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**Mar 20 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THOMAS S. MCFADDEN,

APPELLANT

APPELLATE CASE NO. 2023-000566

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STATE OF SOUTH CAROLINA ) IN THE CIRCUIT COURT NINE  
COUNTY OF CHARLESTON ) DOCKET NO. 2021-GS-10-00152, -00153

State of South Carolina, )  
Plaintiff, )  
versus )  
Thomas McFadden, Jr., )  
Defendant. )

H E A R I N G

DATE: March 27th, 2023

TIME: 11:47 A.M.

LOCATION: South Carolina Circuit Court 9

JUDGE: Edward Miller

TRANSCRIBED BY: Jeanne Meldrim

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25

1 THE COURT: I have to stand up and introduce myself.  
2 My name is Ned Miller. And I am a circuit judge from  
3 Greenville, and happy to be down here to hold a term of  
4 General Sessions Court, which is Criminal Court. I've  
5 been down numerous times before, but it's been four and a  
6 half years since the last time I was down here. So I'm  
7 happy to be handling this term of court. I guess I'm  
8 going to have to sit down.

9 We're going to --- as you probably understand, we're  
10 going to qualify all to serve as jurors for this  
11 particular case. You've been qualified to serve as  
12 jurors generally under the law, but now we're going to  
13 ask you some specific questions with respect to the case  
14 before the court. And in order for me to do that I need  
15 to introduce the case to you.

16 This is --- there are two indictments in the case.  
17 The first indictment is the State of South Carolina  
18 versus Thomas Scott McFadden Jr., and this is an  
19 indictments for murder. And this indictment alleges that  
20 in Charleston County on about March 14, 2019, Thomas  
21 Scott McFadden Jr. with malice aforethought did kill and  
22 murder Damien Marquise Stokes by mean of gunshot ---  
23 means of gunshot. And that Damien Marquise Stokes did  
24 die in Charleston County as a proximate result thereof,  
25 on or about March 14, 2019. A violation of our statutes

1 and laws.

2 The next indictment is the State of South Carolina  
3 versus Thomas Scott McFadden Jr. It's an indictment for  
4 possession of a weapon during the commission of a violent  
5 crime. And this indictment alleges that in Charleston  
6 County on or about March 14, 2019, the defendant, Thomas  
7 Scott McFadden Jr., did possess a firearm or visibly  
8 display what appeared to be a firearm, or did visibly  
9 display a knife during the commission or --- or attempted  
10 commission of a violent crime, to wit, murder and/or any  
11 other lesser included offenses thereof classified as  
12 violent crimes.

13 Now, Ladies and Gentlemen, to these indictments, the  
14 defendant, Mr. McFadden has pled not guilty. And as  
15 such, certain rights attach to him which belong to each  
16 and every person charged in this country with a crime.  
17 And that is he is presumed to be innocent unless and  
18 until the charging body, in this case, the State of South  
19 Carolina can prove to a jury, beyond any reasonable  
20 doubt, each and every element of each offense that he is  
21 charged with. Please keep that in mind throughout the  
22 course of these proceedings.

23 I would also tell you that the documents which I  
24 have read to you are not evidence, and you should make no  
25 presumption, or take any inference from the fact that

1 they've issued. They're just the formal documents which  
2 allow this case to wind its way through our system to  
3 arrive here in court for resolution.

4 So please keep that in mind throughout the course of  
5 the proceedings.

6 Before I begin the questioning, I would ask the  
7 attorneys to stand and introduce themselves and their  
8 client where appropriate.

9 MS. LINDER: Thank you, Your Honor. My name is  
10 Stephanie Linder, and I'm with the Ninth Circuit Court  
11 Solicitor's Office. Sitting with me this case is Phil  
12 Abshire (phonetic). You will probably also see my  
13 investigator, Erin Meyer (phonetic), she'll be coming in  
14 and out of the courtroom and helping coordinate with  
15 witnesses.

16 THE COURT: Sir.

17 MR. KING: I'm Jason King, an attorney with the  
18 Public Defender's Office. Sitting with me is Lindsay  
19 Luther (phonetic), here also an attorney in the Public  
20 Defender's Office and representing Thomas McFadden.

21 THE COURT: Okay. Thank you very much. Is there  
22 any member of the jury panel who is related by blood or  
23 marriage, or who has a business, personal, or social  
24 relationship with any of the attorneys involved in this  
25 case, or any member of the Ninth Circuit Solicitor's

1 Office, or the Ninth Circuit Public Defender's Office?

2 If so, please stand. Okay.

3 Is there any member of the jury panel related by  
4 blood or marriage, or who has a business, personal, or  
5 social relationship with either Mr. Thomas Scott McFadden  
6 Jr., Mr. Damien Marquise Stokes? If so, please stand.

7 I'm going to read a list of potential witnesses in  
8 the case, and I'll need to know the same about these  
9 folks. Jamal Smalls (phonetic), Ishmal Westin  
10 (phonetic), Kayla Duberry (phonetic), Melaka Johnson  
11 (phonetic), Clayvon Austin (phonetic), Anthony Parrish  
12 (phonetic), Charles Westin (phonetic), Sheldon McFadden  
13 (phonetic), Latisha Cooper (phonetic), Keanna Hanes  
14 Cooper (phonetic).

15 From MUSC, Dr. Nicholas Batalis.

16 From the Charleston County Sheriff's Office, Willis  
17 Walker (phonetic).

18 From the dispatch office, Tonya Mallick (phonetic).

19 From the North Charleston Police Department,  
20 Jennifer Butler (phonetic), Lucas Cummins, Brad Melina  
21 (phonetic), Michael Cook, Sam Souther (phonetic), Tiffany  
22 Wilcome (phonetic), Jeremy Leffert (phonetic), Natalia  
23 Wilder (phonetic), Michael Sanchez (phonetic), David  
24 Pritchard (phonetic). Formerly with the North Charleston  
25 Police Department, Clinton Ivy (phonetic), Hannah

1 Webbington (phonetic), Vanessa Cox (phonetic), Sam  
2 Bernard (phonetic), Michael Towachico (phonetic).

3 From the United States Marshals Service, Rob Rowe  
4 (phonetic).

5 From the South Carolina State Law Enforcement  
6 Division, Hannah Jefferson (phonetic), Bailey Hanes  
7 (phonetic), Rachael Noel Johnson (phonetic), Leanne  
8 McGinnis (phonetic), Christine Dadavo (phonetic), Madison  
9 Willis (phonetic), Bethany Davidson (phonetic), Rachael  
10 Nwinn (phonetic), Paul Greer (phonetic), Catherine Lacy  
11 (phonetic).

12 From the Berkeley County Sheriff's Office, Lamarr  
13 Blakely (phonetic).

14 From the Richland County Sheriff's Office, David  
15 McClure (phonetic), Gary Wallach (phonetic).

16 And from the Solicitor's Office Erin Meyer  
17 (phonetic), Josh Chaney (phonetic).

18 Is there any member of the jury panel related by  
19 blood or marriage, or who has a business, personal, or  
20 social relationship with any of those potential  
21 witnesses, whose names I've just read? If so, please  
22 stand. Okay.

23 Is there any member of the jury panel who has any  
24 knowledge about the events that have been alleged in  
25 these indictments? And again, the main case being murder

1 on March 14, 2019? If so, please stand.

2 Is there any member of the jury panel, who has  
3 previous --- previously been a witness in either a civil  
4 or a criminal case? If so, please stand.

5 Is there any member of the jury panel or family  
6 member, or close personal friend ever been charged with a  
7 criminal offense that has been adjudicated or pending  
8 currently with the Ninth Circuit Solicitor's Office? If  
9 so, please stand.

10 Is there any member of the jury panel, or relative,  
11 or close personal friend, had any contact with law  
12 enforcement officials that might affect your view of law  
13 enforcement? If so, please stand.

14 Is there any member of the jury panel, family  
15 member, or close personal friend who has ever been  
16 represented by the Ninth Circuit Public Defender's  
17 Office? If so, please stand.

18 Is there any member of the jury panel who has any  
19 personal, political, or religious belief that would make  
20 it difficult for you to sit in judgment in this case on  
21 the charges alleged? If so, please stand.

22 Is there any member of the jury panel, immediate  
23 family member, or close personal friend who is currently  
24 or formerly a law enforcement employee? If so, please  
25 stand.

1 All right. All right. Yes. Yes, ma'am, you  
2 were --- if you would, your name and number?

3 JUROR: 167, Alison Lynch Banes (phonetic).

4 THE COURT: Okay. And what is your ---

5 JUROR: My mom's a retired (unintelligible).

6 THE COURT: Your mom? Okay. Thank you.

7 Yes, sir, your name and number.

8 JUROR: Bart Botancio (phonetic), 163. My brother's  
9 a retired police officer.

10 THE COURT: Okay. Thank you.

11 Yes, ma'am.

12 JUROR: Mindy Cardau (phonetic), 61, my spouse is  
13 former law enforcement.

14 THE COURT: Former, did you say?

15 JUROR: Former, yeah.

16 THE COURT: Okay. Thank you, ma'am.

17 And yes, sir.

18 JUROR: Number 19, (unintelligible) my  
19 brother-in-law's a cop in Kansas (unintelligible).

20 THE COURT: Okay. All right. Thank you. All  
21 right. To the --- oh, yes, ma'am.

22 JUROR: Yeah, I have a close personal friend who is  
23 a retired cop.

24 THE COURT: What --- what is your name and number?

25 JUROR: Marri Brooks (phonetic) juror 29.

1 THE COURT: Okay. All right. Thank you very much.  
2 All right. Ladies and Gentlemen, would the fact that you  
3 have that relationship impair your ability to be fair and  
4 impartial to either the state or the defense in this  
5 case?

6 And what we're looking for is could you judge this  
7 case based solely on the merits of the evidence presented  
8 in this courtroom and the law that I would give to you?  
9 If you can't do that, please let us know now. All right.  
10 Thank you very much.

11 All right. Is there any member of the jury panel  
12 family member or friend --- I may have asked this,  
13 who --- who has been a victim of, or charged with this  
14 type of offense? If so, please stand. Okay.

15 Is there any member of the jury panel who is aware  
16 of any bias or prejudice towards either the state or the  
17 defense? If so, please stand.

18 Is there any member of the jury panel who is a  
19 member of or contributor to a group whose primary concern  
20 is the promotion of victims or law enforcement rights?  
21 Examples would be MADD, SADD, OR CAVE. If so, please  
22 stand.

23 All right. Yes, ma'am, your name and number.

24 JUROR: (Unintelligible) volunteer (unintelligible).

25 THE COURT: At --- at where?

1 JUROR: (Unintelligible).

2 THE COURT: Okay. All right. Would the fact that  
3 you have that relationship impair your ability to be fair  
4 and impartial in this case to either the state or the  
5 defense?

6 JUROR: No.

7 THE COURT: All right. Thank you, ma'am.

8 Is there any juror who knows of any reason  
9 whatsoever why you shouldn't serve in this case with  
10 particular emphasis on your ability to be fair and  
11 impartial to both the state and the defense, and to judge  
12 this case based solely on the merits of the evidence  
13 presented in this courtroom, and the law as I would give  
14 it to you? If you can't do that, please let us know  
15 right now.

16 Okay. Anything further from the State?

17 MS. LINDER: Nothing further from the state.

18 THE COURT: From the defense?

19 MR. KING: No, Your Honor.

20 THE COURT: Okay. Thank you. All right. We'll  
21 begin the process of striking the jury.

22 If I'm looking around a little bit, please forgive  
23 me, this is not my home turf. I'm usually looking over  
24 this way.

25 All right. When --- and I --- how I do it is when

1 you're name is called, if you'll just stand in place.  
2 Okay? And await further instructions.

3 And what he's doing now, I think is running it  
4 through your --- your --- if you feel dizzy, you're being  
5 swirled around in cyberspace. Your names are being mixed  
6 up. When I started, we had the old bingo things. Took  
7 forever. I mean, turn it, clerk would reach in, pull one  
8 out, unscrew the little cap pull out the paper, read your  
9 name.

10 CLERK: All right. Ladies and Gentlemen, when I  
11 call your name and your number, please just stand. Juror  
12 number 61 Kensey Patina (phonetic). What say you from  
13 the State?

14 MS. LINDER: Next person that's on the list. Please  
15 present this juror.

16 CLERK: Say you from the defendant?

17 MR. KING: Please excuse this juror.

18 CLERK: Ma'am, please have a seat. You've been  
19 excused in the trial in this case.

20 Juror number 42, Rodham Coe (phonetic). What say  
21 you The State?

22 MS. LINDER: Please present this juror.

23 CLERK: Say you the defense?

24 MR. KING: Please excuse this juror.

25 CLERK: Ma'am just have a seat, you've been excused

1 from the trial of this case.

2 Juror number 25, Lori Brooks (phonetic). What say  
3 you The State?

4 MS. LINDER: Please present this juror.

5 CLERK: What say you, the defense?

6 MR. KING: Please and excuse this juror.

7 CLERK: Ma'am, please have a seat. You've been  
8 excused from the trial in this case.

9 Juror number four Tati ana (phonetic)  
10 (unintelligible). What say you The State?

11 MS. LINDER: Please present this juror.

12 CLERK: What say you defense?

13 MR. KING: Please seat this juror.

14 CLERK: Ma'am gather your belongings and come  
15 through here and have a seat in the jury box. You have  
16 been selected as a juror in the trial in this case.

17 Juror number 180, Shane McCardy (phonetic). What  
18 say you The State?

19 MS. LINDER: Please present this juror.

20 CLERK: What say you from the defense?

21 MR. KING: Please and excuse this juror.

22 CLERK: Sir, just have a seat, you've been excused  
23 from the trial in this case.

24 Juror number one --- excuse me (unintelligible)  
25 excuse me. What say you The State?

1 MS. LINDER: Please present this juror.

2 CLERK: What say you the defense?

3 MR. KING: Please seat this juror.

4 CLERK: Ma'am, please gather your belongings, come  
5 through here and have a seat in the jury box. You've  
6 been selected as juror in the trial in this case.

7 Juror number 245, Ann Simpson (phonetic). What say  
8 you The State?

9 MS. LINDER: Please present this juror.

10 CLERK: What say you the defense?

11 MS. LUTHER: Please excuse this juror.

12 CLERK: Ma'am, please have a seat, you've been  
13 excused from the trial in this case.

14 Defense has exhausted five out of ten strikes.

15 Juror number 163, Mark Nadazeium (phonetic).

16 What say you from The State?

17 MS. LINDER: Please present this juror.

18 CLERK: What say you from the defense?

19 MR. KING: Please excuse this juror.

20 CLERK: Sir, please have a seat, you've been excused  
21 from the trial in this case.

22 Juror number 230, Elizabeth Brian (phonetic). What  
23 say you The State?

24 MS. LINDER: Please present this juror.

25 CLERK: What say you from defense?

1 MR. KING: Please seat this juror.

2 CLERK: Ma'am, please gather your belongings, come  
3 through here and have a seat in the jury box. You've  
4 been selected as a juror in the trial in this case.

5 Juror number 110, Ann Colleck (phonetic). What say  
6 you The State?

7 MS. LINDER: Please present this juror.

8 CLERK: What say you defense?

9 MR. KING: Please seat this juror.

10 CLERK: Ma'am, please gather your belongings and  
11 come forward. You've been selected a juror in the trial  
12 in this case.

13 Juror number 13, Stephanie Barrow. What say you The  
14 State?

15 MS. LINDER: Please present this juror.

16 CLERK: What say you the defense?

17 MR. KING: Please seat this juror.

18 CLERK: Ma'am, please gather your belongings and  
19 come forward and have a seat. You've been selected a  
20 juror in the trial in this case.

21 Juror number 19, Tate Ladin (phonetic). What say  
22 you The State?

23 MS. LINDER: Please present this juror.

24 CLERK: What say you defense?

25 MR. KING: Please excuse this juror.

1 CLERK: Sir, please have a seat. You've been  
2 excused from the trial in this case.

3 Juror number 75, Jennifer Dewitt. What say you The  
4 State?

5 MS. LINDER: Please excuse this juror.

6 CLERK: Ma'am, please have a seat. You've been  
7 excused from the trial in this case.

8 Juror number 212, David Owens (phonetic). What say  
9 you The State?

10 MS. LINDER: Please present this juror.

11 CLERK: What say you for the defense?

12 MR. KING: Please seat this juror.

13 CLERK: Sir, please gather your belongings, come  
14 forward and have a seat. You've been selected as a juror  
15 in the trial in this case.

16 Juror number 136, Amy Hull (phonetic). What say you  
17 The State?

18 MS. LINDER: Please present this juror.

19 CLERK: What say you for the defense?

20 MR. KING: Please seat this juror.

21 CLERK: Ma'am please gather your belongings and have  
22 a seat. You've been selected as a juror in the trial in  
23 this case.

24 Juror number 207, Tiffany Norton (phonetic). What  
25 say you for The State?

1 MS. LINDER: Please present this juror.

2 CLERK: What say you for the defense?

3 MR. KING: Please seat this juror.

4 CLERK: Ma'am, please gather your belongings and  
5 come forward and have a seat. You've been selected a  
6 juror in the trial in this case.

7 Juror number 141, Kyle Jacovic (phonetic). What say  
8 you for The State?

9 MR. KING: Please excuse this juror.

10 CLERK: Sir, please have a seat, you've been excused  
11 from the trial in this case.

12 Juror number 113, Nathaniel Harrigan (phonetic).  
13 What say you for The State?

14 MR. KING: Please present this juror.

15 CLERK: Say you for the defense?

16 MR. KING: Please excuse this juror.

17 CLERK: Sir, please have a seat. You've been  
18 excused from the trial in this case.

19 Defense has exhausted eight of ten strikes.

20 Juror number 243, Gordy Secret (phonetic). Say for  
21 The State?

22 MS. LINDER: Please present this juror.

23 CLERK: Say for the defense?

24 MR. KING: Please seat this juror.

25 CLERK: Sir, go over and have a seat in the Jury

1 box, you've been selected as a juror in the trial in this  
2 case.

3 Juror number 167, Alison Lynch (phonetic). What say  
4 you for The State?

5 MR. KING: Please present this juror.

6 CLERK: What say you for the defense?

7 MR. KING: Please excuse this juror.

8 CLERK: Ma'am, please have a seat, you've been  
9 excused from the trial in this case.

10 Juror number 95, Elizabeth Foy (phonetic). Say you  
11 The State?

12 MS. LINDER: Please present this juror.

13 CLERK: Say for the defense?

14 MR. KING: Please seat this juror.

15 CLERK: Ma'am, please come forward, gather your  
16 belongings, have a seat. You've been selected as a juror  
17 in the trial in this case.

18 Juror number 247, Heather Sostrum (phonetic). What  
19 say you The State?

20 MR. KING: Please present this juror.

21 CLERK: What say you for the defense?

22 MR. KING: Please seat this juror.

23 CLERK: Ma'am, please gather your belongings and  
24 come forward and have a seat. You've been selected a  
25 juror in the trial in this case.

1 Juror number 225, Renee Ri d l and (phoneti c). What  
2 say you for The State?

3 MR. KING: Please excuse thi s wi tness.

4 CLERK: Ma'am, please have a seat, you're excused  
5 from the trial in thi s case. State exhausted three out  
6 of fi ve strikes.

7 Juror number 254, Jessi ca Smi th. Say you for The  
8 State?

9 MS. LINDER: Please present thi s juror.

10 CLERK: What say you for the defense?

11 MR. KING: Please seat thi s juror.

12 CLERK: Ma'am, please gather your belongings and  
13 come forward and have a seat. You've been selected as  
14 juror in the trial in thi s case.

15 Now striki ng the first alternate. Juror number 165,  
16 Dougl as Li beroti (phoneti c). What say you for The State?

17 MS. LINDER: Please present thi s juror.

18 CLERK: What say you for the defense?

19 MR. KING: Please excuse thi s juror.

20 CLERK: Si r, please have a seat. You've been  
21 excused from the trial in thi s case.

22 Juror number 26, Kimberl y Brower. Say for the  
23 state?

24 MS. LINDER: Please present thi s juror.

25 CLERK: What say you for the defense?

1 MR. KING: Please seat this juror.

2 CLERK: Please gather your belongings and come have  
3 a seat in the jury box. You've been selected an  
4 alternate in the trial in this case.

5 Now striking for the second alternate. Juror number  
6 157 Kaitlyn Koker (phonetic). What say you for The  
7 State?

8 MS. LINDER: Please present this juror.

9 CLERK: Say you for the defense?

10 MR. KING: Please seat this juror.

11 CLERK: Okay. Please gather your belongings, you've  
12 been selected as the second alternate for the jury in  
13 this case.

14 All right. You've got a jury.

15 THE COURT: Thank you. All right. Any exceptions  
16 or objections to the jury as empanelled (unintelligible)  
17 from State?

18 MS. LINDER: None from The State.

19 THE COURT: From the defense?

20 MR. KING: No, Your Honor.

21 THE COURT: Okay. All right. Send them back now.

22 CLERK: (Unintelligible) free for the day call after  
23 6:00 p.m.

24 THE COURT: All right. Ladies and Gentlemen, you  
25 are free for the rest of the day. Please call on the

1 number provided for you after 6:00 tonight. Thank you.

2 (Gallery exiting 12:14 p.m.)

3 THE COURT: All right. Ladies and Gentlemen, I want  
4 to thank you all for being here. I haven't had an  
5 opportunity to do that. And appreciate the --- all the  
6 sacrifices you are making to perform this vital public  
7 function.

8 I want to tell you that we have a dispute about the  
9 facts in this case which can't be resolved in any fashion  
10 other than to ask a jury to come up and listen to the  
11 evidence presented in the case, and the law, and to come  
12 to a conclusion at the --- at the end of the trial, which  
13 will resolve the dispute.

14 I would remind you again that the indictments that I  
15 read to you are not evidence, and you should make no  
16 presumption, or take any inference from the fact that  
17 they have issued. They are simply the formal written  
18 documents which allow this case to wind its way through  
19 our system to arrive here in court for resolution.

20 I also remind you that every person charged with a  
21 criminal offense in this state, and this country, is  
22 presumed to innocent unless and until the charging body,  
23 State of South Carolina, can prove to you all beyond any  
24 reasonable doubt, each and every element of each offense.  
25 So please keep that in mind throughout the course of

1 these proceedings.

2 I would --- for your benefit, I --- I break a trial  
3 into five parts, so that you all have procedural road map  
4 to tell you where are in the trial, and what's coming  
5 next.

6 The first part of the trial, we're going to begin  
7 tomorrow morning. And those will be the opening  
8 statements to you from the attorneys. And opening  
9 statements are brief, non-argumentative statements to you  
10 about the case.

11 The second part of the trial is the meat and  
12 potatoes of each and every case, and that is the  
13 presentation of the evidence in the case.

14 And the evidence will come to you generally in one  
15 of three ways. I think the most commonly thought of way  
16 is through oral testimony from the witness stand.

17 Second most common way is through the introduction  
18 of physical or tangible items and documents.

19 And the third most common way, is when the parties  
20 agree that some fact is so beyond dispute that you should  
21 accept it as being true. And that's what we call a  
22 stipulation of the parties. I don't know what the  
23 combination of the evidence will be, but it should come  
24 to you in one of those three ways.

25 The third part of the trial will be when all of the

1 evidence has been presented. When it's all before you,  
2 the attorneys make their closing arguments to you. As  
3 you know --- as you notice, it's an opening statement,  
4 and it's a closing argument.

5 And in the closing arguments, the attorneys advocate  
6 their position, argue the law and the evidence to you,  
7 and urge you to resolve the dispute in their favor.

8 The fourth part of the trial will be when I charge  
9 you as to what the law is in this case.

10 And the fifth part of the trial will be when you all  
11 retire to your jury room to deliberate the case and  
12 resolve this dispute.

13 The parts are not of equal length, and as you can  
14 imagine, the second part, the presentation of the  
15 evidence is always the longest part of a trial.

16 Now, I'm sure I'm going to ask you to do many  
17 things, but there are three main things I ask you to do.  
18 The first one is to keep an open mind. We went through  
19 all the questioning about this case to ensure that we  
20 have a fair and impartial jury who will judge this case  
21 based solely on the merits of the evidence presented in  
22 the court and the law presented in the court.

23 The second thing I ask you to do is sometimes  
24 difficult, and that is to pay attention. If you let your  
25 mind wander off during the trial, a certain answer to a

1 question, which you might have missed, or the way a  
2 witness answers a question might become important in your  
3 deliberations at the conclusion of the trial. And if  
4 you've let your mind wander off, you would be at a  
5 disadvantage by doing that. So please pay attention.

