up, but he knew it
23 was a young black male. But that really doesn't help us
24 here because Robert Lee is a young black male too.

25 What matters is that he was sure of what the man he

1 locked eyes with was wearing. A dark sweatshirt and a
2 toboggan, and not a red or orange sweatshirt. He saw no one
3 else and he saw no one wearing a red or orange sweatshirt.

4 Now, he criticized the quality of these photographs,
5 and I'll be the first to admit that when you're trying to
6 make a still from a video with just a regular computer it
7 doesn't turn out all that good. But I think, in fairness,
8 you can see that State's Exhibit 1, the man that they say is
9 Mon, is wearing a dark sweatshirt and a toboggan. Robert,
10 no hat, red sweatshirt -- reddish orange sweatshirt.

11 They had to wear red or orange out in the woods so
12 you'll be seen. It's a prominent color. This man looks
13 like he's trying to hide. Dark clothes, dark hat. This
14 man, bright red orange sweatshirt.

15 Now, these photos aren't that good. I, I agree with
16 you or I agree with Mr. Barnes about that. But we saw that
17 video. That video is clear. Mon is the man with the
18 toboggan and the dark sweatshirt. Robert is the one with
19 the red. Robert is the only one that approached the
20 counter. If you watch that video, Mr. Toboggan never goes
21 near the counter. Robert Lee goes to the counter. He
22 orders cigarettes, and gives his date of birth.

23 So, we know, ladies and gentlemen, this is Robert and
24 this is Mon. This is the shooter. This is the driver. If
25 Robert Lee was outside that car Mr. Barnes would have seen

1 him.

2 It is a tragedy what is happened to that man over
3 there. I'm the first one to admit that. You can not help
4 but have your heart go out to him and to his mother and to
5 the rest of his family as he suffers for the rest of his
6 life. I don't want to diminish that in anyway.

7 But it would also be a tragedy if the guilt and the
8 level of culpability for what happened to this man is
9 wrongly proportioned, and you, ladies and gentlemen, are the
10 only ones that can stop that.

11 Robert Lee has no burden of proof in this case. He
12 hasn't testified, which is his right. The judge will
13 instruct you that that is his right and that is not
14 something that you can consider or hold against him. In
15 fact, he's gonna tell you that you're not suppose to even
16 discuss or mention that in your deliberations.

17 That is because he, like any citizen of our country
18 when charged with a crime, is presumed innocence -- is
19 presumed innocent. The presumption of innocence has been
20 likened to a robe of righteousness that only falls away when
21 the State has proven every element of the crime beyond any
22 reasonable doubt.

23 Presumption of innocence, reasonable doubt, are those
24 just words?

25 Are they just legal theories?

1 I submit to you no, those are our fundamental birth
2 right as citizens of this country. They are the cornerstone
3 and the foundation of our criminal justice system. Back as,
4 as far as long ago as the 1700's, as the English legal
5 system was maturing into what would become our legal system,
6 there was a fellow by the name of Sir Reuben Blackstone who
7 wrote commentaries on the laws of England. One of the
8 things that he wrote about became known as Blackstone's
9 Formulation, and here it is.

10 Better that ten guilty persons escape than one innocent
11 suffer. That's why, based on our traditions and our laws,
12 we have the presumption of innocence and why we require
13 proof beyond any reasonable doubt.

14 Now, Mr. Bulsa gets to talk last, but in order for our
15 system to work you should question what he says.

16 Have they proven, beyond reasonable doubt, that the
17 cell phone was left by Mon?

18 Have they proven, beyond a reasonable doubt, that it
19 wasn't Mon who made the calls on Robert Lee's phone?

20 Have they proven, beyond a reasonable doubt, that
21 Robert Lee shot this man?

22 Isn't the objective evidence of the fingerprints and
23 that of the eye witness, Mr. Barnes, more consistent with
24 the defense's theory?

25 Last but not least, isn't the State's whole case based

1 on a man who is a convicted felon and a, by
2 self-proclamation, a liar?

3 I submit to you, ladies and gentlemen, that there is
4 more than some reasonable doubt in this case. I submit to
5 you that there is a gracious plenty of reasonable doubt in
6 this case, and the judge will instruct you that, if you find
7 there is any reasonable doubt, that it will be your sworn
8 duty to find Robert Lee Moore not guilty, and that's what I
9 ask you to do, is to find him not guilty cause, ladies and
10 gentlemen, that's what he is. Not guilty.

11 Thank you for your attention.

12 THE COURT: Thank you, Mr. Johnston.

13 Solicitor.

14 SOLICITOR BULSA: Thank you, Your Honor.

15 I want to take you back to my opening statement. I
16 told you that we were gonna build a case for you. We were
17 gonna present lay witnesses and police investigation. We
18 were gonna bring physical evidence to you, but I didn't tell
19 you about Tevin Thomas. I did not tell you about Tevin
20 Thomas. I deliberately did not tell you about Tevin Thomas
21 because I believe the case would be proven with the physical
22 evidence and the lay witness testimony that we were gonna
23 present to you.

24 Tevin Thomas came second. He was the last witness we
25 called, and he confirmed what the physical evidence shows

1 you. It confirms the investigation.

2 Sure he gave two different statements to the police,
3 but what was he doing?

4 He was trying to save his own neck, help himself, and
5 save his friend's neck. His friend. His friend. His
6 friend. He didn't know this man. He had no reason to call
7 him. This man knew him. Mr. Hall use to date his cousin.
8 He knew him. He set up the deal. He made at least five
9 calls. Not just a couple of calls. He made multiple calls
10 to Travis Hall. His phone made multiple calls to Travis
11 Hall. The physical evidence, the police investigation puts
12 two people at that scene.

13 The monkey in the room, the elephant in the room,
14 whatever, however you want to call it, is this cell phone.
15 I submit to you the man whose cell phone this is is the
16 shooter. That is how we present this case.

17 We have fingerprints on the outside of the window
18 putting Mr. Thomas there, and we have a cell phone in a
19 remarkable spot inside the vehicle. Mr. Johnston wants you
20 to just dismiss that cell phone's location being there oh,
21 Mon, must of had it. Tevin Thomas must of had it.

22 Use your common sense. Please use your common sense.
23 I think that was in the Judge's opening charge to you is
24 that you're going to weigh the evidence using your common
25 sense. Use your collective life experiences, your

1 individual God given common sense as you weigh the evidence.

2 Now, we presented initially some lay witnesses to you.
3 we called Travis' mom to let you know he got a phone call.
4 More than one actually, but it was from somebody he knew,
5 and an arrangement had been made and this meeting was set
6 up. But she didn't know exactly where they were gonna meet.
7 she knew he was gonna go somewhere.

8 She told you about his injuries and that's true. You
9 can see him right there. It's a horrible crime that
10 occurred in a public place, which is horrific in itself.

11 But then we brought in the initial officer to give you
12 a description and how he was found hanging, literally
13 hanging from his car, and that officer cut the, the strap
14 there, laid him on the ground, see if he could treat him,
15 and take him to the hospital, and remarkably he lived, and
16 then, when the police began processing the car, he talked
17 about the location of the phone and what they find.

18 They find two phones out in the open and they later
19 find a third phone between the seats. So, that's real
20 unusual. They said maybe somebody left that phone that had
21 some information about it.

22 what happened?

23 So, let's see whose phones those belong to. So, they
24 give it to their forensic man, Mr. McGraw. He runs his
25 tests. He -- in fact, all he really does is open them up

1 and check the phone numbers, and then, based on information
2 that the police note from public records and all, they know
3 that phone number belonged to Mr. Moore. Mr. Moore's at
4 least a person of interest. Let's try to find Mr. Moore.

5 what kind of car does Mr. Moore drive?

6 Oh, he just happens to drive the kind of car that the,
7 that the witnesses say left the scene. Ms. Hughes said a
8 Chrysler 300. Mr. Tullock said a Chrysler 300. That's
9 information -- that's the type they're looking for. So they
10 look for Mr. Moore. They find his car in Lake View Manor.
11 Then they don't find him. No sign of him.

12 Should we just disregard the fact that the police were
13 looking for Robert Moore for 11 days and he conveniently
14 turns himself in?

15 That you can use, ladies and gentlemen, shows some
16 indicia of guilt, consciousness of guilt. It's like he fled
17 the area. He's away from the police. They're looking for
18 him all where they think he is. They don't find him.
19 Please don't forget about that. They find Tevin Thomas the
20 next day.

21 So, they start their investigation with the phones.
22 They realize one's Mr. Moore's and the other two are Mr.
23 Hall's. They look to see what kind of contacts were made
24 between them, and you'll have all this in the jury room. We
25 showed them on the screen you remember.

1 This phone called Travis' phone five times that day.
2 The first time at 1:03, then at 1:32, then at 1:48, and then
3 at 2:01, then at 2:06, and 9-1-1 was called around 2:10,
4 2:13, somewhere in that timeframe.

5 Okay. And then, of course, they take the Impala and
6 then they fingerprint it. I want to use this overhead for
7 part of my closing argument cause I think there's some
8 things you need to see. They take it and they fingerprint
9 it thinking maybe they'll be some evidence of somebody
10 touching that car.

11 The police essentially have this case solved in a, in a
12 couple of days as to who was present at the scene of the
13 crime. They didn't have a full understanding of what
14 actually happened, but they knew a man got shot.

15 Mr. Johnston talks about the fingerprints and it's
16 true. The fingerprints were on this car, but it wasn't, and
17 this was important and I went over it with Ms. Arthur, it
18 wasn't a single imprint, okay, in an opening of the door.
19 It was a series of touches as in he's looking trying to
20 figure out what's going on in the car.

21 Well, his plan was, remember, for him to get in the car
22 and steal dope and leave. Well, something goes wrong.
23 Travis doesn't give it up easy. That's why Tevin comes
24 around the car to see what's going on.

25 We know the two cars are parked side-by-side, and it's

1 this back window where all the fingerprint are. The tapes
2 represent locations of the fingerprints. But you can then
3 go further and look at the print cards that Investigator
4 Talanges collected and gave to Ms. Arthur.

5 So these two potentially go together over there near
6 the door frame. This one's actually over here on the door.
7 This one's above it. Let's put it this way. And then these
8 three are potentially tested four times. At least three
9 based on the positioning of the exhibits.

10 okay. So, it's not a single touch. It's more
11 consistent with what he described to you, ladies and
12 gentlemen, where he gets out and is touching it before he
13 got in.

14 The police had that kind of car initially, began
15 looking for the car so they'd be -- part of their
16 investigation was to look for video. Let's see if we can
17 find some video of the car in the area. Let's see if we can
18 find who was in the car, and next they say well, they got
19 the Hot Spot, which was what less than two miles I think
20 Investigator Gary said, which is basically right around the
21 corner down Blackstock Road from the Taco Bell, and yes, we
22 see Tevin -- I mean Travis, excuse me, Tevin Thomas in black
23 and you see the defendant in red.

24 I suggest they pulled off to avoid the police track
25 coming down the road cause they were there about five

1 minutes or so just to buy a pack of cigarettes and a bag of
2 potato chips, and then the police find the car as it drives
3 a couple other places on a couple other videos, and then
4 they locate it in Linville Hills. Excuse me. Not
5 Linville -- in Lake View Manor.

6 So, they locate the car. Fingerprint identified Tevin
7 Thomas. The phone identifies Robert Moore. The physical
8 evidence, ladies and gentlemen, is clear and clearly shows
9 that the shot occurred from inside, and I don't want to
10 insult your intelligence, but it's important to make this
11 point cause that's why Mr. Johnston has to explain away the
12 phone. He's trying to explain away the phone and being
13 inside the car because the shots clearly came from inside
14 the car.

15 So, whoever got in the car is the guy who pulled the
16 trigger, and he tells you that I was going to stand up here
17 and argue about the hand of one. I'm not gonna argue that,
18 but that's a point of law that's applicable to this case.
19 I'm arguing to you that he's the shooter. He got in that
20 car. He struggled with Mr. Hall. He left his cell phone.
21 He pulled the trigger. He got out, just scooted right back
22 into his driver's seat, and sped away.

23 who set up the meeting?

24 who knew the victim?

25 It's all him.

1 I can't sit here and hide Tevin Thomas from you. Yes,
2 he's a convicted felon. Yes, he's serving time. But we
3 bring him into Court and we put him in appropriate clothes
4 so he could sit here and swear like he swore when he signed
5 his statement and he talks to you and he tells you what
6 happened. That's the reason we have Court systems is so
7 you, ladies and gentlemen, can judge his credibility and
8 decide if you believe him.

9 I submit to you that he held his composure remarkably
10 well, his demeanor was more than appropriate, and his
11 answers were consistent with what the police had
12 investigated and what the physical evidence showed. He
13 confirmed, he confirmed the investigation. He confirmed
14 this man pulled the trigger.

15 Now here's where the hand of one comes in. If you want
16 to throw his testimony out, and just look at what the
17 State -- the other evidence the State presented to you, you
18 can believe that this case, this shooting, involved two
19 people cause two people were there. Two people knew of the,
20 knew of the plan. Two people knew of the phone calls. Two
21 people drove to the location, the incident occurred, and two
22 people fled the location.

23 It wasn't just accessory after the fact. There's
24 knowledge and arrival, presence, the crime, then the
25 fleeing, the ditching of the car, the flight from the area

1 for 11 days. That's where the hand of one is the hand of
2 all comes in. It means the State technically does not even
3 have to prove who pulled the trigger. We don't cause if two
4 people are acting in concert to commit a crime, it doesn't
5 matter which of them pulled the trigger. It's as if one
6 hand was the other hand.

7 The language of the statute reads or of the indictment
8 reads like that cause that's the way Tevin Thomas is reached
9 too. It's because of the hand of one is the hand of all.
10 It's that, it's that point of the law that says the State
11 technically doesn't have to prove the triggerman because
12 they're all held to the same standard. They're all guilty.
13 That's where the hand of one comes in.

14 But I submit to you that Tevin was believable on the
15 stand. He had reasonable explanations, explanations for why
16 he lied to the police. Use your common sense. He was
17 trying to protect himself. He was also trying to protect
18 his friend and Mr. Johnston talked about his statements. He
19 didn't introduce, he didn't introduce Tevin's statements. I
20 don't know why, but you won't actually have the written
21 copy.

22 MR. JOHNSTON: Your Honor?

23 Your Honor, I have a matter of law or at least approach
24 the bench.

25 (WHEREUPON, a bench conference was held out of the

1 hearing of the jury at this time.)

2 THE COURT: Ladies and gentlemen of the jury, I have a,
3 a matter to take up outside of your presence of this
4 matter -- of this minute. So, do not begin deliberating
5 this matter at this time. Please do not begin deliberating
6 at this time.

7 Madam Forelady, will you take everybody out?

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 MR. JOHNSTON: You want us to come, come up?

11 THE COURT: (Nods affirmatively.)

12 MR. JOHNSTON: Yes, sir.

13 (WHEREUPON, a bench conference was held at this time.)

14 THE COURT: You ready?

15 COURT REPORTER: Yes, sir.

16 THE COURT: Okay. Mr. Johnston, you need to put your
17 motion on the record here because you were at the side bar.
18 I want to protect you.

19 MR. JOHNSTON: Yes, sir. Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 MR. JOHNSTON: May it please the Court.

22 It is my belief that what I think the solicitor said
23 was he was referencing some statements and he said something
24 to this effect. I don't know why he didn't, he meaning me,
25 didn't introduce those statements referencing the two

1 written statements. I don't know why he didn't introduce
2 them I think is what was said. The court reporter will
3 correct me if I'm wrong.

4 Your Honor, I would argue to the Court that that is an
5 improper burden shifting comment. I'm not asking for a
6 mistrial. I'm merely asking that the Court ask or instruct
7 the jury to disregard that comment. That's all I'm asking.

8 THE COURT: Okay. Those statements are in evidence.

9 MR. JOHNSTON: No, sir, they're not.

10 SOLICITOR BULSA: No, sir.

11 THE COURT: They're not in evidence?

12 SOLICITOR BULSA: No, sir.

13 MR. JOHNSTON: No, sir, they've been talked about, but
14 they're not actually in evidence. They've been marked for
15 identification.

16 THE COURT: Okay.

17 MR. JOHNSTON: The jury will not see them.

18 THE COURT: Okay.

19 MR. JOHNSTON: So what's, what's happened here is that
20 he's introduced the specter that there's something that I'm
21 keeping from them by not introducing all of them.

22 THE COURT: Okay.

23 MR. JOHNSTON: By not introducing them when we have no
24 burden of proof to introduce anything.

25 THE COURT: True.

1 All right. And, and you are asking for a curative
2 instruction, which I wrote one here. You will disregard any
3 comment by the prosecutor as to why or why not defense
4 counsel did or did not introduce any witness statement.

5 MR. JOHNSTON: And perhaps, from an abundance of
6 caution, you might consider adding there, I know you'll do
7 this in your final, but perhaps again reminding the jury
8 that the defendant has no burden of proof, that all the
9 burden of proof is upon the State.

10 THE COURT: Oh, yes, I'm gonna do that.

11 MR. JOHNSTON: All right, sir.

12 THE COURT: In fact, in fact, just so -- well let me
13 hear from the solicitor.

14 MR. JOHNSTON: Yes, sir.

15 SOLICITOR BULSA: Your Honor, the reason I even went
16 into this area, it wasn't in my original argument, is that
17 Mr. Johnston's closing argument he referenced those
18 statements, and he told the jury that Mr. Thomas said, in
19 the second statement, that Mr. Moore shot the victim. That
20 is not in either of those statements. He did not put a gun
21 in Mr. Moore's hand.

22 That was the point I was making in my re, redirect of
23 Mr. Thomas in that he was still trying to help the defendant
24 in his second statement. He didn't put a gun in his hand,
25 and Mr. Johnston's got this jury thinking he did.

1 MR. JOHNSTON: And I don't have any problem if he wants
2 to say that. The only problem I have is when he says why
3 didn't Mr. Johnston introduce the statements, I don't know
4 why he didn't. I don't have any problem if he wants to
5 argue what he just told you.

6 THE COURT: Okay. All right. Well, for the record
7 here, the Court read the case of State versus Cowan,
8 C-O-W-A-N, it's a 2005 Court of Appeals case, as well as all
9 the instructive language contained therein in Douglas v.
10 State, which is at 332 S.C. 67, 1998. So, I will grant your
11 motion as to a curative instruction. Also I had already
12 intended to emphasize to the jury, as I always do, that the
13 defendant has a right not to testify and that all burden
14 remains with the State at all times.

15 So, does that satisfy the defense?

16 MR. JOHNSTON: Yes, sir, that would satisfy it.

17 THE COURT: Mr. Bulsa.

18 SOLICITOR BULSA: Yes, sir, but I still think that the
19 premise of law is once they put up the case, I can comment
20 on their lack of putting in evidence since they undertake
21 the defense.

22 THE COURT: I call your attention to Douglas v. State,
23 332 S.C. 67, 1998. Very instructive on that.

24 SOLICITOR BULSA: Yes, sir.

25 May I have that again, Your Honor?

1 THE COURT: Yes, sir. Douglas v. State, 332 S.C. 67,
2 1998.

3 SOLICITOR BULSA: Thank you.

4 THE COURT: Anything further before we bring the jury
5 back?

6 MR. JOHNSTON: No, sir.

7 THE COURT: Okay. Let's have our jury.

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: Thank you, Your Honor.

11 Madam Forelady, and ladies and gentlemen of the jury, I
12 instruct you that you will disregard any comment by the
13 prosecutor as to why or why not defense counsel did or did
14 not introduce any witness statement, and I will remind you
15 further, in my closing instructions to you and my charge,
16 that the burden remains at all times on the State to prove
17 the defendant's guilt beyond a reasonable doubt and must
18 prove each and every allegation contained in the indictment,
19 indictment beyond a reasonable doubt.

20 Anything from the State?

21 SOLICITOR BULSA: No, sir.

22 THE COURT: Anything from the defense --

23 MR. JOHNSTON: No, sir.

24 THE COURT: -- as to that issue?

25 All right. Mr. Bulsa, please continue.

1 SOLICITOR BULSA: Thank you.

2 Sorry for that, ladies and gentlemen, but I was talking
3 about the defense attorney's attempt to discredit Tevin
4 Thomas, and when he did that, in his cross-examination, he
5 used the two statements that Mr. Thomas wrote to the police,
6 and he argued to you that Mr. Thomas, Mr. Thomas put a gun
7 in his hand. Mr. Thomas never put a gun in his hand until
8 he came and testified.

9 He did in our conversations preparing to testify, but
10 on the first statement he said they weren't there. Neither
11 one of them was there. He was protecting a friend. The
12 second statement he says Moore got in the car, but then the
13 victim assaulted him. There's no discussion as to how the
14 shot occurred. He never put a gun in his hand. He was
15 protecting a friend.

16 Mr. Johnston wants to use those statements to call Mr.
17 Thomas a liar, but look at what else he's doing. He's
18 protecting a friend.

19 So, why, you ask the State, why did you even call Mr.
20 Thomas?

21 Because he approached his lawyer. He wanted to tell
22 the truth. He wanted to clear his conscious. He wanted to
23 tell what happened to this poor man and how he got shot.
24 So, we meet with him, we put him on the stand, and we'll let
25 you decide. You decide.

1 Does it fit the evidence?

2 Does it fit the evidence?

3 I submit to you that it does. It does.

4 So then we look at Mr. Barnes.

5 why didn't you call Mr. Barnes, solicitor?

6 Because Mr. Barnes, I'm not saying he didn't tell the
7 truth, but he embellished it a little bit. He drew this
8 little diagram and he's watching him -- what happens as he's
9 driving by. He doesn't stop and sit there and observe it.
10 He's got his attention on driving. He sees a car moving.
11 He's continuing to drive. He hears a noise and sees the
12 door opened. I didn't know if he sees the door, but he sees
13 the victim hanging out the, the side of the door. So, he's
14 continuing to drive.

15 The car, we know, ladies and gentlemen, the Chrysler is
16 on the opposite side of this. He says he sees the man in
17 black. He uses the word emerge, which is an unusual word.
18 He doesn't use get out of the car. He uses emerge from the
19 passenger side.

20 well, if Mr. Thomas is looking in the car trying to get
21 his friend to stop and he stands up and runs around the car,
22 that's consistent.

23 Okay. But the way he writes it and talks about it, Mr.
24 Johnston questions him, he wants you to believe that he
25 actually saw him get out of the car, and, therefore, he's

1 the shooter.

2 That's not what he saw. I told you, in that -- at the
3 beginning of my opening statement and my closing argument
4 it's all about prospective.

5 where are they where he could see?

6 We couldn't rely on Mr. Barnes to prove that Tevin
7 Thomas was the shooter. We can rely on him to put him at
8 the scene, but we've got that. There's no need to call him
9 and have him testify especially a man who left the scene and
10 was afraid for his own life. He thought he was seen. He
11 told you, when I, when I first approached him, he was
12 afraid. He didn't want to testify. So, we decided not to
13 have him testify. But the defense calls him. They then --
14 then they want to use him to prove that Tevin Thomas is the
15 shooter.