6 And then the --- the last thing I ask you to do, and  
7 instruct you to do, is to not discuss the facts of this  
8 case with anyone, until you are free to deliberate at the  
9 conclusion of the trial. That means you can't talk about  
10 it --- the facts in the case with your family when you go  
11 home tonight. You don't know anything about it, but you  
12 can't talk about it. You can't talk about it with a  
13 friend you might see on the street.

14 And as you go through the trial, you'll learn more  
15 and more about the facts presented in the court. And  
16 even an innocent comment from someone who you like and  
17 trust might impact your state of mind in this case. And  
18 that would not be fair to the parties involved here. It  
19 would not be fair to your fellow jurors, and most  
20 importantly, it would not be fair to yourself, to allow  
21 someone who is not making the sacrifices that each of you  
22 are making to have any input in the outcome of this  
23 trial.

24 We don't care what they're thinking. They're not up  
25 here listening to the evidence and watching the

1 witnesses. So don't discuss the case. And it will  
2 become more difficult as the case goes on, it's just  
3 human nature.

4 That includes not doing any independent research.  
5 Don't go online and look something up. Don't go visit  
6 some incident location you may hear about. And for  
7 goodness sake, don't get on some social media site and  
8 discuss this. Everything you need to know to resolve  
9 this dispute, you'll hear in this courtroom, and that  
10 will be subject to constitutional protections and  
11 scrutiny. Okay? So just don't do that.

12 I would tell you that you, the jury, are the sole  
13 judges of the facts and the law does not allow a trial  
14 judge to have any opinion about the facts of the case.  
15 So don't think anything I might say or do throughout the  
16 course of the trial that I have such an opinion. It's  
17 not up to me. It's up to you all to decide what to  
18 believe and what not to believe.

19 That same law makes me the sole judge of the law in  
20 the case. So if you have any idea as to what the law is  
21 or what the law ought be and it differs from  
22 what I tell you the law is, throughout the trial and at  
23 the conclusion, you'll swear an oath to set aside your  
24 own opinion, and apply the law precisely as I state it to  
25 you. And that ensures that everyone gets tried under the

1 same law.

2 I'm sure there'll be a number of other things I'll  
3 ask you to do. But one thing I want to tell you about is  
4 that from time to time throughout the course of the  
5 trial --- and in fact we're dismissing you for this very  
6 reason until tomorrow morning --- there are issues which  
7 need to be discussed with the attorneys --- legal issues,  
8 that the jury --- you all shouldn't hear about. Perhaps  
9 it might be a disputed piece of evidence that should not  
10 be admitted, and so I think you can understand that ---  
11 that you all shouldn't be there to hear it.

12 I may ask --- ask the lawyers to approach the bench  
13 and have the discussion that you all can't hear. And  
14 while we --- we may be trying to keep something from you,  
15 we are not trying to deceive you in any way. Most of the  
16 time, when that comes up, we're talking about, well, how  
17 long is this witness going to last, when do we --- when  
18 should we break, what's next. Logistic --- logistical  
19 things and other --- other things to discuss. So I hope  
20 that gives you a little bit of an explanation.

21 All right. We're going to --- I'm going to let you  
22 all go now. Ask you to be back at 9:30 in the morning.  
23 And hope you have a pleasant day. And enjoy this ---  
24 what I understand is going to be a beautiful afternoon.  
25 So enjoy that for all of us, because we'll be up here.

1 All right. Thank you. And they're going to show  
2 you out. I think the secret passageway to the  
3 Charleston ---

4 (Simultaneous speaking)

5 (Jury exits the courtroom 12:23 p.m)

6 THE COURT: Okay. What do we have? Tell me. Let's  
7 line up the agenda and the itinerary.

8 MS. LINDER: I think --- I --- I believe they're all  
9 the defense's motions, so I'm happy to kind of speak  
10 through that as far as scheduling or orders.

11 I know that one that Mr. King is a motion to quash  
12 the indictment. And Solicitor Wilson, there were a bunch  
13 of e-mails kind of going around on all this. She's going  
14 to be back and she just told me to text her when she  
15 needs to come over. That's just argument, no testimony.  
16 I'm happy to text her now, whatever you'd like, or after  
17 lunch.

18 We have pretrial motions that are just argument.  
19 The other ones that are going to need testimony are --- I  
20 believe there's four different search warrant suppression  
21 motions that they did.

22 There is --- and then he's filed, I believe, more or  
23 less, they're counsel hearings for firearm  
24 identification, for DNA, and for self site. So two of  
25 those people are out of Columbia. So we would ask ---

1 and Mr. King has agreed if it's okay with Your Honor ---  
2 that we can do those virtually, so they don't have to  
3 drive down twice in one week from Columbia. But they ---  
4 although to be ready by 1:00. And so we'll tell them  
5 whatever order you prefer, or Mr. King prefers.

6 Are there any others that require testimony? I'm  
7 trying to think.

8 MR. KING: The indictment issue which I think we  
9 deferred Ms. Wilson wants to come down. Motion for  
10 speedy trial. Motion to dismiss for violation of speedy  
11 trial.

12 A motion to prevent the solicitor from referring to  
13 the defendant as the name, "Trigger." Some of the  
14 witnesses know him by a nickname Trigger. Ms. Luther is  
15 going argue that. We're arguing that it's prejudicial in  
16 a shooting case.

17 THE COURT: Wasn't that Roy Rogers' horse?

18 MS. LINDER: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. KING: A search warrant to suppress the  
21 defendant's buccal swab. Search warrant to suppress the  
22 defendant's Facebook page. Search warrant to suppress  
23 cell site location evidence. And motion to suppress the  
24 fruits of a search of a car, which ended up being the  
25 alleged murder weapon. And Counsel hearings on cell site

1 location evidence expert, the DNA expert, and firearm  
2 tool mark expert. I've got ten total Judge. I tried  
3 to ---

4 THE COURT: (Unintelligible).

5 MR. KING: --- I think it's --- I think it's ten  
6 total.

7 THE COURT: And ---

8 MR. KING: I tried to keep it limited, best I could.

9 THE COURT: You are?

10 MR. KING: There's a lot --- there's a lot going on  
11 in the case, Judge, so ---

12 THE COURT: Okay.

13 MR. KING: -- I tried to --- I tried to ---

14 THE COURT: All right.

15 (Simultaneous speaking)

16 MR. KING: --- now we --- some of them we think will  
17 go fairly quickly with all of our testimony.

18 THE COURT: Okay. All right. Well, why don't  
19 we --- it's 12:30. How long do you all need for lunch?  
20 Hour? How about be back a quarter to 2:00? Hour a  
21 15 minutes?

22 MS. LINDER: That's great, Judge.

23 THE COURT: Okay. All right. Anything else?

24 MR. KING: (Unintelligible).

25 MS. LINDER: Nothing from us.

1 THE COURT: He's out on bond; is that right?

2 MS. LINDER: No, Judge, he's incarcerated.

3 THE COURT: Is he? Okay. All right. Okay. All  
4 right. Good. We'll see you all at quarter to two.

5 (A recess was taken from 12:27 to 1:54 p.m.)

6 MS. WILSON: Good afternoon, Judge.

7 THE COURT: Solicitor.

8 MS. WILSON: I'm Scarlett Wilson, the solicitor  
9 Ninth Circuit. It's good to have you in town.

10 THE COURT: Thank you, very much. Good to be here.

11 MS. WILSON: And we had sent a response to the  
12 defense's motions --- or motion, to quash our indictments  
13 in this matter. And I'm --- because I came at the end of  
14 the week, while Ms. Linder and Mr. Abshire were up to  
15 their eyeballs in other matters, I decided to take this  
16 on for them.

17 We filed --- or we sent to your office, our response  
18 to their motion. Before we get started, we would move to  
19 amend the indictment --- the face of the indictment, to  
20 include the witness who actually testified before the  
21 Grand Jury, his name a Chris Ross (phonetic), he's with  
22 North Charleston Police Department. I don't believe that  
23 the defense contests the fact that Mr. Ross actually  
24 testified before the Grand Jury; is that correct?

25 MR. KING: I don't contest that that was the witness

1 who testified, Your Honor.

2 THE COURT: Okay.

3 MS. WILSON: So we would move to amend the  
4 indictment that includes his name, since he was the  
5 witness who testified for the Grand Jury.

6 THE COURT: All right. Defense, anything?

7 MR. KING: Well, that's kind of the part of my  
8 motion, Your Honor.

9 THE COURT: Okay.

10 MR. KING: You know, we go down to the jail and see  
11 our clients, and they have their discovery, and they go  
12 through it, and they kind of pick it apart. And we've  
13 been encountering a lot of people pointing out that  
14 there's no name listed on the indictment. And sometimes  
15 clients can find little things that we miss.

16 And there is a statute in addition to the right of  
17 presentment to the Grand Jury in our South Carolina  
18 constitution, there's a statute 14-7-1550, that says the  
19 foreman of the Grand Jury --- or acting foreman in the  
20 Circuit Courts of any county of any state, may swear the  
21 witnesses whose name shall appear on the bill of  
22 indictment in the jury room.

23 So I noticed that this indictment did not have the  
24 name of the witness who testified before the Grand Jury.  
25 I went back and looked at some other indictments from the

1 same Grand Jury. And I have a packet of those that I've  
2 provided to the solicitors, Your Honor, basically showing  
3 that an assortment of different solicitors back in the  
4 same time frame as Mr. McFadden was indicted, none of  
5 those indictments have the name of the witness listed,  
6 they only have the name of the law enforcement  
7 department.

8 And I pulled one indictment from just this past  
9 March that does not have a name on the indictment. So if  
10 Shands is ---

11 THE COURT: I hate to interrupt.

12 MR. KING: Yes.

13 THE COURT: I'm having technical issues up here, so  
14 just give me a second. I'm sorry. I apologize. Does  
15 anybody know if this is supposed to be the Internet  
16 connection?

17 UNIDENTIFIED SPEAKER: Yes, sir.

18 THE COURT: It is? Okay. Let's start from the  
19 beginning. Sorry. Sorry.

20 MS. WILSON: You want me to start over?

21 THE COURT: Yes, ma'am. If you would.

22 MS. WILSON: Okay.

23 THE COURT: Thank you.

24 MS. WILSON: All right. Again, this is Scarlett  
25 Wilson. I am just making an appearance briefly for the

1 State. I'm, taking a little bit of a load off of Mr.  
2 Linder and Mr. Abshire on this indictment issue. Because  
3 it's an issue that could affect the whole office and it's  
4 been going on for quite some time apparently.

5 Our motion that I sent you over the weekend, Judge,  
6 and sent the defense as well, is a quash to amend the  
7 indictment to include the witness' name who testified  
8 before the Grand Jury. His name is Chris Ross. He's an  
9 officer with the Charleston Police Department. He  
10 presented this case to the Grand Jury. We'd offered to  
11 amend that indictment. I believe Mr. King is objecting  
12 to that.

13 THE COURT: Okay.

14 MR. KING: Yes, Your Honor. I'm moving to quash the  
15 indictment, Your Honor. Y'all noticed in this case, the  
16 indictment did not have the name of the witness who  
17 testified listed. It's actually been pointed out by a  
18 different client. And I thought I would, you know, go  
19 ahead and start working on the issue here to --- to try  
20 to present it and see if anything can be done.

21 It may not seem something that important to leave a  
22 name off the indictment. But, I mean, this is a charging  
23 document that the Court uses to bring people in, and ---  
24 and possibly take away their freedom. So it's an  
25 important document. It's enshrined in our South Carolina

1 Constitution, the right of presentment to Grand Jury.  
2 And there's a statute that says the foreman of the Grand  
3 Jury, or acting foreman in the Circuit Courts of any  
4 county of the State may swear the witnesses whose name  
5 shall appear on the bill of indictment in the Grand Jury  
6 room.

7 So it's supposed to be on --- written on the  
8 indictment when they swear the witness in the Grand Jury  
9 room. So that's a statute.

10 THE COURT: What was --- what was the statute?

11 MR. KING: 14-7-1550. One five five zero.

12 THE COURT: Okay.

13 MR. KING: And like I said, it may not seem like  
14 that big of a thing, but I think we're --- it's about the  
15 rule of law, and the people who imposed the law should  
16 follow the law.

17 I think we're living in the time now where there's  
18 the very high distrust of government. There's a huge  
19 percentage of people who think the last election was  
20 rigged. I mean there is --- we're at --- I think at a  
21 height of distrust of the government in our institutions.

22 And when the people charged with enforcing the law  
23 are allowed to not follow the law, it --- it undermines  
24 our whole system. You know, our client --- our clients  
25 might think, you know, when I do something wrong, I get

1 arrested. When they do something wrong, nothing happens.

2 And I --- I have clients --- not Mr. McFadden. I  
3 told him he's always been a great client. But I have  
4 other clients who --- who bring up these little issues  
5 and try and make big deals out of them, and when I try to  
6 explain, well there's --- there's not really any  
7 consequences, they think I'm a bad lawyer. You know, we  
8 have them constantly saying I --- I wasn't indicted  
9 within 90 days. And, you know, we generally tell them,  
10 well, it doesn't really matter, you know, there's no real  
11 teeth to that rule.

12 And then they point out that well, there's no  
13 witness listed on the back of the indictment like the law  
14 requires. And we say, well, doesn't really matter, you  
15 know, the --- they're, you know, probably not going to  
16 quash the indictment because of that.

17 And the clients just think we're terrible lawyers.  
18 So it kind of trickles down to the attorney-client  
19 relationship when, you know, there are things that are  
20 done wrong, and we tell them it doesn't matter. And they  
21 don't understand.

22 And --- and to --- I think a person outside of the  
23 courtroom, it might even seem absurd that there's a law  
24 that says they have to put the name on the indictment,  
25 but there aren't any real consequences if they don't.

1           So I --- I think there should be some consequences.  
2           It's --- it's not just an oversight in that --- this one  
3           indictment. That's why I went to the Circuit Court and I  
4           searched around and I pulled about seven indictments from  
5           the same Grand Jury. And they all lack the name of the  
6           witness on there. And I tried to pull one from a range  
7           of solicitors, so it --- I'm, you know, not trying to  
8           pick on any one solicitor. It appears to be a range of  
9           seven different solicitors.

10           And I pulled one from March 16, 2023, so just a ---  
11           a week or two ago. And it had --- fails to have a name  
12           of the witness on the back of the indictment.

13           So I'm trying to distinguish from State versus  
14           Shands, which they made a similar argument, that there  
15           was no name on the back of the indictment. And the Court  
16           ruled --- the Appellate Court ended up ruling that, you  
17           know, the defendant was not able to show an abuse of the  
18           Grand Jury process, and it was not an abuse of discretion  
19           for the judge to deny the motion.

20           I'm trying to extend it a little bit in this  
21           argument, by saying this is broader than just this  
22           indictment. This has become, you know, institutional.  
23           It's become a common practice in the Ninth Circuit  
24           Solicitor's Office. And that erodes--- it erodes the  
25           right that we have to presentment to the Grand Jury and

1 our faith in these institution in general, and they don't  
2 follow the law.

3 And there are no consequences, Your Honor, then, you  
4 know, that's when this --- people think, well, why should  
5 I --- why should I follow the law if the government  
6 doesn't follow the law? And I think that trickles  
7 down --- and one of the driving forces is the  
8 attorney-client relationship when we have to explain this  
9 to clients.

10 You know, that's why I'm coming and arguing this  
11 today. You know, just if we don't push this at some  
12 point, then if --- if anything gets done out of this, if  
13 they start putting the name on the indictment from now  
14 on, you know, maybe I've accomplished something.

15 But we're asking to quash the indictment. It's sort  
16 of an office-wide practice that undermines --- or  
17 structural error in the Grand Jury process undermines the  
18 whole right.

19 THE COURT: Okay.

20 MR. KING: And I want to make it part of the record  
21 that indictment. I'm sure you can see them if you want  
22 to see them, but --- I --- I've made them at Court  
23 Exhibit Number 8 separate indictments.

24 THE COURT: Why do you need to put those in? I'm  
25 just curious.

1           MR. KING: To show that it is not just this  
2 indictment.

3           THE COURT: Does The State deny that this has been  
4 apparently a little systemic problem?

5           MS. WILSON: This has been a problem. It's just  
6 brought to our attention. Nobody's noticed it. And we  
7 finally traced this back to a change in 2012 that had  
8 something to do with the way our case management system  
9 imported witness names, and us running into the problem  
10 of the arresting officer or the detective on the case  
11 being always listed, but that wouldn't be the witness  
12 before the Grand Jury. And then we would have conflict  
13 there.

14           But if the goal is to accomplish a change, that  
15 change has already started but we don't contest the fact  
16 that this has been the practice. It should not have been  
17 the practice. But one of the --- the things that Mr.  
18 King points out that I think is important to note  
19 regarding the Rule 3 violations of the nine-day rule of  
20 getting cases indicted. The reason why those rules ---  
21 to use this phrase, don't have any teeth, is because they  
22 don't create structural problems with the indictments.  
23 There is no structural problem with this indictment. And  
24 that's why it should be amended. We know who the witness  
25 was. We've told them who the witness is. To have the

1 indictment quashed just to bring another indictment a  
2 week after that with the same witness, the same  
3 information, creating the same result, is really form  
4 over substance.

5 THE COURT: Okay. So I --- I'm not trying to --- if  
6 you want to --- I'm just trying to not confuse the record  
7 by introducing these indictments from other cases.

8 MR. KING: Yes, Your Honor.

9 THE COURT: She has acknowledged that this is a  
10 systemic issue. Do you want to put those in?

11 MR. KING: No, Your Honor. If that agreement ---  
12 that --- that was the only point I was trying to make is  
13 that it wasn't an oversight on one indictment or two  
14 indictments. It's --- it's become ---

15 THE COURT: Okay.

16 MR. KING: --- common practice.

17 THE COURT: Well, you have just accomplished a  
18 systemic ---

19 MS. WILSON: Change.

20 THE COURT: Yes, change.

21 MS. WILSON: Interestingly, when this happened in  
22 2012, it didn't change the process in Berkeley County, it  
23 was only here in Charleston. And because of the way our  
24 system is, we don't often see the other side of the  
25 indictment. We see the binding indictment, which is what

1 we're mainly concerned with. We do present witnesses  
2 from each agency. We don't --- we don't go into the  
3 Grand Jury, so there --- there is a law enforcement agent  
4 who testifies. And we could recreate that, which is how  
5 Mr. King knows that was Detective Ross.

6 THE COURT: Okay. So I'm happy to hear that other  
7 people have technical problems too.

8 MS. WILSON: Yes.

9 THE COURT: IT problem. Okay. I'm going to  
10 permit --- do you have any --- any evidence to show that  
11 this issue that you've pointed out prejudice ---  
12 prejudices your client in any way?

13 MR. KING: I can't really make an argument for this  
14 specific case. It was --- when I didn't know maybe who  
15 the --- who the person on the indictment was, if they had  
16 not been able to find out and the record had been kept,  
17 but they did find out who --- who the witness was who  
18 testified. So at least we have some evidence about that.

19 THE COURT: Okay.

20 MR. KING: It's more than --- it's a broader ---  
21 it's a bigger issue than --- than just this case.

22 THE COURT: Okay. I'm going to grant The State's  
23 motion to amend the indictment, and allow them to put the  
24 name of the witness on the indictment. And it sounds as  
25 if they are going to address the problem that you pointed

1 out today. So...

2 MR. KING: Thank you.

3 MS. WILSON: Your Honor, if I could just hand this  
4 to the clerk's office. This is our response to  
5 defense ---

6 THE COURT: Yes.

7 MS. WILSON: --- just so you have a signed copy of  
8 it.

9 I believe that is all I was needed for. Thank you.

10 THE COURT: I'm sure that you're needed for more  
11 than that, but thank you for appearing.

12 MS. WILSON: (Unintelligible).

13 THE COURT: All right.

14 MS. WILSON: Thank you, Judge.

15 THE COURT: Yes, ma'am.

16 MS. WILSON: Have a good week.

17 THE COURT: You too. Thank you.

18 Is that all we're doing?

19 MR. KING: Oh, sorry. I was waiting for you to give  
20 me the go ahead.

21 Next, Your Honor, I would make a motion to dismiss  
22 for violation of the right to speedy trial.

23 This case is going on four years. I believe Mr.  
24 McFadden was arrested on May 1, 2019. I think the length  
25 of the case triggers presumptive prejudice and requires

1 analysis of the other factors, Your Honor, so I'm  
2 just --- I'm raising that issue because of the age of the  
3 case.

4 THE COURT: All right.

5 MR. KING: I understand we had the pandemic here for  
6 a while. The previous solicitor became ill. And there  
7 was a time when I wasn't able to get the full discovery.  
8 So when that solicitor was I, and we'd kind of come out  
9 of the pandemic, and the trial started back, I had some  
10 discovery, but not all of it.

11 The case was transferred to Ms. Linder, I believe,  
12 maybe around May in mid-last year. I advised her about  
13 some stuff that was (unintelligible) some DNA evidence.  
14 And then she asked me to sign --- I'll --- I'll say this:  
15 She asked me to sign a scheduling order on August 4,  
16 2022. It said trial not before January 1, 2023. And I  
17 did that --- because I knew she had just gotten the case.  
18 Some professional courtesy. And I've been in that  
19 situation before too. And I didn't have all the  
20 discovery, so I wanted to make sure I had the discovery,  
21 and I could be fair.

22 But that delay was not caused by me. Although I did  
23 agree to a protective order for a few months so that the  
24 State could get ready, and because I could get all the  
25 discovery and I could get ready.

1           We then had a court --- priority court date of  
2           January 9, 2023. So we were putting our case on a  
3           priority docket, which means that, you know, it's kind of  
4           a date certain for us to try the case that day.

5           Leading up to that, Ms. Linder found out that the  
6           swabs --- the --- the SLED had not been tested. They  
7           couldn't get it tested in time for the January 9th trial.  
8           And Judge Jefferson ended up continuing over my  
9           objection, to March 27, 2023, which we're here today.

10          We --- I actually got the DNA results, I believe it  
11          was last Monday. They did the test the Friday before,  
12          and we received the results a week ago Monday in the  
13          afternoon. I have an expert who was going out of town  
14          Tuesday to Saturday. So I ended up on the phone with her  
15          yesterday afternoon kind of going over this stuff. So,  
16          you know, I asked for a continuance from Judge Price, he  
17          denied it. But I was able --- 'cause I didn't think I  
18          was going to be able to get my expert at all. She was  
19          able to talk to me on the phone on a Sunday.

20          You know, it --- it put a little bit of a  
21          disadvantage to have to be, you know, learning this last  
22          night. But in --- in --- I know my fault as well. I ---  
23          I --- I've never --- never asked for a continuance. I  
24          don't believe that the defense has ever delayed the case  
25          at all. And like I said, it's put me in a position where

1 I'm looking at complicated DNA evidence at, you know, 1,  
2 2 o'clock on Sunday afternoon before trial, which is not  
3 ideal.

4 You know, I --- there's other stuff I --- I've got  
5 to work to get --- work to get together, and it put me  
6 under the gun a little bit. I do --- I do have e-mails  
7 going back tell --- advising Ms. Linder that there are  
8 swab --- there are swabs at SLED that need to be tested.  
9 Going back, I think, to May 20, 2022, two or three  
10 e-mails. So I think failing to test it and now the case  
11 is almost four years old.

12 Due to the age of case, Your Honor, we would ask to  
13 dismiss for violation of our right to speedy trial.

14 THE COURT: Okay. Anything from The State?

15 MR. ABSHIRE: Your Honor, we would request that that  
16 motion be denied. Looking to the Hunsberger fact that  
17 the defense cites to in their motion, as well as in  
18 argument, turning to those factors, looking at plaintiff  
19 delay, we --- we do not (unintelligible) it's obviously  
20 (unintelligible) May in 2019, and that's when the clock  
21 started ticking, but as you are well aware, Your Honor,  
22 we had a pandemic, and then since then, we have slowly  
23 trickled back into the court to unclog the backlog that  
24 is the aftermath of a pandemic.

25 Your Honor and Ms. King spoke about it a little bit,

1 but there were multiple attempts throughout the reopening  
2 of the court to schedule this, for --- for what we're  
3 calling priority dockets. And those have been kind of  
4 quasi-situations where they would submit it. And then  
5 it's a mixture of chronological cases, but also the  
6 priorities, so to speak, as far as the case itself. This  
7 case was submitted for the January in 2023 priority  
8 docket. It's my understanding that this case was moved  
9 because there was also a conflict with Ms. Linder's other  
10 trial that she had going on that --- that --- at that  
11 same time. And that's how we reached a March 2023  
12 priority docket.

13 Your Honor, under Hunsberger, it speaks to  
14 overcrowded dockets, and how that should not be weighed  
15 against The State.

16 Another factor is the accused's actual assertion of  
17 a motion for speedy trial. Through my research I did not  
18 see that he filed a motion for speedy trial until March  
19 of this year, a week ago. So we would --- it would be  
20 our position that he has not asserted that right at any  
21 point until the week before trial.

22 And then finally, if delay prejudiced the accused in  
23 any way, Your Honor, it's our position that this delay  
24 was not done advertently by The State, in accommodation  
25 of the pandemic as well as hustling to get necessary

1 evidence in this case.

2 We don't contest that the DNA came in when it did.  
3 But as soon as we received that, we were in constant  
4 communication with the chief admin judge who determined  
5 that if we got in by a certain time, that would be enough  
6 time to review it. And we have been in agreement with  
7 that situation since we did --- we actually got it  
8 early --- a day early, and it --- it was a determination  
9 that we had enough time for both sides, to review.

10 So for all those listed reasons, we would ask that  
11 you deny the defendant's motion to withdraw.

12 THE COURT: Okay.

13 MR. KING: The full motion for speedy trial, it was  
14 not filed until very recently. I have made it clear that  
15 each side's solicitor, Mr. McFadden has never asked for a  
16 plea offer, it's always been a trial. And even the  
17 solicitors involved in the case, have --- have never  
18 approached it any other way, but this is going to be a  
19 trial.

20 So --- formal assertion it, you know, it has always  
21 been the posture of a trial. The State never made a plea  
22 offer at all.

23 THE COURT: All right. Well, we're going to trial.  
24 I'm going to deny your motion for a speedy trial.

25 MR. KING: Thank you, Your Honor. Ms. --- Ms.

1 Luther is going to take the next one. Give me a break.

2 THE COURT: Okay.

3 MS. LUTHER: Thank you, Judge. This will be  
4 defense's motion to prevent The State or any witnesses  
5 from referring to our client by his alleged nickname of  
6 "Trigger". Defense would argue that allowing such usage  
7 of his nickname would be highly prejudicial under Rule  
8 403.

9 We would also argue that it would be inadmissible  
10 character evidence under rule 404(a), as The State would  
11 be using the nickname Trigger to prove that he acted in  
12 conforming with that nickname.

13 Generally courts have held that evidence of  
14 defendant's character is not prejudicial if it's used to  
15 prove something at trial, such as identity. However the  
16 nickname deprives the accused of due process when it so  
17 infects the trial with unfairness as we would argue it  
18 would do here.

19 Looking to State v Tubbs, the court found that the  
20 uses of defendant's nickname, "Cobra," did violate due  
21 process. There, the nickname was only used seven times.  
22 Defense didn't object to two of those. There was also a  
23 case of self-defense. It came up where during the State  
24 cross-examination of the defense witness. That witness  
25 cited to a statement they used to police when they said

1 Cobra had had about --- about 12 beers. They then needed  
2 to establish who Cobra was.

3 To the contrary, and more similar to our case, would  
4 be State v Day. That's where the defendant's conviction  
5 for murder and possession of weapon during a violent  
6 crime was reversed, because the States's use of his  
7 nickname did deny him that right to a fair trial. There  
8 the defendant was referred to as his nickname, "Outlaw,"  
9 23 times. The State used his nickname to show that he  
10 acted in conformity that he was proud of being an Outlaw,  
11 proud of violating laws, proud of doing what he was on  
12 trial for. So there the Court found it was extremely  
13 prejudicial.

14 Here The State would seek to call the defendant by  
15 his alleged nickname of Trigger. It's the State's  
16 position likely that evidence of this goes towards  
17 identity. In this, their brief, The State cites to State  
18 v Heyward. However, the case there, the defendant was  
19 having his --- was moving to have his nickname taken off  
20 the indictment. His nickname there was Abdul Muslim.  
21 However, that case isn't really on point with ours here.  
22 There, there was a DNA hit from the DNA taken under the  
23 victim's fingernails. The CODIS hit returned it to Abdul  
24 Muslim, which was the defendant's nickname.

25 Looking into that nickname, they then matched those

1 fingerprints with the defendant. It was a case of  
2 identity, because the CODIS hit went directly to the  
3 nickname.

4 Here we would argue that there's nothing here that  
5 ties the defendant directly to that nickname. His  
6 girlfriend in the case refers to him as Michael Thomas.  
7 One codefendant refers to him as Trigger, but that's  
8 after the warrants were drafted, and it's after Detective  
9 Prichard (phonetic) said, what's the nickname of the  
10 shooter? He didn't ask what the name was. And then  
11 that --- so defendant responded Trigger. He was asked  
12 what the nickname was. Two of the other codefendants  
13 don't name him by his nickname.

14 In the warrant there --- it says that one person  
15 does --- does a hearsay confidential tip where someone  
16 says, we were told Trigger's the shooter. They mainly  
17 get him by his Facebook records, and other things. It's  
18 not the main purpose of how they get him.

19 Therefore, we would argue it's not needed to prove  
20 his identity. And so we'd ask that you prevent it under  
21 Rule 403 and 404(a).

22 THE COURT: Okay.

23 MR. ABSHIRE: Your Honor, it's The State's position  
24 that Trigger --- the use of the nickname, Trigger, is  
25 absolutely essential to proving the identity of the

1 defendant. And the defense correctly states that, yes,  
2 we would be seeking to introduce it in order to establish  
3 identity. It --- under Rule 403, it is substantially  
4 more probative or prejudicial, to prove that who we are  
5 accusing of murder is the actual person known by Trigger.  
6 And under 404(b), it is the enumerated exception to  
7 character evidence, that you may use evidence in order to  
8 prove identity.

9 In order to have witnesses specified as to their  
10 knowledge of Trigger, we would lay the foundation, that  
11 they've known him for a long time, that they --- they ---  
12 they hung around him. They have heard him refer to  
13 himself. They know him on social media. And then we  
14 would establish that his identity is Trigger.

15 Furthermore, in the actual arrest search warrants  
16 for the defendant's Facebook as well as cell phone --- I  
17 mean --- excuse me Your Honor. In the Facebook search  
18 warrant, there is a mention of the defendant being known  
19 by his girlfriend, as well as his friends, and then law  
20 enforcement can testify that they knew him by his  
21 nickname Trigger. That was an essential element in just  
22 establishing the communication between Facebook profile,  
23 with another Facebook profile that led law enforcement to  
24 properly identify Thomas McFadden by the name Trigger.

25 Your Honor, look into the case --- one of the cases

1 that we cited in our brief was US v Heyward, there's a  
2 Fourth Circuit Court of appeals case. And the defense  
3 pointed out that if it's cited also in Clark (phonetic),  
4 but what was addressed in Clark and Heyward are pretrial  
5 motions to suppress those aliases. And the Court in both  
6 instances held --- (unintelligible) I apologize.  
7 (Unintelligible).

8 THE COURT: Sure.

9 MR. ABSHIRE: You're fine, Your Honor. But the US  
10 Court of Appeals for the Fourth Circuit stated that it  
11 is --- if it is used to prove an essential element, that  
12 you may introduce evidence of a nickname, if one of those  
13 elements is identity. Then citing to Heyward, our own  
14 Court of Appeals in Clark stated that the trial court  
15 properly denied a pretrial motion to suppress the  
16 defendant's alias on the basis of --- of the State  
17 intending to introduce evidence linking the defendant to  
18 that nickname. In other words, an essential element of  
19 the identity of the defendant.

20 Your Honor, we --- we expect there to be a lot of  
21 testimony from law enforcement as well as friends of the  
22 defendant that will say that he was known to them as  
23 Trigger.

24 But Your Honor, in doing our own research, we  
25 confirmed based off of a search warrant that was issued

1 for this defendant's Facebook profile, we --- we actually  
2 went to that Facebook profile and I pulled that today.  
3 If I --- if I may approach. Your Honor, he --- his name  
4 on Facebook is Soulja 4 Life Trigger (phonetic).

5 THE COURT: Show it to me.

6 MR. ABSHIRE: And Your Honor, I move to admit this  
7 as a --- admit this as a court's exhibit.

8 THE COURT: Okay. Any --- any objection?

9 MR. ABSHIRE: Would this be Court's Exhibit 1?

10 THE COURT: I haven't done anything else so ---

11 MR. ABSHIRE: Sorry, Your Honor.

12 THE COURT: This --- this is just a court's exhibit  
13 for purposes of this motion, right?

14 MS. LINDER: Yeah, that's --- that's fine, Judge.

15 THE COURT: Okay. All right. Yeah.

16 MR. ABSHIRE: May I approach, Your Honor?

17 THE COURT: Yes.

18 UNIDENTIFIED SPEAKER: I'm sorry, what number is  
19 this?

20 MR. ABSHIRE: So Court's Exhibit 6.

21 THE COURT: Six?

22 MR. ABSHIRE: I think we jumped in line a little  
23 bit, Your Honor.

24 THE COURT: Oh. Okay.

25 (Court's Exhibit 6 Marked)

1 MR. ABSHIRE: But, Your Honor, if --- if you would  
2 like to view this as well. But it --- it does state that  
3 the defendant's Facebook name is Soulja 4 Life Trigger.

4 THE COURT: Okay.

5 MR. ABSHIRE: And Your Honor, The State believes  
6 that under 403, it is absolutely, substantially more  
7 probative than prejudicial to elicit testimony at trial  
8 that the defendant is --- is known by law enforcement,  
9 people who are familiar with him, as well as himself,  
10 referring to himself as Trigger.

11 In conjunction with all that, I --- I think where we  
12 differ a little on the assumption of how the name will be  
13 used, is the defense is --- is assuming that we are going  
14 to open this gate, and then just constantly refer to him  
15 as Trigger. We do not contest that under Tubbs and Day,  
16 that certain lines were crossed. Those were instances  
17 where during closing, they were constantly referring to  
18 him as (unintelligible). We are only seeking to  
19 introduce this for identity purposes, and believe that it  
20 is not only relevant, but a enumerated exception in  
21 404(b), in which witnesses as well as --- the witnesses,  
22 lay witnesses, and law enforcement, will absolutely be  
23 able to testify as to their knowledge of his nickname  
24 being Trigger.

25 THE COURT: Okay. Anything else?

1 MS. LUTHER: Judge, if I just may briefly respond.  
2 I kind of just want to correct the holding United States  
3 v Clark. There the court had to be necessary to identify  
4 the defendant in connection with the acts charged. The  
5 court there found it wasn't that the issue is that  
6 defense didn't renew that objection. So I think that was  
7 taken a little bit out of context. And just kind of  
8 citing back to that, has to be necessary to identify the  
9 defendant. What the police know his alleged nickname to  
10 be is somewhat irrelevant kind of what the people ID him  
11 by.

12 They'll have to prove that that's his Facebook name.  
13 We would just say, you know, trial for murder where he's  
14 alleged to be the Trigger man. We would say that it's  
15 highly prejudicial.

16 THE COURT: Okay. Well, the balancing up here and  
17 I'm going to allow them to do it with discretion.  
18 They've acknowledged that they're not going to step over  
19 that line. Okay.

20 MR. KING: If you're ready, the next motion would be  
21 a motion to suppress the defendant's buccal swab, based  
22 on the search warrant.

23 THE COURT: Okay.

24 MR. KING: And the defense would call Detective  
25 Butler.

1 CLERK: Raise your right hand.

2 Do you swear or affirm the testimony you shall give  
3 the Court and the jury in the trial of this case is the  
4 truth, the whole truth, and nothing but the truth?

5 THE WITNESS: Yes, sir.

6 CLERK: Please be seated and please state your full  
7 name and spelling loudly and clearly for the record.

8 THE WITNESS: Detective Jennifer Butler,  
9 J-E-N-N-I-F-E-R, last name, Butler, B-U-T-L-E-R, North  
10 Charleston Police Department.

11 DETECTIVE JENNIFER BUTLER, HAVING BEEN DULY SWORN,  
12 TESTIFIED AS FOLLOWS:

13 MR. KING: Do you have a copy of the search warrant?

14 THE WITNESS: I do, let me grab it.

15 MR. KING: We ask to make this a Court Exhibit  
16 Number 1. This is the search warrant.

17 THE COURT: Any objection from The State?

18 MS. LINDER: No objection from The State.

19 THE COURT: Okay.

20 (Court Exhibit Number 1 Marked)

21 DIRECT EXAMINATION

22 BY MR. KING:

23 Q. Detective Butler, do you remember if you supplemented  
24 this search warrant with oral testimony?

25 A. Yes, sir.

1 Q. You did?

2 A. Yes, sir.

3 Q. Do you remember what you testified to?

4 A. I don't remember verbatim, but when I --- it is  
5 common practice for me, when I get search warrants  
6 signed --- any search warrant signed, when I meet with  
7 the judge, I present the facts of the case from the very  
8 beginning to where we're at in the investigation when  
9 that search warrant is being signed.

10 So like the initial response and I run down through  
11 everything to, like I said, where we're at when that  
12 particular search warrant is getting signed.

13 Q. And the affidavit's pretty long, right?

14 A. Yes, sir.

15 Q. And it's --- you go through that your probable cause in  
16 the affidavit, you start off talking about issuing a warrant,  
17 so that's March 14, 2019, right?

18 A. Yes, sir.

19 Q. It's 9051 Palmetto Commerce Parkway?

20 A. Yes, sir.

21 Q. Okay. So in this one you don't indicate that's Cummins?  
22 Cummins Plant, right? Cummins Turbo?

23 A. Correct.

24 Q. And then you talk about how EMS arrived and found the  
25 victim on the ground, and he succumbed to his wounds?

1 A. Yes, sir.

2 Q. You talked about the blue Honda CR-V that The State  
3 believes occupied by the defendant?

4 A. Yes, sir.

5 Q. A white Dodge Charger?

6 A. Yes, sir.

7 Q. Okay. And you said investigation shows that the  
8 defendant, and codefendants, and person printed on  
9 (unintelligible) all members of a rival gang, so you gave the  
10 fact that Mr. McFadden and the person killed, were in rival  
11 gangs, right?

12 A. Yes, sir.

13 Q. All right. And you talk about Ishmal Westin and Jamal  
14 Smalls?

15 A. Yes, sir.

16 Q. Operating a white vehicle? You said during an interview  
17 with Ishmal Westin, he provided consent to search his cell  
18 phone?

19 A. Yes, sir.

20 Q. And you saw that he received two missed calls from a  
21 Facebook name, Untamed Gorilla?

22 A. Yes, sir.

23 Q. Not Trigger? The Facebook name was Untamed Gorilla?

24 A. The Facebook name was Untamed Gorilla, yes, sir.

25 Q. Okay. And put in there that it was --- it was two missed

1 phone calls?

2 A. Yes, sir, it's like a Facebook phone, but yes, sir.

3 Q. Okay. You haven't put in here what time the shooting  
4 took place?

5 A. The time is not, just the date.

6 Q. Right. So whether the --- when the calls took place at  
7 4:24 and 4:26, missed calls, doesn't mean a lot if you don't  
8 put what time the shooting occurred, right?

9 A. In the body, yes, sir.

10 Q. And then the next paragraph, you talk about anonymous  
11 tips, the person by the name of Trigger was the shooter,  
12 right?

13 A. Yes, sir.

14 Q. Did you give the magistrate any information about those  
15 tips, or who gave those tips to the magistrate to determine  
16 whether they were reliable?

17 A. Yes, sir.

18 Q. What did you give (unintelligible)?

19 A. Just the --- that the tips were anonymous and some  
20 came from family members of the decedent.

21 Q. Okay. So you told the judge that they were anonymous,  
22 and some of them were family members of the decedent?

23 A. Yes, sir.

24 Q. But that's it?

25 A. Like I said, I don't remember verbatim what I said,

1 but that would have been relayed.

2 Q. You didn't keep any record of how you supplemented it?

3 A. No, sir.

4 Q. And then you obtained the search warrant from Ishmael  
5 Westin's phone, showing him in communication with  
6 843-964-0637?

7 A. Yes, sir.

8 Q. And you said he was --- Ishmael Westin was in  
9 communication with that number before and after the shooting?

10 A. Yes, sir.

11 Q. But he was in communication with other numbers before and  
12 after the shooting as well, right?

13 A. I --- I don't have the phone records in front of me,  
14 but I know we have his phone records to support that.

15 Q. But after the two missed called from Untamed Gorilla,  
16 that there was a call from Little J, at 17:05 p.m.?

17 A. I don't have the phone records in front of me to  
18 confirm that.

19 Q. If I show them to you, would it refresh your memory?

20 A. Possibly. Yes, sir.

21 MR. KING: May I approach, Your Honor?

22 THE COURT: Yes.

23 THE WITNESS: Okay. Yeah. Little J at 18:49.

24 BY MR. KING:

25 Q. So you see the two Untamed Gorilla calls here?

- 1 A. Correct.
- 2 Q. They're at 16:24, and 16:26?
- 3 A. Correct.
- 4 Q. All right. A little later, Little J calls?
- 5 A. Correct.
- 6 Q. It's a missed call, right?
- 7 A. Yes.
- 8 Q. And going a little further, Turn Up calls at 18:00?
- 9 A. Yes, sir.
- 10 Q. Right? That's a missed call?
- 11 A. Uh-huh.
- 12 Q. Turn Up is Sheldon McFadden; is that right?
- 13 A. I believe so. Yes, sir.
- 14 Q. Then there's an outgoing call to Grind. Grind is Jamal
- 15 Smalls?
- 16 A. That's who we know is ---
- 17 Q. Okay.
- 18 A. --- yes, sir.
- 19 Q. Okay. Ishmal Westin calls back Turn Up, Sheldon
- 20 McFadden, right?
- 21 A. It's an outgoing to Turn Up.
- 22 Q. Right. And at 19:08, there's a call from Brando
- 23 (phonetic), right?
- 24 A. Yes. Incoming from Brando.
- 25 Q. And wasn't Brando one of the four people at the

1 (unintelligible) the night before the shooting?

2 A. To the --- I do not recall.

3 Q. And then there's a missed call from Johnny Dang  
4 (phonetic)?

5 A. Correct.

6 Q. Right?

7 (Simultaneous speaking)

8 Q. That's Clayvon Alston?

9 A. That is, yes, sir.

10 Q. He was a --- one of the people interviewed in this case  
11 and charged with obstruction of justice, right?

12 A. Yes, sir.

13 Q. Okay. So there were multiple people calling that Ishmal  
14 Westin that night, right?

15 A. Yes, sir.

16 Q. You didn't put any of that in your search warrant?

17 A. Not in the body of the search warrant, No, sir.

18 Q. Did you inform the judge of that orally?

19 A. Like I said, I would have --- I would explained the  
20 whole case from beginning to the end. I would have  
21 explained that we had the phone records, and what the  
22 phone records revealed.

23 Q. You showed him the phone records?

24 A. I would not have shown him the phone records, but I  
25 would have explained what the phone records revealed.

1 Q. You went through each of these phone calls with the judge  
2 before you got the search warrant that we just went over?

3 A. I would not have gone through each and every phone  
4 call, No, sir.

5 Q. You put that the phone communications coincide with what  
6 is observed and surveillance video?

7 A. Yes, sir.

8 Q. But did you give the judge those times?

9 A. No, sir, it could have been a broad statement of all  
10 the surveillance video --- video footage that we have in  
11 the area of the vehicle leaving, and the white vehicle  
12 leaving, coinciding with cell phone provider data and  
13 their location data as well, matching that surveillance  
14 footage.

15 Q. Did you explain what that meant?

16 A. I ---

17 Q. The fact that phone communications coincide with what is  
18 observed on the surveillance video?

19 A. If the judge would have asked me if there was a  
20 question on what that meant, I would have explained that.

21 Q. Did the judge ask you?

22 A. I don't recall.

23 Q. And then you talk about the cell provider search warrant  
24 for the number 964-637, and you retained cell --- cell site  
25 data from that number, right?

1 A. Yes.

2 Q. And --- and the warrant says that that data shows it in  
3 the vicinity of Cummins Turbo at the time of the homicide?

4 A. Yes, sir.

5 Q. Okay. But you hadn't mentioned Cummins Turbo at any  
6 other point in the warrant?

7 A. Besides the address for Cummins, No, sir.

8 Q. Right. So if --- if --- unless you know 9051 Palmetto  
9 Commerce Parkway is Cummins ---

10 A. Uh-huh.

11 Q. --- that information isn't very useful, right?

12 A. Correct, but that would have been explained when I  
13 gave my supplementation to the judge.

14 Q. The next sentence says on March 26, 2019, a burned Honda  
15 CR-V, believed to have been used during this homicide is  
16 located in that same area?

17 A. Yes, sir.

18 Q. Right? It was actually a burning vehicle, not a burned  
19 vehicle; is that right?

20 A. I didn't respond to it. Berkeley County responded  
21 to that vehicle.

22 MR. KING: May I approach, Your Honor?

23 THE COURT: Sure.

24 THE WITNESS: Yes, they requested the fire  
25 department.

1 BY MR. KING:

2 Q. So on March 26th, the CR-V was on fire, right?

3 A. Yes, sir.

4 Q. And the fire department had to be called to put it out?

5 A. Yes, sir.

6 Q. Your affidavit makes it sound like cell data tracked that  
7 number up toward Ridgeville and it was burned that night, and  
8 was later found burned? It doesn't really make it clear that  
9 it was burning on March 26th. And why that's important is ---  
10 is it sound like from reading this, that cell site tracked the  
11 defendants to an area of Ridgeville. And then later, a burned  
12 CR-V believed to have been used, was found in that same area,  
13 right?

14 So isn't that confusing where it sounds like you're  
15 saying that the night of the shooting they drove up to  
16 Ridgeville, burned the CR-V, and it was later found on  
17 March 26th?

18 A. I would say that's not confusing. But like I said,  
19 I would supplement --- I would fill all of that in when I  
20 explained everything to the judge. I would explain that  
21 Berkeley County responded to a burning vehicle and the  
22 fire department would have had to put it out. And that's  
23 why I would have labeled burned because for our purposes,  
24 it was burned. Like North Charleston, when we respond to  
25 it, it's burned.

1 Q. But you're saying you told the judge it was burning?

2 A. I --- I would supplement everything. So I would  
3 explain, like, the timeline from beginning to end. So I  
4 would say, you know Berkeley County sheriff's office got  
5 a call here for a vehicle fire. And as a result of that,  
6 we recovered the burn --- a burned Honda CR-V.

7 Q. Now, the last sentence, on May 1, 2019, the defendant was  
8 captured in Moncks Corner. During a search of the vehicle he  
9 was occupying, officers located a firearm, which matched the  
10 caliber used to kill the victim, right?

11 A. Yes.

12 Q. Did --- you didn't put what caliber?

13 A. I did not.

14 Q. And to say the same caliber gun doesn't necessarily  
15 narrow it down to very much does it?

16 A. I --- I think it does.

17 Q. Well, I mean, it could be any caliber?

18 A. Right.

19 Q. Could be a .22, could be a .38. It could be any --- any  
20 caliber?

21 A. Right.

22 Q. All right. So ---

23 A. I would have also explained that the  
24 (unintelligible). Like I would have explained all of  
25 that to the judge during my supplemental.

1 Q. Now, toward the end, you're asking for a buccal swab  
2 right? To get a DNA profile from Mr. McFadden?

3 A. Uh-huh. Yes, sir.

4 Q. And you say the evidence collected consists of DNA  
5 samples that would be tested and compared. (Unintelligible)  
6 informed and believes that the material evidence will be found  
7 by (unintelligible) buccal swab Thomas McFadden, which can be  
8 compared to evidence collected from the crime scene, right?

9 A. Yes, sir.

10 Q. You didn't put any information about what the evidence  
11 was collected at the crime scene?

12 A. We did not.

13 Q. And at the very bottom, it says it's important the DNA  
14 profile from buccal swab collected from Thomas McFadden be  
15 compared with the DNA profiles of other evidence collected in  
16 this case, right?

17 A. Yes, sir.

18 Q. When this was written, you had those DNA profiles from  
19 other evidence collected in the case, right?

20 A. The --- I mean, this would have been done on May,  
21 like --- No, sir.

22 (Simultaneous speaking)

23 Q. --- like last week, right?

24 A. We wouldn't ---

25 (Simultaneous speaking)

1 Q. So in that time, you were not aware that any profiles had  
2 been developed from any of the (unintelligible)?

3 A. Correct.

4 MR. KING: That's all for me, Your Honor.

5 THE COURT: Okay. Cross?

6 MS. LINDER: Just very briefly, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. LINDER:

9 Q. Mr. King kind of took you almost word by word for this,  
10 but I just want to clear up a few things for the record.