16 That's not what he saw. He saw Mr. Thomas leave the
17 car just like Tevin Thomas told you. Tevin Thomas'
18 fingerprints are on the back window in multiple places as if
19 he's looking in the car just like he testified.

20 This is your shooter. This is your shooter. He left
21 his phone in the car because -- during the struggle.

22 How did it get way over on that side?

23 He struck him with it. It's, it's not a plant. Not a
24 conspiracy. It's human nature. You want to help yourself
25 and, of course, Mr. Thomas wants to help himself. But he

1 put hisself before you, ladies and gentlemen, for you to
2 judge his credibility. But remember how he talked to the
3 police and what he told the police about how he testified.

4 We don't get our witnesses from the local Baptist
5 Church. Sometimes we have to rely on acquaintances. Wow,
6 that's pretty good. Never seen that before. On
7 acquaintances of people on trial.

8 Mr. Thomas' fingerprints where he told you. Mr.
9 Moore's phone's in the car. Mr. Moore had a connection.
10 Mr. Moore made the phone calls. Mr. Moore drove the car.
11 Mr. Moore got out and got in and made to complete the plan,
12 and it didn't quite go right. He used the gun. He got the
13 revolver leaving no shell casing, and he drove the car away.
14 He ditches the car, and then he's absent for 11 days. All
15 that adds up to proof. You should be firmly convinced that
16 this is the man.

17 I'm asking you to convict him for Mr. Hall's sake, for
18 Spartanburg County's sake, for this community. This man
19 shot Travis Hall, and he is guilty of attempted murder.

20 Thank you.

21 THE COURT: Thank you, solicitor.

22 Madam Forelady, and ladies and gentlemen of the jury,
23 you have now, you have now seen all and heard all the
24 testimony and the closing arguments of counsel, and it is,
25 at this point, that I charge you on the law in this case.

1 Mr. Robert Lee Moore is sitting before you charged with
2 the offense of attempted murder. Specifically, the State
3 alleges that Robert Lee Moore did, in the County of
4 Spartanburg, State of South Carolina, on or about
5 February 25 of 2013, with malice aforethought, attempt to
6 kill Travis Hall by shooting him in the head in violation of
7 State Law.

8 Now, Madam Forelady and ladies and gentlemen, you have
9 seen and heard all of the evidence presented, the arguments
10 of the counsel, and now I tell you what the law is. It is
11 your exclusive duty to determine what the facts are in this
12 case. You do that based on your own common sense
13 examination and evaluation of the testimony and other
14 evidence received during the trial of this case.

15 You 12 jurors alone will decide what effect, value, and
16 weight to be given to any particular testimony or other
17 evidence received. Quite simply, your ultimate goal is to
18 find the truth in this case, and by doing so, you will have
19 fulfilled your obligations as jurors in giving both the
20 State and the defendant a fair and impartial trial based on
21 the evidence presented and the law applicable to this case.

22 Again, the indictment has charged the defendant with
23 attempted murder of, of -- the defendant, Robert Lee Moore
24 with -- Robert Lee Moore with attempted murder on or about
25 February 23 of 2000 -- on or about February 25 of 2013. I

1 remind you that the fact that the defendant was arrested,
2 charged, and indicted in this case is not evidence in this
3 case and can not be considered by you as evidence of his
4 guilt. The indictment is simply the formal written
5 instrument which contains the charge made against him, and
6 it is the document that brings the case before the Court.

7 The defendant has entered a plea of not guilty to the
8 indictment, and that plea of not guilty puts the burden on
9 the State to prove the defendant guilty. A person charged
10 with committing a criminal offense in South Carolina is
11 never required to prove himself innocent.

12 I charge you that it is a cardinal, important, and
13 vital rule of law that, in a criminal trial, no matter what
14 the seriousness of the charge may be for which he stands
15 charged, the defendant will always be presumed to be
16 innocent of the crime for which the indictment was issued
17 unless guilt has been proven by evidence satisfying you of
18 that guilt beyond a reasonable doubt. This presumption of
19 innocence does not end when you begin your deliberations,
20 but it accompanies him throughout the trial and until you
21 reach a verdict of guilt based on evidence satisfying you of
22 that guilt beyond a reasonable doubt.

23 The presumption of innocence is like a robe of
24 innocence placed about the shoulders of the defendant which
25 remains with him from the moment of his arrest and continues

1 until it has been stripped from his shoulders by evidence
2 satisfying you of his guilt beyond a reasonable doubt. The
3 presumption of innocence is not a mere legal theory nor a
4 mere legal phrase. It is a substantial right to which every
5 defendant is entitled unless you 12 jurors are satisfied
6 from the evidence of his guilt beyond a reasonable doubt.

7 I remind you that, during this trial, you and I have
8 certain duties to perform. As the trial judge, it is my
9 responsibility to preside over this trial and I also have
10 the duty to rule on admissibility of evidence offered during
11 the trial. You are to consider only the evidence before
12 you. If there were any evidence or testimony ordered
13 stricken from the record in this case during the trial you
14 must disregard it. You are to consider only the testimony
15 which has been presented from the witness stand, the
16 exhibits which have been made apart of the record, and any
17 stipulations of counsel.

18 I have the additional duty to charge you the law in
19 this case, and as the presiding judge I am the judge, sole
20 judge of the law of this case and it is your duty, as
21 jurors, to accept and apply it as I now state it to you.

22 If you already have any idea as to what the law is or
23 what the law ought to be or what the law should be, and it
24 does not agree with what I now tell you the law is, you must
25 abandon your idea because you are sworn to accept the law

1 and apply it exactly as I state it to you.

2 In every case tried in this Court before a jury, the
3 jury becomes the sole and exclusive judge of the facts in
4 this case. A trial judge can not intimate, state, comment
5 on, or make any statement to a trial jury about the facts in
6 a case. You, the jury, are the sole judge of the facts and
7 you are not to infer from anything that I have said, I have
8 said during the progress of this trial in ruling upon
9 admissibility of evidence or otherwise or anything that I
10 now say to you during the course of my instructions that I
11 have an opinion about this case. The law of South Carolina
12 does not allow me to have an opinion about the facts of this
13 case. This is a matter solely for you, the jury, to
14 determine. The jurors -- as jurors, it is your duty to
15 determine the effect, value, weight, and truth of the
16 evidence presented during the trial.

17 The State has the burden of proving the defendant
18 guilty beyond a reasonable doubt. Ladies and gentlemen,
19 proof beyond a reasonable doubt is proof that leaves you
20 firmly convinced of the defendant's guilt. There are few
21 things in this world that we know with absolute certainty,
22 and, in criminal cases, the law does not require proof that
23 overcomes every possible doubt.

24 A reasonable doubt may also be described as the kind of
25 doubt that would cause a reasonable person to hesitate to

1 act. If you have such a doubt as to the guilt of the
2 defendant, then he would be entitled to a verdict of not
3 guilty. Reasonable doubt may arise from evidence which is
4 in the case or from the absence or lack of evidence in the
5 case. If, based on your consideration of the evidence, you
6 are firmly convinced that the defendant is guilty of the
7 crime charged, you must find him guilty. If, on the other
8 hand, you think there is a real possibility that he is not
9 guilty, you must give him the benefit of the doubt and find
10 him not guilty. You alone must make the determination of
11 whether or not reasonable doubt exists as to the guilt of
12 the defendant.

13 There are two types of evidence which are generally
14 presented during a trial, direct evidence and circumstantial
15 evidence. Direct evidence is the testimony of a person who
16 claims to have actual knowledge of a fact such as an eye
17 witness. It is evidence which immediately establishes the
18 fact to be proven.

19 Circumstantial evidence is proof of a chain of facts
20 and circumstances indicating the existence of a fact. It is
21 evidence which immediately establishes collateral facts from
22 which the main fact may be inferred. Circumstantial
23 evidence is based on inference and not on personal knowledge
24 or observation.

25 The law makes absolutely no distinction between the

1 weight or value to be given to either direct or
2 circumstantial evidence nor is a great degree of certainty
3 required of circumstantial evidence than of direct evidence.
4 You should weigh all of the evidence in this case, and after
5 weighing all of the evidence, if you are not convinced of
6 the guilt of the defendant beyond a reasonable doubt you
7 must find the defendant not guilty.

8 I further instruct you and emphasize that the fact that
9 the defendant did not testify is not a factor to be
10 considered by you in anyway in your deliberation and in your
11 consideration of the question of guilt or the innocence of
12 the defendant. It must not be considered by you in any
13 manner whatsoever. A defendant has the Constitutional right
14 to remain silent and the assertion of this right must not be
15 considered by you in your deliberations.

16 I repeat, ladies and gentlemen, under your oath, you
17 are to draw no conclusion whatsoever from the fact that the
18 defendant in this case did not testify. The fact that this
19 defendant did not testify should not be discussed in the
20 jury room. The burden of proof, as I have stated to you, is
21 on the State of South Carolina. The defendant is not
22 required to prove his innocence. The burden of proof
23 remains on the State to prove guilt beyond a reasonable
24 doubt.

25 Under the Constitution of South Carolina you are the

1 finders of facts in this case, and necessarily you must
2 determine the credibility of witnesses who have testified.

3 Credibility simply mean believability. It becomes your
4 duty, as jurors, to analyze and to evaluate the evidence and
5 determine which evidence convinces you of its truth.

6 In determining the believability of witnesses who have
7 testified, you may believe one witness over several or
8 several witnesses over one. You may believe a part of the
9 testimony of a witness and reject the remaining part of the
10 same testimony. You may believe the testimony of a witness
11 in its entirety or reject the testimony of a witness in its
12 entirety.

13 You may consider whether any witness has exhibited to
14 you any interest, bias, prejudice, or other motive in this
15 case. You may also consider the appearance and manner of a
16 witness while he or she was on the witness stand. Was the
17 witness straightforward in answering questions or hesitant
18 in responding. Simply put, ladies and gentlemen, do you
19 believe the witness was telling the truth. You may consider
20 how the witness came to know the facts to which he or she
21 testified and whether or not the witness had an opportunity
22 to hear, observe, or perceive a fact by means of their
23 senses. Whatever your good judgment and common sense tells
24 you is the most believable testimony is the testimony that
25 you should accept and reject that testimony which you find

1 not to be credible or believable.

2 The rules of evidence ordinarily do not permit a
3 witness to testify to opinions or conclusions. An exception
4 to this rule exists for witnesses we call expert witnesses.
5 A witness who by education and experience has become expert
6 in some art, science, profession, or calling may state an
7 opinion as to relevant and material matter in which that
8 witness claims to be an expert and may also state the
9 reasons for his or her opinion.

10 You should consider any expert opinion received in this
11 case like any other evidence and give it the weight that you
12 think it deserves. If you decide that the opinion of an
13 expert witness is not based on sufficient education and
14 experience or if you conclude that the reasons given in
15 support of the opinion are not sound or that the opinion is
16 outweighed by other evidence, you may disregard the opinion
17 entirely. An expert witness' testimony is to be given no
18 greater weight than that of other witnesses simply because
19 the witness is an expert. Further, you are not required to
20 accept the expert's opinion even though it is not
21 contradicted.

22 Again, I remind you that by the same Constitution that
23 makes you the finders of the facts makes me the sole and
24 only instructor in the law, and you must accept the law that
25 I charge you and apply it to the evidence as you find it.

1 Please put away any conceptions that you may of had about
2 the law before coming here to do (sic) and accept the law as
3 I instruct it to you.

4 Criminal intent is a necessary element of each crime
5 that must be proved by the State beyond a reasonable doubt.
6 Criminal intent is always a matter that must be determined
7 by the jury from the circumstances surrounding the
8 situation.

9 There is no way to prove intent to a mathematical
10 certainty. There is no way medical science can dissect a
11 person's brain and determine what he had in mind. So, the
12 law says that criminal intent may be inferred from the
13 circumstances shown to have existed, and this is how a jury
14 makes a determination of whether or not the element
15 requiring intent was present.

16 Criminal intent is a state of mind which operated
17 jointly with an act is the commission of a crime. Criminal
18 intent is a mental state, a conscious wrongdoing. So it is
19 up to you, the jury, to determine what the, what the
20 defendant intended to do based on the circumstances shown to
21 have existed. I tell you that the State must prove criminal
22 intent beyond reasonable doubt just as the State must prove
23 every element beyond a reasonable doubt as previously
24 explained.

25 It is not necessary to establish intent by direct or

1 positive evidence, but intent may be established by
2 inference in the same way as any other fact by taking into
3 consideration the acts of the parties and all the facts and
4 circumstances of the case. While the State may prove
5 motive, it is unnecessary for the State to do so, but the
6 State must prove intent.

7 I have instructed you that the defendant is charged
8 with the offense of attempted murder, and I will now read to
9 you in part Section 16-3-29 -- 0029 of the South Carolina
10 Code of Laws which says:

11 A person who, with intent to kill, attempts to kill
12 another person with malice aforethought, either expressed or
13 implied, commits the offense of attempted murder. Malice is
14 hatred, ill will, or hostility towards another person. It
15 is the intentional doing of a wrongful act without just
16 cause or excuse and with an intent to inflict an injury or
17 under circumstances that the law will infer an evil intent.

18 Malice aforethought does not require that the malice
19 exist for any particular time before the act is committed,
20 but malice must exist in the mind of the defendant just
21 before and at the time of the act is committed. Therefore,
22 there must be a combination of the previous evil intent and
23 the act.

24 Malice aforethought may be expressed or inferred.
25 These terms expressed and inferred do not mean different

1 kinds of malice, but merely the manner in which the malice
2 may be shown to exist. That is either by direct evidence or
3 by inference from the facts and circumstances which are
4 proved.

5 Express malice is shown when a person speaks words
6 which express hatred or ill will for another or when the
7 person prepared beforehand to do the act which was later
8 accomplished. For example, lying in wait for a person or
9 any other acts of preparation going to show that the deed
10 was within the defendant's mind would be express malice.
11 Malice may be inferred from conduct showing a total
12 disregard for human life.

13 Under the hand of -- under the hand of one the hand of
14 all theory, one who joins with another to accomplish an
15 illegal purpose is liable criminally for everything done by
16 his confederate incidental to the execution of the common
17 design and purpose. A principal in a crime is one who
18 either actually commits the crime or who is present aiding,
19 abetting, or assisting in the commission of the crime. When
20 two or more persons aid, abet, and encourage each other in
21 the commission of a crime all being present, each is guilty
22 as a principal.

23 Prior knowledge that a crime is going to be committed
24 without more is not sufficient to make a person guilty of
25 that crime. The mere knowledge that another person is going

1 to commit a crime, even if the defendant is present when the
2 crime is committed, is not sufficient to convict the, the
3 defendant as a principal. Guilt as a principal is shown by
4 actual or constructive presence at the scene as a result of
5 prior arrangements. The State must prove, beyond a
6 reasonable doubt by competent evidence, the theory of the
7 hand of one is the hand of all.

8 A principal in a crime is one who either, in person,
9 perpetrates the crime or who being present aids, abets, and
10 assists in the commission of that crime. When a person does
11 an act in the presence of and with the assistance of
12 another, the act is done by both. Where two or more acting
13 with a common design or common intent are present at the
14 commission of a crime, it matters not by whose immediate
15 agency that crime is committed because all would be guilty.
16 The hand of one is the hand of all.

17 Present means to be sufficiently near to aid and abet
18 and assist in the commission of the crime. However, mere
19 presence at the scene is not sufficient to convict one as a
20 principal under the theory of aiding and abetting. Intent
21 is also a necessary element for there must have been a
22 common design or intent to commit the crime and the crime
23 must have been committed pursuant thereto with a person
24 aiding and abetting by some overt act.

25 Intent may be shown by acts and conduct of the

1 defendant and other circumstances from which you may
2 naturally and reasonably infer intent. If two or more
3 combined together to commit an unlawful act, and in the
4 execution of that criminal act a homicide is committed by
5 one of the actors as a probable or natural consequence of
6 the act done in pursuance of the common design, all present
7 participating in the unlawful undertaking are as guilty as
8 the one who can -- who committed the fatal act. The law is
9 that if a crime is committed by two or more persons who are
10 acting together in the commission of an offense, the act of
11 one is the act of both or all if there are more than two.

12 By way of illustration, two people can be guilty of
13 killing another or murder when only one of the two had a
14 pistol and only one shot the pistol. If two or more people
15 are together or substantially together acting together
16 assisting each other in the commission of the offense, the
17 law says, under those circumstance, the act of one is the
18 act of all. The hand of one is the hand of all.

19 A person engaged in the commission of an unlawful act
20 is legally responsible for all the consequences which
21 naturally and necessarily flow from the act as one of its
22 probable and natural consequences even though what was done
23 was not intended as a part of the original design. Except
24 in rare situations a person committing an unlawful act is
25 legally responsible for all natural or necessary

1 consequences thereof. One combining and confederating with
2 others to accomplish an illegal purpose is criminally liable
3 for everything done by him or his confederates which follows
4 incidentally in the execution of a common design as one of
5 the probable and natural consequences though not intended as
6 a part of the original design or common plan.

7 I charge you that mere presence at the scene is not
8 sufficient to prove someone guilty of a crime. A
9 defendant's presence where a crime is being committed or
10 mere association with the person who commits a crime does
11 not make a defendant an accomplice or an aider or an abettor
12 of the person committing the crime. The burden is on the
13 state to prove every element of the crime charged. If you
14 find, after reviewing all of evidence, that the State has
15 proved that the defendant was only present at the scene of
16 the crime, and that they have not proved, beyond a
17 reasonable doubt, any other participation in the crime, then
18 you must find the defendant not guilty. The law is that
19 proof of at the scene at the crime is not sufficient to find
20 someone guilty.

21 Now, ladies and gentlemen, you have been selected as
22 fair and impartial jurors sworn to impartially try and
23 determine the facts of this case, and when you comply with
24 your oath to do so, no one will have a right to criticize
25 your verdict and you will have fully discharged your duty as

1 jurors. You are to decide this case according to the
2 testimony that you have heard from the lips of the sworn
3 witnesses along with other evidence introduced in the trial.

4 Now, Madam Forelady, and ladies and gentlemen, during
5 your deliberations you may only discuss this case in the
6 jury room with your fellow jurors because they have seen and
7 heard the same evidence you have seen and heard. However,
8 you must not discuss the case with anyone else until you
9 have returned a verdict and the case is ended. Whenever a
10 member of the jury requires a break for smoking, restroom,
11 or otherwise, please discontinue your deliberation until
12 that juror returns. After your service in this trial has
13 ended, you have the right to either refuse to discuss your
14 verdict or to discuss your verdict as much as you choose.

15 Ladies and gentlemen, your verdict must be a unanimous
16 one.

17 Madam Forelady, when the jury agrees on the verdict you
18 will indicate your verdict in the space provided on the
19 verdict form that I will provide to you, sign your name, and
20 put, put the date on that, and then knock on the jury room
21 door and inform the bailiff that you have reached a verdict.
22 At this time we will return you, the jury, back to the
23 courtroom and receive your verdict.

24 Now, Madam Forelady, this is the document of which I
25 just spoke. It's a single piece of paper that will be

1 coming back along with all of the exhibits. As I previously
2 told you, all of these exhibits belong to you, the jury. In
3 just a couple of minutes, when you leave the room, I'm gonna
4 ask the lawyers to come forward with all the exhibits. As
5 you can see, when lawyers talk in the courtroom, they
6 generally lay them around on the tables. I want them to get
7 with Madam Court Reporter here, she has a list, and make
8 sure that everything is there for you, and nothing is
9 missing.

10 With that, and when they agree that everything is here,
11 I will then put this form, Madam Forelady, with those
12 exhibits, and I will send them to you with my bailiff. When
13 you receive this piece of paper along with those exhibits
14 you are free to begin your deliberations. Take as little
15 time or as much time as you need. It's up to you.

16 This single piece of paper has the caption of the case.
17 It has the case number and it says we, the jury, unanimously
18 find the defendant, Robert Lee Moore, concerning the offense
19 of attempted murder, not guilty or guilty. I certify this
20 decision was the unanimous decision of the jury.

21 Madam Forelady, there's a place for you to sign and put
22 whatever date it is. Today's date is July 23, 2014. And
23 then you would knock on the door and tell the bailiff that
24 you have reached a verdict and we will return you at that
25 time.

1 I tell you there is no significance to the fact that
2 not guilty is first and guilty is second or vice versa.
3 This is merely a form that I use in every case. There's no
4 significance. It necessarily means I have to write one
5 above the other, and that's the way it is on this particular
6 piece of paper.

7 With that, Madam Forelady, I'm gonna ask you not to
8 begin your deliberations. Don't talk about the case. I'm
9 gonna send you to your jury room. I'm gonna ask the lawyers
10 to come forward and account for all of the exhibits, and
11 you -- and once you receive those exhibits and this form,
12 you may begin your deliberations.

13 Thank you.

14 (WHEREUPON, the following takes place outside the
15 presence of the jury.)

16 THE COURT: Anything from the State?

17 SOLICITOR BULSA: No, sir.

18 THE COURT: Anything from the defense?

19 MR. JOHNSTON: One thing, Your Honor. I could of
20 missed it. I don't think it's in the written instruction,
21 and I hadn't spent as much time with it as, as maybe I
22 should have, but I -- one point came to me as you were
23 giving the instruction.

24 The defense would request that the Court give a
25 standard instruction about the use of 609, Rule 609,

1 convictions for witnesses. Something to the effect of
2 certain convictions of a particular nature can be used by
3 you in determining credibility or lack of credibility of a
4 witness. I don't think that is in your charge. If it is
5 not we would respectfully request it be included, that it be
6 charged.

7 THE COURT: Hang on.

8 MR. JOHNSTON: Yes, sir.

9 THE COURT: Solicitor.

10 SOLICITOR BULSA: I don't think it was in there, and I
11 don't like the timing of it. It's a correct statement, but
12 it's certainly gonna draw---

13 THE COURT: It's certainly the law of the State.

14 MR. JOHNSTON: Well, if you want to put something in
15 else to go with it if you got something else to go in there.

16 THE COURT: A person who has a past criminal record is
17 competent to testify during trial. A past record does not
18 affect the ability of that witness to testify. A past
19 record may only be considered by you, if at all, in
20 determining the witness' believability, and you are the sole
21 judges of the credibility and believability of all
22 witnesses.

23 THE COURT: Mr. Johnston.

24 MR. JOHNSTON: Yes, sir, what you just read is what
25 we'd ask you to charge, and we -- and that, that's not a

1 completely defense oriented charge. It has both. You're
2 telling them that they're competent and it's not only thing
3 to be considered. So, I don't think it's unfair.

4 THE COURT: Anything else, Mr. Bulsa?

5 SOLICITOR BULSA: No, sir.

6 (WHEREUPON, a bench conference was held at this time.)