11 In your affidavit that's part of Court's Exhibit  
12 number 1, did you mention the fact that you recovered  
13 surveillance footage from the incident location where all of  
14 this happened?

15 A. Yes, ma'am.

16 Q. And did you include in that that you interviewed Ishmal  
17 Westin?

18 A. Yes, ma'am.

19 Q. Did you include that Ishmal Westin, how he would have the  
20 ability to know information if he was in communication with  
21 this defendant? Would you include that ---

22 A. Yes, ma'am.

23 Q. --- information? When --- when you talked about in here,  
24 I believe the words you used, is that Westin and the  
25 defendant's phone number coincide before and after the

1 shooting. This includes the 17 times where there was no  
2 communication except between the two of them within about a  
3 two-hour time frame, right?

4 A. Yes, ma'am.

5 Q. And by the time that you did this bit of buccal swab, you  
6 already indicated in here that on May first, two days prior to  
7 this buccal swab search warrant, that the defendant was  
8 arrested and actually are served with some sworn warrants for  
9 his arrest in this case, right?

10 A. Yes, ma'am.

11 Q. And by the time this was done, which was May 3, 2019, Mr.  
12 King was making an issue about profiles on other evidence that  
13 was collected. He was --- the defendant was arrested on  
14 May 1st, right?

15 A. Yes, ma'am.

16 Q. And then May 3rd is when this buccal swab warrant  
17 (unintelligible)?

18 A. Yes, ma'am.

19 Q. Between May 1st and May the 3rd, isn't it true that North  
20 Charleston Police Department had already swabbed the magazines  
21 and the Mini Draco that was seized at the time of the  
22 defendant's arrest that was later given for DNA comparison?

23 A. I believe so. Yes, ma'am.

24 MS. LINDER: I don't have anything further.

25 MR. KING: I have no questions, Your Honor.

1 THE COURT: All right. Thank you, ma'am, you can  
2 step down.

3 THE WITNESS: Thank you, sir.

4 MR. KING: Your Honor, I first argue that just  
5 getting sort of a general statement that I go through the  
6 entire case without remembering what specifically she  
7 told the magistrate is kind meaningless for us. You  
8 know, if there were specific things that she remembered,  
9 that would be one thing. But I would ask to limit it to  
10 the four corners of the document, since she doesn't  
11 remember exactly what was told to the magistrate. She's  
12 not going to be able to remember.

13 And the affidavit is pretty long. It's three solid  
14 paragraphs. So it --- it --- from its face it wouldn't  
15 look like it would supplement. And I think that's why  
16 they put so much on there. So I'd ask to limit it to the  
17 four corners of the document here. And when you do that,  
18 there is no explanation of what 9051 Palmetto Commerce  
19 Parkway is. So to understand what it means for the  
20 number to be in the vicinity of Cummins Turbo, without  
21 knowing that Cummins Turbo is 9051 Commerce Parkway, it  
22 doesn't make any sense that that's the scene of the  
23 crime.

24 Anonymous tips, I don't believe add anything to the  
25 probable cause, even if they're from family members. I

1 don't think there's any information provided about an  
2 anonymous tip that would give the judge any way to  
3 evaluate that credibility, whether it's, you know,  
4 previously given confidential information that turned out  
5 to be correct, or details that were given that support it  
6 being true. But you know, just telling them that some  
7 anonymous family members have given some information  
8 doesn't add anything.

9           There were --- there's a --- a paragraph about phone  
10 communications coinciding with what's observed on  
11 surveillance video. The judge wasn't given those times  
12 or described exactly how that worked. It says the cell  
13 site data tracked the defendant and codefendants to an  
14 area of Ridgeville, and then talks about the burned  
15 vehicle located. I think when you read it it's  
16 misleading to where it sounds like the night of the  
17 shooting, the CR-V was driven up to this area and burned  
18 and later found. And that's not exactly what happened.  
19 It --- it was found on --- let's see --- 12 days later on  
20 fire and burning.

21           And when you're talking about in that area, you're  
22 talking about up in sort of a Ridgeville area which is  
23 getting farther away from Charleston. You know, for the  
24 cell site tower to --- you know, which tower it's pinging  
25 on, I mean, going over the cell site expert, but it's

1 not --- it's not very strong information that it pinged  
2 on a tower somewhere near that area.

3 The vehicle, there was a firearm found there that  
4 matched the caliber. The caliber's not given. There's  
5 no real information for the judge to evaluate what that  
6 means. Just having the same firearm of the same caliber  
7 as a shooting, you know, there's lots of different ---  
8 that would put a lot of people as a suspect if that were  
9 something used to implicate people. If it were a rare  
10 caliber, that might be one thing, but it doesn't even say  
11 with what caliber it is. There's a lot of different  
12 calibers and millions of guns.

13 The search warrant wants to compare it with evidence  
14 collected at the crime scene. And The State versus  
15 Baccus, it requires a clear indication that relevant  
16 material evidence will be found. So if they don't  
17 have --- they have swabs, they may have rubbed swabs onto  
18 some of the evidence, but they do not have any profile at  
19 all. You know, they can rub swab on an object that  
20 doesn't necessarily mean there's going to be a DNA  
21 profile developed from it, or any material evidence will  
22 come from it. Eventually they were able to get a sample,  
23 but that was about a week ago. So at that time, there  
24 was --- there were no DNA profiles to compare it to. So  
25 I'm arguing that on the face of the document, it lacks

1           probable cause, and there's no clear indication given  
2           that relevant material evidence will be found.

3           MS. LINDER: Thank you, Your Honor. Briefly. Your  
4           Honor, as you know, we're looking here to tally the  
5           circumstances. We're not looking for certainty, only ---  
6           only probabilities. You know I --- I think it's  
7           interesting Mr. King is kind of speaking out of both  
8           sides of his mouth. He's saying that wow, this  
9           affidavit's really long, but then again, he's saying but  
10          it doesn't include A, B, and C.

11          I do not think Your Honor should consider just the  
12          four corners of the document like he asked, especially  
13          when straight out of the gate when asked, Detective  
14          Butler said that she orally supplemented it. And not  
15          only did she supplement it to just a random question that  
16          that issuing magistrate had, however she --- she told  
17          Your Honor, and she testified how she gives kind of a  
18          running synopsis of the entire investigation up until  
19          that point.

20          Frankly, Your Honor, at this time, this was not the  
21          beginning of the investigation. The defendant was  
22          already arrested. The defendant was already in custody.  
23          He was arrested two days prior to this buccal swab being  
24          signed which was specifically in the warrant.

25          Mr. King is --- is kind of arguing word choice, the

1 vehicle is burned, versus the vehicle is burning on  
2 May 26th. I don't think that really matters. I don't  
3 know if it was a 24-hour burn, or a 48-burn, or a  
4 one-hour burn. I don't think that makes any difference  
5 in this case. He's also complaining about the --- about  
6 saying Cummins at one point versus an address, at another  
7 point --- well, frankly another point in Court's  
8 Exhibit 1 is it talks about how Cummins is the --- where  
9 the homicide occurred.

10 So all of these items, especially with Butler's  
11 orally supplemented testimony to the magistrate, I think  
12 we can get past all of that.

13 As far as the caliber again, she's giving orally  
14 supplemented testimony in this case. And as she briefly  
15 mentioned it was a Mini Draco. So it was 7.62 casings or  
16 prior cartridge cases that were found at the scene. And  
17 also that ammunition in the vehicle. At this point, they  
18 had already collected and swabbed the firearm that was  
19 located when the defendant was arrested.

20 Furthermore, at this point on the crime scene  
21 itself, as --- as Detective Butler would have indicated  
22 to the magistrate, that there was a T-shirt found on  
23 scene that they then attempted --- so there was a  
24 physical item on the scene and try to collect this.

25 We believed that the --- the document itself, plus

1 the supplement oral testimony given by Detective Butler  
2 is sufficient in this case, and would ask that you deny  
3 the defense's motion.

4 THE COURT: Okay. I'm going to confine it to the  
5 four corners of the affidavit, and going to give  
6 substantial deference to the magistrate's decision to  
7 issue this warrant, and deny your motion.

8 MR. KING: Thank you, Your Honor. Your Honor, my  
9 client is making --- is requesting a bathroom break.

10 THE COURT: Sure. We'll just take a short break.

11 (A brief recess was taken 2:57 to 3:08)

12 THE COURT: Okay.

13 MS. LUTHER: Judge, we are going to do defense's  
14 motion to suppress the Mini Draco seized in the Infiniti.

15 THE COURT: Wait a minute. I'm --- say it again?

16 MS. LUTHER: We're going to do defense's motion to  
17 seized the Mini Draco --- or to suppress the Mini Draco  
18 seized from the Infiniti.

19 THE COURT: Okay.

20 MS. LUTHER: So we are going to call Sam Souther  
21 from the North Charleston Police Department.

22 THE COURT: Okay.

23 CLERK: Please raise your right hand, put your left  
24 hand on the Bible.

25 Do you swear or affirm the testimony you shall give

1 the Court and the jury in this trial of the case is the  
2 truth, the whole truth, and nothing but the truth, so  
3 help you God?

4 (No audible response)

5 CLERK: Please be seated. Please state your full  
6 name, spelling your last name loudly and clearly into the  
7 microphone.

8 THE WITNESS: My name is Samuel Steven Souther. My  
9 last name is S-O-U-T-H-E-R.

10 CPL. STEVEN SOUTHER BEING FIRST DULY SWORN, TESTIFIES AS  
11 FOLLOWS:

12 DIRECT EXAMINATION

13 BY MS. LUTHER:

14 Q. Do you go by officer? What's your title?

15 A. Corporal.

16 Q. Perfect. Corporal Souther, I'm just going to ask you a  
17 few questions. Did you respond to [REDACTED] Cozy Corner Lane in  
18 Moncks Corner on May 1, 2019?

19 A. Yes, ma'am.

20 Q. And what did you see when you got there?

21 A. As I passed by the residence. I observed a  
22 individual standing in the doorway the --- of the  
23 residence. I waited down the street for a period of  
24 time. I turned around, I passed by again, saw the same  
25 individual, confirmed it was a subject that I had been

1 looking for, and then I notified my team.

2 Q. How did you know that was the subject that you were  
3 looking for?

4 A. From pictures.

5 Q. And you said he was in the doorway?

6 A. Yeah.

7 Q. Of the residence?

8 A. Yes.

9 Q. Who secured him or brought him out of the home?

10 A. He came out of the home by himself with his hands  
11 up.

12 Q. Was he anywhere but the home when you saw him except for  
13 when you pulled him out?

14 A. Me personally? No. No.

15 Q. And in your report you talk about the vehicle being towed  
16 at some point ---

17 A. Uh-huh.

18 Q. --- who made that decision?

19 A. The decision was ultimately made by the homeowner,  
20 who stated that --- that --- that vehicle was his. Both  
21 the homeowner and the other individual that was in the  
22 home both separately confirmed it was his. They said  
23 that they did not want it on --- on their property, at  
24 which time it was towed by Berkeley County.

25 Q. So the police department called the tow truck?

1 A. For --- I --- I believe Berkeley County did. That  
2 was --- that portion was out of my hands.

3 Q. What is the inventory policy in your department?

4 A. In my department? For North Charleston?

5 Q. Yes.

6 A. I mean, I can't recite to you the whole policy  
7 verbatim, but in that situation we were in Berkeley  
8 County's jurisdiction. So our policy wouldn't apply to  
9 that.

10 Q. Which agency inventoried (unintelligible)?

11 A. With situations like this, every time there is an  
12 inventory done, like me being the case agent, I would  
13 assist in the inventory. So, you know, it was Berkeley  
14 and myself.

15 Q. Was the owner of the vehicle ever notified?

16 A. I do not know.

17 Q. And which agency found the Mini Draco?

18 A. That would be me, North Charleston.

19 Q. Was it you personally?

20 A. Yes.

21 Q. And that was before a search warrant was sent for the  
22 vehicle?

23 A. I couldn't tell you at what point the search warrant  
24 was done. I --- I know whenever we're conducting the  
25 inventory I open the door, and that's when I see the Mini

1 Draco. And that's why I made notifications.

2 Q. And just to clarify something, because you said you were  
3 in Berkeley's jurisdiction, would it be your policy that North  
4 Charleston would follow Berkeley County's policy to inventory  
5 if they're in their jurisdiction?

6 A. Yeah, if Berkeley County's doing the inventory, or  
7 doing the tow, it would on their --- their policy. Say  
8 if we were in North Charleston, we would be following  
9 North Charleston's policy.

10 Q. Okay. Perfect. Hang on one second.

11 You said you were doing the inventory though?

12 A. Well, the --- an inventory done prior to a tow. And  
13 the purpose of that is so that all items are accounted  
14 for prior to a tow company taking it.

15 Any officer can assist with just going through the  
16 vehicle. But as far as like, you know, taking anything  
17 out, that's --- that's a little different.

18 Q. But you took the Mini Draco out?

19 A. No, I didn't take it out of the vehicle personally.  
20 I just opened the door and saw it. The --- the extent of  
21 my, I guess inventory, per se, would be opening the rear  
22 door and seeing it. And --- and that's that.

23 Q. Okay. Are you familiar with North Charleston's Police  
24 Department Policy and Procedure manual?

25 A. Yeah.

1 Q. Are you familiar with Policy 837, that's the inventory  
2 policy?

3 A. I couldn't repeat it verbatim, but yeah.

4 Q. Okay. Would you believe me if I said when it talks about  
5 private properties, it requires that you make all attempts to  
6 contact the vehicle owner?

7 A. I would believe, yeah.

8 (Background noise)

9 Q. --- said that it also states properties owned ---  
10 property owner's responsibility to have the vehicle towed?

11 A. Uh-huh. Yes.

12 Q. Neither of which happened here?

13 A. Well, yeah. Correct. Because we were not in North  
14 Charleston's jurisdiction. We were following Berkeley  
15 County's inventory and tow policy.

16 Q. Okay. But still you were acting object behalf of North  
17 Charleston when you opened the door?

18 A. Yeah. Which is --- it's --- it's --- it's normal  
19 for just to assist. Yeah.

20 Q. Okay. And where was it towed to?

21 A. I --- we didn't --- I didn't personally tow it, so  
22 I --- I don't know who came and towed it. That would be  
23 a --- a Berkeley County question.

24 Q. And who filled out the inventory log?

25 A. That, again, Berkeley County did that portion, so I

1 don't know who exactly did, but...

2 MS. LUTHER: Okay. I think that's it. Thank you.

3 THE COURT: Okay.

4 CROSS-EXAMINATION

5 BY MS. LINDER:

6 Q. For me just briefly, just so the judge understands all  
7 this. Back in 2019, what was your position in North  
8 Charleston?

9 A. I was assigned to the US Marshals fugitive task  
10 force.

11 Q. And you were tasked with apprehending this defendant,  
12 Thomas McFadden, after arrest warrants were sworn for him; is  
13 that right?

14 A. Correct.

15 Q. Okay. And then when you went up to Moncks Corner, the  
16 area was on Cozy Corner Lane, I believe, in Moncks Corner in  
17 Berkeley County, right?

18 A. Correct.

19 Q. And there was a number of you conducting surveillance?

20 A. Correct.

21 Q. And y'all, while you're doing surveillance, the defendant  
22 was seen entering the vehicle and entering the residence?

23 A. Yes, ma'am.

24 Q. And then after the defendant ultimately came out and was  
25 taken into custody, you testified that there was a resident

1 there. What did that resident say about the vehicle?

2 A. She said that the vehicle belonged to the defendant.

3 Q. And did she say she wanted it towed?

4 A. Yes.

5 Q. And did another female resident --- actually the  
6 homeowner, come home during this time too?

7 A. Yes.

8 Q. What did she tell you about that vehicle?

9 A. She said the same thing, it was his and she wanted  
10 it off the property.

11 Q. All right. And then --- and this Draco that was located,  
12 I believe you testified you opened the --- the rear passenger  
13 door, correct?

14 A. Correct. Yeah.

15 Q. And where was the Mini Draco?

16 A. It was leaned up on the floorboard.

17 Q. So you weren't rifling through looking for it? You just  
18 saw it as soon as you opened it?

19 A. Correct. Yeah.

20 Q. And how significant is it to you that the Mini Draco was  
21 there? Why did you know more about the Mini Draco and it was  
22 important in this case?

23 A. During the homicide, a Mini Draco was used. I ---  
24 I'd watched the surveillance video of the homicide  
25 itself. And it's very clear that a --- a Draco was used

1 in the murder itself. And ---

2 (Simultaneous speaking)

3 Q. The --- the murder happened in --- in North Charleston  
4 Police Department's jurisdiction, right?

5 A. Correct.

6 Q. And you were US Marshals task force, but you were working  
7 with the North Charleston Police Department?

8 A. Yes, ma'am.

9 MS. LINDER: I don't have anything else for you.

10 THE COURT: Just for the record, is a Mini Draco a  
11 distinctive-looking firearm?

12 THE WITNESS: It absolute is. It's essentially  
13 it --- if you're familiar with what a AK-47 looks like,  
14 that's what it looks like, but without the stock that  
15 goes against your shoulder. That's a weapon that we  
16 don't see very --- you know, very often, so it's very  
17 distinctive.

18 THE COURT: Okay. Thank you. Anything else?

19 MS. LUTHER: Just two questions.

20 REDI RECT EXAMINATION

21 BY MS. LUTHER:

22 Q. The surveillance video that you're talking about, could  
23 you see that Mini Draco on that video?

24 A. Well, yeah, you can see a Mini Draco. Yes.

25 Q. Could you show --- see the shooter using a Mini Draco?

1 A. Yes. Uh-huh.

2 Q. And the Mini Draco, you had to open the car door to see  
3 it?

4 A. Yes.

5 Q. And this car --- or I'm sorry, this vehicle is not in  
6 that surveillance video?

7 A. Correct.

8 MS. LUTHER: Okay. Thank you.

9 THE COURT: Okay. Thank you very much.

10 THE WITNESS: Thank you.

11 THE COURT: Okay. Anything else on that issue?

12 MS. LUTHER: Yes. I'm sorry, Judge. We are going  
13 to call the Berkeley officer that we have.

14 THE COURT: AKA the Berkeley officer?

15 THE WITNESS: Yes, Judge.

16 CLERK: Raise your right hand.

17 Do you swear or affirm the testimony you shall give  
18 the Court and the jury in the trial in the case is the  
19 truth, the whole truth, and nothing but the truth, so  
20 help you God?

21 THE WITNESS: Yes, I do.

22 LT. JAMES LAMARRR BLAKELY, HAVING BEEN DULY SWORN,

23 TESTIFIED AS FOLLOWS:

24 CLERK: All right. Please take a seat. Please say  
25 your --- state your full name, spell your last name

1 loudly and clearly for the record.

2 THE WITNESS: James Lamarr Blakely, B-I-a-k-e-l-y.

3 DIRECT EXAMINATION

4 BY MS. LUTHER:

5 Q. Lieutenant Blakely, did you all tow the gray Infiniti  
6 from ■ Cozy Corner Lane?

7 A. Yes, ma'am.

8 Q. Can you tell me about your towing policy?

9 A. Our towing policy states that we're able to tow a  
10 vehicle if an arrestee is --- like --- we arrest someone,  
11 if that's their vehicle, we can tow the vehicle.

12 Q. What about if it is not the arrestee's vehicle?

13 A. If they're in it we can --- we can --- they're in  
14 control of it, or they have the ability to have control  
15 over it, we can tow it. We don't have to have the actual  
16 owner of the vehicle there.

17 Q. Do you have to notify the owner?

18 A. No, ma'am.

19 Q. Is it the responsibility --- if the vehicle's on private  
20 property, is it the responsibility of the person who lives  
21 there to tow it?

22 A. Yes, and no. If it's an abandoned car, and you wake  
23 up and the car's on your property, and it's abandoned,  
24 then, yes we would say that. There's a lot of times that  
25 we would still call for the tow. It's hard to --- to ---

1 for people to understand sometimes, that hey call this  
2 tow company, have it towed, the owner will pay for it. A  
3 lot of people just think it's their call, and they're  
4 responsible for it.

5 However, when it's an arrest situation we typically  
6 tow the vehicle regardless of private property or not.

7 Q. And regardless of whether how close the arrestee is to  
8 the vehicle?

9 A. Yes, ma'am, if that arrestee is in that vehicle, or  
10 has been in that vehicle, then yes, ma'am, we can tow it.

11 Q. And you were all --- were you conducting surveillance at  
12 [REDACTED] Cozy Corner Lane that day, May 1, 2019?

13 A. I was in a group of people that was conducting  
14 surveillance, yes, ma'am.

15 Q. When did you observe Thomas McFadden there?

16 A. I didn't --- I didn't --- I --- I didn't observe him  
17 until after he was taken in custody, or at the time he  
18 was taken in custody.

19 Q. Did you help inventory the vehicle?

20 A. I --- from my recollection, I either started it, or  
21 they started it while I was calling for the tow, or had  
22 called for the tow. And --- and maybe doing something  
23 else. I was trying to get detectives there, making sure  
24 that we had some other people there to --- to gives a  
25 hand.

1 Q. And just to clarify, this would be your department policy  
2 once a towing company is called, that you all can inventory  
3 the car?

4 A. I don't know if it dictates in the policy before  
5 we're called, or if we know we're going to tow it. You  
6 get what I'm saying? I don't know if it actually  
7 specifies in there. Typically, we would call for the tow  
8 company, and then inventory, yes, ma'am.

9 Q. (Unintelligible) policy (unintelligible)?

10 A. Yes, ma'am.

11 MS. LUTHER: Okay. No further questions, Judge.

12 THE COURT: All right. Cross.

13 MS. LINDER: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. LINDER:

16 Q. Lieutenant Blakely, you've been in law enforcement for  
17 over 20 years, right?

18 A. Yes, ma'am.

19 Q. And you're in Berkeley County Sheriff's Office?

20 A. Yes, ma'am.

21 Q. And back on May 1st of 2019 y'all were up in Moncks  
22 Corner, and that's in Berkeley County, right?

23 A. Yes, ma'am.

24 Q. And you were part of --- I believe you testified,  
25 multiple agencies were there, that you had Berkeley County,

1 North Charleston, and the US Marshals?

2 A. Yes, ma'am. At that time, I was assigned to US  
3 Marshals task force, but we had various agencies  
4 assigned.

5 Q. And did you speak to a resident or the homeowner at the  
6 house that day?

7 A. At the time that we took Mr. McFadden into custody,  
8 we spoke to the female that was on scene, and I believe,  
9 if I remember correctly, she gave me her mom's phone  
10 number. I spoke to her mom originally on the phone, and  
11 her mom eventually arrived on scene.

12 Q. And did those two females indicate who had possessory  
13 ability of the car?

14 A. Yes, ma'am. Both of them identified the car as  
15 belonging to Mr. McFadden.

16 Q. And did those two indicate whether or not they wanted  
17 that car to stay there?

18 A. Yes, ma'am. The --- the --- the mother  
19 specifically --- the homeowner stated that she wanted it  
20 towed off of her property.

21 Q. And I believe you already testified to this, but you were  
22 in charge more or less with --- as being up in Berkeley  
23 County. And is it typical, or does it happen that sometimes  
24 you'll --- you request a tow like that that you did that day?

25 A. Yes, ma'am.

1 Q. And prior to that tow, was an inventory conducted?

2 A. Yes, ma'am.

3 MS. LINDER: I don't have anything else.

4 MS. LUTHER: Me neither, Judge.

5 THE COURT: Okay. Thank you. You may step down.  
6 Thank you, sir. Okay. Anything else?

7 MS. LUTHER: Judge, just my oral argument of if the  
8 Mini Draco was seized from the gray Infiniti without a  
9 search warrant, I believe the exception The State's  
10 using --- to use here is the inventory search. We would  
11 just argue that North Charleston helped take the Mini  
12 Draco. I believe that he testified that the inventory  
13 maybe wasn't in compliance with the standard policies of  
14 North Charleston.

15 THE COURT: Okay. Well, I'm going to find that's  
16 not enough to go on that appeal, so I'm going to deny  
17 your motion.

18 MS. LUTHER: Yes, Judge.

19 MR. KING: Two more search warrants motions, Your  
20 Honor. So it's two around the same time.

21 THE COURT: Whatever --- however you want to  
22 efficiently address your motions.

23 MR. KING: Okay. Defense calls Detective Butler.

24 THE COURT: Which motion is this?

25 MR. KING: I'm going to start with, Your Honor,

1 the --- sorry. The search warrant for Facebook.  
2 Facebook information.

3 THE COURT: Go ahead. Swear in.

4 CLERK: Do you swear or affirm the testimony you  
5 shall give the Court and the jury in the trial of this  
6 case, is the truth, the whole truth, and nothing but the  
7 truth, so help you God?

8 THE WITNESS: Yes, sir.

9 DETECTIVE JENNIFER BUTLER, HAVING BEEN DULY SWORN,  
10 TESTIFIED AS FOLLOWS:

11 CLERK: All right. Please be seated. Please spell  
12 your name loudly and clearly for the record.

13 THE WITNESS: Detective Butler, B-U-T-L-E-R, North  
14 Charleston Police Department.

15 DIRECT EXAMINATION

16 BY MR. KING:

17 Q. Do you need the search warrant (unintelligible) you have  
18 them?

19 A. I have them.

20 Q. Let's start with the one that's signed first. The  
21 Facebook search warrant.

22 A. Okay.

23 Q. This affidavit was signed on March 21, 2019 ---

24 A. Yes, sir.

25 Q. --- is that correct?

1 A. Yes, sir.

2 Q. That's not long from the murder, right? It's still in  
3 the early parts of the investigation?

4 A. Correct.

5 Q. So on the face of the affidavit, you give the background  
6 information about a shooting at Cummins Turbo. The blue Honda  
7 CR-V was on video?

8 A. Uh-huh.

9 Q. The shirt that found with a deceased person on it, the  
10 state police is the motive in the shooting, correct?

11 A. I don't --- I might say I believe it's the motive  
12 for this particular shooting. Is that what you're  
13 referencing?

14 Q. Right. The --- the person on that shirt is alleged to  
15 have been killed by Rob N Win (phonetic) gang? So you were  
16 looking for suspects who were part of Town of Lincolnville  
17 gang, right?

18 A. The shirt had --- it was a memorial for someone part  
19 of the Town of Lincolnville gang, and we know that there  
20 to be a beef between Rob N Win and TOL --- Town of  
21 Lincolnville gang.

22 Q. All right. And you talk about tips that you get through  
23 using this investigation, right?

24 A. Yes, sir.

25 Q. Investigator received a tip prior to the shooting.

1 Facebook name was given of Grime Wallace as the subject who  
2 made this call. Wallace has been positive identified as Jamal  
3 Smalls, one of the (unintelligible) in this case, right?

4 A. Yes, sir.

5 Q. It's confirmed that he worked in ARD, A-R-D warehouse,  
6 which is connected to Cummins?

7 A. Yes, sir.

8 Q. Okay. And Ishmal Westin has been confirmed to be a  
9 member of Town of Lincolnville?

10 A. Yes, sir.

11 Q. And also works for ARD, right?

12 A. Yes, sir.

13 Q. It says that Smalls and Westin were brought in for a  
14 formal interview, and advised they left the ARD warehouse in  
15 Westin's white Charger, and drove over to Cummins' parking lot  
16 and smoked weed?

17 A. Correct.

18 Q. Then the next sentence, that information revealed that he  
19 speaks with Untamed Gorilla, who has been positively  
20 identified as Thomas McFadden. All right.

21 So at this time you don't have --- you don't have the  
22 cell phone records, right? That's the next (unintelligible)  
23 you're going to do to (unintelligible) later; is that right?

24 A. The provider is next, correct.

25 Q. So at this point you were unaware at this point, or you

1 have nothing to tie that 964 number to Mr. McFadden at this  
2 point, right?

3 A. Correct.

4 Q. You're going straight off Facebook?

5 A. This search warrant is for Facebook.

6 Q. Right. You put in there that he's --- so you get  
7 background information about Jamal Smalls and Ishmal Westin,  
8 setting --- setting it up so make it look like they were  
9 involved in the crime, right? You have to establish that  
10 first to establish a connection to Untamed Gorilla?

11 A. That --- that is established ---

12 Q. Right?

13 A. --- first, yes, sir.

14 Q. But you put in there that he speaks --- Ishmal speaks  
15 with Untamed Gorilla, but that is not true, right? There were  
16 two missed calls from Untamed Gorilla?

17 A. Correct, they were --- they were missed calls.

18 Q. So you put in here that information revealed that he  
19 speaks with Untamed Gorilla who has been positively identified  
20 as Thomas McFadden prior calling through Facebook Messenger;  
21 that's not true?

22 A. The "speaks" would have been an error, correct.

23 Q. And then investigators receive several tips that Trigger,  
24 who has been identified as, Thomas McFadden, as the person  
25 responsible for the murder. Again, an anonymous tip that Mr.

1 McFadden did it, right?

2 A. Correct.

3 Q. And then based on these facts you believe that probable  
4 cause exists for the execution of the search warrant. So the  
5 information as far as any of Mr. McFadden's Facebook, are two  
6 missed calls, right?

7 A. That is part ---

8 (Simultaneous speaking)

9 Q. --- the answer?

10 A. That is part of it, yes, sir.

11 Q. From Untamed Gorilla, and we know that those calls were  
12 made at 16:24, 16:26, right?

13 A. Yes.

14 Q. And that's around two and a half hours prior to the  
15 shooting; is that right?

16 A. Yes.

17 Q. You didn't put the time the calls remained (Background  
18 noise)?

19 A. I did not in this --- not in this affidavit, No,  
20 sir.

21 Q. And then you put in some tips, so the --- kind of the  
22 essence of the probable cause for McFadden, is that two missed  
23 calls for Untamed Gorilla with no information for the judge,  
24 no windows calls took place in relating --- relation to the  
25 shooting. And you implied that they speak on the phone when

1 it's two missed calls, right?

2 A. Yeah, the speaks is an error, but again, I would ---  
3 I supplement every single search warrant I do when I meet  
4 with the judge. And again, I explain to them the facts  
5 in the case from the beginning, the response of the case,  
6 throughout everything we have up until the time that this  
7 search warrant is signed.

8 So that would include the video from Cummins  
9 observing the shooter exit a blue Honda CR-V, appear to  
10 drop something. A t-shirt recovered in the same area,  
11 that that item appears to be dropped. On that t-shirt is  
12 a memorial for someone that was killed in the beginning  
13 of the year, and a member of the TOL gang, the Town  
14 Lincolnville gang. And at that time, we would have  
15 requested --- we did request employee records from ARD  
16 and Cummins.

17 And through those records, we discovered that Ishmal  
18 Westin and Jamal Smalls work at ARD, which is --- not  
19 physically connected, but they work with Cummins. And  
20 then as a result of that, we would interview both of  
21 them. And during the consent on Ishmal's phone, those  
22 two missed calls from Untamed Gorilla came into his  
23 phone.

24 And when we received information that Town of  
25 Lincolnville gang was in --- the shirt was recovered, we

1 reached out to surrounding agencies for information on  
2 this gang. And we received information from several  
3 different agencies in the area, and we knew at that time,  
4 Untamed Gorilla to be Trigger, or Thomas McFadden.

5 Q. So you established a lot of information about Ishmal  
6 Westin and Jamal Smalls, right? What in addition to telling  
7 the judge that Ishmal speaks with Untamed Gorilla, when  
8 actually, it was two missed calls, and those two missed calls  
9 were hour and a half before the shooting. Right? And we went  
10 over before, there were other calls ---

11 A. Uh-huh.

12 Q. --- that come around that time too, right?

13 A. Yes, sir.

14 Q. You didn't put the time of calls in the affidavit, so the  
15 judge wouldn't really know what relation to the shooting that  
16 would be?

17 A. No, but that would have been relayed that it was  
18 prior to the shooting.

19 Q. An hour and a half prior to the shooting?

20 A. Yes, sir.

21 Q. So I'm just trying to get the essence of --- of probable  
22 cause for Untamed Gorilla's Facebook. And it looks like it  
23 boils down to two calls that were missed calls ---

24 A. Uh-huh.

25 Q. --- but (Background noise) it is connected speaking calls

1 in the affidavit right?

2 A. Yes, the speak is an error on my part, yes, sir.

3 Q. And that that several tips that he's the person --- the  
4 person responsible, correct?

5 A. Yes, sir.

6 Q. Would that be information about who gave those tips and  
7 their reliability?

8 A. That would have been relayed when I spoke to the  
9 judge.

10 Q. Do you know who relayed the tips?

11 A. Tips that we received were anonymous tips and tips  
12 from family members of the decedent.

13 Q. Anonymous means you don't know who it is, correct?

14 A. Yes. Like we --- I mean, on every case, or a  
15 majority of cases I worked, we get Crime Stoppers tips.  
16 That's the entire purpose of Crime Stoppers is to be able  
17 to remain anonymous. But there was also tips from family  
18 members that they were hearing that Trigger was the  
19 person responsible for the decedent's death.

20 Q. Okay. So just family members saying he did it?

21 A. People that I physically spoke to, yes, sir.

22 MR. KING: That's all the questions I have.

23 THE COURT: Okay.

24 CROSS-EXAMINATION

25 BY MR. ABSHIRE:

1 Q. Detective Butler, in your involvement of this case, you  
2 were also a cold case agent ---

3 A. Yes, sir.

4 Q. --- for this case, right?

5 A. Yes, sir.

6 Q. In other words, you were one of the lead detectives?

7 A. Yes, sir.

8 Q. So you would have been well aware of all of the facts and  
9 information that Detective Pritchard or the other detectives  
10 would know as well, right?

11 A. Yes, sir.

12 Q. And that includes all the information that you just  
13 testified to ---

14 A. Yes, sir.

15 Q. --- correct? And that you were relaying to the  
16 magistrate?

17 A. Yes, sir.

18 Q. You --- you testified earlier on a different search  
19 warrant that it is common practice for you to always include  
20 all the information, right?

21 A. Yes, sir.

22 Q. And it's for exact reasons like this, right?

23 A. Yes, sir.

24 Q. So whenever you're called into court, you know you're not  
25 leaving anything out, right?

1 A. Correct. Yes, sir.

2 Q. So coming to the shirt, just to clarify that a little  
3 bit, you --- you included that in your search warrant for the  
4 Facebook account, but that T-shirt that was found on scene,  
5 that was a victim who was affiliated with Town of Lincolnville  
6 gang?

7 A. Correct. Yes, sir.

8 Q. And you knew that through how?

9 A. Once we --- so we have a crime analysis unit, and we  
10 relay information like that back to them. And they start  
11 working in the background while we're on scene collecting  
12 evidence.

13 And they were able --- they discovered that that was  
14 Justin Stewart, and he was part of the Town of  
15 Lincolnville gang, and that is when we started reaching  
16 out to other agencies to get information on that gang.

17 Q. Gotcha. So there's information shared between law  
18 enforcement, right?

19 A. Yes, sir.

20 Q. And would that also have been included in your oral  
21 supplement?

22 A. Yes, sir.

23 Q. And moving to --- you already told us --- you identified  
24 the Town of Lincolnville was in some way affiliated ---

25 A. Uh-huh.

1 Q. --- did that also lead to your identification of Ishmal  
2 Westin and Jamal Smalls at ARD?

3 A. Yes, sir.

4 Q. And they were Town of Lincolnville affiliates?

5 A. Yes, sir.

6 Q. And then they actually spoke with you, correct?

7 A. Yes, sir.

8 Q. And in speaking with them, you received information about  
9 Untamed Gorilla, right?

10 A. Yes, sir.

11 Q. And that would also corroborate the anonymous information  
12 that you were receiving about Untamed Gorilla or Trigger?

13 A. Yes, sir.

14 Q. And that would also be included in your oral  
15 supplementation, correct?

16 A. Yes, sir.

17 Q. And in speaking with Westin, you --- and as well as the  
18 searching of his phone, you guys were able to identify  
19 communications between Untamed Gorilla and Westin, correct?

20 A. Yes, sir.

21 Q. And I --- I understand there may have been a  
22 misclarification of a fight. It was that Facebook Untamed  
23 Gorilla communicates with Westin ---

24 A. Yes, sir.

25 Q. --- around the time of the murder, correct?

1 A. Yes, sir.

2 Q. And based on all of that information, you sought a search  
3 warrant for this Facebook call, correct?

4 A. Correct.

5 Q. And you had shared the totality of all of these  
6 circumstances corroborating one another to the magistrate?

7 A. Yes, sir.

8 Q. And did you do that in this case?

9 A. Yes, sir.

10 MR. ABSHIRE: Thank you, Your Honor.

11 MR. KING: Thank you. The probable cause that I  
12 see --- can see, are where they're trying to get probable  
13 cause that Untamed Gorilla is ---

14 (Simultaneous speaking)

15 THE COURT: Are you done with ---

16 MR. KING: Oh, yes, sir. I'm sorry.

17 THE COURT: Okay.

18 THE WITNESS: Are we doing the other one or ---

19 THE COURT: Well, are you going to call her in the  
20 next --- you want to make your argument on this one first  
21 and then we'll continue?

22 If you don't mind, just keep your seat.

23 THE WITNESS: Okay. Yes, sir.

24 MR. KING: We're talking about what probable cause  
25 there was to get the Facebook from Untamed Gorilla. So

1 there is information in the affidavit that sets up a few  
2 codefendants, Ishmal Westin and Jamal Smalls. But the  
3 facts really come down to in the affidavit, it says that  
4 Untamed Gorilla speaks with Ishmal Westin. It doesn't  
5 put a time. If the --- Detective Butler told the judge  
6 the time, it would be 4:24 p.m., 4:26 p.m., which is  
7 actually two and a half hours before the shooting.  
8 Because the shooting on the face of the warrant is 18:59.

9 So two and a half hours before the shooting, there  
10 were two missed calls from Untamed Gorilla. And several  
11 tips that he was the person who did that. I don't think  
12 that's enough probable cause. I don't think that  
13 satisfies probable cause. Just --- just those facts.

14 And understand she's saying I told them everything,  
15 but don't --- we don't know exactly what facts were  
16 added. There weren't a lot of facts known back then,  
17 because this is still initially early part of the  
18 investigation. So I don't know what else was given,  
19 except for the times were aren't in the affidavit. But  
20 if she told the times to the officer --- I mean to  
21 the --- to the judge --- the magistrate who signed the  
22 warrant, it would have been two and a half hours before.

23 And I don't think the fact that there were two  
24 missed calls two and a half hours before a shooting, and  
25 there's no information given that there were other calls

1 made after that. But that's probable cause to get the  
2 Facebook account.

3 And I don't think throwing in anonymous tips, or  
4 family members thinking that he did it provides any extra  
5 probable cause for the judge to make a determination.

6 So I think in this one, there's --- there's not  
7 enough for probable cause to get these Facebook records.  
8 And we'd ask to suppress them.

9 THE COURT: To get ---

10 MR. KING: To get the Facebook records.

11 Specifically, the Facebook. A Facebook named Untamed  
12 Gorilla.

13 THE COURT: Okay.

14 MR. ABSHIRE: Your Honor, it's The State's position  
15 that based on the totality of the circumstances as well  
16 as giving great deference to the magistrate judge who  
17 heard these facts, you heard testimony from detective  
18 Butler, that she supplements every report for this exact  
19 reason, that she would have provided all the information  
20 that you just heard from the stand.

21 And that based in conjunction there was a good faith  
22 belief that probable cause existed, that information  
23 about the murder as well as the defendant would be  
24 retrieved from the Facebook account, Untamed Gorilla.

25 So for that reason, we would ask that you deny The

1 State's motion as brought.

2 THE COURT: The State's motion?

3 MR. ABSHIRE: Or I --- excuse me, Your Honor. The  
4 defense motion to suppress.

5 THE COURT: All right. Anything else?

6 MR. KING: I guess just pointing out two missed  
7 calls two and a half hours. I don't think that's  
8 probable cause.

9 THE COURT: Well, I'm going to --- I'm going to give  
10 great deference to the magistrate judge and the totality  
11 of the circumstances, and I will deny your motion.

12 MR. KING: Thank you, Your Honor. One more search  
13 warrant with Detective Butler. This is the motion to  
14 suppress cell site location information from phone number  
15 964-0637.

16 Do you have that search warrant?

17 THE WITNESS: Yes, sir.

18 DIRECT EXAMINATION

19 BY MR. KING:

20 Q. This was --- this affidavit was signed on April 4, 2019?

21 A. Yes, sir.

22 Q. All right. So that's a little bit --- about a week or so  
23 after previous one that we just went over, it was March 24th?

24 A. Yes, sir.

25 Q. So a little bit farther along in the investigation. They

1 kind of start off the same, when they're talking about the  
2 shooting at Cummins Turbo. Talking who the deceased suspect  
3 on the shirt was. The rivalry between Town of Lincolnville  
4 gang and the alleged victim in this case.

5 And then you talk about Ishmal Westin and Jamal being  
6 interviewed. So they're brought in for a meeting, right? For  
7 questioning?

8 A. Uh-huh. Yes, sir. Sorry.

9 Q. Based on surveillance video that you saw that you're  
10 suspicious?

11 A. In addition with the employee list from ARD, and ---

12 Q. They --- they were members of T0 --- TOL gang that you  
13 were looking for, and they worked at that place?

14 A. Correct.

15 Q. So it says during the interview with Ishmal Westin, he  
16 advised that he and Jamal left together from work at 6:00 p.m.  
17 on 3/14/19. And then the next sentence says during the second  
18 interview with Mr. Westin he provided different accounts,  
19 advising he left at 6:00 p.m. and smoked weed at Cummins prior  
20 to leaving. So he gave one account, and he gave a different  
21 account?

22 A. Uh-huh. Yes, sir.

23 Q. One he said he just left and went home, and the other  
24 account, he said he went and smoked weed at Cummins  
25 (unintelligible)?

1 A. Yes, sir.

2 Q. Right? So he left out smoking weed?

3 A. Yes, sir. When he was going over to Cummins.

4 Q. And it says video surveillance shows a white Dodge  
5 Charger with black rims matches Mr. Westin's vehicle pulling  
6 into the parking space where Mr. Stokes exit the building for  
7 a smoke break. There's no time put in there (Background  
8 noise) --- no --- no time to relate to the time of the  
9 shooting of 18:59.

10 A. Not in that sentence, No, sir.

11 Q. Does it say when Mr. Stokes exited the vehicle?

12 A. You mean the building?

13 Q. I'm sorry, the building, yes.

14 A. Oh, no. It does not.

15 Q. And then the next sentence, video shows blue Honda CR-V  
16 and the shooter's vehicle --- in parenthesis --- in the  
17 parking lot and parked in proximity to the victim. As the  
18 white Dodge Charger leaves the parking lot, the suspect moves  
19 closer to the victim. And approximately one minute after the  
20 Dodge Charger leaves, the Honda moves and the shooting  
21 happens.

22 And then information was received from the victim's  
23 girlfriend, Ms. Reed (phonetic), who advised the victim  
24 admitted being worried about people hurting him from a rival  
25 gang.

1           And you've got the phone number from Ishmal Westin?

2           A. Uh-huh yes, sir.

3           Q. And it showed several calls from this target phone number  
4 here that you're trying to get the cell site data for,  
5 964-0637?

6           A. Zero, yes, sir.

7           Q. Several calls on the day of the incident coincide with  
8 the movements of both vehicles captured on the surveillance  
9 video?

10          A. Yes, sir.

11          Q. You --- can you explain what that means?

12          A. So we --- once we got the video from Cummins and  
13 you --- we observed the vehicle leaving the parking lot,  
14 then we canvassed the area in an attempt to track the  
15 vehicle. And when we do track that vehicle, and ---  
16 to --- for as long as we can, till we no longer have  
17 video surveillance in the area. That provider coincides  
18 with the movement of those vehicles.

19          Q. So you've got Ishmal Westin giving an inconsistent story,  
20 right? That's one --- one --- I guess piece of the  
21 (Background noise) --- and the search warrant, right?

22          A. Yes, sir.

23          Q. And what you believe are coordinated movements between  
24 the CR-V and the white Dodge Charger?

25          A. It appears that way on surveillance, yes, sir.

1 Q. Just to --- when the CR-V pulls in, Charger leaves  
2 shortly before?

3 A. Yes, sir.

4 Q. And as we said before, there were multiple other calls  
5 being made to Ishmal Westin during this time too as well?

6 A. Yes, sir.

7 Q. Was that provided to the magistrate?

8 A. We would have advised the magistrate that we had,  
9 like, his phone records, his full phone records that ---  
10 and there would have been multiple calls being made, or  
11 incoming, outgoing.

12 Q. You --- you told the magistrate every incoming, outgoing  
13 phone call?

14 A. I would not have said exactly every call. No, sir.

15 Q. And again, sort of a tip from a family member, victim's  
16 girlfriend said the victim worried about people that worked  
17 for him in the gang?

18 A. Yes, sir.

19 Q. Mr. McFadden --- he didn't work at Cummins, right?

20 A. No, he did not.

21 Q. That --- that would apply to Ishmal Westin and Jamal  
22 Smalls?

23 A. Yes, sir.

24 Q. And the last thing that's based on these facts belief  
25 that probable cause exists on the execution of a search

1 warrant. Information pertaining to the murder will be found  
2 in the phone records, right?

3 A. Yes, sir.

4 Q. You didn't put what information you were looking for?

5 A. No, sir. I mean, in the description of property  
6 sought, the other section, it has what exactly we're  
7 looking for.

8 Q. So subscriber information, that would be something  
9 important to know about that number, right? Whose phone  
10 number is it?

11 A. Yes, that is complete --- complete subscriber  
12 information to include name, date of birth, Social  
13 Security number, address, telephone numbers, and credit  
14 billing details is included in description of property  
15 sought.

16 Q. And why did you need the cell site location information?

17 A. That is location data.

18 Q. To try to find out where the number 964-0637 was located?

19 A. Yes, if that coincides with the blue in color  
20 vehicle. The vehicles that we see on video involved in  
21 the homicides.

22 Q. The cell site location can't put somebody in a specific  
23 location, right?

24 A. I am not a cell site expert. I apologize.

25 Q. So you didn't explain to the judge how cell site location

1 information worked?

2 A. If they had a question, I would have been able to  
3 say, you know, that we have a couple people at my  
4 department that are able to put it into a system and do  
5 the cones, but I don't do that myself.

6 Q. So you weren't able to explain to Judge the locations of  
7 cell site location?

8 A. If the judge asked, I would have been able to make a  
9 phone call and answer those questions for him or her.

10 Q. Did that happen?

11 A. I do not recall.

12 MR. KING: That's all the questions I have.

13 THE COURT: Okay.

14 CROSS-EXAMINATION

15 BY MR. ABSHIRE:

16 Q. Detective Butler, we --- we talked about a couple of your  
17 search warrants at this point. Was this one any different  
18 than of the other ones we've discussed?

19 A. No, sir.

20 Q. Where you provided a full accounting of your knowledge of  
21 the case up to that point?

22 A. Correct.

23 Q. And you would orally supplement what --- whatever  
24 information you provided in writing as well?

25 A. Yes, sir.

1 Q. And you --- at this point, where the cell phone search  
2 warrant was being sought, and then eventually signed, Ishmal  
3 Westin had been interviewed multiple times at that point,  
4 correct?

5 A. Yes, sir.

6 Q. And in both accounts, he admits to driving a white  
7 Charger, right?

8 A. Yes, sir.

9 Q. In the same area that the murder took place?

10 A. Yes, sir.

11 Q. At around the same time?

12 A. Yes, sir.

13 Q. And then looking to the information you received from the  
14 Facebook warrant, did you --- were you able to determine that  
15 the defendant had actually searched the victim's name?

16 A. Yes, sir. Multiple times.

17 Q. And were you familiar with who the victim --- what the  
18 victim's name was on Facebook?

19 A. Yes, sir. Kodak Light (phonetic).

20 Q. And you were aware that he had searched Kodak Light  
21 multiple times leading up to the day of the murder?

22 A. Yes, sir.

23 Q. And retrieving information from that Facebook warrant,  
24 were you able to receive this phone number ---

25 A. Yes.

1 Q. --- associated with the defendant?

2 A. Yes, sir.

3 Q. And you would seek that phone number to corroborate  
4 movement of the vehicle, because Ishmal Westin had confirmed  
5 that he was in the area driving?

6 A. Yes, sir.

7 Q. As well as communicating with the defendant?

8 A. Correct.

9 Q. And if you were to receive that information from the cell  
10 phone data, you would be able to corroborate that as the  
11 defendant's number, correct?