7 THE COURT: Are all the exhibits here?

8 Do you know?

9 SOLICITOR BULSA: Your Honor, we're working on that.

10 (Pause.)

11 SOLICITOR BULSA: You want to do this now or --?

12 THE COURT: Yeah, if y'all got them.

13 (Pause.)

14 THE COURT: Is that everything?

15 SOLICITOR BULSA: Yes, sir.

16 MR. JOHNSTON: It appears to be all in order, sir.

17 THE COURT: We have our jury back please.

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 THE COURT: Madam Forelady, and ladies and gentlemen, I
21 further charge you that a person who has a past criminal
22 record is competent to testify during a trial. A past
23 record does not affect the ability of that witness to
24 testify. The past record may only be considered by you if
25 at all in determining that witness' believability. Remember

1 you are the sole judges of the facts in this case and of the
2 believability and -- of any and all of the witnesses.

3 Ladies and gentlemen, we -- the lawyers have now
4 reviewed the evidence. It is neatly stacked up here
5 probably in order.

6 The verdict form, Madam Forelady, is laying on top.

7 We would ask you now to retire to your jury room. Once
8 all 12 are together, you may begin your deliberations.

9 Madam Alternate, when you go out, the bailiff will take
10 you to a, a separate area so that you would be sequestered
11 and not be influenced by any person. At this point only the
12 12 may be together.

13 Madam Forelady, take your jury out, and, if you would,
14 take this on the way out.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: Anything from the State?

18 SOLICITOR BULSA: No, sir.

19 THE COURT: Anything from defense?

20 MR. JOHNSTON: No, sir.

21 THE COURT: All right. We're in recess.

22 (WHEREUPON, the jury began deliberations at 12:33PM and
23 returned with a verdict at 1:36PM.)

24 THE COURT: All right. We're back on the record.

25 I'm advised by the bailiffs that we have a verdict at

1 this time.

2 Now, I want to tell everybody in the courtroom that
3 this is an open courtroom in the United States of America.
4 You're welcome to be here, but there will not be any
5 outburst. I know tensions are high, but there will be no
6 outburst whichever way it is. whether he's guilty or not
7 guilty, they'll be none, and, if you are, these officers
8 with take you in custody and I will deal with that later as
9 contempt of Court.

10 You understand?

11 Does everybody here understand?

12 If you can not control your emotions, you are advised
13 to leave right now before the jury comes in, but there's
14 gonna be no applauding and there's gonna be, there's gonna
15 be no signs of any kind of outburst whatsoever.

16 All right. Mr. Bailiff, bring our jury.

17 (WHEREUPON, the following takes place within the
18 presence of the jury.)

19 THE COURT: Madam Forelady, has the jury reached its
20 verdict?

21 THE FORELADY: Yes, sir.

22 THE COURT: If you would hand the verdict form to the
23 bailiff please.

24 (Forelady complies.)

25 THE CLERK: State of South Carolina, County of

1 Spartanburg, State of South Carolina versus Robert Lee Moore
2 in Indictment Number 2013-GS-42-2965. We, the jury,
3 unanimously find the defendant, Robert Lee Moore, concerning
4 of the offense of attempted murder, guilty. Signed by the
5 foreperson, Nettie Shull, dating today's date, July 23rd,
6 2014.

7 Ladies and gentlemen of the jury, is this your verdict
8 and still your verdict, if so, please raise your right-hand.

9 (WHEREUPON, all jurors raise their hands.)

10 THE CLERK: So say you-all.

11 THE COURT: Anything from the, from the State?

12 SOLICITOR BULSA: No, sir.

13 THE COURT: From the defense?

14 MR. JOHNSTON: Request them be polled.

15 THE COURT: All right. Madam Clerk, you may poll the
16 jury please.

17 (WHEREUPON, all jurors were polled at this time and all
18 responded in the affirmative that this was and is still
19 their verdict.)

20 THE COURT: Anything from the State?

21 SOLICITOR BULSA: No, sir.

22 THE COURT: From the defense?

23 MR. JOHNSTON: No, sir.

24 THE COURT: All right. Thank you.

25 (WHEREUPON, the jury was excused at this time.)

1 THE COURT: Anything else you need from Madam Forelady?

2 THE CLERK: That's it.

3 (Pause.)

4 THE COURT: Motions from the State?

5 SOLICITOR BULSA: Your Honor, I need to get -- sign the
6 sentencing sheet and we have the criminal history.

7 THE COURT: Okay. Matters from defense?

8 MR. JOHNSTON: None other than a few comments about
9 mitigation, sir.

10 THE COURT: Yes, sir.

11 SOLICITOR BULSA: May I approach?

12 THE COURT: Yes, sir.

13 MR. JOHNSTON: Do you wish us to come around, Your
14 Honor, or remain where we are?

15 THE COURT: Yes, sir, come around unless it -- yeah,
16 come around please.

17 Mr. Bulsa.

18 SOLICITOR BULSA: Thank you, Your Honor.

19 The defendant's criminal history dates to 2007. Looks
20 like he pled guilty to assault and battery of a high and
21 aggravated nature, burglary second degree violent, common
22 law robbery, malicious injury to -- must of been jail,
23 resisting arrest. Those were all February 28th, 2007. He
24 received an active youthful offender sentence. That
25 sentence was revoked in April of 2010.

1 Then in April of 2012, his assault and battery third
2 degree conviction.

3 November of 2012, a criminal domestic violence
4 conviction.

5 August of 2013, a malicious injury to personal property
6 less than \$2,000 conviction.

7 Then in December 2013, failure to stop for a blue light
8 conviction.

9 THE COURT: Yes, sir.

10 MR. JOHNSTON: May it please the Court, Your Honor.

11 Robert Lee is 26 -- Robert Lee Moore is 26 years of
12 age. He's single. He doesn't have any children. He only
13 went to the eighth grade in school. Much of his schooling
14 was at the Charles Lea Center, McCarthy-Teszler Institution.
15 He had an IEP there, an Individualized Education Program.
16 He spent much of his years in a self-contained classroom.

17 From the psychosocial documents that I got from his
18 school, it appears that he was emotionally disabled,
19 learning disabled, and he also had ADHD. There's also some
20 evidence that he's had mental health issues over the years
21 and been treated at mental health. Taken some psychoactive
22 medications in the past. These issues would not rise to the
23 level of an affirmative defense, but I will still ask the
24 Court to consider them as mitigating circumstances.

25 THE COURT: Mr. Moore, be happy to hear from you.

1 THE DEFENDANT: I'm just sorry all -- that all this
2 happened. I apologize for what happened. I'm sorry.

3 THE COURT: Okay. Mr. Moore, I don't have any magic
4 words here. This is a sad day. It's a sad day for me.
5 It's a sad day for you. It's a sad day for your lawyer,
6 prosecutor, everybody in this courtroom.

7 You stand here convicted of a heinous crime. The
8 victim is in a wheelchair and never be his, hisself again.
9 Your codefendant, I don't know what's gonna happen there. I
10 may or may not be the judge on that case, but, nonetheless,
11 he also is looking at an extended sentence in the Department
12 of Corrections, and people over here who love you, and
13 people over there who love him, and people who love your
14 codefendant.

15 I don't really know what all this was about, but it's
16 the trouble you brought on yourself, and I know you don't
17 know this, and I'm not gonna say it more than a couple of
18 times around here because the lawyers get tired of hearing
19 it. But when I was in the House of Representatives and I
20 chaired the committee of criminal law for the State of South
21 Carolina, one of the things we learned from the Few
22 Foundation, after a two year study, was that young offenders
23 need to be dealt with harshly because after you're about 43,
24 44 years of age, your chances of recidivism, your chances of
25 reoffending fall to almost nothing. That's true.

1 You're gonna have plenty of time to look that up, and
2 you look that up.

3 okay?

4 You can get it on the Internet.

5 2013-2965, sir, you are confined to the State
6 Department of Corrections for a period of 30 years. I give
7 you credit for the time that you did serve.

8 Good luck to you, Mr. Moore.

9 MR. JOHNSTON: Thank you, Your Honor.

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12 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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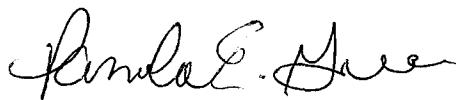
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C E R T I F I C A T E

I, Pamela E. Green, 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 the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 21st through 23rd day of July, 2014.

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

October 20th, 2014



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

R. Keith Kelly, Circuit Court Judge

RECEIVED

DEC 18 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ROBERT LEE MOORE,

APPELLANT

APPELLATE CASE NO. 2014-001669

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUES ON APPEAL	4
STATEMENT OF THE CASE	5
ARGUMENT 1	
The court erred by refusing to suppress all evidence derived from the search of appellant's cell phone pursuant to <u>Riley v. California</u> , 134 S.Ct. 2473 (2014), since the cell phone was searched without a warrant after it was inadvertently left behind, and not abandoned. All of the evidence located during the search (warrantless and after the warrant) of appellant's cell phone was the fruit of the poisonous tree, and had to be suppressed	6
Relevant facts.....	6
Suppression hearing.....	7
Argument of counsel	11
Ruling.....	13
Trial evidence	14
Eyewitness Barnes.....	16
Cell phone inculpatory evidence	17
Forensic cell phone evidendence.....	18
Closing arguments	18
Discussion.....	19
ARGUMENT 2	
The court erred by refusing to suppress the evidence obtained as a result of the search warrant since the warrant was impermissibly granted based on a conclusory affidavit that did not establish probable cause for the issuance of the warrant	22
Relevant facts.....	22
CONCLUSION.....	25

TABLE OF AUTHORITIES

Cases

<u>California v. Acevedo</u> , 500 U.S. 565 (1991)	21
<u>Franks v. Delaware</u> , 438 U.S. 154 (1978).....	24
<u>Katz v. United States</u> , 389 U.S. 347 (1967).....	19
<u>Riley v. California</u> , 134 S.Ct. 2473 (2014).....	passim
<u>State v. Adams</u> , 291 S.C. 132, 352 S.E.2d 482 (1987)	24
<u>State v. Baccus</u> , 367 S.C. 41, 625 S.E.2d 216 (2006).....	24
<u>State v. Bellamy</u> , 336 S.C. 140, 519 S.E.2d 347 (1999).....	23
<u>State v. Brown</u> , 400 S.C. 82, 736 S.E.2d 263 (2012)	21
<u>State v. DuPree</u> , 319 S.C. 454, 462 S.E.2d 279 (1995).....	11,20
<u>State v. Jenkins</u> , 2015 WL 4002381 (July 1, 2015).....	23
<u>State v. Jenkins</u> , 398 S.C. 215, 727 S.E.2d 761 (Ct.App. 2012).....	23
<u>State v. Jones</u> , 342 S.C. 121, 536 S.E.2d 675 (2000)	24
<u>State v. King</u> , 349 S.C. 142, 561 S.E.2d 640 (Ct.App. 2002).....	24
<u>State v. McGuinn</u> , 268 S.C. 112, 232 S.E.2d 229 (1977)	24
<u>State v. McKnight</u> , 291 S.C. 110, 352 S.E.2d 471 (1987).....	24
<u>State v. Smith</u> , 301 S.C. 371, 392 S.E.2d 182 (1990).....	24
<u>State v. Weston</u> , 329 S.C. 287, 494 S.E.2d 801	23
<u>United States v. Chadwick</u> , 433 U.S. 1 (1977)	21
<u>United States v. Jones</u> , 565 U.S. ___, 132 S.Ct. 945 (2012)	20
<u>Wong Sun v. United States</u> , 371 U.S. 471 (1963).....	21

Statutes

S.C. Code § 17-13-140 (2003)..... 24

Constitutional Provisions

U.S. Const. amend. IV 11, 19

STATEMENT OF ISSUE ON APPEAL

1.

The court erred by refusing to suppress all evidence derived from the search of appellant's cell phone pursuant to Riley v. California, 134 S.Ct. 2473 (2014), since the cell phone was searched without a warrant after it was inadvertently left behind, and not abandoned. All of the evidence located during the search (warrantless and after the warrant) of appellant's cell phone was the fruit of the poisonous tree, and had to be suppressed.

2.

The court erred by refusing to suppress the evidence obtained as a result of the search warrant since the warrant was impermissibly granted based on a conclusory affidavit that did not establish probable cause for the issuance of the warrant.

STATEMENT OF THE CASE

Appellant was indicted by the Spartanburg County Grand Jury for the offense of attempted murder. R. 327. His case came on for trial on July 21, 2014, before the Honorable R. Keith Kelly, and a jury. Andrew Johnston represented appellant. Derrick Balsa was the deputy solicitor. R. 1.

On July 23, 2014, the jury found appellant guilty. R. 320, l. 25 – 321, l. 6. Judge Kelly sentenced appellant to thirty years' imprisonment. R. 322, ll. 5-6.

This appeal follows.

ARGUMENT

1.

The court erred by refusing to suppress all evidence derived from the search of appellant's cell phone pursuant to *Riley v. California*, 134 S.Ct. 2473 (2014), since the cell phone was searched without a warrant after it was inadvertently left behind, and not abandoned. All of the evidence located during the search (warrantless and after the warrant) of appellant's cell phone was the fruit of the poisonous tree, and had to be suppressed.

Relevant facts

Defense counsel Johnston moved to suppress all of the information derived from the search of appellant's cell phone, "an AT&T flip phone, which is attributed to the ownership of the defendant." Defense counsel told the judge the court would need to hear the testimony from the investigators who recovered it, and the other law enforcement personnel who were involved "in the forensic evaluation of the phone" before ruling. R. 2, ll. 7-19.

Assistant solicitor Bulsa told the judge this case involved the shooting of the victim, thirty-four-year-old Travis Hall, on February 25, 2013 at a Taco Bell in Spartanburg. Three cell phones were found surrounding the injured victim in his car. Since money and drugs were also found in the vehicle, the police obviously suspected this case involved a drug deal gone badly, or a drug deal that was actually the result of a planned robbery that went awry. R. 3, l. 8 – 6, l. 11. Defense counsel cited *Riley v. California*, 134 S.Ct. 2473 (2014) in support of his motion to suppress the cell phone evidence. R. 6, l. 13 – 7, l. 15.

Bulsa argued that the police discovered the cell phones, and thought they had a potential suspect. The police later got a search warrant after making "preliminary productive discoveries" from the warrantless search of the phone. However, Bulsa

maintained a search warrant for the contents of the cell phone was never required because it had been “abandoned by the defendant.” R. 7, l. 16 -- 9, l. 6.

Defense counsel Johnston confirmed that appellant was claiming a privacy interest and an expectation of privacy in his cell phone. Johnston strongly disagreed that appellant had abandoned his cell phone. Johnston argued there was a major difference between forgetting one’s phone or negligently leaving it behind, and abandoning it. Even though the state had the burden of proof, as will be seen infra, the state was unable to state whether the cell phone had a secure password on it that law enforcement was able to get beyond, or whether the forensically “pulled” information was obtained in a less onerous manner. R. 8, l. 2 – 9, l. 14.

Suppression hearing

Investigator Lindsey McGraw was the state’s first witness during the suppression hearing. McGraw testified that three cell phones were collected from the scene of the February 25, 2013 shooting at the Taco Bell in Spartanburg. “I was asked to perform a forensic examination of three cellular telephones that were found at the scene primarily to determine who owned the cell, the cell phones to determine ownership.” McGraw identified the phones as an Apple I-phone 3, an Apple I-phone 4, and a ZTE331 flip phone. R. 10, ll. 8-25.

The flip phone was the one at issue here. McGraw did a forensic examination of “the installed SIM card.” The card contained the call logs stored contacts “things of that nature.” R. 10, l. 22 – 11, l. 12. McGraw was able to recover the cell phone number assigned to the phone from his forensic investigation. He then asked other investigators to find out who the person matched up with the phone number. R. 12, l. 2 – 13, l. 3.

McGraw testified he was able to determine the cell phone number did not belong to the victim. Before he obtained a search warrant, McGraw said he found out the telephone number was 864-494-2573. He also recovered thirty-four contact entries, and he discovered three text messages on the cell phone. R. 12, l. 2 – 13, l. 3.

McGraw says the stored contact information allowed him to associate a name – appellant -- with a phone number. McGraw said after he obtained this information, the police got a search warrant and “I did a full forensic examination of the phone, processed it.” McGraw maintained he was unable to further recover contacts and images and pictures from the phone. R. 12, l. 2 – 15, l. 9.

On cross-examination, McGraw confirmed he got the phone number for the cell phone before the police obtained a search warrant. He confirmed the cell phone could send and receive text messages, and that typically the phone would have a contact name, phone number and “possibly their physical address and email address.” McGraw confirmed that the cell phone had a camera for photographs, and a record of all telephone calls made and received. R. 16, l. 1 – 17, l. 21.

McGraw testified that the search warrant was obtained the day after he initially searched the phone without a warrant. R. 17, l. 4 – 18, l. 20. The search warrant affidavit and return are all included in the record on appeal. R. 323. The detective on the search warrant was Tom Clark, and the warrant was dated February 26, 2013. Court’s Exhibit one. R. 323.

Detective Tom Clark was the state’s next witness at the suppression hearing. Clark testified he was originally contacted by Investigator Williams because multiple (three) cell

phones had been found in the vehicle, and Clark said the police determined that the victim himself had multiple cell phones. R. 19, l. 6 – 20, l. 16.

Clark confirmed that he was not the person who conducted the forensic examination on the telephone before a search warrant was obtained. He correctly said he assumed investigator Williams was the person who did the warrantless forensic examination. R. 20, l. 24 – 21, l. 18. Clark then read into the record his affidavit to obtain the search warrant.

Q. Tell me what you told Judge Willingham.

A. Told Judge Willingham that on February the 25th at approximately 14:30 hours deputy responded to the Spartanburg County – well, excuse me. With the Spartanburg County Sheriff's Office responded to 7680 Warren H. Abernathy Highway in reference to a shooting. Upon arrival they found the victim, Travis Hall, had been shot. Travis Hall was transported to Spartanburg Regional Medical Center.

Through further investigation and processing of the, processing of the vehicle, the victims AT&T ZTE model 7331 cell phone with serial number 322213371843 was found inside the vehicle. Through further investigation it was found that this phone number **assigned to this phone was 864-494-2573**. Through further investigation it was found that this phone *did not belong to the victim*. *Through further investigation it was found that this phone belonged to Robert Lee Moore*, that a search warrant is needed for the furtherance of this investigation to obtain information from the phone **that can either implicate or clear Robert Lee Moore from any involvement in this incident**.

R. 21, l. 19 – 22, l. 13. (emphasis added).

Judge Willingham did not have any other information to base his decision about the search warrant on other than that above. R. 22, ll. 14-19. Clark also confirmed that the police used the information from the warrantless search of the cell phone to obtain the search warrant. R. 23, ll. 3-19.

Clark agreed there was **not anything** in the search warrant affidavit which stated why the police thought appellant may or may not "have shot the victim." R.

23, l. 20 – 24, l. 4. Clark also said he was only told that the cell phone was found “in the vehicle under or near the victim and **that was all the information that I was given** other than the victim, according to the investigation, had several cell phones.” R. 24, ll. 10-17. (emphasis added).

On re-cross examination, Clark said he did not recall what he told the judge about **how the police knew** that cell phone was owned by appellant. He confirmed that the affidavit also did not provide even that most basic information to the magistrate. R. 25, l. 12 – 26, l. 3.

Investigator Lorine Williams was the lead investigator on this case. R. 26, ll. 6-19. Williams confirmed that several cell phones were found in the victim’s automobile. The wounded victim had been removed from the scene by the time he arrived at the Taco Bell and observed the two cell phones in the car. Williams said the third cell phone seized was not in plain view. Two of the cell phones “are in the driver compartment floorboard closer to the door.” R. 27, l. 3 – 28, l. 1.

Williams testified --and apparently found significance in the fact -- that no one at the scene was claiming ownership of any of the cell phones. Williams said that although he did not have any documentation, he seemed to remember that McGraw had told them that “he had gotten a phone number from the flip phone I believe it was. That number was run through our data system at the sheriff’s office. It was associated to Mr. Moore through that system as an “known phone number that he had used or given either in a previous incident or when he was booked in at the jail or something of that nature. It was associated to him. At that point we realized the phone did not belong to the victim. Therefore, the exam was stopped in

order to obtain a search warrant before any further forensic testing was done on the phone.” R. 28, l. 23 – 29, l. 14.

Williams said he could not testify whether or not the cell phone was “password protected,” and he added that Investigator McGraw’s report was no help on the password protected subject either. R. 29, l. 21 – 30, l. 1.

As for “abandonment,” Williams confirmed he had never seen appellant in possession of the cell phone nor had he seen appellant relinquish possession of the phone. Williams confirmed he had chased suspects who had discarded items during the chase. R. 30, ll. 2-17. Williams said he had never seen appellant throw the phone down or throw it away. “I never saw Mr. Moore at the scene.” Williams said he did not know why appellant left his cell phone but he opined it was apparent there had been a struggle at the Taco Bell scene, and he said **he was sure the cell phone was left behind by mistake.** R. 30, l. 1 – 32, l. 15. Another law enforcement officer, Forensic agent Robert Talanges, would take issue with the statement that it was apparent there had been a struggle inside the car. “I can’t say there was a struggle.” R. 101, ll. 9-17. Williams confirmed that he was aware of other situations where a person may have forgotten or misplaced their cell phone. R. 32, l. 18 – 33, l. 3.

Argument of counsel

Defense counsel Johnston again argued pursuant to Riley v. California that the fruits of the search of the cell phone had to be suppressed. Johnston distinguished State v. DuPree, 319 S.C. 454, 462 S.E.2d 279 (1995) where the defendant had abandoned his property for Fourth Amendment purposes by throwing

the crack cocaine to the floor during the search of his mouth. Johnston reminded the judge that “Detective Williams summed it up very nicely when he said I have no doubt that he [appellant] *forgot it* and left it behind.” Johnston argued unintentionally forgetting or leaving behind a cell phone did not mean that it was abandoned. R. 33, l. 24 – 35, l. 9.

Johnston added there was a large amount of money and drugs were found in the victim’s car, and this was not a situation where a person would have voluntarily abandoned his cell phone. Johnston argued there was nothing in the search warrant to indicate appellant had anything to do with the shooting, and he said the warrant was conclusory, and did not provide probable cause for the issuance of a search warrant. Johnston noted the search warrant went so far as to state the search of the cell phone may actually “clear” appellant. This issue is discussed infra, in issue two. R. 37, l. 4 – 38, l. 11.

Johnston argued Riley v. California was on point about the extraordinarily large amount of private information that was stored on an individual’s cell phone. The cell phones provided “potentially all of the person’s associates, their addresses, their telephone numbers, email addresses, anything else a person might decide to include with their contact information.” The cell phones also contained photographs and other personal data. R. 37, l. 4 – 38, l. 11.