12 A. Yes, sir.

13 Q. The number that you had found on Facebook was associated  
14 with that profile?

15 A. Yes, sir.

16 Q. And then in --- in fact, Ishmal Westin provided his  
17 number to y'all when he consented to a search?

18 A. His phone number, yes, sir.

19 Q. Right, and through searching his phone, you were able to  
20 determine that he had communicated with this other number  
21 multiple times that day?

22 A. I believe it was of his phone records, but yes, sir.

23 Q. And that was the same number that was confirmed to be  
24 attached to the Facebook profile?

25 A. Yes, sir.

1 Q. And would you have provided all this information orally  
2 supplemented?

3 A. Yes, sir.

4 Q. And did you in this case?

5 A. Yes, sir.

6 MR. ABSHIRE: Nothing further.

7 THE COURT: Okay. Anything else?

8 MR. KING: No, Your Honor.

9 THE COURT: Okay. Anything you want to tell me?

10 MR. KING: It's difficult when there's such, you  
11 know, just general just saying I told them everything  
12 about the case. It's just such a general statement, that  
13 it --- I don't think it provides us with any meaningful  
14 way to determine what the magistrate knew.

15 You know, they're providing him information that  
16 Ishmal Westin gave a conflicting story. He left out that  
17 he went to Cummins to smoke weed, that may be something.  
18 I don't know if that's probable cause. But a slight  
19 inconsistency is one thing.

20 And you know, they're --- they're talking about how  
21 when the CR-V pulls --- right before it pulls in, the  
22 Dodge Charger is leaving. So a coincidence of the  
23 vehicles, one leaving after the other one comes in. That  
24 may be something, but I don't know if that amounts to  
25 probable cause.

1           And in arguing any information from the victim's  
2 girlfriend, Ms. Reed; I don't think that adds a whole lot  
3 as well that they believe that somebody in a rival gang  
4 that the --- that the victim admitted being worried about  
5 people from a rival gang. I don't think that adds a  
6 whole lot to the analysis.

7           And the fact that there were several calls to that  
8 number, there were several calls to lots of numbers  
9 during that time. That information isn't provided to let  
10 them know, that, you know, what's special about this  
11 number. There was nothing provided to show why this  
12 number is more special than any other that was called  
13 around a certain time. That's our argument.

14           THE COURT: Okay. Well, even in a doubtful case,  
15 you give great deference to the ruling of the magistrate  
16 judge, which is what I'm going to do in this case. Okay?  
17 You going to let her off the stand?

18           CLERK: Yes. Yes, sir Your Honor.

19           THE COURT: All right.. Okay.

20           MR. KING: I think we have two more Your Honor,  
21 these --- these involve the experts. The cell site  
22 location and (unintelligible).

23           I think the witness, Willis Walker, is here, Your  
24 Honor, the expert in the cell site location evidence. So  
25 I would call Willis Walker to the stand.

1 THE COURT: Okay.

2 MR. ABSHIRE: Along one of the --- I believe Mr.  
3 King's next motion would involve DNA, and that witness  
4 would be virtual, can we go ahead and maybe go through  
5 the logistics of getting him set up?

6 CLERK: Please hold your right hand up and place  
7 your left hand on the Bible.

8 Do you swear or affirm the testimony you shall give  
9 the Court and the jury is the truth, the whole truth, and  
10 nothing but the truth, so help you God?

11 THE WITNESS: I do.

12 WILLIS WALKER, HAVING BEEN DULY SWORN, TESTIFIED AS  
13 FOLLOWS:

14 CLERK: Thank you. Please have a seat. Please  
15 state your --- your name fully and clearly, the last name  
16 spelled.

17 THE WITNESS: Willis Walker, W-A-L-K-E-R.

18 DIRECT EXAMINATION

19 BY MR. KING:

20 Q. Mr. Walker, what's your involvement in this case?

21 A. I was provided with cell phone records to analyze.

22 Q. And specifically you analyzed the 964-0637; does that  
23 sound like one of the numbers you analyzed?

24 A. Yes, sir.

25 Q. The cell site location (unintelligible)?

1 A. Yes, sir.

2 Q. That's not GPS, right?

3 A. That is not GPS. The --- the --- the cell sites,  
4 it --- it --- I could go over the records with you and  
5 show you everything that's on the records. It's not GPS,  
6 but it gives you the --- the antenna or cell site, so it  
7 gives you an actual location.

8 Q. Using a location of a cell site?

9 A. Yes, sir.

10 Q. That the phone communicates to?

11 A. Yes, sir. The ---

12 Q. So --- and it gives --- would you say it gives an  
13 approximate location?

14 A. It give --- of the phone? It'll give a general  
15 location.

16 Q. A general location where the phone is?

17 A. Yes, sir.

18 Q. Okay. Or estimated area where the phone could  
19 potentially be?

20 A. General location, yeah.

21 Q. It provides a location of the tower used by the cell  
22 phone. Would you get --- when you look at the cell site  
23 information, right? It tells you the tower used by a certain  
24 cell phone, right?

25 A. It does. And the --- the direction. Typically,

1 it's going to have the --- each tower is set up into the  
2 most part, three different sectors or sides. So it'll  
3 tell you kind of which side of the tower.

4 Q. So you can determine which tower, and which sector of  
5 that tower was talking to the cell phone, so to speak?

6 A. The --- the cell phone was utilizing, yes, sir.

7 Q. Okay. You can't tell why a particular cell tower  
8 location is chosen from the call detail records?

9 A. It's the strongest signal.

10 Q. Well, it attempt to connect to the tower with the  
11 strongest and highest quality signal, but it's not necessarily  
12 the closest tower, is it?

13 A. No. No, sir. I mean, generally it is, but not ---  
14 not always, no. There's things that affect it. Yeah.

15 Q. Okay. So generally, it's going to try to connect to the  
16 one with the strongest signal that may or may not be the  
17 closest tower? There's some --- what are some reasons why it  
18 would not connect to the closest tower?

19 A. Typography, you know, weather, you know, any kind of  
20 buildings, or anything that might obstruct the --- the  
21 signal. It --- it travels faster over the water. So  
22 I've --- I've worked many cases --- not many, but I've  
23 worked cases on the Battery, and it was utilizing a tower  
24 in Mount Pleasant, because it traveled faster over the  
25 water, that kind of thing.

1 Q. You said the weather?

2 A. The weather, yes, sir.

3 Q. Did you check the weather for the --- the time that you  
4 did the analysis for the cell phone?

5 A. No, I did not.

6 Q. The health of the tower can also determine which tower is  
7 chosen? The health of the specific tower?

8 A. What do you mean by the "health," sir?

9 Q. If it needs maintenance?

10 A. They're --- they're maintained pretty well, so  
11 that's typically not an issue.

12 Q. Did you get maintenance information for each tower?

13 A. I don't have maintenance information.

14 Q. Did you get outage information for each tower?

15 A. Did I get outage? No. I got the --- I know the  
16 towers that were on the records were working and ---  
17 and ---.

18 Q. Then you talked about signal reflection, buildings being  
19 in the way can --- can reflect those radio waves, right?

20 A. I wouldn't say, "reflect," but it --- it --- it ---  
21 obstructs.

22 Q. Refraction? Do you know about that?

23 A. Yeah, I like that better.

24 Q. Okay. So refraction, when it hits a building, it --- it  
25 can alter the direction of the radio waves, right?

1 A. Potentially.

2 Q. And that can make it appear that --- that the phone was  
3 somewhere where it's not?

4 A. Not necessarily. I don't --- I don't --- I --- I'd  
5 have to --- it's a case-by-case. I'd have to, you know,  
6 look at the --- I don't want to make hypotheticals. I  
7 mean ---

8 Q. It's possible that refraction can make it appear the  
9 phone is somewhere it's not?

10 A. Highly unlikely.

11 Q. Can some objects absorb radio frequencies?

12 A. Uh-huh.

13 Q. Deletion?

14 A. Say again.

15 Q. The term deletion, you hear of that?

16 A. Deletion, I'm not that familiar with it, No, sir.

17 Q. What about if the phone is inside of a building? Can  
18 that affect which tower it connects to?

19 A. It can, sure.

20 Q. And some of our buildings have metal-impregnated glass,  
21 which can affect the signal --

22 A. Sure.

23 Q. -- is that right? Cell tower coverage overlaps?

24 A. It does.

25 Q. That's because the phone companies will maintain

1 continuous coverage and not lose the signal?

2 A. Correct.

3 Q. Do you know about hand off?

4 A. I do.

5 Q. All right. So that's where a --- a phone moves from one  
6 tower to another, when it's between the two towers?

7 A. Right. Yes.

8 Q. And is it possible for the phone not to move, but the  
9 towers to change?

10 A. It --- it can happen. It --- if --- if it's ---  
11 yeah. It can happen.

12 Q. And was your analysis of 964-0637, there was a situation  
13 where something like that occurred, right?

14 A. Point it out to me, and I'll --- so I know exactly  
15 what you're referring to.

16 Q. There's a --- you have it with you?

17 A. I don't. I --- I --- I have it, but it's very  
18 small. Let me see. Let me see if I --- if I can --- I  
19 might be able to see. What --- what time?

20 Q. This is the first page showing sort of a summary of the  
21 maps, it's 7:30:18. So according to the these --- the map  
22 that you're --- (unintelligible) exhibits like in a trial,  
23 right?

24 A. Yes, sir. I'm assuming. I haven't seen what you  
25 have, but ---

1 MR. KING: May I approach, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. KING:

4 Q. Do you recognize this?

5 A. I do.

6 Q. Okay. In this map, at 7:38 p.m., it is pinging --- is  
7 that the term you would use?

8 A. No, it's not pinging is done in real time. That's  
9 if you --- that's where a signal is sent out from a tower  
10 to the phone. No, this ---

11 (Simultaneous speaking)

12 A. --- connecting or utilizing (unintelligible) but ---

13 Q. So at 7:38 p.m., it's connecting to cell tower 159452?

14 A. Correct.

15 Q. And at 7:38 p.m., over here, it's also connecting to  
16 159145?

17 A. Correct.

18 Q. So within the same minute it's bouncing from --- from  
19 one ---

20 A. Uh-huh.

21 Q. --- cell tower to another?

22 A. Uh-huh.

23 Q. Right?

24 A. Yeah. So I --- I would --- based off that, I would  
25 say that the phone is probably in this general area up

1 here. It's almost like you triangulate it. And I would  
2 say it's --- it's kind of up in this area.

3 Q. But that shows that a phone can be sort of in one  
4 place ---

5 (Simultaneous speaking)

6 A. Sure, if you're --- if you're --- kind of --- kind  
7 of in between tower coverage areas there, it --- it can  
8 hit off --- off multiple cell sites on the call without  
9 moving that much.

10 Q. And that could make it appear the phone is somewhere that  
11 it's not; is that right?

12 A. I don't think so. I --- I just showed where I think  
13 it is based off that that you showed me. I think I can  
14 kind of --- kind of figure out what general area it is  
15 based off that. I can't tell you the exact location, but  
16 I can tell you the general area that --- that it's ---

17 Q. But if it's connecting to two different towers at the  
18 same time ---

19 A. Uh-huh.

20 Q. --- then it's going to put it in the broader ---  
21 according to your ---

22 A. Sure. Sure.

23 (Simultaneous speaking)

24 Q. --- charts that's a much broader area ---

25 A. Well ---

1 Q. --- where it would be?

2 A. Yeah. Well, the --- let's talk about the ---  
3 the --- the pie charts, that just shows the strength  
4 where the signal is coming from the side. It --- it's  
5 not like if you cross over that line, you're going to hit  
6 a different --- different tower. It --- it --- in --- in  
7 actuality, it's not definitive lines. You know, like I  
8 cross the county line, you're in the next county. It's  
9 not like that exactly.

10 Q. But you have drawn a line in the map?

11 A. Yeah, that's how it's depicted. That --- that ---

12 (Simultaneous speaking)

13 Q. --- misleading ---

14 A. --- that --- that no.

15 Q. (Unintelligible)?

16 A. That's how the governing body --- the --- the  
17 scientific working group on digital evidence, they kind  
18 of --- 2017, they had a symposium of academia, and law  
19 enforcement professionals, and cell phone carriers, and  
20 that kind of thing. And they dictate the set of  
21 guidelines in how they should be portrayed. So when I  
22 first started doing this in 2015, you could show the  
23 whole pie sector, and that was the way it was done. But  
24 as the evolution has changed, we just show the side and  
25 the --- the --- we show the beam width, but it just shows

1 the side, it doesn't show actual coverage area. And  
2 that's how the standards say to ---

3 Q. In this diagram --- the diagrams you're going to present  
4 later in the trial, you're assuming each tower has the same  
5 coverage area?

6 A. I am not. I --- I make no assumptions about  
7 coverage area.

8 Q. They all appear to be around the same size, were you  
9 changing the size of the ---

10 A. That is the beam width that is provided by Verizon.  
11 It's the horizontal beam width, which is the size of that  
12 pie, if you will.

13 Q. So you can determine coverage areas from call detail  
14 records?

15 A. I --- I --- I can determine cell site or antenna  
16 that was utilized by the phone at the time of the call.

17 Q. Okay. Well, then how do you know where to draw this  
18 little wedge?

19 A. Do --- do you have the call detail records? I could  
20 show you exactly how I do what I do. Do --- do you have  
21 the --- the call detail records?

22 Q. The full one with numbers and everything?

23 A. Yeah.

24 Q. (Unintelligible)?

25 A. So in that they're going to provide --- they're

1 going to provide several --- the date, time, the call,  
2 number that was placing the call, the number that was  
3 receiving call. Where the call --- they're all a little  
4 different, but basically have all this stuff.

5 They're going to provide the tower that was  
6 utilized. Verizon will you give you the first and last  
7 tower --- you know, so if it's a 20-minute call, it'll  
8 give you the first tower and the last tower. Where AT&T  
9 will give you --- like if you drive from here to  
10 Summerville, they're going to give you up to 27 handoffs.  
11 So they'll give you 27 towers that were hit --- were hit  
12 along the way.

13 Q. Do they give you the coverage area?

14 A. They --- they --- they don't give you anything about  
15 the coverage area. They tell you the sector and the  
16 tower. They give you the --- the location of the cell  
17 site or the tower, then they give you the side of the  
18 tower, or the sector, where the signal is strongest.

19 Q. So from call detail records, you can get the tower, the  
20 phone it's communicating with, and which sector, which is sort  
21 of like a direction, right?

22 A. Yes.

23 Q. So the question is: From that information, how do you  
24 know how far to draw this wedge?

25 A. They provide a cell site list, which corresponds to

1 that cell tower number. This is how Verizon does it.  
2 You match that up, they have the records for that time  
3 period, because the towers will change, not that often,  
4 but it --- from 2019 to --- to now, it's --- it ---  
5 they're a little different. But they will tell you  
6 the --- the location of the cell site, and they will tell  
7 you the --- the side or they give you what's called an  
8 azimuth which is a degree. So north would be zero or  
9 360 degrees. And it goes around --- they will give you  
10 the center of that --- that pie, if you will, which is  
11 the sector. So that's ---

12 (Simultaneous speaking)

13 A. --- that's where it comes from.

14 Q. I thought we were talking before that you can determine  
15 coverage areas from the so-called detail records?

16 A. Did I say anything about coverage areas? I can tell  
17 you the side, I can tell you the location of the cell  
18 tower, cell site, and it gives you where the strength of  
19 the signal was --- was coming from the side of that  
20 tower.

21 Q. It gives you the strength of the signal?

22 A. Where the --- I don't know if strength is the right  
23 word, but it --- it gives you where the --- the --- the  
24 side of the tower --- if --- if I could draw you a ---  
25 a --- can I draw a diagram? Or I could do it on the

1 chalkboard. And I --- Your Honor, may I?

2 THE COURT: Yeah. Please.

3 THE WITNESS: So this would be the --- the actual  
4 pole. And on top of the pole, they're going to have  
5 most, not all --- but they're going to have a triangle  
6 kind of metal frame. And --- so this will be zero  
7 degrees, this is 180. So typically sectors are up like  
8 this. So this would be sector one, this would be sector  
9 two, this will be sector three. Each of these is  
10 180 degrees. And the maps say it was this sector.

11 The --- this would be shaded to show that this is  
12 the direction the --- the --- of the tower that was  
13 according to the records that was utilized.

14 BY MR. KING:

15 Q. But --- sorry if I missed it before, but how do you know  
16 how big to make that shading, and how long to make those lines  
17 that ---

18 (Simultaneous speaking)

19 A. Because they provide what's called a horizontal beam  
20 width, which is --- is this. This is 180 degrees.  
21 That's provided by Verizon with the search warrant  
22 return, and the records that were probably entered into  
23 evidence. That's where that comes from.

24 Q. This will give you a radius from the center of that  
25 circle, and the distance ---

1 A. It --- it --- it --- I have to look at the records,  
2 because they're all a little different. I'm trying to  
3 recall, but it --- it will give you --- it will say  
4 sector two, and the center of this would be zero.  
5 Sometimes they'll give you what they call an azimuth, and  
6 that --- that's going to be the center there. So if ---  
7 if it was this sector it would be --- the azimuth would  
8 be zero. So it's showing you --- it's not telling you  
9 that phone's here. It's just telling you this side of  
10 the tower was used.

11 Q. Right. Right. We determined that you can determine the  
12 cell tower, and you can determine which sector of the cell  
13 tower that it communicated with, right?

14 A. Which --- which what? Which side?

15 Q. You can --- you can determine which sector --- which  
16 side ---

17 A. Yes, sir.

18 Q. So ---

19 A. I'm sorry ---

20 (Simultaneous speaking)

21 Q. Now, I'm --- I'm understanding. I understand this. You  
22 can know the tower, and you know which of those three sectors  
23 that it communicates with, which gives you a general  
24 direction, right?

25 A. Yes.

1 Q. I'm not understanding how you know how far out to make  
2 it?

3 A. You don't. I'm not say ---

4 Q. Are you assuming on these --- these charts?

5 A. From my training experience, that there's no --- it  
6 doesn't show it any --- where that --- sector is. Or  
7 that --- that --- yeah.

8 Q. Well, you --- so when you made these maps ---

9 A. You see how it's an open --- you see how it's an  
10 open ---

11 Q. Right. There are two lines like the letter V, stick out?

12 A. Uh-huh. Right.

13 Q. Do you determine how long those lines are? How far out  
14 to draw them?

15 A. I don't.

16 Q. What determines that?

17 A. I utilize a couple programs, and they --- they ---  
18 it's in there.

19 Q. A program?

20 A. So --- so --- so that --- and one --- and ones  
21 against those are not definitive lines. I mean it's ---  
22 it's --- it's just to show the general direction and the  
23 side.

24 Q. So --- so line ---

25 A. They provide --- they provide the horizontal beam

1 width. So they provide you this number, which is where  
2 those lines come from. But I mean, I --- I --- you know,  
3 you don't cross over that line. You go, oh, you're going  
4 to immediately hit --- move to this sector. This ---  
5 this is --- this area is --- is --- you know, you could  
6 be in either sector if --- if you're (unintelligible) on  
7 the --- on the --- on the lines here; does that make  
8 sense?

9 But if you're --- if you're --- if you're --- if it  
10 says utilizing this, I mean, you're not going to be here.  
11 Does that make sense?

12 Q. So just back to the --- the question about how --- how do  
13 you know how long to make the lines of the V? You're saying a  
14 computer tells you?

15 A. There's --- there's a program that I --- that I put  
16 the records into, there's several. And --- and yes,  
17 it --- it will.

18 Q. So the computer can determine those lines from call  
19 detail records?

20 A. Sure. Yes.

21 Q. Do you know how --- what --- what ---

22 (Simultaneous speaking)

23 A. Okay. The program --- it --- there's several --- I  
24 use CellHawk, which is Hawk Analytics, and I use CASTViz  
25 which is the FBI's thing that I've been trained on both.

1 It's --- it --- I can't tell you where --- where they  
2 come up with how long --- how long to make it. I ---  
3 I --- and that --- but that's, you know, it's --- go  
4 ahead. I --- I don't know if I answered your question.

5 Q. We were talking about lines and how long the lines of  
6 that V are?

7 A. Yeah.

8 Q. And they stick out farther than the shaded wedge, right?

9 A. Yeah, that --- that wedge is just showing you ---  
10 that --- that is not depicting coverage. That's just  
11 showing where this --- the --- the side of the tower that  
12 the signal was hitting.

13 Q. Okay. So is it the lines that stick out that show you  
14 the area coverages? The V lines that we just talked about?

15 A. They don't --- they don't show you coverage. They  
16 show you the side of --- of the cell site tower that was  
17 used.

18 Q. Okay. Did you have access to any radio propagational  
19 maps?

20 A. No, I don't.

21 Q. Did you do any drive testing contemporaneous with ---

22 A. I --- I didn't. I --- it --- it wouldn't have ---  
23 it --- it happened in 2019. I don't think I got the  
24 records until late last year or early this year. So  
25 it --- it --- it --- everything has kind of changed since

1 then, so it wouldn't have done me any good.

2 Q. But that would be information that would help you  
3 know --- determine how far out to draw those lines, right? If  
4 you did a drive-by you can test and see for each individual  
5 tower the coverage area; is that right?

6 A. I --- I've never done it like that. I -- I ---  
7 I ---

8 Q. You used a ---

9 A. I mean, I would love to have as much as I can have,  
10 but I don't know that --- that it would have changed  
11 my --- because I --- I'm not really trying to show like  
12 actual coverage. I'm just trying to give you a general  
13 area.

14 Q. You use CASTViz?

15 A. Uh-huh. Yes, sir.

16 Q. Then doesn't the FBI offer and come and help and do  
17 drive-bys for you? Drive testing?

18 A. They have a --- a system called the Garr (phonetic)  
19 it's --- it's you know, it's a very expensive system that  
20 has to be --- I believe you have --- they have engineers  
21 that drive --- that drive test and stuff like that. No,  
22 they did not do them in this case, and it's --- I mean,  
23 it's --- it's done, but it's not done like on a regular  
24 basis, or you know, and I --- I look at call detail  
25 records every day, and there's only several cases that

1 I've had that --- that we've had that kind of stuff. And  
2 I mean, it's phenomenal, but it --- it's just not  
3 practical, or --- or the capability is not there to do it  
4 in every case.

5 MR. KING: That's all the questions I have.

6 MS. LINDER: Bear with me, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. LINDER:

9 Q. Just make sure all this is clear. So you currently are  
10 walking --- walking --- working through Charleston County  
11 Sheriff's Office in at Seahawk, correct?

12 A. That's correct. Yes, ma'am.

13 Q. And you --- I believe you just testified that daily is  
14 how often you look at these call detail records and utilize  
15 programs for cell phone mapping; is that correct?

16 A. That is correct.

17 Q. And then not only --- you --- you had training in these  
18 areas? You don't need to list them, but you've hired a number  
19 of trainers in this area?

20 A. Yeah. Extensive, yes, ma'am.

21 Q. And you also are an instructor in this area?

22 A. Yes, ma'am.

23 Q. And you --- how many of these --- how many times, have  
24 you been --- appeared as expert in court before?

25 A. I have.

1 Q. How many times? Do you know approximately?

2 A. Ten --- ten or so. But I've testified over ---  
3 probably upwards of 30.

4 Q. And then are there any publications or peer reviews of  
5 the techniques that are used for this?

6 A. Sure. For these records, I utilized Chris Martinez,  
7 who's with --- with SLED.

8 Q. And then are there any quality control procedures in  
9 place to ensure the reliability for the --- for these records  
10 and the mapping?

11 A. Sure. Chris goes over it. Like I said, the  
12 scientific working group on digital evidence is kind of  
13 the --- they --- they give the guidelines, and the ---  
14 the way that the information is obtained, preserved, and  
15 analyzed.

16 MS. LINDER: I don't have anything further.

17 MR. KING: Your Honor, I would move to exclude  
18 testimony of the cell site location information. I don't  
19 believe it will assist the trier of fact. And I don't  
20 think the methodology or underlying science is reliable.  
21 And whatever probative value is going to outweighed by  
22 unfair prejudice. They --- danger of unfair prejudice.

23 What I --- what I was trying to establish, and I ---  
24 so I think I got this: That the expert can determine  
25 which tower it communicates, which is just straight up

1 tower. And that tower has generally three sectors, each  
2 would serve 90-degree sectors there.

3 THE COURT: No, it's actually 120.

4 MR. KING: 120 degrees. So that gives a general  
5 direction. He says that the --- the shaded part that's  
6 going to be on the map that he's going to present to the  
7 jury, that doesn't show --- the shaded part doesn't show  
8 coverage area. It's just meant to give a general  
9 direction.

10 (Simultaneous speaking)

11 MR. KING: --- cell site.

12 THE COURT: What is it --- is it you think he's  
13 going to present to the jury?

14 MR. KING: He's presenting these long lines from  
15 this V that I --- I don't understand how that --- he's  
16 getting that information of how long to draw those lines,  
17 except you put in the machine and the machine did it.

18 I --- I think there's --- there's no way to  
19 accurately determine that these lines drawn are correct.  
20 That they're drawn to the correct length. And I --- I  
21 don't know how that's useful to the jury.

22 I think you know, at minimum, I think we know the  
23 tower and the sector of the tower, which gives a  
24 direction. But once you start drawing lines going out,  
25 and putting shading on there, it's going to appear to the

1 jury that he knows how far those lines are supposed to  
2 go, and how far the coverage ---

3 (Simultaneous speaking)

4 THE COURT: He said he doesn't know that. I don't  
5 think that's a --- an issue.

6 MR. KING: Well, then he's going --- these maps make  
7 it appear so. And I think that's misleading to the jury.  
8 It was a potential for confusion to the jury for them to  
9 see these lines that --- that imply that there's a  
10 certain coverage area that the expert is not going to be  
11 sure about. That he can't determine from call detail  
12 records how far this coverage area goes.

13 THE COURT: He's not going to testify to that. And  
14 you can ask him on cross-examination which he has  
15 answered today.

16 MR. KING: I would ask to remove those long lines in  
17 the shaded part and simply testify to the tower and the  
18 sector that was communicated with the phone. 'Cause  
19 I --- I believe that by presenting these long lines in  
20 the shaded area, it's going to be misleading to the  
21 jury --- confuse the jury.

22 THE COURT: Well, I think you'll clear that up on  
23 cross. So I'm going to deny your motion.

24 If you would, show us your face.

25 MR. MCLURE: Is the camera on? We can hear you now.

1 . Our camera is on. I can see you (unintelligible). My  
2 camera works, because I can see (unintelligible). Unless  
3 there's something --- unless there's something in Webex.

4 MR. KING: Shall I proceed, Your Honor, or try  
5 to ---

6 THE COURT: See if we can get this straightened out  
7 here.

8 Can he see me?

9 (Simultaneous speaking)

10 MR. MCLURE: I can see the judge. Judge ---

11 UNIDENTIFIED SPEAKER: I believe Paul Greer is in  
12 the waiting room. And Mr. McLure can log off. We can do  
13 Paul Greer which is the firearms, and when log back on.  
14 Maybe that will help with the camera. I'm not quite  
15 certain what the issue is.

16 THE WITNESS: Sure, we can try that.

17 THE COURT: Okay. Have at it.

18 MR. KING: Thank you, Your Honor.

19 THE COURT: Defense calls Paul Greer. All right.

20 Mr. Greer, if you would raise your right hand.

21 Do you swear or affirm to tell the truth, the whole  
22 truth, and nothing but the truth?

23 THE WITNESS: I do.

24 THE COURT: Okay. Thank you. Please state your  
25 full name for the record.

1 THE WITNESS: My --- my name is Paul Greer,  
2 G-R-E-E-R.

3 THE COURT: Thank you. All right.

4 PAUL GREER, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

5 MR. KING: State versus Phillips says that the  
6 burden of showing that the state has the burden of  
7 showing that the expert meets the requisite requirements  
8 under 702. Could we switch here? The State has --- I  
9 think The State has the burden to show (unintelligible).

10 THE COURT: Okay. I mean, you --- this is your  
11 motion. I don't know anything about the case, so tell me  
12 what the motion is.

13 MR. KING: This is the motion to exclude firearm  
14 (unintelligible).

15 THE COURT: Okay. All right.

16 MR. KING: Two cartridge casings, the cartridge  
17 casing found on the scene and testify (unintelligible)  
18 we're taking and compare and Mr. Greer is going to give  
19 an opinion on that.

20 THE COURT: Okay. You don't want to go ahead and  
21 qualify him as an expert?

22 MR. KING: That's (unintelligible). It's just  
23 (unintelligible) establish certain things.

24 THE COURT: Yes.

25 MR. KING: (Unintelligible).

1 THE COURT: All right. Okay.

2 MS. LINDER: I'm --- I'm fine doing that, Judge.

3 DIRECT EXAMINATION

4 BY MS. LINDER:

5 Q. Are you employed at SLED, correct?

6 A. Yes, ma'am. I'm having just a little trouble  
7 hearing.

8 Q. I will walk up to this podium. Am I louder up here?

9 A. Just a little. Yes, ma'am.

10 Q. All right. I don't want to yell, but ---

11 All right. Are you employed at SLED?

12 A. I'm employed at South Carolina Law Enforcement  
13 Division, yes, ma'am, it's commonly known as SLED.

14 Q. And how long have you been there?

15 A. I've been employed at SLED nine years.

16 Q. What is your position there?

17 A. At SLED I am a forensic scientist in the firearm  
18 department of our forensic services laboratory.

19 Q. And what are your duties?

20 A. My day-to-day duties as a forensic scientist, I  
21 examine firearms and firearms-related (unintelligible)  
22 components, tools, and tool marks, and related  
23 components. I conduct general rifling characteristic  
24 exams on fire projectiles recovered, submitted to the  
25 laboratory. I conduct serial number restorations on

1 firearms with obliterated serial numbers. I would also  
2 assist with destruction of weapons for agencies across  
3 the State of South Carolina.

4 Q. All right. Can you --- do you mind telling the judge,  
5 just briefly, about your education, training and experience?

6 A. Yes, ma'am. I received a Bachelor's of Science in  
7 biological science from the University of South Carolina.

8 Upon my appointment at SLED, I began our own SLED  
9 in-house training program for firearm and tool  
10 (unintelligible). This is a --- essentially an  
11 apprenticeship-style training program that is conducted  
12 here at SLED under the supervision of other core  
13 qualified examiners.

14 During this time, it took approximately three years  
15 for all of this training. I conducted many written and  
16 practical examinations. I assisted other qualified  
17 examiners, prepared their cases for court, and also  
18 conducted many microscopic comparisons on comparison  
19 microscope.

20 At the conclusion of this training period and  
21 program, I was given a multi-part comprehensive final  
22 exam, and that did include some mock casework. I  
23 successfully completed all these exams and casework, and  
24 was then allowed to begin casework on my own at that  
25 time.

1 Q. All right. And I guess for brevity, do you ever examine  
2 cartridge cases, or firearms that are submitted to you?

3 A. Yes, ma'am. That is a routine part of my job.

4 Q. And are there certain --- certain patterns or  
5 characteristics that are unique to different firearms and  
6 cases?

7 A. When a firearm is made, there are marks left on that  
8 firearm from the manufacturing process that was used to  
9 rate that firearm. When a cartridge case is fired, or a  
10 bullet is fired and travels down barrel, it has the  
11 potential to take on some of those markings. And --- and  
12 that is part of my job, where we look at these fired  
13 ammunition components such as a fired cartridge case or  
14 fired bullet. We're looking at tiny, microscopic  
15 scratches and striations, and impressions that are left  
16 on various surfaces of those cartridge cases and those  
17 bullets, in order to determine if they were fired by a  
18 specific or particular firearm.

19 Q. All right. And in this case specifically, were you  
20 provided with cartridge cases and a firearm?

21 A. Yes, ma'am, I was.

22 Q. And I don't need the results necessarily, but did you do  
23 any comparisons that you just described on the cartridge cases  
24 to see if they are consistent --- all fired by the same  
25 firearm?

1 A. Yes, ma'am, I did that type of examination and  
2 performed those comparisons.

3 Q. And you --- did you also do an examination with the  
4 firearm that was provided to you comparing that with the fired  
5 cartridge cases in this case in your test fire?

6 A. Yes, ma'am. I examined firearm. I also testified  
7 that firearm. I compare those test-fired cartridge cases  
8 with each other. And then I fired here in the  
9 laboratory, and then compared those cartridge cases to  
10 the evidence cartridge cases that were submitted.

11 Q. And the technique that you used, are there any public  
12 cases and/or peer reviews?

13 A. Yes, ma'am. And in the SLED firearms department in  
14 what is common across our entire (unintelligible) is what  
15 is known as (unintelligible) and that is the --- the  
16 technique that we use when we're comparing these items.

17 Firearms identification in itself, yes, ma'am, there  
18 are peer-reviewed articles that are --- are out there for  
19 review. That have been issued, that have been examined  
20 and studied by other scientists and forensics examiners.  
21 Those can appear in things such as the NAFE Journal, AFTE  
22 is the Association of Firearm and Tool Mark Examiners  
23 that issues a journal with these peer-reviewed articles.  
24 Peer-reviewed articles have also --- for firearm and tool  
25 mark identification also appeared in Journal for Forensic

1 Scientists, or Science and other publications such as  
2 that.

3 Q. And approximately how long has this method of analysis  
4 been used?

5 A. In its current form --- firearms identification  
6 really took hold in the early 1900s. It was then when  
7 they began to develop a really scientific approach to  
8 firearms identification, and really use the tools such as  
9 comparison microscope to look at these tiny, small,  
10 microscopic markings that are on these fired ammunition  
11 (unintelligible).

12 So the firearms identification has been around  
13 for --- for many, many years. Like I said, during the  
14 early 1900s is where it really started to take off.

15 And since then, we've just kind of built upon that  
16 foundation there with advancements, and education, and  
17 technology, and better microscopes. You know, things  
18 like that, we just built on this --- that foundation set  
19 forth back then to get us where we are now.

20 Q. And does --- do you or does SLED have any quality control  
21 procedures to ensure the reliability?

22 A. Yes, ma'am. There are multiple quality control  
23 procedures here at SLED. First of all, we do have a  
24 firearms department manual of our operating procedures  
25 that we follow in order to go about our daily activities

1 and examinations. We follow that routinely in our  
2 casework, so that way we are all operating in the same  
3 guidelines.

4 In addition to quality control, each case that we  
5 issue here at SLED or goes out our door is --- there is a  
6 100 percent micro-verification process. That essentially  
7 means that another qualified examiner examines our  
8 evidence to arrive at a conclusion after I've already  
9 examined the evidence. And if they share the same  
10 conclusion that I previously arrived at, then they will  
11 sign off and approve our results. The entire case that  
12 is generated throughout my examination and process also  
13 undergoes a technical review, and an administrative  
14 review by typically that same other qualified examiner.

15 In addition to our 100 micro-verification process,  
16 SLED also has its own SLED quality department, where we  
17 have a quality manual. That manual does give the  
18 laboratory a guideline to follow. And that guideline is  
19 also in accordance with ANAB, which is SLED's accrediting  
20 body.

21 So on top of all those internal quality procedures,  
22 SLED laboratory is accredited by ANAB, which follows ---  
23 that's a national accrediting body. And that also  
24 follows international standards from ISO 17025.

25 And so all that coupled together ensures that the

1 laboratory's operating at the same level and putting out  
2 the same quality product within our --- each of our  
3 departments do as well as other --- brings laboratories  
4 across the nation and with that ISO standard across the  
5 world, as that's an international policy to follow.

6 Q. And I think you pretty much answered this, so yes or no  
7 may suffice. But is the method employed by you at SLED  
8 consistent with methods of recognized scientific law and  
9 procedures?

10 A. Yes, ma'am. We are --- as we said, ANAB accredited.  
11 We just received our reaccreditation. The ANAB sends in  
12 auditors from across the world. Ours was actually not  
13 from the United States. We had an international auditor  
14 this past fall, come in to examine our records, our case  
15 documentation, watch us form work, and we were able to  
16 pass that inspection. And our laboratory was regained  
17 our accreditation.

18 So by adhering to that policy, we are at SLED acting  
19 in a manner that's consistent with other laboratories  
20 across the United States that fall under that  
21 accreditation, as well as international following those  
22 same policies and procedures.

23 Q. And have you ever testified in court before?

24 A. Yes, ma'am, I have.

25 Q. Have you been declared an expert before?

1 A. Yes, ma'am, I have.

2 Q. Do you know how many times, or approximately how many  
3 times?

4 A. Yes, ma'am, approximately 31 times.

5 Q. And then do you know how many times an individual from  
6 SLED has testified in court about firearms identification  
7 following these same techniques that you do?

8 A. No, ma'am, I do not know how many, but at this point  
9 I would say it's well in the thousands.

10 MS. LINDER: Okay. Thank you. I don't have any  
11 other questions for you.

12 THE COURT: Cross.

13 CROSS-EXAMINATION

14 BY MR. KING:

15 Q. Mr. Greer, when you make a comparison, are you looking  
16 for the number of similarities in the --- in --- versus the  
17 two cartridge casings you compare?

18 A. I --- I believe I said when I --- I'm sorry, I could  
19 barely hear you.

20 Q. When you're making the comparison, when you're doing your  
21 analysis, you're looking to --- to count the number of  
22 similarities between the two different shell casings; is that  
23 right?

24 A. When we do our comparisons, SLED uses a pattern  
25 matching process. So what we are looking at

1           correspondence of patterns across those two surfaces of  
2           the two tool marks, whatever that may mean on a cartridge  
3           case or a fired projectile. I'm speaking about firearms.

4           And so we use that pattern matching which is a  
5           widely accepted method and the most common accepted  
6           method across the entire field of firearms. So we're  
7           looking at those patterns, and looking at the surface  
8           contours of those two items, comparing those individual  
9           peaks, and ridges, and burrows, looking at the  
10          relationships of those --- those lines and those --- the  
11          depths and the highs of each of that with each other.

12          And we're looking at all of that under a high  
13          magnification using the comparison microscope.

14          Q. And you were looking for similarities in those patterns  
15          between the two different cases, right?

16          A. Yes, sir. In this case I --- when I was examining  
17          the --- the two --- the cartridge cases, I was looking to  
18          see if there was agreement or disagreement. And I was  
19          able to find agreement between those patterns in this  
20          case.

21          Q. What criteria do you use to determine agreement?

22          A. As a guideline, I am a member of the Association of  
23          Firearm and Tool Mark Examiners, which is also known as  
24          AFTE. We do have a theory of identification that we use  
25          as a guideline in making those identifications.

1           Ultimately, during our training process, we're going  
2 to look at thousands of comparisons by the time  
3 (unintelligible). And we're going to look at --- we know  
4 match, so our known matches. And we're going to look at  
5 things that we know do not match. So our known  
6 non-matches. We're going to look at that to compare with  
7 each other, to see what agreement may be between there.  
8 We're going to look at all of these items in order to  
9 determine what a match looks like, and what it --- what  
10 it does not look like. So see what agreement looks like.  
11 We want to --- during that training process to --- to  
12 know what agreement is reproduced two tools that --- two  
13 separate tools looks like and what is consistent with  
14 agreement when two tool marks have been made by the same  
15 tool. So we --- we do all of that through those training  
16 process.

17           During that time, I also participated in other  
18 practical exercises where I looked at things that were  
19 consecutively --- excuse me that were test-fired and  
20 firearms that were consecutively manufactured. I  
21 participated in several of those studies as practical  
22 during my training.

23           So if we're going to see any agreement between items  
24 that may have been manufactured side-by-side or  
25 consecutively, that kind of sets up a best-case scenario

1 to --- and in each of those practicals, I was able to  
2 successfully distinguish between which cartridge casings,  
3 or which bullets were fired from each gun. So I was able  
4 to discern between all of the features in all those  
5 cartridge cases and bullets which --- which cartridge  
6 cases fired and which bullet was fired. And we're able  
7 to see through all of that, those characteristics that  
8 were left behind.

9 And ultimately, again, the active theory of  
10 identification is --- is kind of a guideline that we use  
11 to go by to --- to kind of pull all of this together.

12 Q. So you had talked about finding agreement between the  
13 markings on one casing and the markings on another, right?  
14 You're looking for agreement or matching characteristics?

15 A. Yes, sir. Yes, sir.

16 Q. How do you know when you've reached a sufficient amount  
17 of --- of that match, and to declare it --- to declare a  
18 match? How do you know when you --- at a sufficient number of  
19 points of comparison, so you can say it's a match?

20 A. Yes, sir. We don't use it like it's a significant  
21 number of points. Again, the most widely used method is  
22 that pattern matching. But that is all learned in ---  
23 during our training period, which was extensive, and  
24 looking at these multiple cartridge cases.

25 And that's why it's important for us to look at and

1 compare items that we have fired from --- from the same  
2 gun, and look at that and see what that agreement looks  
3 like. Looking at the totality of all of those features  
4 on the surface of those cartridge cases and those  
5 bullets. And looking at things that we know require  
6 consecutive firings. And seeing if any agreement exists  
7 between there.

8 That was another important part of our --- our  
9 training program is doing those practicals, and those  
10 studies where you have that consecutive manufacturing.  
11 So if we're going to see any agreement between things, we  
12 should see that between firearms that were made at the  
13 same time. So if a tool is going to leave behind marks,  
14 we should see that on a run of --- for instance in one of  
15 the studies I believe there may have been ten guns. We  
16 should see agreement between each of those ten guns. And  
17 that rates our best --- our worst-case scenario, to see  
18 that.

19 And I've demonstrated through our training and  
20 successfully passed those, which are --- are world-wide  
21 known studies that I was able to determine in looking at  
22 and evaluating those markings that I determine that this  
23 cartridge case was fired from gun A, this one was from B,  
24 this is from C, and I did that successfully. And that's  
25 all in that training program. And I'm adhering to that

1 AFTE theory of identification to determine what that  
2 significance is when we're looking at all those features  
3 on the surfaces of those fired (unintelligible).

4 Q. Is there a subjective element in this analysis?

5 A. Firearms identification is --- is kind of an applied  
6 science. And it's the last form --- the last step of in  
7 the identification process. It --- it is sort of  
8 subjective, but that's based on using objective data and  
9 scientific principles that we've used along the way. But  
10 that identification process at the very end, I would ---  
11 is subjective in nature, yes, sir.

12 Q. Don't you determine which marks you're looking at, which  
13 you consider important?

14 A. Yes, sir. When I'm looking at those components of  
15 the microscope, I'm going to look at the marks and  
16 evaluate them and determine their significance and  
17 looking at the totality of all those markings.

18 Q. So you said you determine the significance of marks that  
19 you see, right?

20 A. Yes, sir. I'm going to look at that and --- and  
21 based on my training and experience in looking at those  
22 comparisons in known matches, and known non-matches, I'm  
23 going to use that --- that training and experience to ---  
24 to determine and help determine significance of those  
25 markings that I'm looking at in comparison in this gun.

1 Q. Has it been demonstrated that this technique is  
2 repeatable and reproducible?

3 A. Yes, sir. Firearms identification, we are using a,  
4 you know, a scientific approach to --- in our  
5 examination, and to arrive at these conclusions. This  
6 has been repeated. There are many peer-reviewed articles  
7 that have been published throughout the years, in many  
8 different scientific journals that show this --- the  
9 process it --- it's scientific, and uses that approach  
10 and is repeatable.

11 Q. These journals, are these journals by forensic  
12 scientists?

13 A. They can be forensic scientists. I'm sure  
14 throughout the years there were journals that are issued  
15 by other scientists. I know firearms identification has  
16 now branched into some colleges and universities. There  
17 are a lot of agencies, especially within our Federal  
18 Government that work with the Department of Justice and  
19 NIJ that utilizes scientists that are not necessarily in  
20 forensics that may be from other realms of --- of science  
21 world. And they're a contributing factor in these  
22 journals, yes, sir. So there's collaboration between  
23 many different scientists in those journals.

24 Q. Are you able to determine an error rate now?

25 A. Am I able to determine an error rate?

1 Q. Yes.

2 A. For this case?

3 Q. I mean, as part of your process, are you able to  
4 determine how often you're wrong?

5 A. I'm --- I do not have a calculated personal error  
6 rate.

7 Q. You know how to calculate any sort of probability of how  
8 correct or how sure you are of your results?

9 A. Using the methods that are widely accepted and  
10 employed at SLED, I could not put a statistical figure.

11 There are things in the works with three-D microscopy

12 that other laboratories and other science groups are

13 working towards that help us to evaluate that from the

14 computer statistics --- statistical standpoint. And

15 I --- we do not have that technology here at SLED yet.

16 We are still evaluating that as it's slowly being rolled

17 out and --- and worked on by those scientists.

18 I do know based on reading in the literature, that

19 even with the use of this 3D technology, that it --- it's

20 proving what we've been doing throughout these years to

21 be correct. Throughout the studies that have been

22 conducted over the years, these studies have generated

23 error rates and --- and those have all been typically

24 very low, within one percent or less.

25 I --- while I do not have a personal calculated

1 error rate --- I mean, I have been a part of the training  
2 that has included some of these studies, and can rely on  
3 those studies, as those published error rates are very  
4 low, one percent or less. And then as we work towards  
5 and advance our discipline, that 3D microscopy is also  
6 kind of solidifying what we're doing (unintelligible)  
7 given that number. We just do not have that capabilities  
8 at SLED here yet.

9 Q. You're talking about error rates of one percent, you  
10 said?

11 A. Yes. The error rates are very --- are very low  
12 throughout some of those studies that have been conducted  
13 and followed. So I --- I participated in some of those  
14 studies as practicals. And --- and can kind of share  
15 some of those examples. But yes, sir, typically the  
16 error rates throughout the years in following these and  
17 these validity studies there have been very low.

18 Q. Is that one percent an average error rate?

19 A. Yes, sir. I believe so. I'm not sure I can speak  
20 how each one is specifically calculated, but those  
21 published error rates are --- are the --- are very low.  
22 And that would include the --- I believe a total of, you  
23 know, all the answers that are compiled throughout the  
24 study, and that's not just one person within the study.

25 Q. I guess what I'm asking about average error rate,

1           could --- could it be a situation where some examiners are  
2           good, and maybe get it right more often. Some are not so  
3           good, and it averages out about one percent, when you put  
4           those two together; is that how it's done?

5           A. I don't know how those calculations are done in each  
6           study, as I have not been a part of that. I think it's  
7           also important to note that in some of these studies that  
8           have been conducted, you know, in all of the quality  
9           control procedures that are not in place, because  
10          they --- they want to just test the --- test the examiner  
11          and get those results. So I think it's important to note  
12          that even though that's with those studies, these error  
13          rates are still very, very low. And coupled with the  
14          quality control procedures that are set in place here at  
15          SLED and all of these other laboratories, that would help  
16          to eliminate any further errors, and hopefully also  
17          reduce that error rate to --- to be less than what it is  
18          even published.

19          Q. In conducting this test, the comparisons you made in this  
20          case ---

21          A. Yes, sir.

22          Q. --- was the second independent verification of that?

23          A. Was there an independent verification?

24          Q. Yes.

25          A. Yes, sir, after I arrived at my conclusions, another

1 qualified examiner --- one of our senior criminalists did  
2 examine the evidence and arrive --- on their own  
3 conclusion, and that was conducted in this case as it is  
4 in every case.

5 Q. And did you find another firearm, same caliber, same  
6 model ---

7 THE COURT: --- interrupt. This is about whether or  
8 not to qualify him as an expert; is that right?

9 MR. KING: Yes, sir.

10 THE COURT: Your motion.

11 MR. KING: And (unintelligible).

12 THE COURT: And what?

13 MR. KING: Rule 403.

14 THE COURT: Well this, it's not a discovery process.  
15 So let's limit it to whether or not his testimony is  
16 going to be presented to a jury, and whether or not ---  
17 what arguments to a jury you need to deal with right now.  
18 So just try to rein it in a little bit. Okay?

19 MR. KING: Yes, Your Honor. That's all the  
20 questions.

21 THE COURT: Well, I didn't mean to shut you down. I  
22 did though, I'm sorry. All right. Any other  
23 examinations from The State?

24 MS. LINDER: None from The State.

25 THE COURT: Okay. All right. (Unintelligible).

1           MR. KING: Your Honor I would move to exclude it.  
2           He doesn't have a personal error rate. This is not part  
3           science like DNA. It's a subjective test. He's  
4           basically looking at certain characteristics of one  
5           cartridge casing and looking at characteristics of  
6           another. And he's giving his opinion, I guess, based on  
7           how many of the marks coincide with each other. It's  
8           subjective. He's talking about error rates of one  
9           percent. I think --- I think I was asking if that was  
10          average, is that some sort of average one percent? So  
11          there can be some people who are going to be worse than  
12          one percent, some people maybe are a little bit better.  
13          But he does not know his personal error rate. So we  
14          don't know what --- you know, how often he's wrong, and  
15          we have no idea.