Defense counsel repeated that the cell phone had not been abandoned, and that there was evidence of a clear intention to abandon the phone. Counsel argued that all the information obtained from the cell phone before and after the search warrant had to be suppressed. R. 38, ll. 12-25.

The solicitor said he had not anticipated the argument that the phone was mistakenly left behind rather than abandoned. The solicitor insisted the search was reasonable, and that the phone had been abandoned regardless. The solicitor also argued that the Riley v. California did not prevent the judge from ruling the telephone had simply been abandoned, and that appellant had no expectation of privacy in the cell phone once it “was left behind.” R. 39, l. 2 – 41, l. 3.

Defense counsel in his colloquy with the court said that the victim was apparently known to carry two cell phones but that three phones were found. Johnston also argued that even if the police thought the phone belonged to the victim they would still have needed to obtain a search warrant to obtain the victim’s information since it was known these cell phones contain private communications, and information that is inculpatory. For that reason, a search warrant was required for the personal information on the cell phone. R. 43, l. 4 – 44, l. 23. The judge deferred ruling. R. 44, ll. 22 -23.

Ruling

Following jury selection, the judge denied appellant’s motion to suppress any and all of the information seized from appellant’s cell phone. R. 51, ll. 9-14. The judge ruled that appellant’s cell phone was “abandoned property.” The judge said he had read cases that property can “be abandoned even momentarily.” The judge reasoned the “property” had been abandoned. The judge ruled he would not suppress any information derived from the search of the cell phone, and accepted, as argued in issue two, that an alleged “benign” reason to search a cell phone was permissible. R. 51, l. 9 – 52, l. 24.

Defense counsel quickly tried to correct the judge about the prejudice of the information that law enforcement intended to use from the search of appellant's cell phone. Counsel correctly predicted the state was going to show a record of phone calls between appellant and the victim's phone that were in close proximity to the incident. He requested that the judge reconsider his ruling. The judge said he was not changing his ruling: "I have wrestled with that a little bit, Mr. Johnston." The judge and Johnston had a further discussion of Riley v. California, and Johnston argued that the holding in Riley v. California did not "hang on whether or not the person had been arrested." R. 53, l. – 54, l. 11. The judge refused to alter his ruling denying suppression.

Trial evidence

The state's first witness was the victim's mother, Deborah Hall. Her son, Travis Hall, was thirty-four years old when he was shot on February 25, 2013 at the Taco Bell. R. 58, l. 18 – 59, l. 23.

Ms. Hall testified her son came by her house for twenty to twenty-five minutes prior to the incident, and "he kept receiving several phone calls *from the same person.*" (emphasis added). Ms. Hall said she overheard her son talking about picking up his daughter near Highway 29. Highway 29, of course, was near the Taco Bell. Ms. Hall said the next thing she heard from her son was when "I got a phone call that he had got shot in the head from the sheriff's department." R. 59, l. 15 – 61, l. 24.

Ms. Hall testified her son spent a couple of months in the hospital after the shooting. R. 61, l. 7 – 63, l. 20. Ms. Hall then identified photographs showing the damage to her son's Impala. R. 64, l. 1 – 65, l. 21.

Deputy John Hudson, testified he went to the crime scene off Highway 29 at the Taco Bell. He remembered several people standing around the victim's automobile. R. 68, l. 2 – 70, l. 16.

Hudson recalled the victim had been shot, and he was leaning out of the vehicle "and the seatbelt was supporting his weight." Hudson opined the victim was attempting to get out of the front driver's seat, but the seatbelt was holding him inside. R. 73, l. 5 – 75, l. 16.

Tim Tullock worked for an air conditioning and refrigeration company. He was at the Taco Bell on the day of the shooting, February 25, 2013. R. 80, l. 22 – 82, l. 4.

Tullock was doing paperwork in his van when he heard "some popping sounds." He saw a man "hanging out of the car," and proceeded to walk across the parking lot "to see if he could help him out." Tullock remembered that a "white Chrysler 300 with some rather large rims" tore out of the parking lot "squealing its tires at the same time." R. 82, l. 23 – 84, l. 21.

Marilyn Arthur was a fingerprint identification expert. She testified that Tevin Thomas, a future state's witness, left behind ten fingerprints on the victim's automobile. R. 117, l. 17 – 119, l. 18. None of appellant's fingerprints were found on the victim's automobile. R. 127, ll. 9-14.

Tevin Thomas' fingerprints were also located on the white Chrysler that Tullock apparently identified as the car quickly leaving the Taco Bell parking lot. Appellant's fingerprints were found on the Chrysler as well. R. 129, l. 12 – 130, l. 11.

Thomas later testified as a state's witness that Reginald Sanders, Thomas, and appellant planned to rob the victim during a planned drug deal. Thomas claimed when Sanders did not show up that, he went with appellant to meet the victim at the Taco Bell without Sanders. Thomas said appellant parked his car "side by side" with the victim's car. Thomas maintained it was appellant who got out of his car, and got into the victim's car. Thomas claimed he saw appellant and the victim get into a struggle with the victim. Thomas said appellant and the victim were "on top of each other" when he heard a shot. R. 196, l. 4 – 207, l. 20. Thomas claimed appellant admitted he shot the victim as he fought with him inside the victim's car.¹ R. 207, l. 16 – 208, l. 11.

Eyewitness Barnes

The defense called eyewitness Chris Barnes during appellant's trial. Barnes was going through the drive through at the time of the Taco Bell shooting. R. 242, l. 19 – 245, l. 22. Barnes testified he saw the victim's car "rocking back and forth. I was thinking like, what's going on in that car because it was swinging around, and then I heard a pop, and then I saw somebody slumped over and blood like squirting." Barnes saw a man get out of the passenger side of the victim's car, and jump into "another car." R. 245, l. 19 – 246, l. 8.

¹ This Court can take judicial notice from the Department of Corrections Inmate Locator Information Service Website of the fact that Thomas was also serving sentences for burglary in the second degree, and he apparently received a ten year sentence for attempted armed robbery in this case. He is scheduled to be released in about six years on August 26, 2021.

The description Barnes gave of the man getting out of the victim's car after the shooting matched Thomas, and not appellant. That is true because Barnes described the black male quickly leaving the car as wearing a dark colored sweatshirt and a dark colored toboggan, and not red clothing. This was significant because Thomas was captured on a Hot Spot convenience store videotape shortly after the shooting wearing dark colored clothing, and a toboggan. Appellant, on that same videotape, was wearing red clothing. R. 172, l. 1 – 174, l. 17.

The solicitor was left to argue in closing that he did not think Barnes had a good view of the victim's car. The solicitor essentially argued that Barnes misidentified Thomas as the man in getting out of victim's car at the time of the shooting, and maintained Barnes saw Thomas get out of the other car consistent with what state's witness Thomas said. R. 301, ll. 6-19.

Cell phone inculpatory evidence

Robert Talanges was with the forensic department of the Spartanburg County Sheriff's Department. He opined, from the broken glass, that the shots were fired from inside the victim's car "out" that day. There was also a powder burn on the seat. The victim had "a fully loaded gun" inside his car -- with a full magazine with sixteen rounds in it. Talanges opined the victim did not shoot his gun. R. 94, l. 21 – 96, l. 10.

Talanges found three cell phones inside the victim's car. He acknowledged he could not tell from looking at them who owned these cell phones. R. 100, l. 11 – 103, l. 20. Finally, according to Talanges, the gun which fired the shot that hit the victim in the head, and injured him, was never found. R. 106, ll. 11-13.

Forensic cell phone evidence

Forensic analyst Lindsey McGraw testified three cell phones were recovered from the victim's car, and he tried to identify the owners of the cell phones. R. 136, l. 11 – 137, l. 5. McGraw testified that his examination of the SIM card on the AT&T flip phone revealed the phone number was 864-494-2573. He identified the phone numbers from the other two cell phones as well. R. 137, l. 1 – 138, l. 13.

During his investigation, McGraw said he was able to “pull phone calls off of the cell phone log” and he “took pictures of them” with his digital camera. He testified five calls were made from appellant's phone to the victim's phone on the day of the shooting. R. 138, l. 24 – 142, l. 7.

Closing arguments

In closing, defense counsel Johnston reminded the jury how many times Tevin Thomas had lied to the police to gain an advantage for himself. He told the jury as a strategic matter the prosecution decided to charge appellant as a participant in the shooting rather than as an accessory after the fact which appellant actually was. R. 273, l. 8 – 277, l. 22. Johnston reminded the jury that Barnes was a neutral witness, with nothing to gain or lose, and that he observed a man dressed exactly like Tevin Thomas and not like appellant get out of the victim's automobile immediately after the shooting. R. 280, l. 16 – 283, l. 16.

The solicitor argued to the jury that the forensic evidence traced the cell phone found in the victim's car to appellant. The forensic cell phone evidence showed appellant called the victim five times on the day of the incident. R. 288, l. 21 – 289, l. 14.

When the police went looking for appellant after removing the information from his cell phone, the solicitor told the jury appellant could not be found for eleven days before he

“conveniently turned himself in.” R. 287, l. 18 – 288, l. 20. The solicitor said Tevin Thomas conversely was found the day after the shooting. R. 288, ll. 15-20.

Discussion

It was undisputed in this case that the forensics personnel searched appellant’s cell phone without a warrant. It is also undisputed that the information they obtained from this warrantless search allowed them to trace the telephone to appellant. The state then obtained an impermissible search warrant from a “conclusory affidavit” -- that provided no probable cause – for its issuance. The search warrant was also impermissibly obtained as the fruit of the information found during the illegal warrantless search.

It was acknowledged that the cell phone was inadvertently left behind in the victim’s automobile. That means it was not intentionally abandoned.

Law enforcement had no way of knowing when appellant’s cell phone was unintentionally left in the victim’s vehicle. For all the police knew, appellant may have ridden with the victim on other occasions, and there was an innocent explanation for the cell phone being forgotten and left behind.

The state used the evidence procured from the search warrant to trace calls from the appellant’s cell phone to the victim’s cell phone. The phone calls allegedly showed appellant and the victim were communicating at a critically inculpatory time on the day of the shooting. The solicitor argued that five calls were made to the victim by appellant that day, and Tevin Thomas was found the day after the shooting, and that appellant was not located for eleven days until “he conveniently turned himself in.”

Searches without a warrant are *pre se* unreasonable under the Fourth Amendment unless some exception applies. Katz v. United States, 389 U.S. 347, 357 (1967). It should

be apparent that the abandonment exception does not apply here given the testimony of the state's own witness in this case. The judge erred by finding the cell phone was abandoned. See State v. Dupree, *supra*. That erroneous legal ruling warrants reversal.

In Riley v. California, 134 S.Ct. 2473 (2014), the United States Supreme Court eloquently explained how a citizen's cell phone is a storage facility for nearly every aspect of his or her life – from the mundane to the intimate. Riley v. California, 134 S.Ct at 2490. The “historic location information is a standard feature on many smart phones and can reconstruct someone's specific movements down to the minute, not only around town but also within a specific building.” *Id.* at 2490 (*citing* United States v. Jones, 565 U.S. ___, 132 S.Ct. 945, 955 (2012) (Sotomayer, J., concurring)).

Defense counsel correctly argued that the fact the cell phone in Riley was seized incident to arrest was not a distinguishing factor from this case. In fact, it seems intuitive from the case law that a person has a much less expectation of privacy in what is removed from his person incident to arrest than he or she does in a mistakenly left behind cell phone.

Law enforcement knows very well that a search of cell phone may lead to suspicion or probable cause that the owner of the cell phone is, or has been, engaged in criminal activity, or other wrongdoing. Further, intimate information, details, and photographs contained on a citizen's cell phone also raise considerable privacy considerations.

Law enforcement in this case should have obtained a search warrant before it forensically searched appellant's cell phone. Defense counsel correctly argued appellant had an expectation of privacy in his cell phone. Although the state had the burden of justifying the search of appellant's cell phone, they *incredibly* maintained they did not even know if the cell phone was “password protected.”

It was undisputed that law enforcement used information obtained during the illegal warrantless search of appellant's cell phone to obtain the search warrant, even though, as argued infra, that warrant was illegally obtained from a "conclusory affidavit" that did not supply probable cause. Because illegally procured information from the warrantless search was used to obtain the search warrant the fruits of the search warrant also had to be suppressed. See, Wong Sun v. United States, 371 U.S. 471 (1963).

It was simply unreasonable for the police here not to obtain a search warrant for the contents of the cell phone once it was safely in their possession. See United States v. Chadwick, 433 U.S. 1 (1977).² See, also, State v. Brown, 400 S.C. 82, 91, 736 S.E.2d 263, 267 (2012). All of the evidence procured from the warrantless illegal search, and then from the search warrant in this case, should have been suppressed as the fruit of the poisonous tree. See, Wong Sun v. United States, 371 U.S. 471 (1963). The judge committed reversible error by ruling otherwise.

² Overruled on other grounds. California v. Acevedo, 500 U.S. 565 (1991).

2.

The court erred by refusing to suppress the evidence obtained as a result of the search warrant since the warrant was impermissibly granted based on a conclusory affidavit that did not establish probable cause for the issuance of the warrant.

Relevant facts

After illegally searching appellant's cell phone without a warrant, the state, through Detective Tom Clark, sought a search warrant the following day. Search warrant. R. 323. The affidavit purportedly providing probable cause that appellant had committed a crime to justify the search warrant stated:

On 2/25/2013 at approx. 14:13 Hrs. Deputies with the Spartanburg County Sheriff's Office responded to 7680 Warren H. Abernathy Hwy. In reference to a shooting. Upon arrival they found the Victim, Travis Hall had been shot. Hall was transported to SRMC. Through further investigation and the processing of the Victim's vehicle **an AT&T ZTE model Z331 cell phone serial number #22213371843 was found inside the Victim's vehicle.** Through further investigation it was found this phone number assigned to the phone is **(864)494-2573**. Through further investigation it was found this phone did not belong to the Victim. *Through further investigation it was found this phone belonged to Robert Lee Moore.* This search warrant is needed for the furtherance of this investigation **to obtain information from the phone that can either implicate, or clear Robert Lee Moore** from any involvement in this incident.

The description of the property sought from appellant's cell phone was all stored data, which included but was not limited to "passwords, access codes, SIM passwords, files, programs, ringtones, picture files, video files, audio files, phonebooks, date books, call history, voice mail, e-mail, text messages, multimedia messages, instant messages,

internet chat content, calendar entries, task entries, note entries, internet browser history, internet bookmarks, geographical information, and databases.” Search Warrant. R. 323.

Defense counsel correctly argued that this affidavit was an impermissible “conclusory” affidavit, and it did not provide probable cause to warrant the issuing of the search warrant. He cited State v. Weston, 329 S.C. 287, 494 S.E.2d 801, and State v. Jenkins, 398 S.C. 215, 727 S.E.2d 761 (Ct.App. 2012)³ in support of his motion. Tr. 44, l. 6 – 45, l. 12.

This was an incredible search warrant in its conclusory nature. It did not, as counsel argued, state that probable cause existed that appellant shot the victim, and it incredibly even stated in the affidavit that a search of appellant’s cell phone may “clear” him of further suspicion by the government. Conversely, it may lead to finding inculpatory evidence against him. This was the antithesis of probable cause. It was the epitome of a fishing expedition.

It is quite a gesture for the government ask to look into the most intimate aspects of a citizen’s life -- which the United States Supreme Court recognized in Riley v. California recognized are often contained in his or her cell phone -- because that search may “clear” him or her of further suspicion by the government. This conclusory affidavit simply failed to provide probable cause for its issuance.

It is elementary that a search warrant may only issue upon a finding of probable cause. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). The duty of the reviewing Court is to ensure that the issuing magistrate had a substantial basis upon

³ The error was found harmless in State v. Jenkins, 2015 WL 4002381 (July 1, 2015), after the state did not challenge the finding of this Court that the search warrant for the DNA did not establish probable cause.

which to conclude that probable cause existed. State v. Adams, 291 S.C. 132, 352 S.E.2d 482, 483 (1987). The determination by the magistrate is governed by the “totality of the circumstances test.” State v. King, 349 S.C. 142, 148, 561 S.E.2d 640, 643 (Ct.App. 2002), *citing* State v. Jones, 342 S.C. 121, 536 S.E.2d 675 (2000).

In this state, search warrants may only be issued “upon affidavits sworn to before the magistrate . . . establishing the grounds for the warrant.” S.C. Code § 17-13-140 (2003); State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987). The affidavit must set forth particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter. Franks v. Delaware, 438 U.S. 154 (1978).

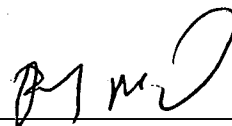
Conclusory statements and affidavits provide no basis to make a judgment that probable cause exists. *See*, State v. Smith, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990); State v. Baccus, 367 S.C. 41, 52, 625 S.E.2d 216, 222 (2006). Further, there must be sufficient nexus, described in the affidavit, between the items to be seized and the criminal behavior alleged. State v. McGuinn, 268 S.C. 112, 232 S.E.2d 229 (1977).

The judge erred by ruling nothing obtained from the search warrant “would lead to the arrest of the defendant himself. It led to his identity and certainly to a questioning as to why the cell phone may have been there. Don’t know that. But that’s all it does.” R. 52, ll. 12-24. Defense counsel quickly explained the prejudice of the search warrant to the judge but he refused to reconsider his ruling which approved the fishing expedition the state had gone into in this case vis-à-vis the search warrant. R. 53, l. 1 – 54, l. 11. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed, and this case remanded to the Spartanburg County Court of General Sessions for a new trial.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

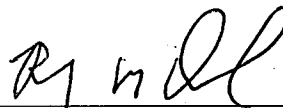
ATTORNEY FOR APPELLANT

This 18th day of Decemeber, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 18, 2015



Robert M. Dudek
Chief Appellate Defender

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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
R. Keith Kelly, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

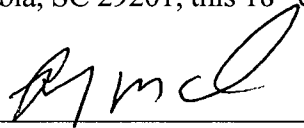
V.

ROBERT LEE MOORE,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blich, Jr. Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of December, 2015.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of December, 2015.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case Tracking No. 2014-001669

The State,

Respondent,

vs.

Robert Lee Moore,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
ARGUMENT.....	3
I. The trial court did not err in refusing to suppress evidence found during the search of a cell phone Appellant abandoned at the scene of the crime. (Appellant's Issues I and II).	3
CONCLUSION.....	11

TABLE OF AUTHORITIES

Cases:

<u>California v. Greenwood</u> , 486 U.S. 35 (1988).....	5
<u>City of St. Paul v. Vaughn</u> , 237 N.W.2d 365.....	6
<u>Florida v. Jimeno</u> , 500 U.S. 248 (1991).....	4
<u>Katz v. United States</u> , 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).....	4
<u>Minnesota v. Carter</u> , 525 U.S. 83 (1998).....	5
<u>Nix v. Williams</u> , 467 U.S. 431 (1984).....	8
<u>Oliver v. United States</u> , 466 U.S. 170 (1984).....	4
<u>Rakas v. Illinois</u> , 439 U.S. 128	5
<u>Rawlings v. Kentucky</u> , 448 U.S. 98 (1980).....	4
<u>State v. Abdullah</u> , 357 S.C. 344, 592 S.E.2d 344 (Ct. App. 2004).....	3
<u>State v. Brown</u> , Op. No. 5355 (S.C. Ct. App. Filed September 23, 2015, (Shearouse Adv. Sh. No. 37 at 25)	5,6
<u>State v. Dupree</u> , 319 S.C. 454, 462 S.E.2d 279 (1995).....	5, 6
<u>State v. Flowers</u> , 360 S.C. 1, 598 S.E.2d 725 (Ct. App. 2004).....	3
<u>State v. McKnight</u> , 291 S.C. 110, 352 S.E.2d 471 (1987).....	4
<u>State v. Rivera</u> , 384 S.C. 356, 682 S.E.2d 307 (Ct. App. 2009).....	3
<u>State v. Weston</u> , 329 S.C. 287, 494 S.E.2d 801 (1997).....	9
<u>U.S. v. Bynum</u> , 293 F.3d 192 (4th Cir. 2002).....	9
<u>U.S. v. Leon</u> , 468 U.S. 897 (1984)	8, 9
<u>United States v. Risher</u> , 966 F.2d 868 (4th Cir. 1992).....	4

Statutes:

U.S. Const. amend. IV 4, 7

STATEMENT OF ISSUES ON APPEAL

- I. The trial court did not err in refusing to suppress evidence found during the search of a cell phone Appellant abandoned at the scene of the crime. (Appellant's Issues I and II).

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

I. The trial court did not err in refusing to suppress evidence found during the search of a cell phone Appellant abandoned at the scene of the crime. (Appellant's Issues I and II).

Appellant contends the trial court erred in refusing to suppress evidence obtained from his cell phone recovered from the scene of the crime. Appellant abandoned the cell phone, and, as a result, Appellant no longer had a reasonable expectation of privacy in a phone he left at a crime scene and made no attempt to collect. As a result, there is no violation of the Fourth Amendment and the results of the search were properly admitted into evidence. Further, any evidence obtained through the search of Appellant's cell phone would have inevitable been discovered through the search of the victim's phone also collected at the crime scene. Finally, the search warrant obtained was unnecessary, but, even if necessary, was obtained in good faith and suppression is not warranted.

In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see also, State v. Abdullah, 357 S.C. 344, 349, 592 S.E.2d 344, 347 (Ct. App. 2004) ("On appeal from a suppression hearing, this court is bound by the circuit court's factual findings if any evidence supports the findings."). The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. "The right of the people to be secure in their persons, houses,

papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .” U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures. “The touchstone of the Fourth Amendment is reasonableness.” Florida v. Jimeno, 500 U.S. 248, 250 (1991).

When moving to suppress evidence on the basis of an alleged unreasonable search, the defendant has the burden of showing a legitimate expectation of privacy in the area searched. See United States v. Rusher, 966 F.2d 868 (4th Cir. 1992); see also Rawlings v. Kentucky, 448 U.S. 98 (1980) (declaring a legitimate expectation of privacy is necessary to trigger Fourth Amendment protections); State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987) (stating defendant who seeks to suppress evidence on Fourth Amendment grounds must demonstrate his “own rights” have been violated by showing he has a legitimate expectation of privacy in connection with the searched premises in order to challenge the search). “Since Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967), the touchstone of [Fourth] Amendment analysis has been the question whether a person has a ‘constitutionally protected reasonable expectation of privacy.’” Oliver v. United States, 466 U.S. 170, 177 (1984) (quoting Katz, 389 U.S. at 360 (Harlan, J., concurring)).

Thus,

in order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable; i.e., one that has “a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society.”

Minnesota v. Carter, 525 U.S. 83, 88 (1998) (quoting Rakas v. Illinois, 439 U.S. 128, 143–44 n. 12 (1978)).

As this Court very recently observed: “Our supreme court has recognized the doctrine of abandonment as one such exception to the Fourth Amendment warrant requirement.” State v. Brown, Op. No. 5355 (S.C. Ct. App. Filed September 23, 2015) (Shearouse Adv. Sh. No. 37 at 25) (citing State v. Dupree, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995)). “Abandoned property has no protection from either the search or seizure provisions of the Fourth Amendment.” State v. Dupree, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995) (citing California v. Greenwood, 486 U.S. 35 (1988)). The South Carolina Supreme Court thoroughly explained the determination of abandoned property, indicating a very clear distinction between abandoned property in a property-law sense and abandoned property in a Fourth Amendment sense:

The distinction between abandonment in the property-law sense and abandonment in the constitutional sense is critical to a proper analysis of the issue. In the law of property, the question . . . is whether owner has voluntarily, intentionally, and unconditionally relinquished his interest in the property so that another, having acquired possession, may successfully assert his superior interest.... In the law of search and seizure, however, the question is whether the defendant has, in discarding the property, relinquished his reasonable expectation of privacy so that its seizure and search is reasonable within the limits of the Fourth Amendment. In essence, what is abandoned is not necessarily the defendant's property, but his reasonable expectation of privacy therein.

Where the presence of the police is lawful and the discard occurs in a public place where the defendant cannot reasonably have any continued expectancy of privacy in the discarded property, the property will be deemed abandoned for the purpose of search and seizure.

Dupree, 319 S.C. at 457, 462 S.E.2d at 281 (quoting City of St. Paul v. Vaughn, 237 N.W.2d 365, 370–71 (1975)). This Court explained: “Whether such an expectation of privacy has been abandoned is determined on the basis of the objective facts available to the investigating officers, not on the basis of the owner’s subjective intent.” Brown, Ad. Sh. No. 37 at 26.

This distinction is critical in this case where Appellant’s sole argument regarding whether he abandoned the cell phone is that he “forgot it” or “inadvertently” left it behind—as he fled a crime scene. His argument, if believed in full, could be fruitful in the “property-law sense” because he did not voluntarily abandon his interest in the property, such that the police who found it could claim a greater possessory interest. However, similar to this Court’s conclusion in Brown, Appellant did abandon his expectation of privacy interest in the cell phone by leaving it at a crime scene and not seeking to reclaim the phone. See Id. at 27-29.

During the suppression hearing and at trial, officers explained three cell phones were located in the victim’s vehicle. No one came forward to claim any of the cell phones. (T.36; R. 28). The cell phone ultimately connected to Appellant was not password protected. (T.37-38; R. 29-30).¹ Appellant presented no evidence he intended to come forward and claim the cell phone as his prior to the suppression hearing. As a result, the officers objectively believed the cell phone to be abandoned, and the Fourth Amendment did not require a warrant to conduct a search of the phone.

¹ Appellant contends the testimony by Investigator Williams indicates Investigator McGraw’s report was “of no help” in determining whether the phone was password protected. On the contrary, the testimony regarding the report indicates the phone was no password protected. Counsel asked: “in his report, does he say it was password protected?” (T. 37; R. 29). The answer was not I don’t see anything in the report it was instead: “I don’t see that it was.” (T.38; R. 30). The clear implication is if the phone had been password protected the report would have indicated the fact, but instead the report indicated the phone was not password protected.

Further, Investigator McGraw did not initially examine the contents of the phone such as text messages and call logs. Instead, he examined the SIM card which provided him merely a phone number for the phone. (T.19-20; R. 11-12). The phone number was then run through the Sheriff's Department's database and was connected to Appellant. (T.20; 37; R. 12-19). This process would have been required in order to verify whether the phone belonged to the victim. A process which was entirely reasonable given the phone was found in the victim's car. The mere obtaining of the cell phone number from the SIM card in order to verify whether the phone belonged to the owner of the vehicle in which it was found did not implicate the Fourth Amendment because it was not an unreasonable search. See U.S. Const. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .") (emphasis added). As a result, the obtaining of the phone number connected to the phone for purposes of determining ownership would not implicate Fourth Amendment protections.

Additionally, the only evidence admitted from the search of Appellant's phone was its connection to the victim through the phone calls made directly before the shooting occurred. The officers had the victim's phone in their possession. They had every right to search the victim's phone as part of the investigation, and even if they did not, Appellant could not assert any violation of the right because he did not have a possessory interest in the victim's phones. As a result of the search of the victim's phone, the officers would have found the number that called five times immediately before the shooting. It would have taken nothing more than running the number through the same database that they ran the number from the SIM card through to determine it belonged to

Appellant. A simple call to the number would have verified it was the phone in their possession and would have placed Appellant at the scene of the crime. As a result, any evidence obtained from the search of Appellant's phone would have inevitably been discovered through an independent source, the victim's phone. See Nix v. Williams, 467 U.S. 431, 443-444 (1984) (finding the inevitable discovery doctrine has been adopted as an exception to the exclusionary rule and "[t]he independent source doctrine teaches us that the interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, not a worse, position that they would have been in if no police error or misconduct had occurred.").

Even though the search warrant obtained on Appellant's phone was entirely unnecessary in light of the fact he abandoned any expectation of privacy in the phone, the warrant was obtained in good faith and provided no basis to suppress the evidence. The United States Supreme Court in U.S. v. Leon, 468 U.S. 897 (1984), holds a court should not suppress the fruits of a search conducted under the authority of a warrant, even a "subsequently invalidated" warrant, unless "a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization." Leon, 468 U.S. at 922 n. 23. The Supreme Court explained the limited circumstances in which an officer could not be found to have acted with "objective reasonableness," thereby excluding application of this good faith exception:

(1) "the magistrate ... was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth";

- (2) the magistrate acted as a rubber stamp for the officers and so “wholly abandoned” his detached and neutral “judicial role”;
- (3) “an affidavit [is] so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable”; or
- (4) “a warrant [is] so facially deficient- i.e., in failing to particularize the place to be searched or the things to be seized-that the executing officers cannot reasonably presume it to be valid.”

U.S. v. Bynum, 293 F.3d 192, 195 (4th Cir. 2002) (citing Leon, 468 U.S. at 923) (internal quotation marks omitted).

The Fourth Circuit Court of Appeals explained:

“Substantial basis” provides the measure for determination of whether probable cause exists in the first instance. If a lack of a substantial basis also prevented application of the Leon objective good faith exception, the exception would be devoid of substance. In fact, Leon states that the third circumstance prevents a finding of objective good faith only when an officer’s affidavit is “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.” This is a less demanding showing than the “substantial basis” threshold required to prove the existence of probable cause in the first place.

Bynum, 293 F.3d at 195 (internal citations omitted) (emphasis added).

The South Carolina Supreme Court explained the application of the Leon good faith exception: “Suppression is appropriate in only a few situations, including when an affidavit is ‘so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.’ State v. Weston, 329 S.C. 287, 293, 494 S.E.2d 801, 804 (1997) (emphasis added) (quoting Leon, 468 U.S. at 923). “[W]hen an officer acting in objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope, a reviewing court should not order a suppression of the evidence based on a lack of probable cause.” Id. at 292, 494 S.E.2d at 803-804.

In this case, even if the affidavit does not provide a substantial basis for determining the existence of probable cause, it is not “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.” The affidavit cannot be described as so bare-boned that the magistrate’s issuance of the warrant could be viewed as a mere rubber-stamping of the warrant application, nor is the affidavit so lacking in indicia of probable cause that it was unreasonable for the officers or the magistrate to conclude that probable cause existed. Accordingly, even if the affidavit is insufficient in some manner, this Court should affirm the admission of the evidence under the additional sustaining ground of the Leon good faith exception.

Appellant abandoned his cell phone and any reasonable expectation of privacy he had in it. As a result, the trial court properly refused to suppress the results of any search of the phone because Appellant no longer had the requisite expectation of privacy to challenge the search and any search was reasonable under the Fourth Amendment to the United States Constitution. Further, the information would have been discovered through a search of the victim’s phone indicating he received the five phone calls from Appellant’s phone number immediately before being shot at the Taco Bell. Finally, the search warrant was unnecessary, but even if found conclusory, it was obtained in good faith and did not provide a basis to suppress the evidence presented at trial. Accordingly, Appellant’s conviction and sentence should be affirmed.

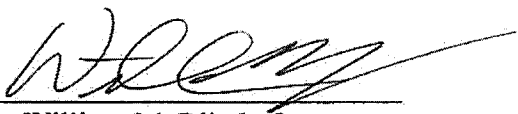
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

BY: 
William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 17, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case Tracking No. 2014-001669

The State,

Respondent,

vs.

Robert Lee Moore,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY: 

William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 17, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case Tracking No. 2014-001669

The State,

Respondent,

vs.

Robert Lee Moore,

Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 17th day of December, 2015.



SALLY ELLISON
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Robert Lee Moore, Appellant.

Appellate Case No. 2014-001669

Appeal From Spartanburg County
R. Keith Kelly, Circuit Court Judge

Opinion No. 5512
Heard January 18, 2017 – Filed August 30, 2017

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William M. Blich, Jr., both of
Columbia; and Solicitor Barry Joe Barnette, of
Spartanburg, for Respondent.

MCDONALD, J.: Robert Lee Moore appeals his conviction for attempted murder, arguing the trial court erred when it (1) denied his motion to suppress evidence from a limited warrantless search identifying him as the owner of a cell phone found at the crime scene and (2) denied his motion to suppress evidence obtained pursuant to a subsequent search warrant Moore contends was based on a conclusory affidavit. Although the panel majority affirms the circuit court's denial of Moore's motion to suppress the identification information obtained from the

warrantless search of the cell phone, Chief Judge Lockemy, Judge Konduros, and I differ in our analyses of this Fourth Amendment challenge. The majority also affirms the circuit court's denial of Moore's motion to suppress the evidence obtained pursuant to the search warrant, as we find the supporting affidavit was sufficient to establish probable cause.

Facts and Procedural History

On the afternoon of February 25, 2013, Travis Hall (Victim) was found shot in the head in a Taco Bell parking lot. When police arrived at the scene, Victim was draped out of the driver's side door of his vehicle, and three cell phones were found in the car. The phone at issue here was an AT&T ZTE331 model flip phone (the flip phone) discovered "almost up under" the driver's side seat. The other two phones were iPhones belonging to the Victim. In addition to the three phones, money and drugs were found inside the vehicle.

Police photographed and collected the phones, took them to the Sheriff's Office, and gave them to Detective Lindsay McGraw. Detective McGraw performed limited forensic examinations to determine who owned each of the phones. Specifically, he pulled the flip phone's subscriber identity module card (SIM card) from the phone and obtained the telephone number associated with the phone. Detective McGraw provided the phone number to Investigator Tom Clark, who ran it through a database and determined the flip phone belonged to Moore. Investigator Clark then applied for a search warrant to examine the stored data on the phone. After obtaining the search warrant, Detective McGraw performed a full forensic examination of the flip phone during which he recovered stored contacts, images, call logs, and text messages.

Before trial, Moore moved to suppress any and all information derived from the search of his phone, citing *Riley v. California*, 134 S. Ct. 2473 (2014). Moore further argued the search warrant affidavit submitted to support the flip phone warrant application was conclusory and did not support the finding of probable cause necessary for issuance of the search warrant. The trial court denied the motion to suppress the flip phone evidence, ruling the phone was abandoned property.

At trial, the State's evidence established Victim was at his mother's home prior to the shooting and received several phone calls from the same number. Records from the flip phone revealed five calls were made to Victim's phone between 1:03 p.m. and 2:06 p.m. on the day of the shooting.

After the shooting, witnesses observed a white Chrysler 300 rapidly fleeing the area. One witness who was on foot stated the car drove against the flow of traffic and had to slam on its brakes to avoid hitting her. Police later used surveillance footage to identify the vehicle at a gas station near the Taco Bell. The video showed that after the vehicle parked at the gas station, two men exited and threw a bag in the trash before entering the gas station. The two men were identified as Tevin Thomas and Moore. Inside, Moore bought potato chips and cigarettes, and was required to give his birthdate for the cigarette purchase. This footage showed Thomas wearing dark clothing and Moore wearing a red jacket. Other cameras at a Cracker Barrel and an automotive business recorded the vehicle after it left the gas station. The vehicle was eventually located in a neighborhood not far from the automotive business.

Thomas testified that he and Moore had planned to rob Victim during a drug deal. According to Thomas, Moore was given a revolver by a third man who did not go with them to the Taco Bell. Moore and Thomas rode to the Taco Bell in Moore's Chrysler. Once they arrived, Victim parked next to their car and Moore exited his car and got into Victim's car. Thomas stated he saw Moore pull the gun on Victim; a struggle then ensued and Thomas heard a gunshot. Thomas testified that he got out of Moore's car and tried to intervene when he saw the struggle, but the doors on Victim's car were locked. When Thomas later asked whether Moore shot Victim, Moore responded, "yeah, I seen blood coming out of his head."

A fingerprint expert testified Thomas left ten fingerprints on the exterior of the passenger side of Victim's car. None of Moore's fingerprints were found on Victim's car; however, both Thomas's and Moore's fingerprints were found on the white Chrysler 300.

Moore called eyewitness Chris Barnes, who testified he was at the Taco Bell, heard a shot, then saw a man emerge from the passenger side of Victim's car and jump into another car. He described the man as wearing a dark colored sweatshirt and a dark colored toboggan. Barnes was shown the gas station surveillance video with Moore wearing a red jacket, but Barnes insisted the man he "locked eyes with" at the Taco Bell was not wearing red.

The jury found Moore guilty of attempted murder, and the circuit court sentenced him to thirty years' imprisonment.

Standard of Review

"On appeals from a motion to suppress based on Fourth Amendment grounds, the appellate court] . . . reviews questions of law de novo." *State v. Bash*, 419 S.C. 263, 268, 797 S.E.2d 721, 723–24 (2017). As to a circuit court's findings of fact, we must affirm "if there is any evidence to support" the factual findings and "may reverse only for clear error." *State v. Brown*, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012).

Law and Analysis

I. Warrantless Search of the Flip Phone

Moore argues the initial warrantless search of the flip phone violated the Fourth Amendment, and no exception to the warrant requirement applied to justify the search. Additionally, Moore disputes the circuit court's conclusion that he abandoned his phone. I disagree that the initial, limited search to determine ownership of the flip phone violated the Fourth Amendment.

The Fourth Amendment to the United States Constitution demands that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" U.S. Const. amend. IV. South Carolina's constitution also recognizes the right of the people to be free from unreasonable searches and seizures. *See* S.C. Const. art. I, § 10 (containing language nearly identical to that of the Fourth Amendment). But not every search implicates the Fourth Amendment. "The touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). "[A] Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable." *Kyllo v. United States*, 533 U.S. 27, 33 (2001). However, "a Fourth Amendment search does *not* occur . . . unless 'the individual manifested a subjective expectation of privacy in the object of the challenged search,' and 'society [is] willing to recognize that expectation as reasonable.'" *Id.* (quoting *California v. Ciraolo*, 476 U.S. 207, 211 (1986)). In cases claiming an unreasonable search and seizure, the burden is on the defendant to prove not only that the search of an item was illegal, but also that he had a legitimate expectation of privacy in the item searched. *Rawlings v. Kentucky*, 448 U.S. 98, 104–05 (1980) (holding petitioner did not make a sufficient showing that his legitimate or reasonable expectations of privacy were violated by a search of his female companion's purse).

Particularly illustrative here is a recent case from the Georgia Court of Appeals, *State v. Hill*, 789 S.E.2d 317 (Ga. Ct. App. 2016). In *Hill*, a police officer discovered a cell phone in the back seat of a taxi. *Id.* at 318. The taxi's driver told police that a man had fled his taxi without paying the fare. *Id.* The police officer turned on the phone but could not access any information because the phone was protected by a passcode. *Id.* However, the officer was able to use an emergency call feature on the phone to get in touch with a 911 dispatcher, who then provided the officer with the phone's number as well as the owner's name and date of birth. *Id.*

The Georgia Court of Appeals found no Fourth Amendment violation because the defendant had no reasonable expectation of privacy in his name, date of birth, or phone number. *Id.* To support its determination, the Georgia court cited the litany of state and federal cases that have concluded "a person lacks a legitimate expectation of privacy in identifying information such as name, address, or telephone number that is used to facilitate the routing of communications by methods such as physical mail, e-mail, landline telephone, or cellular telephone." *Id.* at 319. The court explained there was a "core distinction" between the content of a communication and the information necessary to get the communication from one point to another. *Id.* at 319 (citing *United States v. Carpenter*, 819 F.3d 880, 886 (6th Cir. 2016)); see also *United States v. Graham*, 824 F.3d 421, 427 (4th Cir. 2016) (en banc) (addressing historical cell-site location information and holding an individual can claim "no legitimate expectation of privacy" in information he voluntarily provided to a third party). Although the content of the communication is private, the information related to its transmission is not. *Hill* at 319; *Graham* at 428.

The *Hill* court further recognized that "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties." *Id.* (quoting *Smith v. Maryland*, 442 U.S. 735, 743–44 (1979)); see also *Graham* at 428 (recognizing "the vast majority of federal district court judges" who have reached the same result). Therefore, the defendant's cellular phone number did not fall within the category of private information protected by the Fourth Amendment.

Hill at 320. The police in *Hill* did not—and could not due to the presence of a passcode—access the files contained on the phone.^{1, 2} *Id.*

Likewise in *Graham*, the Fourth Circuit, sitting *en banc*, considered information voluntarily provided to cell phone providers, albeit in a different, and perhaps more intrusive, context. In discussing its reasoning for finding a defendant had no legitimate expectation of privacy in historical cell-site location information, the court noted:

Moreover, outside the context of phone records, we have held that third-party information relating to the sending and routing of electronic communications does not receive Fourth Amendment protection. *United States v. Bynum*, 604 F.3d 161, 164 (4th Cir. 2010). In *Bynum*, we explained that it "would not be objectively reasonable" for a defendant to expect privacy in his phone and Internet subscriber records, including "his name, email address, telephone number, and physical address." *Id.*

Graham at 432.

Like the *Hill* phone, Moore's flip phone was found at a crime scene and was examined by police before they obtained a warrant *solely* to obtain the telephone number and ownership identification. In the present case, police removed the phone's SIM card and processed it for the limited purpose of obtaining the telephone number. I recognize that even small manipulations of personal property have been held to be Fourth Amendment searches. *See Arizona v. Hicks*, 480 U.S. 321, 324–25 (1987) (holding a search occurred when a police officer briefly moved stereo equipment inside a defendant's apartment in order to record the equipment's serial numbers). However, under the facts of this case, law enforcement's limited search of the SIM card to obtain the phone number did not constitute an

¹ It is unclear whether Moore's phone was passcode-protected, although when an officer was asked to review Detective McGraw's report to see whether the report indicated the phone was passcode-protected, the officer stated, "I don't see that it was."

² Because the court found no Fourth Amendment violation, it did not reach the issue of abandonment. *Hill* at 321.

unreasonable search under the Fourth Amendment because Moore had no reasonable expectation of privacy in the number itself.

Of significance here is the fact that police obtained a warrant before performing further analysis to examine the phone's contents. In *Riley*, the United States Supreme Court explained that the immense amount of personal information stored in modern cell phones makes cell phone searches inherently different from other searches conducted incident to a lawful arrest. 134 S. Ct. at 2482. The Court wrote:

The storage capacity of cell phones has several interrelated consequences for privacy. First, a cell phone collects in one place many distinct types of information . . . that reveal much more in combination than any isolated record. Second, a cell phone's capacity allows even just one type of information to convey far more than previously possible Third, the data on a phone can date back to the purchase of the phone, or even earlier

Finally, there is an element of pervasiveness that characterizes cell phones but not physical records. Prior to the digital age, people did not typically carry a cache of sensitive personal information with them as they went about their day. Now it is the person who is not carrying a cell phone, with all that it contains, who is the exception

Id. at 2489–90. The Supreme Court ultimately held "that a warrant is generally required before such a search, even when a cell phone is seized incident to arrest." *Id.* at 2493. The Court explained:

Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans "the privacies of life[.]" The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our answer to the question of what police must do before searching a cell

phone seized incident to an arrest is accordingly simple—get a warrant.

Id. at 2494–95.

Unlike *Riley*, this case does not involve the warrantless search of a cell phone's stored contents. Accordingly, *Riley*'s concerns about modern cell phones operating as personal "minicomputers" are not implicated when, as here, police obtained a warrant before examining the flip phone's stored contents. *Id.* at 2489; *see also Hill*, 789 S.E.2d at 320 ("Although a law enforcement officer cannot access data stored within a cellular phone without a warrant or an exception to the warrant requirement . . . courts have held that the officer can take other action with a cellular phone lawfully in his or her possession to determine the phone's owner." (internal citation omitted)).³

I recognize our learned dissenting colleague's admonition in *State v. Brown* that "the lack of any exigency justifying a warrantless search and the ease with which law enforcement could have obtained a warrant demonstrates further the need to comply with the warrant requirement." 414 S.C. 14, 30, 776 S.E.2d 917, 926 (Ct. App. 2015) (Konduros, J., dissenting), *cert. granted* (S.C. Sup. Ct. Order dated August 8, 2017). I also acknowledge that the best policy in cases where Fourth Amendment concerns might be implicated is to obtain a warrant before conducting a search. *See Riley*, 134 S. Ct. at 2493 ("Recent technological advances . . . have . . . made the process of obtaining a warrant itself more efficient."); *State v. Cardwell*, 414 S.C. 416, 778 S.E.2d 483 (Ct. App. 2015), *cert. granted* (June 16, 2016) (stating a warrant is a necessary and "relatively simple step" when seeking to conduct a full search of files on a computer). Yet, I agree with the *Brown* majority that in *Riley*, "the Court did not require law enforcement officers to obtain a warrant to search every cell phone that falls into their possession[,] in every situation. 414 S.C. 14, 23, 776 S.E.2d 917, 921–22. "[T]he Fourth Amendment is not triggered unless a person has an actual and reasonable expectation of privacy or unless the government commits a common-law trespass for the purpose of obtaining information." *State v. Robinson*, 410 S.C. 519, 527, 765 S.E.2d 564, 568 (2014) (citation omitted).

As an additional sustaining ground, I find the inevitable discovery doctrine applies to the question of ownership of the flip phone. *See State v. Spears*, 393 S.C. 466,

³ Because I would find no Fourth Amendment violation, I have not addressed the issue of abandonment.

482, 713 S.E.2d 324, 332 (Ct. App. 2011) ("The inevitable discovery doctrine, one exception to the exclusionary rule, states that if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means, the information is admissible despite the fact it was illegally obtained." (citing *Nix v. Williams*, 467 U.S. 431, 444 (1984))). Detective McGraw testified he was asked to perform a forensic examination of all three phones found at the scene of the shooting. The undisputed evidence established five phone calls were made from the flip phone to one of Victim's phones shortly before the shooting occurred. Therefore, even without the use of the SIM card, Moore's telephone number would have been discovered through the examination of Victim's phones—in which Moore certainly had no reasonable expectation of privacy. *See Nix*, 467 U.S. at 449–50 (holding the inevitable discovery doctrine applied when searchers were approaching the location of a victim's body and would have discovered it without information obtained from the defendant's unlawful interrogation).

II. Validity of Search Warrant

Next, Moore argues the warrant to search the contents of the flip phone was impermissibly issued as the conclusory affidavit submitted to obtain the warrant did not establish the necessary probable cause. The panel majority disagrees.

A search warrant may issue only upon a finding of probable cause. *State v. Baccus*, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006). The duty of the reviewing court is to ensure that the issuing magistrate had a substantial basis upon which to conclude that probable cause existed. *Id.* at 50, 625 S.E.2d at 221. "The task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Spears*, 393 S.C. 466, 483, 713 S.E.2d 324, 333 (Ct. App. 2011) (quoting *State v. Dunbar*, 361 S.C. 240, 253, 603 S.E.2d 615, 622 (Ct. App. 2004)). "A reviewing court should give great deference to a magistrate's determination of probable cause." *State v. Weston*, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997). "Suppression is appropriate in only a few situations, including when an affidavit is 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" *Id.* at 293, 494 S.E.2d at 804 (quoting *United States v. Leon*, 468 U.S. 897, 923 (1984)).

Here, the affidavit submitted with the search warrant request stated:

On 2/25/2013 at approx. 14:13 Hrs. Deputies with the Spartanburg County Sheriff's Office responded to 760 Warren H. Abernathy Hwy. In reference to a shooting. Upon arrival they found the Victim, Travis Hall had been shot. Hall was transported to SRMC. Through further investigation and the processing of the Victim's vehicle an AT&T ZTE model Z331 cell phone serial number #22213371843 was found inside the victim's vehicle. Through further investigation it was found the phone number assigned to the phone is (864) 494-2573. Through further investigation it was found this phone did not belong to the Victim. Through further investigation it was found this phone belonged to Robert Lee Moore. This search warrant is needed for the furtherance of this investigation to obtain information from the phone that can either implicate, or clear Robert Lee Moore from any involvement in this incident.

This affidavit provided ample probable cause for the magistrate to issue the warrant. The affidavit explained *why* police believed the phone's contents would reveal evidence about the shooting and Moore's possible involvement; namely, because police discovered his phone in Victim's vehicle at the scene of the shooting. *Contra State v. Smith*, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990) (finding an affidavit defective on its face when it set forth no facts as to *why* police believed a defendant committed a robbery and omitted the fact that some of the information in the affidavit was provided by an informant). As the affidavit provided the magistrate with a substantial basis to find probable cause existed to support the search and, thus, issue the warrant, the circuit court properly denied Moore's motion to suppress.

AFFIRMED.

LOCKEMY, C.J., concurring in part and dissenting in part in a separate opinion. KONDUROS, J., dissenting in a separate opinion.

LOCKEMY, C.J., concurring in part and dissenting in part: I agree with the dissent's Fourth Amendment analysis and would find Moore's constitutional rights were violated when officers searched his cell phone without a warrant. However, I would find the information used during trial—the identity of the owner of the cell phone—would have been inevitably discovered because officers obtained a valid search warrant prior to performing a full forensic search. Therefore, I concur in part and dissent in part.

As each of my colleagues recognize, the Fourth Amendment ensures "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" U.S. Const. amend. IV. Furthermore, as the lead opinion notes, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). "In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement." *Riley v. California*, 134 S. Ct. 2473, 2482 (2014).

The lead opinion indicates the officer's actions in removing the SIM card and processing the information contained therein was not a search under the Fourth Amendment because Moore had no reasonable expectation of privacy in the information recovered. I disagree that the Fourth Amendment analysis should focus on the information searched, and instead should focus on what information could have been searched. The SIM card contained more than simply the cell phone's number, and police could have accessed that information during their search. As Chief Justice Roberts noted in *Riley*,

a cell phone search would typically expose to the government far more than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home, it also contains a broad array of private information never found in a home in any form—unless the phone is.

Id. at 2491.

I would find Moore had a reasonable expectation of privacy in the data contained on his cell phone, and any intrusion into that data constituted a search under the Fourth Amendment. Furthermore, I disagree with the State that Moore's reasonable expectation of privacy was abandoned as the facts do not support such a finding in this case. *See State v. Dupree*, 319 S.C. 454, 457, 462 S.E.2d 279, 281

(1995) ("In the law of search and seizure, . . . the question is whether the defendant has, in discarding the property, relinquished his reasonable expectation of privacy so that its seizure is reasonable within the limits of the Fourth Amendment." (quoting *City of St. Paul v. Vaughn*, 237 N.W.2d 365, 370-71 (Minn. 1975))); *State v. Brown*, 414 S.C. 14, 23, 776 S.E.2d 917, 922 (Ct. App. 2015), *cert. granted*, (S.C. Sup. Ct. Order dated August 8, 2017) ("Whether such an expectation of privacy has been abandoned 'is determined on the basis of the objective facts available to the investigating officers, not on the basis of the owner's subjective intent." (quoting *United States v. Tugwell*, 125 F.3d 600, 602 (8th Cir. 1997))).

Because Moore had a reasonable expectation of privacy in the data contained on his cell phone and he did not abandon that expectation, I would find the State violated the Fourth Amendment by performing a warrantless search of that information. I concur in the result reached by the lead opinion because I believe the State would have inevitably discovered the same information using the valid warrant it later secured to continue its search of the phone. *See Nix v. Williams*, 467 U.S. 431, 447 (1984) ("If the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police, there is no rational basis to keep that evidence from the jury in order to ensure the fairness of the trial proceedings.").

I recognize police included information gleaned from the warrantless search in their warrant affidavit. In *State v. Spears*, this court faced a similar issue regarding illegally obtained information used in a warrant. 393 S.C. 466, 713 S.E.2d 324 (Ct. App. 2011). The court excised the offending information from the warrant affidavit, and analyzed the remaining portions of the affidavit to determine if probable cause still existed to support the magistrate's decision to issue the warrant. *Id.* at 483, 713 S.E.2d at 333.

Here, I would find any information about the owner of the phone should be removed from the warrant affidavit and the remaining language should be considered under our test for probable cause. The affidavit would thus read:

On 2/25/2013 at approx. 14:13 Hrs. Deputies with the Spartanburg County Sheriff's Office responded to 7680 Warren H. Abernathy Hwy. In reference to a shooting. Upon arrival they found the Victim, Travis Hall had been shot. Hall was transported to SRMC. Through further investigation and the processing of the Victim's vehicle an AT&T ZTE Model Z331 cell phone serial number

[Redacted] was found inside the Victim's vehicle. This search warrant is needed for the furtherance of this investigation to obtain information from the phone that can either implicate, or clear any individual from any involvement in this incident.

I agree with the lead opinion that this warrant affidavit would support a finding of probable cause. *See State v. Dunbar*, 361 S.C. 240, 253, 603 S.E.2d 615, 622 (Ct. App. 2004) ("The task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place."). Accordingly, I would find the evidence would have been inevitably found pursuant to the valid search warrant, regardless of the initially unlawful search.

Finally, I wish to echo the sentiments expressed in the lead opinion and the dissent cautioning officers about the practice of searching cell phones without warrants. Chief Justice Roberts stated well the importance with which courts must protect individual's rights to the "privacies of life" that are contained on cell phones. *Riley*, 134 S. Ct. at 2495. "The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought." *Id.* There were no cell phones at Valley Forge. The principle of fighting and dying to make sure a soldier of the king is not allowed to kick in a citizen's door, however, is not very different than keeping a person's utmost personal information safe from unreasonable government intrusion. In the context of a search incident to an arrest, the Supreme Court created a bright line rule—"get a warrant." *Id.* While this case does not warrant the creation of such a rule in cases outside the search incident to an arrest exception, officers should tread lightly around digital information, and consider the implications of failing to obtain a warrant before searching an individual's cell phone.

KONDUROS, J., dissenting: I respectfully dissent and would reverse and remand Moore's case for a new trial. I conclude Officer McGraw's warrantless examination of the SIM card constituted a search that violated Moore's Fourth Amendment rights. As Officer McGraw explained in his testimony, the contents one can find on a SIM card include the stored phone number, call logs, a contact list, and "things of that nature." In this case, Officer McGraw testified he recovered the cell phone number, thirty-four contact entries, and three text messages. The minute Officer McGraw removed the SIM card, he had access to

digital information in which our courts have recognized an expectation of privacy. See *Riley v. California*, 134 S. Ct. 2473 (2014) (explaining society is willing to recognize an expectation of privacy in the digital contents of one's cell phone as reasonable). Therefore, I would conclude the warrantless search of Moore's cell phone violated his Fourth Amendment rights and no exception to the warrant requirement applies to the facts of this case.⁴ *Katz v. United States*, 389 U.S. 347, 357 (1967) (indicating searches without a warrant are per se unreasonable under the Fourth Amendment unless some exception applies).

The lead opinion cites to two cases—one from the Georgia Court of Appeals and one from the Fourth Circuit Court of Appeals—both of which are distinguishable from the facts in this case. In *State v. Hill*, the police used a locked cell phone to call 911 and obtain the owner's phone number, name, and date of birth. 789 S.E.2d 317, 318 (Ga. Ct. App. 2016). Such limited identifying information is not all Officer McGraw had access to in Moore's SIM card. The 911 dispatcher in Georgia did not provide the police with the owner's contact list, text messages, or call logs. The Fourth Circuit's opinion in *United States v. Graham*, 824 F.3d 421, 427 (4th Cir. 2016) (en banc), addressed an individual's expectation of privacy in historical cell-site location information. Again, this is distinguishable from the information available on a SIM card.

Additionally, I respectfully disagree with both of my learned colleagues that this warrantless search of Moore's cell phone can be cured through inevitable discovery. The holding in *Riley* "is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search, *even* when a cell phone is seized incident to arrest." 134 S. Ct. at 2493 (emphasis added). As I noted in my dissent in *State v. Brown*, 414 S.C. 14, 32, 776 S.E.2d 917, 927 (Ct. App. 2015) (Konduros, J., dissenting), *cert. granted* (S.C. Sup. Ct. Order dated August 8, 2017), I believe this language from *Riley* indicates an officer must obtain a warrant prior to searching a cell phone absent an applicable exception, even when one's expectation of privacy is diminished. Allowing officers to search the digital content of a cell phone prior to obtaining a warrant, yet cure such an invasion by arguing they could have inevitably obtained the information, circumvents the spirit of the warrant requirement. In keeping with my previous dissent and adhering to what I believe is the Court's holding in *Riley*, I

⁴ I agree with Chief Judge Lockemy that the facts of this case do not support a finding Moore abandoned his expectation of privacy in the contents of the cell phone.

would find the search of the digital contents of Moore's cell phone violated his rights under the Fourth Amendment and the case should be reversed and remanded.⁵

⁵ Because my resolution of Moore's issue regarding the warrantless search of the cell phone would be dispositive, I decline to address his second issue on appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issue when disposition of prior issue is dispositive).

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ROBERT LEE MOORE,

APPELLANT

APPELLATE CASE NO. 2014-001669

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

Opinion No. 5512

PETITION FOR REHEARING

Appellant seeks rehearing pursuant to Rule 221 (a), SCACR, because the majority of this Court, for different reasons, overlooked the scope of Officer McCraw's warrantless search of Appellant Moore's cell phone as Judge Konduros explained in her dissent:

I conclude Officer McGraw's warrantless examination of the SIM card constituted a search that violated Moore's Fourth Amendment rights. As Officer McGraw explained in his testimony, the contents one can find on a SIM card *include the stored phone number, call logs, a contact list, and "things of that nature."* In this case, *Officer McGraw testified he recovered the cell phone number, thirty-four contact entries, and three text messages.* The minute Officer McGraw removed the SIM card, **he had access to digital information in which our courts have recognized an expectation of privacy.** See Riley v. California, — U.S. —, 134 S.Ct. 2473,

189 L.Ed.2d 430 (2014) (explaining society is willing to recognize an expectation of privacy in the digital contents of one's cell phone as reasonable). Therefore, I would conclude the warrantless search of Moore's cell phone violated his Fourth Amendment rights and no exception to the warrant requirement applies to the facts of this case. (*Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) (indicating searches without a warrant are per se unreasonable under the Fourth Amendment unless some exception applies).

State v. Moore, Op. No. 5512, Shearouse's Adv. Sh. #33 at 59.

The dissent also explained the distinction between the present case and a Georgia and Fourth Circuit case relied upon in the lead opinion:

The lead opinion cites to two cases—one from the Georgia Court of Appeals and one from the Fourth Circuit Court of Appeals—both of which are distinguishable from the facts in this case. In *State v. Hill*, the police used a locked cell phone to call 911 and obtain the owner's phone number, name, and date of birth. 338 Ga.App. 57, 789 S.E.2d 317, 318 (2016). **Such limited identifying information is not all Officer McGraw had access to in Moore's SIM card.** The 911 dispatcher in Georgia did not provide the police with the owner's contact list, text messages, or call logs. The Fourth Circuit's opinion in *United States v. Graham*, 824 F.3d 421, 427 (4th Cir. 2016) (en banc), addressed an individual's expectation of privacy in *historical cell-site location information. Again, this is distinguishable from the information available on a SIM card.*

State v. Moore, Op. No. 5512, Shearouse's Adv. Sh. #33 at 59.

As to inevitable discovery, Judge Konduros harkened back to her dissent in *State v. Brown*, 414 S.C. 14, 32, 776 S.E.2d 917, 927 (Ct. App. 2015) *cert. granted* (S.C. Sup. Ct. Order dated August 8, 2017):

The holding in *Riley* 'is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search, even when a cell phone is seized incident to arrest.' 134 S.Ct. at 2493 (emphasis added) . . . I believe this language from *Riley* indicates an officer must obtain a warrant prior to searching a cell phone absent an applicable exception, even when one's expectation of privacy is diminished. Allowing officers to

search the digital content of a cell phone prior to obtaining a warrant, yet cure such an invasion **by arguing they could have inevitably obtained the information, circumvents the spirit of the warrant requirement.**

State v. Moore, Op. No. 5512, Shearouse's Adv. Sh. #33 at 60.

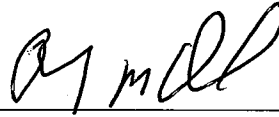
In concurring and dissenting, Chief Judge Lockemy agreed that appellant did not abandon his reasonable expectation of privacy in the data contained on his cell phone. State v. Dupree, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995), involved discarding and abandoning illegal drugs, not the data and information on a citizen's cell phone. State v. Moore, Op. No. 5512, Shearouse's Adv. Sh. #33 at 56-57.

While finding the State violated the Fourth Amendment in this case by performing a search of appellant's cell phone information, the concurring and dissenting opinion nonetheless joined in the lead opinion because "[I] believe the State would have inevitably discovered the same information using the valid warrant it later secured to continue its search of the phone. See Nix v. Williams, 467 U.S. 431, 447, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984) ('If the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police, there is no rational basis to keep that evidence from the jury in order to ensure the fairness of the trial proceedings.'). State v. Moore, Op. No. 5512, Shearouse's Adv. Sh. #33 at 57.

Respectfully, the State conducted an illegal warrantless search of appellant's cell phone as the concurring and dissenting opinion found. In doing so it obtained information and data that violated appellant's reasonable expectation of privacy. The State's belated covering of its tracks to obtain a mulligan for its constitutional violation of appellant's reasonable expectation of privacy from the majority of the Court does, most respectfully, circumvent the integrity of the warrant requirement. See Riley v. California, — U.S. —, 134 S.Ct. 2473 (2014).

Appellant respectfully urges the majority of the Court to reconsider, and grant rehearing in this significant constitutional case.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

ROBERT M. DUDEK
Chief Appellate Defender

This 14th day of September, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

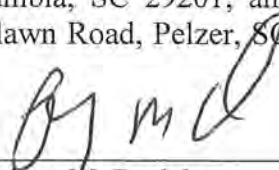
V.

ROBERT LEE MOORE,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon William M. Blich, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Robert Lee Moore, #320303, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 14th day of September, 2017.



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 14th day of September, 2017.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: May 2, 2027.

The South Carolina Court of Appeals

The State, Respondent,

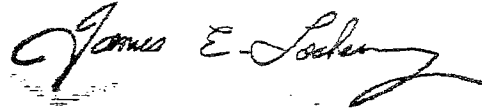
v.

Robert Lee Moore, Appellant.

Appellate Case No. 2014-001669

ORDER

After careful consideration of the petitions for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, both Appellant's petition for rehearing and Respondent's petition for rehearing are denied.

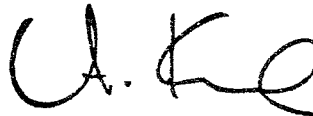


C.J.



J.

For the reasons set forth in my dissent, I would grant Appellant's petition for rehearing.



J.

Columbia, South Carolina

cc:

FILED

November 2, 2017



Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire
William M. Blich, Jr., Esquire
Barry Joe Barnette, Esquire

RECEIVED

NOV 02 2017

APPELLATE DEFENSE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

 ORIGINAL

Certiorari to Spartanburg County

R. Keith Kelly, Circuit Court Judge

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Opinion No. 5512 (S.C. Ct. App. Filed August 30, 2017)

DEC 19 2017

2013-GS-42-2965

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

ROBERT LEE MOORE,

PETITIONER.

APPELLATE CASE NO. 2017-002479

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

INDEX

INDEX	i
CERTIFICATE OF COUNSEL	1
QUESTION PRESENTED	2
STATEMENT OF THE CASE.....	3
ARGUMENT	
The Court of Appeals erred by affirming petitioner’s conviction based on an inconsistent “inevitable discovery” analysis where the majority agreed petitioner’s constitutional rights were violated where the police searched his cell phone without a warrant, yet found on erroneous and inconsistent bases that the fruits of the warrantless search would have been inevitable discovered since the majority opinions circumvent the integrity of the warrant requirement in violation of <i>Riley v. California</i> , 134 S.Ct. 2473 (2014).....	4
Relevant facts.....	4
Suppression hearing.....	5
Argument of counsel	10
Ruling.....	11
Trial evidence	12
Eyewitness Barnes.....	14
Cell phones	15
Forensic cell phone evidence.....	15
Closing arguments	16
Discussion.....	18
CONCLUSION	22

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on November 2, 2017.

QUESTION PRESENTED

Whether the Court of Appeals erred by affirming petitioner's conviction based on an inconsistent "inevitable discovery" analysis where the majority agreed petitioner's constitutional rights were violated where the police searched his cell phone without a warrant, yet found on erroneous and inconsistent bases that the fruits of the warrantless search would have been inevitable discovered since the majority opinions circumvent the integrity of the warrant requirement in violation of Riley v. California, 134 S.Ct. 2473 (2014)?

STATEMENT OF THE CASE

Petitioner was indicted by the Spartanburg County Grand Jury for the offense of attempted murder. R. 327. His case came on for trial on July 21, 2014, before the Honorable R. Keith Kelly, and a jury. Andrew Johnston represented petitioner. Derrick Balsa was the deputy solicitor. R. 1.

On July 23, 2014, the jury found petitioner guilty. R. 320, l. 25 – 321, l. 6. Judge Kelly sentenced petitioner to thirty years' imprisonment. R. 322, ll. 5-6.

The majority of the Court of Appeals affirmed in State v. Robert Lee Moore, Op. No. 5512 (filed August 30, 2017). Chief Judge Lockemy and Judge Konduros both held that petitioner's constitutional rights were violated by the warrantless search by the police of his cell phone. However, Judge Lockemy, based on a different analysis, agreed with Judge McDonald that the information from the cell phone search would have been inevitably discovered. Therefore, petitioner's attempted murder conviction was affirmed. App. 1-15.

Petitioner and the state sought rehearing. App. 16-30. Rehearing was denied. App. 2. Petitioner now seeks certiorari from this Court.

ARGUMENT

The Court of Appeals erred by affirming petitioner's conviction based on an inconsistent "inevitable discovery" analysis where the majority agreed petitioner's constitutional rights were violated where the police searched his cell phone without a warrant, yet found on erroneous and inconsistent bases that the fruits of the warrantless search would have been inevitable discovered since the majority opinions circumvent the integrity of the warrant requirement in violation of *Riley v. California*, 134 S.Ct. 2473 (2014)

Relevant facts

Defense counsel Johnston moved to suppress all of the information derived from the search of petitioner's cell phone, "an AT&T flip phone, which is attributed to the ownership of the defendant." Defense counsel told the judge the court would need to hear the testimony from the investigators who recovered it, and the other law enforcement personnel who were involved "in the forensic evaluation of the phone" before ruling. R. 2, ll. 7-19.

Assistant solicitor Balsa told the judge this case involved the shooting of the victim, thirty-four-year-old Travis Hall, on February 25, 2013 at a Taco Bell in Spartanburg. Three cell phones were found surrounding the injured victim in his car. Since money and drugs were also found in the vehicle, the police obviously suspected this case involved a drug deal gone badly, or a drug deal that was actually the result of a planned robbery that went awry. R. 3, l. 8 – 6, l. 11. Defense counsel cited *Riley v. California*, 134 S.Ct. 2473 (2014) in support of his motion to suppress the cell phone evidence. R. 6, l. 13 – 7, l. 15.

Balsa argued that the police discovered the cell phones, and thought they had a potential suspect. The police later got a search warrant after making "preliminary productive discoveries" from the warrantless search of the phone. However, Balsa maintained a search warrant for the

contents of the cell phone was never required because it had been “abandoned by the defendant.” R. 7, l. 16 – 9, l. 6.

Defense counsel Johnston confirmed that petitioner was claiming a privacy interest and an expectation of privacy in his cell phone. Johnston strongly disagreed that petitioner had abandoned his cell phone. Johnston argued there was a major difference between forgetting one’s phone or negligently leaving it behind, and abandoning it. Even though the state had the burden of proof, as will be seen infra, the state was unable to state whether the cell phone had a secure password on it that law enforcement was able to get beyond, or whether the forensically “pulled” information was obtained in a less onerous manner. R. 8, l. 2 – 9, l. 14.

Suppression hearing

Investigator Lindsey McGraw testified that three cell phones were collected from the scene of the February 25, 2013 shooting at the Taco Bell in Spartanburg. “I was asked to perform a forensic examination of three cellular telephones that were found at the scene primarily to determine who owned the cell, the cell phones to determine ownership.” McGraw identified the phones as an Apple I-phone 3, an Apple I-phone 4, and a ZTE331 flip phone. R. 10, ll. 8-25.

The flip phone was the one at issue here. McGraw did a forensic examination of **“the installed SIM card.”** The card contained the call logs stored contacts “things of that nature.” R. 10, l. 22 – 11, l. 12. (emphasis added). McGraw was able to recover the cell phone number assigned to the phone from his forensic investigation. He then asked other investigators to find out who the person matched up with the phone number. R. 12, l. 2 – 13, l. 3.

McGraw testified he was able to determine the cell phone number did not belong to the victim. Before he obtained a search warrant, McGraw said he found out the telephone number was

864-494-2573. He also recovered thirty-four contact entries, and he discovered three text messages on the cell phone. R. 12, l. 2 – 13, l. 3.

McGraw says the stored contract information allowed him to associate a name – petitioner -- with a phone number. McGraw said after he obtained this information, the police got a search warrant and “I did a full forensic examination of the phone, processed it.” McGraw maintained he was unable to further recover contacts and images and pictures from the phone. R. 12, l. 2 – 15, l. 9.

On cross-examination, McGraw confirmed he got the phone number for the cell phone before the police obtained a search warrant. He confirmed the cell phone could send and receive text messages, and that typically the phone would have a contact name, phone number and “possibly their physical address and email address.” McGraw confirmed that the cell phone had a camera for photographs, and a record of all telephone calls made and received. R. 16, l. 1 – 17, l. 21.

McGraw testified that the search warrant was obtained the day after he initially searched the phone without a warrant. R. 17, l. 4 – 18, l. 20. The search warrant affidavit stated:

On 2/25/2013 at approx. 14:13 Hrs. Deputies with the Spartanburg County Sheriff's Office responded to 760 Warren H. Abernathy Hwy. in reference to a shooting. Upon arrival, they found the Victim, Travis Hall had been shot. Hall was transported to SRMC. Through further investigation and the processing of the Victim's vehicle an AT&T ZTE model Z331 cell phone serial number #22213371843 was found inside the victim's vehicle. **Through further investigation it was found the phone number assigned to the phone is (864) 494-2573. Through further investigation it was found this phone did not belong to the Victim. Through further investigation it was found this phone belonged to Robert Lee Moore. This search warrant is needed for the furtherance of this investigation to obtain information from the phone that can either implicate, or clear Robert Lee Moore from any involvement in this incident.**

R. 324; State v. Moore, 421 S.C. 167, 179, 805 S.E.2d 585, 592 (2017). (emphasis added).

This was the search warrant affidavit that the police used to obtain the warrant. The Court of Appeals found it was a sufficiently detailed affidavit, that it was not conclusory, and that it

established probable cause for a complete search of petitioner's cell phone. Petitioner maintains, however, *infra*, that it was improper for one of the affirming Judge's to reason that if the highlighted objectionable language was deleted (based on the initial search of the cell phone) that the evidence would have been inevitably discovered because the search warrant affidavit would have passed "probable cause" muster for a search warrant to be issued anyway.

Detective Tom Clark was the state's next witness at the suppression hearing. Clark testified he was originally contacted by Investigator Williams because multiple (three) cell phones had been found in the vehicle, and Clark said the police determined that the victim himself had multiple cell phones. R. 19, l. 6 – 20, l. 16.

Clark confirmed that he was not the person who conducted the forensic examination on the telephone before a search warrant was obtained. He correctly said he assumed investigator Williams was the person who did the warrantless forensic examination. R. 20, l. 24 – 21, l. 18. Clark then read into the record his affidavit to obtain the search warrant.

Q. Tell me what you told Judge Willingham.

A. Told Judge Willingham that on February the 25th at approximately 14:30 hours deputy responded to the Spartanburg County – well, excuse me. With the Spartanburg County Sheriff's Office responded to 7680 Warren H. Abernathy Highway in reference to a shooting. Upon arrival they found the victim, Travis Hall, had been shot. Travis Hall was transported to Spartanburg Regional Medical Center.

Through further investigation and processing of the, processing of the vehicle, the victims AT&T ZTE model 7331 cell phone with serial number 322213371843 was found inside the vehicle. Through further investigation it was found that this phone number **assigned to this phone was 864-494-2573. Through further investigation it was found that this phone did not belong to the victim. Through further investigation it was found that this phone belonged to Robert Lee Moore, that a search warrant is needed for the furtherance of this investigation to obtain information from the phone that can either implicate or clear Robert Lee Moore from any involvement in this incident.**

R. 21, l. 19 – 22, l. 13. (emphasis added).

Judge Willingham did not have any other information to base his decision about the search warrant on other than that above. R. 22, ll. 14-19. Clark also confirmed that the police used the information from the warrantless search of the cell phone to obtain the search warrant. R. 23, ll. 3-19.

Clark agreed there was **not anything** in the search warrant affidavit which stated why the police thought petitioner may or may not “have shot the victim.” R. 23, l. 20 – 24, l. 4. Clark also said he was only told that the cell phone was found “in the vehicle under or near the victim and **that was all the information that I was given** other than the victim, according to the investigation, had several cell phones.” R. 24, ll. 10-17. (emphasis added).

On re-cross examination, Clark said he did not recall what he told the judge about **how the police knew** that cell phone was owned by petitioner. He confirmed that the affidavit also did not provide even that most basic information to the magistrate. R. 25, l. 12 – 26, l. 3.

Investigator Lorine Williams was the lead investigator on this case. R. 26, ll. 6-19. Williams confirmed that several cell phones were found in the victim’s automobile. The wounded victim had been removed from the scene by the time he arrived at the Taco Bell and observed the two cell phones in the car. Williams said the third cell phone seized was not in plain view. Two of the cell phones “are in the driver compartment floorboard closer to the door.” R. 27, l. 3 – 28, l. 1.

Williams testified --and apparently found significance in the fact -- that no one at the scene was claiming ownership of any of the cell phones. Williams said that although he did not have any documentation, he seemed to remember that McGraw had told them that “he

had gotten a phone number from the flip phone I believe it was. That number was run through our data system at the sheriff's office. It was associated to Mr. Moore through that system as a "known phone number that he had used or given either in a previous incident or when he was booked in at the jail or something of that nature. It was associated to him. At that point we realized the phone did not belong to the victim. Therefore, the exam was stopped in order to obtain a search warrant before any further forensic testing was done on the phone." R. 28, l. 23 – 29, l. 14.

Williams said he could not testify whether or not the cell phone was "password protected," and he added that Investigator McGraw's report was no help on the password protected subject either. R. 29, l. 21 – 30, l. 1.

As for "abandonment", Williams confirmed he had never seen petitioner in possession of the cell phone nor had he seen petitioner relinquish possession of the phone. Williams confirmed he had chased suspects who had discarded items during the chase. R. 30, ll. 2-17. Williams said he had never seen petitioner throw the phone down or throw it away. "I never saw Mr. Moore at the scene." Williams said he did not know why petitioner left his cell phone but he opined it was apparent there had been a struggle at the Taco Bell scene, and he said **he was sure the cell phone was left behind by mistake.** R. 30, l. 1 – 32, l. 15.

Another law enforcement officer, Forensic agent Robert Talanges, would take issue with the statement that it was apparent there had been a struggle inside the car. "I can't say there was a struggle." R. 101, ll. 9-17. Williams confirmed that he was aware of other situations where a person may have forgotten or misplaced their cell phone. R. 32, l. 18 – 33, l. 3.

Argument of counsel

Defense counsel Johnston again argued pursuant to Riley v. California that the fruits of the search of the cell phone had to be suppressed. Johnston distinguished State v. DuPree, 319 S.C. 454, 462 S.E.2d 279 (1995) where the defendant had abandoned his property for Fourth Amendment purposes by throwing the crack cocaine to the floor during the search of his mouth. Johnston reminded the judge that “Detective Williams summed it up very nicely when he said I have no doubt that he [petitioner] *forgot it* and left it behind.” Johnston argued unintentionally forgetting or leaving behind a cell phone did not mean that it was abandoned. R. 33, l. 24 – 35, l. 9.

Johnston added there was a large amount of money and drugs were found in the victim’s car, and this was not a situation where a person would have voluntarily abandoned his cell phone. Johnston argued there was nothing in the search warrant to indicate petitioner had anything to do with the shooting, and he said the warrant was conclusory, and did not provide probable cause for the issuance of a search warrant. Johnston noted the search warrant went so far as to state the search of the cell phone may actually “clear” petitioner. R. 37, l. 4 – 38, l. 11. (Petitioner argued this issue in the Court of Appeals. It is presently subsumed in the argument before this Court as to a majority of the Court of Appeals was constituted by an incorrect and inconsistent “inevitable discovery” holding.)

Johnston argued Riley v. California was on point about the extraordinarily large amount of private information that was stored on an individual’s cell phone. The cell phones provided “potentially all of the person’s associates, their addresses, their telephone numbers, email addresses, anything else a person might decide to include with their contact

information.” The cell phones also contained photographs and other personal data. R. 37, l. 4 – 38, l. 11.

Defense counsel repeated that the cell phone had not been abandoned, and that there was no evidence of a clear intention to abandon the phone. Counsel argued that all the information obtained from the cell phone before and after the search warrant had to be suppressed. R. 38, ll. 12-25.

The solicitor said he had not anticipated the argument that the phone was mistakenly left behind rather than abandoned. The solicitor insisted the search was reasonable, and that the phone had been abandoned regardless. The solicitor also argued that the Riley v. California did not prevent the judge from ruling the telephone had simply been abandoned, and that petitioner had no expectation of privacy in the cell phone once it “was left behind.” R. 39, l. 2 – 41, l. 3.

Defense counsel in his colloquy with the court said that the victim was apparently known to carry two cell phones but that three phones were found. Johnston also argued that even if the police thought the phone belonged to the victim they would still have needed to obtain a search warrant to obtain the victim’s information since it was known these cell phones contain private communications, and information that is inculpatory. For that reason, a search warrant was required for the personal information on the cell phone. R. 43, l. 4 – 44, l. 23. The judge deferred ruling. R. 44, ll. 22 -23.

Ruling

Following jury selection, the judge denied petitioner’s motion to suppress any and all of the information seized from petitioner’s cell phone. R. 51, ll. 9-14. The judge ruled that petitioner’s cell phone was “abandoned property.” The judge said he had read cases

that property can “be abandoned even momentarily.” The judge reasoned the “property” had been abandoned. The judge ruled he would not suppress any information derived from the search of the cell phone, and accepted, that an alleged “benign” reason to search a cell phone was permissible. R. 51, l. 9 – 52, l. 24.

Defense counsel quickly tried to correct the judge about the prejudice of the information that law enforcement intended to use from the search of petitioner’s cell phone. Counsel correctly predicted the state was going to show a record of phone calls between petitioner and the victim’s phone that were in close proximity to the incident. He requested that the judge reconsider his ruling. The judge said he was not changing his ruling: “I have wrestled with that a little bit, Mr. Johnston.” The judge and Johnston had a further discussion of Riley v. California, and Johnston argued that the holding in Riley v. California did not “hang on whether or not the person had been arrested.” R. 53, l. – 54, l. 11. The judge refused to alter his ruling denying suppression.

Trial evidence

The state’s first witness was the victim’s mother, Deborah Hall. Her son, Travis Hall, was thirty-four years old when he was shot on February 25, 2013 at the Taco Bell. R. 58, l. 18 – 59, l. 23.

Ms. Hall testified her son came by her house for twenty to twenty-five minutes prior to the incident, and “he kept receiving several phone calls *from the same person*.” (emphasis added). Ms. Hall said she overheard her son talking about picking up his daughter near Highway 29. Highway 29, of course, was near the Taco Bell. Ms. Hall said the next thing she heard from her son was when “I got a phone call that he had got shot in the head from the sheriff’s department.” R. 59, l. 15 – 61, l. 24.

Ms. Hall testified her son spent a couple of months in the hospital after the shooting. R. 61, l. 7 – 63, l. 20. Ms. Hall then identified photographs showing the damage to her son's Impala. R. 64, l. 1 – 65, l. 21.

Deputy John Hudson, testified he went to the crime scene off Highway 29 at the Taco Bell. He remembered several people standing around the victim's automobile. R. 68, l. 2 – 70, l. 16.

Hudson recalled the victim had been shot, and he was leaning out of the vehicle "and the seatbelt was supporting his weight." Hudson opined the victim was attempting to get out of the front driver's seat, but the seatbelt was holding him inside. R. 73, l. 5 – 75, l. 16.

Tim Tullock worked for an air conditioning and refrigeration company. He was at the Taco Bell on the day of the shooting, February 25, 2013. R. 80, l. 22 – 82, l. 4.

Tullock was doing paperwork in his van when he heard "some popping sounds." He saw a man "hanging out of the car," and proceeded to walk across the parking lot "to see if he could help him out." Tullock remembered that a "white Chrysler 300 with some rather large rims" tore out of the parking lot "squealing its tires at the same time." R. 82, l. 23 – 84, l. 21.

Marilyn Arthur was a fingerprint identification expert. She testified that Tevin Thomas, a future state's witness, left behind ten fingerprints on the victim's automobile. R. 117, l. 17 – 119, l. 18. None of petitioner's fingerprints were found on the victim's automobile. R. 127, ll. 9-14.

Tevin Thomas' fingerprints were also located on the white Chrysler that Tullock apparently identified as the car quickly leaving the Taco Bell parking lot. Petitioner's fingerprints were found on the Chrysler as well. R. 129, l. 12 – 130, l. 11.

Thomas later testified as a state's witness that Reginald Sanders, Thomas, and petitioner planned to rob the victim during a planned drug deal. Thomas claimed when Sanders did not show

up that, he went with petitioner to meet the victim at the Taco Bell without Sanders. Thomas said petitioner parked his car “side by side” with the victim’s car. Thomas maintained it was petitioner who got out of his car, and got into the victim’s car. Thomas claimed he saw petitioner and the victim get into a struggle with the victim. Thomas said petitioner and the victim were “on top of each other” when he heard a shot. R. 196, l. 4 – 207, l. 20. Thomas claimed petitioner admitted he shot the victim as he fought with him inside the victim’s car.¹ R. 207, l. 16 – 208, l. 11.

Eyewitness Barnes

The defense called eyewitness Chris Barnes during petitioner’s trial. Barnes was going through the drive through at the time of the Taco Bell shooting. R. 242, l. 19 – 245, l. 22. Barnes testified he saw the victim’s car “rocking back and forth. I was thinking like, what’s going on in that car because it was swinging around, and then I heard a pop, and then I saw somebody slumped over and blood like squirting.” Barnes saw a man get out of the passenger side of the victim’s car, and jump into “another car.” R. 245, l. 19 – 246, l. 8.

The description Barnes gave of the man getting out of the victim’s car after the shooting matched Thomas, and not petitioner. That is true because Barnes described the black male quickly leaving the car as wearing a dark colored sweatshirt and a dark colored toboggan, and not red clothing. This was significant because Thomas was captured on a Hot Spot convenience store videotape shortly after the shooting wearing dark colored clothing, and a toboggan. Petitioner, on that same videotape, was wearing red clothing. R. 172, l. 1 – 174, l. 17.

The solicitor was left to argue in closing that he did not think Barnes had a good view of the victim’s car. The solicitor essentially argued that Barnes misidentified Thomas as the man in

¹ This Court can take judicial notice from the Department of Corrections Inmate Locator Information Service Website of the fact that Thomas was also serving sentences for burglary in the second degree, and he apparently received a ten year sentence for attempted armed robbery in this case. He is scheduled to be released in about five years on August 26, 2021.

getting out of victim's car at the time of the shooting, and maintained Barnes saw Thomas get out of the other car consistent with what state's witness Thomas said. R. 301, ll. 6-19.

Cell phones

Robert Talanges was with the forensic department of the Spartanburg County Sheriff's Department. He opined, from the broken glass, that the shots were fired from inside the victim's car "out" that day. There was also a powder burn on the seat. The victim had "a fully loaded gun" inside his car -- with a full magazine with sixteen rounds in it. Talanges opined the victim did not shoot his gun. R. 94, l. 21 – 96, l. 10.

Talanges found three cell phones inside the victim's car. He acknowledged he could not tell from looking at them who owned these cell phones. R. 100, l. 11 – 103, l. 20. Finally, according to Talanges, the gun which fired the shot that hit the victim in the head, and injured him, was never found. R. 106, ll. 11-13.

Forensic cell phone evidence

Forensic analyst Lindsey McGraw testified three cell phones were recovered from the victim's car, and he tried to identify the owners of the cell phones. R. 136, l. 11 – 137, l. 5. McGraw testified that his examination of the SIM card on the AT&T flip phone revealed the phone number was 864-494-2573. He identified the phone numbers from the other two cell phones as well. R. 137, l. 1 – 138, l. 13.

During his investigation, McGraw said he was able to "pull phone calls off of the cell phone log" and he "took pictures of them" with his digital camera. He testified *five calls were made from petitioner's phone to the victim's phone on the day of the shooting*. R. 138, l. 24 – 142, l. 7. (emphasis added).

Closing arguments

In closing, defense counsel Johnston reminded the jury how many times Tevin Thomas had lied to the police to gain an advantage for himself. He told the jury as a strategic matter the prosecution decided to charge petitioner as a participant in the shooting rather than as an accessory after the fact which petitioner actually was. R. 273, l. 8 – 277, l. 22. Johnston reminded the jury that Barnes was a neutral witness, with nothing to gain or lose, and that he observed a man dressed exactly like Tevin Thomas and not like petitioner get out of the victim's automobile immediately after the shooting. R. 280, l. 16 – 283, l. 16.

The solicitor argued to the jury that the forensic evidence traced the cell phone found in the victim's car to petitioner. The forensic cell phone evidence showed petitioner called the victim five times on the day of the incident. R. 288, l. 21 – 289, l. 14.

When the police went looking for petitioner after removing the information from his cell phone, the solicitor told the jury petitioner could not be found for eleven days before he “conveniently turned himself in.” R. 287, l. 18 – 288, l. 20. The solicitor said Tevin Thomas conversely was found the day after the shooting. R. 288, ll. 15-20.

Court of Appeals

There were three distinct opinions in the Court of Appeals.

Judge McDonald authored the “lead” opinion. She found the initial search of petitioner's phone did not violate the Fourth Amendment. In doing so she acknowledged “the police removed the phone's SIM card and processed it . . .” App. 6. Judge McDonald stated she agreed obtaining a warrant before the search was the “best policy” but found a warrant was not required for the first search of petitioner's phone. She finally found, for a different reason than Judge Lockemy, that “inevitable discovery” was applicable as an additional sustaining ground. Judge McDonald ruled

that a search of the victim's phone would have led to the discovery of the five phone calls between petitioner and the decedent before their alleged meeting at the Taco Bell. She reasoned that petitioner had no expectation of privacy in the victim's phone. App. 8-9.

It was during the first warrantless search, however, that the police discovered that this was petitioner's phone which allowed it to link it to the victim's phone.

Chief Judge Lockemy found the first search without a warrant violated petitioner's constitutional rights. App. 11. **Judge Konduros** agreed the first warrantless search violated petitioner's Fourth Amendment rights and that she would reverse and remand for a new trial. App. 13. However, **Judge Lockemy**, for a different reason than **Judge McDonald**, found the evidence would be "inevitably found pursuant to a valid search warrant, regardless of the initially unlawful search." App. 12-13.,

Judge Lockemy reasoned:

I recognize police included information gleaned from the warrantless search in their warrant affidavit. In State v. Spears, this court faced a similar issue regarding illegally obtained information used in a warrant. 393 S.C. 466, 713 S.E.2d 324 (Ct. App. 2011). The court excised the offending information from the warrant affidavit, and analyzed the remaining portions of the affidavit to determine if probable cause still existed to support the magistrate's decision to issue the warrant. Id. at 483, 713 S.E.2d at 333.

Here, I would find any information about the owner of the phone should be removed from the warrant affidavit and the remaining language should be considered under our test for probable cause. The affidavit would thus read:

On 2/25/2013 at approx. 14:13 Hrs. Deputies with the Spartanburg County Sheriff's Office responded to 7680 Warren H. Abernathy Hwy. In reference to a shooting. Upon arrival they found the Victim, Travis Hall had been shot. Hall was transported to SRMC. Through further investigation and the processing of the Victim's vehicle and AT&T ZTE Model Z331 cell phone serial number [Redacted] was found inside the Victim's vehicle. This search warrant is needed for the furtherance of this investigation to obtain information from the phone that can either implicate, or clear any individual from any involvement in this incident.

I agree with the lead opinion that this warrant affidavit would support a finding of probable cause. See State v. Dunbar, 361 S.C. 240, 253, 603 S.E.2d 615, 622 (Ct. App. 2004) (“The task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.”). Accordingly, I would find the evidence would have been inevitably found pursuant to the valid search warrant, regardless of the initially unlawful search.

App 12-13..

Discussion

It was undisputed in this case that the forensics personnel searched petitioner’s cell phone without a warrant. It is also undisputed that the information they obtained from this warrantless search allowed them to trace the telephone to petitioner. The state used this information from the illegal warrantless search to obtain a search warrant that led to the discovery of inculpatory evidence linking petitioner to the decedent. Removing the offending information obtained during the warrantless search from the search warrant affidavit, and then finding the “mythical affidavit” sufficient is an improper application of the “inevitable discovery” doctrine, and for that reason alone certiorari should be granted.

Further, Judge McDonald respectfully erred in her application of the “inevitable discovery” doctrine as well. She determined that the police would have found out the link to petitioner’s phone (the phone exchanges around the time of the robbery) by searching the victim’s phone and that petitioner had no right to complain about information she assumed would be found by search of the victim’s phone. This is speculative, and not a proper application of the “inevitable discovery” doctrine.

Moreover, State v. Spears, 393 S.C. 466, 713 S.E.2d 324 (Ct.App. 2011) relied upon in Judge Lockemy's inevitable discovery analysis was a case littered with procedural appellate briefing problems wherein the Court of Appeals found that "the evidence recovered from 140 Charlotte Circle was admissible under the inevitable discovery doctrine as the evidence would have been found subject to the valid search warrant, regardless of whether Bantan was coerced to give consent during the initial search." State v. Spears, 393 S.C. 466, 713 S.E.2d 324 (Ct.App. 2011). The reliance on the information found in the warrantless search of petitioner's cell phone here was too great to rely on the "redaction" principle discussed in Spears. Here, the information used from the warrantless search to obtain the search warrant was inextricably entwined with obtaining the search warrant, and the application of the inevitable discovery doctrine here being grounded in Spears was respectfully improper.

The Court of Appeals did correctly assume that petitioner did not abandon his phone. Law enforcement had no way of knowing when petitioner's cell phone was unintentionally left in the victim's vehicle. For all the police knew, petitioner may have ridden with the victim on other occasions, and there was an innocent explanation for the cell phone being forgotten and left behind. Common sense dictated that petitioner did not intentionally relinquish control of his cell phone in this case.

The state used the evidence procured from the search warrant to trace calls from the petitioner's cell phone to the victim's cell phone. The phone calls allegedly showed petitioner and the victim were communicating at a critically inculpatory time on the day of the shooting. The solicitor argued that five calls were made to the victim by petitioner that day, and Tevin Thomas was found the day after the shooting, and that petitioner was not located for eleven days until "he conveniently turned himself in."

Searches without a warrant are *pre se* unreasonable under the Fourth Amendment unless some exception applies. Katz v. United States, 389 U.S. 347, 357 (1967). It should be apparent that the abandonment exception does not apply here given the testimony of the state's own witness in this case. The judge erred by finding the cell phone was abandoned. See State v. Dupree, supra.

In Riley v. California, 134 S.Ct. 2473 (2014), the United States Supreme Court eloquently explained how a citizen's cell phone is a storage facility for nearly every aspect of his or her life – from the mundane to the intimate. Riley v. California, 134 S.Ct at 2490. The “historic location information is a standard feature on many smart phones and can reconstruct someone's specific movements down to the minute, not only around town but also within a specific building.” Id. at 2490 (*citing* United States v. Jones, 565 U.S. ___, 132 S.Ct. 945, 955 (2012) (Sotomayer, J., concurring)).

Defense counsel correctly argued that the fact the cell phone in Riley was seized incident to arrest was not a distinguishing factor from this case. In fact, it seems intuitive from the case law that a person has a much less expectation of privacy in what is removed from his person incident to arrest than he or she does in a mistakenly left behind cell phone.

Law enforcement knows very well that a search of cell phone may lead to suspicion or probable cause that the owner of the cell phone is, or has been, engaged in criminal activity, or other wrongdoing. Further, intimate information, details, and photographs contained on a citizen's cell phone also raise considerable privacy considerations.

Law enforcement in this case should have obtained a search warrant before it forensically searched petitioner's cell phone. Defense counsel correctly argued petitioner had an expectation of privacy in his cell phone. Although the state had the burden of justifying the search of petitioner's

cell phone, they *incredibly* maintained they did not even know if the cell phone was “password protected.”

Because illegally procured information from the warrantless search was used to obtain the search warrant the fruits of the search warrant also had to be suppressed. See, Wong Sun v. United States, 371 U.S. 471 (1963). It was simply unreasonable for the police here not to obtain a search warrant for the contents of the cell phone once it was safely in their possession. See United States v. Chadwick, 433 U.S. 1 (1977).² See, also, State v. Brown, 400 S.C. 82, 91, 736 S.E.2d 263, 267 (2012). All of the evidence procured from the warrantless illegal search, and then from the search warrant in this case, should have been suppressed as the fruit of the poisonous tree. See, Wong Sun v. United States, 371 U.S. 471 (1963). Because of the improper application of the inevitable discovery doctrine by one or two Judges on the Court of Appeals, certiorari should be granted, and petitioner’s conviction reversed as urged by the dissenting Judge Konduros.

² Overruled on other grounds. California v. Acevedo, 500 U.S. 565 (1991).

CONCLUSION

By reason of the foregoing arguments, certiorari should be granted.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of December, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
R. Keith Kelly, Circuit Court Judge

Opinion No. 5512 (S.C. Ct. App. filed August 30, 2017)
2013-GS-42-2965

THE STATE,

RESPONDENT,

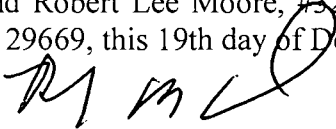
V.

ROBERT LEE MOORE,

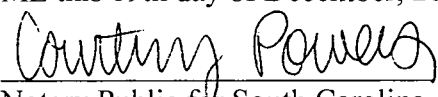
PETITIONER

CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on William M. Blitch, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Robert Lee Moore, #320303, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 19th day of December, 2017.


Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 19th day of December, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Spartanburg County
Hon. R. Keith Kelly, Circuit Court Judge
Appellate Case Tracking No. 2017-002479

RECEIVED

JAN 19 2018

S.C. SUPREME COURT

The State,

Respondent,

v.

Robert Lee Moore,

Petitioner.

Opinion No. 5512 (S.C. Ct. App. filed August 30, 2017)

**RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

STATEMENT OF QUESTIONS PRESENTED.....	1
STATEMENT OF THE CASE.....	2
ARGUMENT	3
I. The Court of Appeals correctly affirmed the trial court's refusal to suppress evidence found during the search of a cell phone Appellant abandoned at the scene of the crime. The search was not an unreasonable search in violation of the Fourth Amendment. Additionally, Appellant relinquished any expectation of privacy in the phone by abandoning it inside the victim's vehicle and failing to make any effort to retrieve the phone. Even if the search was in violation of the Fourth Amendment, the Court of Appeals correctly ruled the evidence should not have been suppressed because it would have inevitably been discovered.....	3
CONCLUSION.....	24

STATEMENT OF QUESTIONS PRESENTED

I. The Court of Appeals correctly affirmed the trial court's refusal to suppress evidence found during the search of a cell phone Appellant abandoned at the scene of the crime. The search was not an unreasonable search in violation of the Fourth Amendment. Additionally, Appellant relinquished any expectation of privacy in the phone by abandoning it inside the victim's vehicle and failing to make any effort to retrieve the phone. Even if the search was in violation of the Fourth Amendment, the Court of Appeals correctly ruled the evidence should not have been suppressed because it would have inevitably been discovered.

STATEMENT OF THE CASE

Procedural History

The State agrees with Petitioner's procedural statement of the case.

Factual Background

On February 25, Deputy Hudson responded to a call that shots had been fired at a Taco Bell in Spartanburg. When he arrived, he saw the victim, shot in the left side of the head, hanging out of the victim's vehicle, and hung up in the seatbelt. (T.115; R.73). The victim was barely breathing. EMS arrived to render aid and transport the victim. (T.116-117; R.74-75).

During the suppression hearing and at trial, officers explained three cell phones were located in the victim's vehicle. No one came forward to claim any of the cell phones. (T.36; R. 28). Investigator McGraw was asked to examine the phones to determine ownership. He did not initially examine the contents of the phone such as text messages and call logs. Instead, he examined the SIM card, which provided him merely a phone number for the phone. (T.19-20; R. 11-12).¹ The phone number was then run through the Sheriff's Department's database and was connected to Appellant. (T.20; 37; R. 12; 29). Appellant presented no evidence he intended to come forward and claim the cell phone as his prior to the suppression hearing. Further, the only evidence presented at trial was the phone number and the phone's connection to Appellant. None of the contents, such as text messages or images, were presented at trial.

¹ The cell phone ultimately connected to Appellant was not password protected. (T.37-38; R. 29-30).

ARGUMENT

I. The Court of Appeals correctly affirmed the trial court’s refusal to suppress evidence found during the search of a cell phone Appellant abandoned at the scene of the crime. The search was not an unreasonable search in violation of the Fourth Amendment. Additionally, Appellant relinquished any expectation of privacy in the phone by abandoning it inside the victim’s vehicle and failing to make any effort to retrieve the phone. Even if the search was in violation of the Fourth Amendment, the Court of Appeals correctly ruled the evidence should not have been suppressed because it would have inevitably been discovered.

The trial court properly refused to suppress the evidence resulting from the search of the SIM card of Appellant’s cell phone because the search was not an unreasonable search in violation of the Fourth Amendment. Further, Appellant abandoned any expectation of privacy he had in the phone when he left it inside the victim’s vehicle and failed to make any effort to retrieve the phone. Additionally, even if the search violated the Fourth Amendment, the Court of Appeals correctly held the evidence would have been inevitably discovered and should not have been suppressed.²

“On review of a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling and will reverse only when there is clear error.” State v. Bruce, 412 S.C. 504, 509, 772 S.E.2d 753, 755 (2015) (citing State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011)); see also, State v. Missouri, 361 S.C. 107, 111, 603 S.E.2d 594, 596 (2004) (same). ““On appeals from a motion to suppress based on Fourth Amendment grounds, this Court applies a deferential standard of review and will reverse if there is clear error.”” State v. Adams, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014) (quoting State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010)). “The ‘clear error’ standard means that

² Initially, it is important to note this Court has granted oral argument in State v. Lamar Brown for January 31, 2018. Appellate Case Number 2015-002360. The issue in Brown is remarkably similar to the issue in the instant case and this Court’s holding in Brown is likely to significantly impact the holding in this case even if it is not determinative of the outcome of this case.

an appellate court will not reverse a trial court's finding of fact simply because it would have decided the case differently." State v. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016) (quoting State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005)). "[A]ppellate courts must affirm if there is any evidence to support the trial court's ruling." Id. "On appeals from a motion to suppress based on Fourth Amendment grounds, this Court reviews questions of law *de novo*." State v. Bash, 419 S.C. 263, 268, 797 S.E.2d 721, 723–24 (2017) (quoting Adams, 409 S.C. at 647, 763 S.E.2d at 344).

"The right of the people to be secure in their persons, houses, papers, and effects, against **unreasonable** searches and seizures, shall not be violated. . . ." U.S. Const. amend. IV (emphasis added). This guarantee protects against unreasonable searches and seizures. "The touchstone of the Fourth Amendment is **reasonableness**." Florida v. Jimeno, 500 U.S. 248, 250 (1991) (emphasis added).

When moving to suppress evidence on the basis of an alleged unreasonable search, the defendant has the burden of showing a legitimate expectation of privacy in the area searched. See United States v. Risher, 966 F.2d 868 (4th Cir. 1992); see also Rawlings v. Kentucky, 448 U.S. 98 (1980) (declaring a legitimate expectation of privacy is necessary to trigger Fourth Amendment protections); State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987) (stating defendant who seeks to suppress evidence on Fourth Amendment grounds must demonstrate his "own rights" have been violated by showing he has a legitimate expectation of privacy in connection with the searched premises in order to challenge the search). "Since Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967), the touchstone of [Fourth] Amendment analysis has been the question whether a person has a 'constitutionally protected

reasonable expectation of privacy.’” Oliver v. United States, 466 U.S. 170, 177 (1984) (quoting Katz, 389 U.S. at 360 (Harlan, J., concurring)).

Thus,

in order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable; i.e., one that has “a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society.”

Minnesota v. Carter, 525 U.S. 83, 88 (1998) (quoting Rakas v. Illinois, 439 U.S. 128, 143–44 n. 12 (1978)).

Reasonable Search

Initially, the search of the phone’s SIM card to determine ownership of the phone was entirely reasonable and not a violation of the Fourth Amendment. In Riley v. California, the United States Supreme Court reiterated: “As the text makes clear, ‘the ultimate touchstone of the Fourth Amendment is ‘reasonableness.’ ” Riley v. California, 134 S. Ct. 2473, 2482 (2014) (citing Brigham City v. Stuart, 547 U.S. 398, 403, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006)). The Court explained: “Our cases have determined that ‘[w]here a search is undertaken by law enforcement officials to **discover evidence of criminal wrongdoing**, . . . reasonableness generally requires the obtaining of a judicial warrant.’” Id. (emphasis added) (citing Vernonia School Dist. 47J v. Acton, 515 U.S. 646, 653, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995)). As the Court in Acton explained: “But a warrant is **not** required to establish the reasonableness of all government searches; and when a warrant is not required (and the Warrant Clause therefore not applicable), probable cause is not invariably required either.” Acton, 515 U.S. at 653 (emphasis added).

“When containers have been turned over to the police, an officer ‘may validly search lost property to the extent necessary for identification purposes.’” United States v. Wilson, 984 F. Supp. 2d 676, 683 (E.D. Ky. 2013) (quoting State v. Ching, 678 P.2d 1088, 1093 (Haw. 1984)). In Wilson, officers searched a suitcase containing the personal effects and electronics of the defendant in order to identify ownership. Id. at 681. The district court found officers acted reasonably in searching a suitcase for identification of the owner when the suitcase was found in the woods and turned over to them. Id. at 683.

Very recently, the Ohio Supreme Court considered the reasonableness of searching unattended book bags on a school bus. The Court found even if someone retained an expectation of privacy in a lost item, that expectation was “diminished to the extent that the finder may examine the contents of that item as necessary to determine the rightful owner.” State v. Polk, 78 N.E.3d 834, 843 (Ohio 2017) (citing State v. Hamilton, 2003 MT 71, 314 Mont. 507, 67 P.3d 871; accord Ching at 110, 678 P.2d 1088; State v. Kealey, 80 Wash. App. 162, 173, 907 P.2d 319 (1995)); see also, U.S. v. Sumlin, 909 F.2d 1218, 1220 (8th Cir.1990) (holding officer’s search of defendant’s stolen property for the purpose of identifying ownership was a “legitimate governmental interest” that outweighed defendant’s reasonable expectation of privacy in that property); Chrispen v. Sec’y, Florida Dep’t of Corr., 246 F. App’x 599, 602 (11th Cir. 2007) (finding either briefcase left on trunk of third-party’s automobile was abandoned or the search by officers of the briefcase “constituted a reasonable inventory-like administrative search conducted for the purpose of identifying the seemingly abandoned briefcase’s owner”); Wayne R. LaFare, 3 Search & Seizure § 5.5(d) (5th ed.) (2016 Supp.) (“Similarly, there is authority that police may inventory effects which they find apparently abandoned or which are turned over to them by persons who found them or who by mistake took or received possession of them. Even if such

full inventory authority is not granted, courts recognize a police obligation to undertake to find the owner of property they find or which a finder turns over to them, and on this basis an examination of contents is permissible but only to the extent needed to discover the owner's identification.”) (footnotes omitted).

As the California Court of Appeals, First District, explained in an analogous situation in which the Court found no Fourth Amendment violation in searching a jacket for identification:

An individual who places a jacket at an empty table in a restaurant must reasonably expect that the coat will be touched or handled by either an employee or by a member of the public who wishes to clean up or sit at the table. Indeed, an individual who leaves behind an article of clothing at a public place most likely hopes that some Good Samaritan will pick up the garment and search for identification in order to return it to the rightful owner.

People v. Juan, 175 Cal. App. 3d 1064, 1069, 221 Cal. Rptr. 338 (Ct. App. 1985). The same consideration would apply to a cell phone left behind in someone’s vehicle.

Investigator McGraw did not initially examine the contents of the phone such as text messages and call logs. Instead, he examined the SIM card and obtained merely a phone number for the phone to determine ownership. (T.19-20; R. 11-12). The phone number was then run through the Sheriff’s Department’s database and was connected to Appellant. (T.20; 37; R. 12; 29). This process would have been required in order to even verify whether the phone belonged to the victim, who was known to have multiple phones. (T.27; R.19). A process which was entirely reasonable given the phone was found in the victim’s car. The mere obtaining of the cell phone number from the SIM card in order to verify whether the phone belonged to the owner of the vehicle in which it was found did not implicate the Fourth Amendment because it was not an unreasonable search, or one requiring a warrant.

Investigator McGraw indicated his sole intention was to determine ownership of the phone and set about in the least intrusive means of establishing ownership by trying to find contacts which would lead him to the owner's information. (T.10; R.18). It is difficult to imagine how police would obtain owner information from an unidentified cell phone in a less intrusive way than what occurred here. Most phones do not have their numbers emblazoned across the front of the phone; therefore, some investigation was necessary to determine the identity of the owner. Finding the identity of the owner of a lost item, whether a wallet, a briefcase, or a cell phone should be a reasonable endeavor by law enforcement. Anyone that has lost an item would hope that a Good Samaritan or law enforcement would undertake to find its rightful owner so that it can be returned. The determination of whether the search is reasonable should not be different because the person who lost the item is a criminal hoping not to be found instead of an average citizen hoping for the return of the lost item. The investigation undertaken by Investigator McGraw was entirely reasonable and not in violation of the Fourth Amendment.

Abandonment

Additionally, the phone in the instant case was abandoned and so Appellant did not retain any expectation of privacy in the phone. Consistent with Katz, the United States Supreme Court has uniformly held that the application of the Fourth Amendment depends on whether the person invoking its protection can claim a reasonable expectation of privacy that has been invaded by government action. U.S. v. Knotts, 460 U.S. 276 (1983), citing Smith v. Maryland, 442 U.S. 735 (1979). The reasonable expectation of privacy inquiry involves two discrete questions: First, whether the individual, by his conduct, has "exhibited an actual (subjective) expectation of privacy." Knotts at 281 (citations omitted). Second, whether the individual's expectation,

viewed objectively, is one society is prepared to recognize as reasonable under the circumstances. Id.

It is the “basic rule that ‘searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.’” Arizona v. Gant, 556 U.S. 332, 338 (2009) (quoting Katz, 389 U.S. at 357). As this Court has explained:

The Fourth Amendment itself provides no remedy for a violation of the warrant requirement. However, the United States Supreme Court has fashioned a judicially-created remedy, the exclusionary rule, which is a deterrent sanction by which the prosecution is barred from introducing evidence obtained in violation of the Fourth Amendment. “Exclusion is ‘not a personal constitutional right,’ nor is it designed to ‘redress the injury’ occasioned by an unconstitutional search.” “The rule’s sole purpose, [the Supreme Court] has repeatedly held, is to deter future Fourth Amendment violations.” Because “[e]xclusion exacts a heavy toll on both the judicial system and society at large,” the Court has stated “the deterrence benefits of suppression must outweigh its heavy costs” for the exclusion to be deemed appropriate.

State v. Brown, 401 S.C. 82, 88–89, 736 S.E.2d 263, 266 (2012) (citing and quoting Davis v. United States, 564 U.S. 229 (2011)).

However, because the ultimate touchstone of the Fourth Amendment is “reasonableness,” the warrant requirement is subject to certain exceptions. State v. Herring, 387 S.C. 201, 210, 692 S.E.2d 490, 494 (2009). This Court has “recognized the doctrine of abandonment as an exception to the Fourth Amendment warrant requirement.” State v. Dupree, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995) (citing Fernandez v. State, 306 S.C. 264, 411 S.E.2d 426 (1991)).

“Abandoned property has no protection from either the search or seizure provisions of the Fourth Amendment.” State v. Dupree, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995) (citing California v. Greenwood, 486 U.S. 35 (1988)). “When a person voluntarily abandons his privacy

interest in property, his subjective expectation of privacy becomes unreasonable, and he is precluded from seeking to suppress evidence seized from it.” United States v. Stevenson, 396 F.3d 538, 546 (4th Cir. 2005) (citing United States v. Leshuk, 65 F.3d 1105, 1111 (4th Cir.1995)); see also Abel v. United States, 362 U.S. 217, 241 (1960) (“There can be nothing unlawful in the Government’s appropriation of ... abandoned property”). “Abandonment is an ultimate fact or conclusion based generally upon a combination of act and intent.” Friedman v. United States, 347 F.2d 697, 704 (8th Cir.1965). “Intent may be inferred from words spoken, acts done, and other objective facts, and all the relevant circumstances at the time of the alleged abandonment should be considered.” United States v. Hoey, 983 F.2d 890, 892 (8th Cir. 1993). “Abandonment is primarily a question of intent, and intent may be inferred from words spoken, acts done, and other objective facts. All relevant circumstances existing at the time of the alleged abandonment should be considered.” United States v. Colbert, 474 F.2d 174, 176 (5th Cir. 1973).

“[T]he proper test for abandonment is not whether all formal property rights have been relinquished, but whether the complaining party retains a reasonable expectation of privacy in the [property] alleged to be abandoned.” United States v. Haynie, 637 F.2d 227, 237 (4th Cir.1980) (internal quotation marks and citation omitted). This Court thoroughly explained the determination of abandoned property, indicating a very clear distinction between abandoned property in a property-law sense and abandoned property in a Fourth Amendment sense:

The distinction between abandonment in the property-law sense and abandonment in the constitutional sense is critical to a proper analysis of the issue. In the law of property, the question . . . is whether owner has voluntarily, intentionally, and unconditionally relinquished his interest in the property so that another, having acquired possession, may successfully assert his superior interest.... In the law of search and seizure, however, the question is whether the defendant has, in discarding the property, relinquished his reasonable expectation of privacy so that its seizure and search is reasonable within the limits of the Fourth Amendment. In essence,

what is abandoned is not necessarily the defendant's property, but his reasonable expectation of privacy therein.

Where the presence of the police is lawful and the discard occurs in a public place where the defendant cannot reasonably have any continued expectancy of privacy in the discarded property, the property will be deemed abandoned for the purpose of search and seizure.

Dupree, 319 S.C. at 457, 462 S.E.2d at 281 (quoting City of St. Paul v. Vaughn, 237 N.W.2d 365, 370–71 (1975)). This Court also made it clear: “Even though Dupree abandoned the drugs in response to police action, when the actions of the police are lawful the abandoned property is not protected by the Fourth Amendment.” Dupree, 319 S.C. at 460, 462 S.E.2d at 283.

The distinction set forth in Dupree between property rights and expectation of privacy rights is critical in this case where Appellant’s sole argument regarding whether he abandoned the cell phone is that he “forgot it” or “inadvertently” left it behind—as he fled a crime scene. His argument, if believed in full, could be fruitful in the “property-law sense” because he did not voluntarily abandon his interest in the property, such that the police who found it could claim a greater possessory interest. Appellant did abandon his expectation of privacy interest in the cell phone by leaving it at a crime scene and not seeking to reclaim the phone. He did nothing to further protect his expectation of privacy by claiming the phone at the scene, or calling the phone to determine if it had been discovered.

During the suppression hearing and at trial, officers explained three cell phones were located in the victim’s vehicle. No one came forward to claim any of the cell phones. (T.36; R. 28). The cell phone ultimately connected to Appellant was not password protected. (T.37-38; R. 29-30). Appellant presented no evidence he intended to come forward and claim the cell phone as his prior to the suppression hearing. As a result, the officers objectively believed the cell

phone to be abandoned, and the Fourth Amendment did not require a warrant to conduct a search of the phone.

Appellant's actions clearly exemplify an intent to abandon his expectation of privacy in the phone. His actions are those of someone who does not care who finds the phone, or what they do with the phone; otherwise he would have taken some action to retrieve the cell phone. As far as Petitioner was concerned, especially as expressed by his actions, the cell phone was "*bona vacantia*." See Abel, 362 U.S. at 241. As the trial court found, this case squarely fits within the definition of abandonment of a reasonable expectation of privacy as provided by Dupree and Petitioner cannot now claim any protection under the Fourth Amendment. [R. 89.]. See also, United States v. Sanders, 130 F.3d 1316, 1318 (8th Cir. 1997) ("The Fourth Amendment only protects privacy. It does not immunize people who, finding themselves in a compromising situation, voluntarily trade their interest in privacy for a chance to escape incrimination, no matter how unwise the decision may seem in retrospect.").

It is entirely unreasonable for someone to discard a cell phone and not expect the person who finds it to go through the content of the phone, whether that person is an individual just looking to see who owns the phone, someone looking to see if there are pictures or other information on the phone which can be exploited for nefarious gain, or the police looking to determine the owner who left it in a shooting victim's vehicle.

It is entirely unreasonable to believe the content of that phone will not be examined when you do nothing to turn off service to the phone or prevent the accessibility of the content. See e.g., United States v. Powell, 732 F.3d 361, 374 (5th Cir. 2013) ("As a consequence of her statements abandoning the cell phone, she lacks standing to challenge the admissibility of the phone **and the records contained therein.**") (emphasis added).