16                 And I think without having that information I should  
17          move to --- move to exclude it as not reliable. The  
18          underlying science is not reliable and any probative  
19          value is substantially outweighed by its --- its  
20          significant danger of unfair prejudice.

21                 THE COURT: Okay. Thank you.

22                 MS. LINDER: Thank you, Your Honor. It please the  
23          Court. I believe that with Mr. Greer's testimony, I  
24          think we need to look at the admissibility of the  
25          scientific evidence under the (unintelligible). It's

1 publications in (unintelligible) technique. He talked  
2 about the AFTE journal a variety of forensic science  
3 journals. He talked about how that in the training that  
4 he received, going through it and still to this day,  
5 there are always peer reviews that are done. You need to  
6 look at the prior application of the methods of the type  
7 of evidence involved in this case. And he testified that  
8 current (unintelligible) started in the early 1900s.

9 I mean, it's been microscopes since then. The  
10 microscopes, yes, they do improve, but this is --- this  
11 is not something that started two, three years ago.

12 Also I think when you look at quality control  
13 procedures used to ensure the reliability, he talked  
14 about an internal accreditation at SLED, the ANAB  
15 international accreditation that they just were  
16 reaccredited fall of '22. He talked about the operating  
17 manual procedure, the peer review on each one, and  
18 administrative review and a technical. All of that is  
19 done.

20 And then also the consistency of the method with  
21 recognized scientific laws and procedures. Again, it's  
22 the ANAB, which is an international accreditation that  
23 was done --- were reaccredited last fall. You heard  
24 about his education. You've heard that he's been  
25 qualified as an expert previously. He's testified to it.

1 He answered a variety of questions. I believe that's  
2 admissible under 702. I believe that is absolutely more  
3 probative and prejudicial to the defendant.

4 It's obviously not good news for the defendant when  
5 we have a firearm that ultimately we have --- we have the  
6 casings from the scene were all fired from one gun, and  
7 then that gun and all those casings matched. So I  
8 understand it's not good news for the defendant. However  
9 I believe that it is absolutely probative as to the guilt  
10 of this defendant, and we would say that Mr. Greer should  
11 be allowed to testify as an expert in this case.

12 THE COURT: Okay.

13 MR. KING: Just ask how the opinion is going to be  
14 phrased, Your Honor? I guess that --- how exactly is it  
15 going to be phrased as a conclusion, as an opinion, to a  
16 reasonable degree of ballistic certainty? I'm just ---  
17 I'm not sure how he's going to present the opinion.

18 THE COURT: You want to ask him that question?

19 BY MR. KING:

20 Q. Mr. Greer, if you heard that, can you explain how you're  
21 going to present the opinion that you're going to give, that  
22 this is a match that these shell casings came from this  
23 firearm?

24 A. So my report states that matches, individual and  
25 (unintelligible) characteristics were found. And it was

1 concluded that I was 10 to 13 which (unintelligible)  
2 cases required by Item 14. And that is my opinion that  
3 those partial casings were fired by that firearm.  
4 Furthermore, it's the opinion of my reviewing examiner.  
5 But yes, sir, it's my opinion, those partial cases were  
6 fired by the --- the firearm.

7 THE COURT: Okay. All right. So that's one ---

8 MR. KING: Sorry, just a final argument that he be  
9 limited at least to just showing the identifying  
10 characteristics, and making --- letting the jury make the  
11 ultimate conclusion as to whether it's a match.

12 (Simultaneous speaking)

13 THE COURT: --- state his own opinion. I'm going to  
14 allow him to do that. (Unintelligible) obviously argue  
15 that to the jury.

16 MR. KING: Yes, Your Honor.

17 THE COURT: All right. You have one more? I think  
18 we're done?

19 MS. LINDER: Yes, we're --- I think we're done  
20 with ---

21 (Simultaneous speaking)

22 THE COURT: --- Greer is done. Thank you very much.

23 MS. LINDER: And then our investigator says that  
24 David McClure should be in the waiting room.

25 THE COURT: Mr. McClure.

1 MR. MCLURE: Your Honor, I can hear you.

2 THE COURT: We cannot see you.

3 MR. MCLURE: We have gone to another computer.

4 THE COURT: Okay. What is this? Who is this  
5 witness and what is the challenge? What is the  
6 challenge?

7 MR. KING: This is the --- they're going to admit  
8 evidence of trace or touch DNA. A fairly recent case,  
9 State verse Phillips, talks about the difference between  
10 trace DNA and, like finding a pool of blood, or you know,  
11 a actual blood drop. There's differences between the  
12 two. And it --- it seemed to --- it says there are  
13 enough problems in confusing issues with DNA, that I'm  
14 asking to have a hearing and use your gate-keeping role  
15 to make sure that the information presented is reliable.

16 THE COURT: Where does this guy work?

17 MR. ABSHIRE: Your Honor, he works for Richland  
18 County Sheriff's Office.

19 THE COURT: Okay.

20 MR. MCLURE: If we can't get the video to work, I'll  
21 be more than happy to come to you, sir.

22 THE COURT: At some point you'll have to. How ---  
23 how do you wanted to handle it? Clearly we're not going  
24 to get video.

25 MR. KING: Can we just do it without the video if

1 the state's okay with that?

2 MR. ABSHIRE: That's fine by me.

3 MR. KING: It's best we're going to --- we're going  
4 to do. I think he can answer the questions. I don't  
5 think I need to like --- like showing you anything  
6 through this anyway, but (unintelligible) probably won't  
7 show anything.

8 THE COURT: Okay. Okay.

9 MR. ABSHIRE: Just can't see (unintelligible).  
10 Okay. I'm fine with that. I'm fine ---

11 MR. KING: I'm proceeding with that.

12 THE COURT: All right. Okay. Let's --- let the  
13 record --- we are on Webex and we've conducted one  
14 hearing without a problem, but for some reason Mr.  
15 McClure, the last witness is not --- his video is not  
16 coming through. All the parties have consented to be on  
17 board with just the audio portion. All right.

18 MR. ABSHIRE: Mr. McClure, can you hear me?

19 MR. MCLURE: Yes, sir, I can.

20 MR. ABSHIRE: Okay. I just wanted to test the audio  
21 real quick.

22 THE COURT: All right. Mr. McClure, if you would,  
23 sir ---

24 MR. MCLURE: Yes, sir.

25 THE COURT: --- please raise your right hand. Do

1 you swear to tell the truth, the whole truth, and nothing  
2 but the truth?

3 THE WITNESS: Yes, sir.

4 THE COURT: All right. And if you would, please  
5 state your name for the record.

6 THE WITNESS: David McClure.

7 THE COURT: All right. Please answer the questions.

8 DAVID MCCLURE HAVING BEEN DULY SWORN, TESTIFIED AS  
9 FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. ABSHIRE

12 Q. David where do you currently work?

13 A. I currently work for the Richland County Sheriff's  
14 Department.

15 Q. And how long have you been there?

16 A. I've been here for three years now.

17 Q. And what do you do for Richland County?

18 A. I'm the supervisor of the DNA database unit, or the  
19 DNA analysis unit.

20 Q. Okay. And what did you do before you worked for the DA's  
21 unit of Richland?

22 A. For seven years prior to coming here, I did work for  
23 a pharmaceutical company. Prior to that, I worked for  
24 23 years in the DNA analysis unit at SLED.

25 Q. And what was your role at SLED?

1 A. My role at SLED was as a DNA analyst doing casework,  
2 and also as the lieutenant on the DNA database unit.

3 Q. While at SLED, were you ever called to testify as an  
4 expert on DNA analysis?

5 A. On numerous occasions.

6 Q. And was that ever in General Sessions Court?

7 A. Yes, sir.

8 Q. And during your time at SLED and now at Richland, have  
9 you kept yourself abreast of current publications on DNA  
10 analysis?

11 A. Yes, sir. Every quarter we do --- we --- we read  
12 current journals.

13 Q. And do you hold certifications in DNA analysis?

14 A. No, we don't hold a certification in DNA.

15 Q. But do you do your best to keep up to date with anything  
16 developing in the field of DNA analysis?

17 A. Yes. We do that through reading scientific  
18 journals, and through also attending different  
19 conferences, such as the (unintelligible) conference  
20 which is on DNA analysis, or the Bode Conference.

21 Q. Did you work at SLED as well as now Richland, go through  
22 a peer evaluation?

23 A. It goes through the ANAB at SLED. At the time I was  
24 there it was called ASCRAD (phonetic) but it's now  
25 referred to as ANAB. And our lab here at Richland is

1 accredited through ANAB.

2 Q. All right. And just briefly, could you describe the  
3 differences, if any, between the DNA analysis and now  
4 Richland?

5 A. The DNA analysis itself is pretty much basically the  
6 same, but as far as extracting the DNA, quantitating it  
7 and finding your DNA, and running it on the  
8 instrumentation. DNA Analysis has gotten a little bit  
9 more sensitive than when I was working at SLED. But the  
10 procedures are the same.

11 Q. And have you found that the methods and procedures you  
12 use in your DNA Analysis to be reliable?

13 A. Yes, sir, I do.

14 Q. And are they widely accepted in the DNA Analysis  
15 community?

16 A. They are accepted in the DNA Analysis community, and  
17 we have validated all of our procedures.

18 Q. And for the most part are these methods consistent  
19 throughout the entire world?

20 A. The methods are consistent throughout the forensic  
21 community.

22 Q. David, have you ever been in a --- in a hearing to  
23 determine the reliability of DNA Analysis?

24 A. Early on when DNA was first introduced in South  
25 Carolina, we had some reliability hearings that others

1 testified in, but not myself.

2 Q. Have you --- have you found since then that it's become  
3 a --- a widely accepted scientific form of analysis?

4 A. Yes, sir, it has.

5 MR. ABSHIRE: That's all I have Mr. McClure, please  
6 answer anything Mr. King has for you.

7 THE WITNESS: Thank you.

8 CROSS-EXAMINATION

9 BY MR. KING:

10 Q. Mr. McClure, this case involves touch or trace DNA; is  
11 that right?

12 A. I'm sorry, sir?

13 Q. This case --- the analysis you did has involved touch or  
14 trace DNA; is that right?

15 A. That would be correct. It will be touch DNA.

16 Q. In general, there's less DNA available when you're doing  
17 the touch or trace DNA?

18 A. It depends on how long the item had been handled as  
19 to how much DNA would have been possibly on the item.

20 Q. And were you able to develop a full profile from item  
21 number two?

22 A. No, I was not. I was only able to develop a partial  
23 profile.

24 Q. Were you able to develop a full profile for item number  
25 three?

1 A. No, sir, I have number three had more DNA present,  
2 but it also was a partial profile.

3 Q. And this also involves a mixture; is that right?

4 A. That is correct.

5 Q. Is that more complicated than a single source?

6 A. Yes, sir.

7 Q. You put in your report that Mr. McFadden cannot be  
8 excluded; is that right?

9 A. That is correct.

10 Q. You can get an opinion that he is included?

11 A. I would not give an opinion as to whether he is  
12 included, I would give a statistical reference as to the  
13 significance of that evidence profile if Mr. McFadden had  
14 deposited the DNA there.

15 Q. Do you know how many contributors there were in the  
16 number two sample?

17 A. There were was a minimum of two.

18 Q. Do you have to make an assumption on that making your  
19 calculations?

20 A. I'm sorry, sir?

21 Q. Do you have to make an assumption about number of  
22 contributors to do the calculations?

23 A. Yes, we look at the DNA profiles and the number of  
24 the (unintelligible) that are present in those DNA  
25 profiles. And we make an assumption as to the minimum

1 number of contributors that are there. But with the  
2 TrueAllele software, it takes that under consideration,  
3 but looks at that profile to see how many contributors  
4 are there without ever looking at any of the standards  
5 that may be involved in the case.

6 Q. I want to talk about the likelihood ratio.

7 A. That is correct.

8 Q. That's a little --- that's some complicated math; is that  
9 right?

10 A. It does include some complicated math.

11 Q. Are you familiar with the prosecutor's fallacy?

12 A. Yes, sir, I am.

13 Q. When you give your conclusion with your report, you say  
14 that T McFadden cannot be excluded as a contributor. And then  
15 your conclusion --- I'm looking at number one under  
16 conclusions and opinions. The DNA result obtained from T  
17 McFadden, is approximately 3.3 billion times more likely to be  
18 included in this DNA result than a random unrelated  
19 individual, right?

20 A. That is correct. We're comparing the DNA profile  
21 that was attend from Mr. McFadden back to the TrueAllele  
22 analysis of what Alleles or what genotypes were present  
23 in that mixture.

24 Q. Doesn't that conclusion assume that McFadden is a  
25 contributor?

1 A. No, it does not.

2 Q. How can we assure the Court that the jury won't  
3 misinterpret this data, thinking that it's a 3.3 billion times  
4 more likely that Mr. McFadden's guilty?

5 A. Because it stated in there that the genetic results  
6 attend from him, and an explanation that TrueAllele looks  
7 at the mixture itself, and determines the different  
8 genotypes that may be involved in that mixture without  
9 knowing Mr. McFadden's genotype.

10 Only after TrueAllele makes a determination as to  
11 the genotypes that are present in the mixture, will it  
12 then look at Mr. McFadden's genotype, or the genetic  
13 results that we attend from him to see whether or not  
14 those genotypes would be included in that mixture. And  
15 then gives us a statistical interpretation.

16 Q. Okay. Are you --- do you word your conclusion  
17 differently than SLED for example?

18 A. We word it slightly different than SLED, but it's  
19 basically saying the same thing that SLED's conclusions  
20 do.

21 Q. Can you explain the difference between the way that SLED  
22 would present results, versus your way of presenting results?

23 A. Me presenting my results would come to the same  
24 conclusion as SLED's presenting their results.

25 Q. The wording would be different?

1 A. Slightly different.

2 Q. It's the SLED analysis they focus more on the DNA profile  
3 versus the DNA result obtained from Thomas McFadden; is that  
4 right?

5 A. SLED focuses more on the profile that they entered  
6 into the STRmix software, whereas TrueAllele determines  
7 the genotypes that are present in that mixture without  
8 knowing Mr. McFadden's. So the statistical portion of  
9 the report is already determined before Mr. McFadden's  
10 profile is looked at to see if it's included or excluded.

11 Q. And touch DNA can transfer from one surface to another;  
12 is that right?

13 A. It is possible.

14 Q. And you can't tell how long it's been there?

15 A. No, sir, I cannot.

16 Q. And you can tell how it got on the surface?

17 A. No, sir, I cannot.

18 Q. Let's say --- assuming that that the firearm tested ---  
19 that it was recovered about one and a half months after the  
20 shooting, could subsequent handling of that firearm remove  
21 DNA?

22 A. It possibly could.

23 Q. So --- so anyone who handled that gun in a one and a half  
24 month period after the shooting, could have removed ---  
25 essentially the shooter's DNA from the firearm; is that right?

1 A. It's a possibility it could have removed the  
2 shooter's DNA, which is why we run it through the  
3 TrueAllele software, to see what genotypes are present in  
4 that mixture. And then see whether or not anyone  
5 involved may have those same genotypes.

6 Q. And you asked the police (unintelligible) additional  
7 known standard for person of interest for comparison of two  
8 and three?

9 A. That is correct.

10 Q. Did you receive any?

11 A. We have not.

12 MR. KING: I have no other questions.

13 THE COURT: Anything else from The State?

14 MS. LINDER: No.

15 MR. ABSHIRE: No, Your Honor.

16 THE COURT: Mr. McClure, I --- somehow I missed, I  
17 guess, in the introduction, what is your educational  
18 background?

19 THE WITNESS: I have a Bachelor of Science degree in  
20 microbiology from Clemson University. I've also attended  
21 the FBI's DNA analysis school, which was four weeks long,  
22 and accredited through the University of Virginia as a  
23 graduate-level class. I've attended numerous seminars,  
24 conferences over the years on DNA analysis.

25 THE COURT: Okay. Does anyone have any questions

1 about any of that?

2 MR. ABSHIRE: No, Your Honor.

3 THE COURT: Okay. All right. Anything else?

4 MR. KING: No, no other questions, Your Honor.

5 THE COURT: All right. Anything from The State?

6 DNA Analysis? No? Okay. All right. Mr. McClure, thank  
7 you so much. Appreciate it.

8 THE WITNESS: Thank you, Your Honor, and I apologize  
9 for our camera not coming through.

10 THE COURT: That's --- that's quite all right.  
11 Thank you.

12 MR. KING: Your Honor, I'll try to be quick.  
13 Looking at state versus Phillips is a good case, the ---  
14 the --- I think Judge Fue kind of breaks down touch DNA  
15 pretty well.

16 THE COURT: Who did that?

17 MR. KING: I think it's Judge Fue who wrote State  
18 versus Phillips.

19 THE COURT: Okay. That's all right.

20 MR. KING: He did --- he says that DNA evidence has  
21 the potential to confuse and mislead jurors. So this is  
22 really a 403 argument. I'm really going far. That ---  
23 that the evidence is confusing and misleading to the  
24 jury. The State versus Phillips says there are three  
25 fundamental (unintelligible) that are not

1 straightforward.

2 Touch DNA, non-exclusion DNA, and random match  
3 probability. And I think we're dealing with all these of  
4 these in this case. He also --- Judge, he also talks  
5 about DNA and expose, special --- special problems  
6 because epithelial cells are ubiquitous, they're  
7 everywhere, that I can't determine when they're  
8 deposited. And specifically, the random match  
9 probability has the most of the potential for confusion.

10 Those are pretty big numbers that this expert's  
11 going to testify to. It doesn't mean that it's  
12 3.3 billion times more likely that Mr. McFadden did this.  
13 But there's such a --- a potential for that to confuse  
14 and mislead --- mislead the jury, Your Honor, I would ask  
15 to exclude that. We're dealing with partial DNA  
16 fragments, not a full DNA --- not a full DNA like if you  
17 found blood on the ground, you can have a much fuller DNA  
18 profile.

19 And it --- dealing with a mixture, we expect to be  
20 more complicated too. They're making some assumptions  
21 about whether, you know, it's two or possibly more  
22 people. The assumptions they're making. So I think  
23 presenting this jury --- this to the jury, is just  
24 difficult without the jury coming to the conclusion that  
25 it is 3.3 billion more times likely that he did it, or

1 1.9 ---

2 THE COURT: Just stop one second. You're  
3 misinterpreting that, correct?

4 MR. KING: Well, three ---

5 THE COURT: That's not what he testified to.

6 MR. KING: It's going to be confusing and misleading  
7 is my argument.

8 THE COURT: What is the 3 billion times that it's  
9 his DNA as opposed to random individual, right?

10 MR. KING: That's right, Your Honor.

11 THE COURT: Okay. I don't even know what that  
12 was --- where did that DNA come from. I don't know what  
13 surface it was taken from.

14 MR. KING: From the surface of the firearm. The  
15 alleged murder weapon ---

16 THE COURT: Okay.

17 MR. KING: --- that was found in a vehicle when Mr.  
18 McFadden was arrested.

19 THE COURT: Is this the Mini Draco?

20 MR. KING: Yes. Yes, Your Honor. It was found ---

21 THE COURT: But you --- you --- got him to  
22 acknowledge that he can't tell you how long the DNA's  
23 been on there.

24 MR. KING: And that's why I think it --- it's  
25 unfairly prejudicial, because it's just not much for the

1 jury to understand. It's been one and a half months  
2 since the shooting. Anyone who touched that could remove  
3 DNA from someone else, add more DNA. There's a mixture,  
4 so clearly more than one person has touched it.

5 THE COURT: That's great for jury argument. But I  
6 don't think it goes to the admissibility of the  
7 scientific evidence. Okay?

8 MR. KING: Yes, Your Honor. It's mainly the Rule  
9 403 objection to ---

10 THE COURT: Yeah.

11 MR. KING: There's --- there's large numbers.

12 THE COURT: Okay. What is --- what are they ---  
13 when they positively identify somebody's DNA, what is the  
14 number then? Do they have a name for it?

15 MR. KING: I've had one --- one nonoillion. One out  
16 of one nonillion before, which I think may be a one with  
17 nine zeros.

18 THE COURT: Okay. I've have that one time. That's  
19 kind of like (unintelligible). You know. It's --- it's  
20 a fantasy.

21 Okay. Well I --- I appreciate the --- arguments, I  
22 think you guys have good jury arguments.

23 (Background noise)

24 THE COURT: I'm going to deny your motion.

25 MR. KING: Thank you.

1 THE COURT: All right. So do we --- anything else?

2 MR. KING: I believe that's all the pretrial  
3 motions, Your Honor.

4 MR. ABSHIRE: Your Honor, hate to be the last one,  
5 but this is a quick authentication certificates of  
6 authentication motion. We are just moving the Court to  
7 authenticate the certificates that we filed behalf of  
8 this case, for Facebook provider, (unintelligible) cell  
9 phone data, you've heard extensive testimony about it.  
10 We --- in order to properly authenticate social media, we  
11 have to provide other circumstantial information that  
12 proves more than just ownership. I believe Your Honor  
13 has heard a lot of testimony already that we can tie the  
14 cell phone to the messages to the communications between  
15 different numbers, where people know him as, then there  
16 will be a litany of other information that will be  
17 provided by us in order to properly authenticate  
18 (unintelligible).

19 THE COURT: Okay.

20 MR. KING: And --- and this is something that fairly  
21 recently that I think has been happening. Well, using  
22 the Certified Business Records Statute 19-5-520. And it  
23 says that evidence of authenticity is a condition  
24 precedent to admissibility is not required with respect  
25 to the following: And it says a copy of domestic record

1 that meets the requirements of rule 8036 shown by a  
2 certification. I'm not sure exactly what a certification  
3 is. They have some that are notarized, some that are not  
4 notarized. I --- I would argue that a certification  
5 would need to be notarized if it's going to be  
6 admissible.

7 So that there's basically just got a letter from, I  
8 think it's the Facebook companies. Who --- who say that  
9 they're the custodian of records, and then try to fulfill  
10 the requirements of Rule 8036 business records. It's not  
11 notarized. There is Verizon records which are notarized,  
12 but don't exactly hit every point of that Rule 8036  
13 business records. The --- the Verizon were the ones that  
14 were notarized, says I'm the custodian of records for  
15 Verizon.

16 In that capacity, I certify that the attached pages  
17 of records appeared to be copies of records created.  
18 Information maintained by Verizon in the actual course of  
19 business, it's Verizon's ordinary practice to sustain  
20 such records --- maintain such records and that records  
21 appear to have been made contemporaneously. It doesn't  
22 state by a person ---

23 (Simultaneous speaking)

24 THE COURT: You have a tendency to let your voice  
25 trail off.

1 MR. KING: Sorry, Judge. Sorry. This is in  
2 Verizon's ordinary practice to maintain records, and that  
3 such records appear to have been made contemporaneously  
4 with the transaction and events stated therein, or within  
5 a reasonable time thereafter. It doesn't include a  
6 person by person with knowledge.

7 So I mean doesn't --- doesn't exactly hit every  
8 element of Rule 8036, by saying that the information is  
9 kept by a person of knowledge. And the other  
10 certifications aren't notarized. So what is basic ---  
11 it --- it doesn't --- understand confrontation falls may  
12 not apply in this situation. I don't know if it's  
13 considered testimonial. But there's no witness I can  
14 cross-examine. It --- there --- the statute says that  
15 it's authentic, so it authenticates them. But it didn't  
16 say that it satisfies the business record exception. It  
17 says extrinsic evidence authenticity is not required. So  
18 I ---

19 THE COURT: (Unintelligible).

20 MR. KING: I --- I'm objecting. I'm objecting to  
21 just using the certifications Your Honor,  
22 (unintelligible) to call the witness.

23 THE COURT: Well, maybe some (unintelligible) okay?

24 MR. KING: Thank you.

25 THE COURT: All right. What about I told the jury

1 9:30?

2 MS. LINDER: That's good with us, and I think that  
3 covers all three trials.

4 THE COURT: Okay. And I'll be ready to roll and  
5 swear them in, and we'll get going with your brief,  
6 non-argumentative opening statements.

7 MS. LINDER: Yes, Judge.

8 MR. KING: Yes, Your Honor.

9 THE COURT: Okay. You got your witnesses lined up?  
10 Anything else we can do logistically before we ---

11 MS. LINDER: I don't believe so. I don't think  
12 there's anything else we can do. Mr. King and I met  
13 yesterday, literally went through all of my exhibits. He  
14 may have a few objections about (unintelligible) or  
15 whatnot, but we can bring those up before those  
16 witnesses. But I --- we have all of our witnesses  
17 already, and we have extra ones stashed (unintelligible).

18 THE COURT: All right. And you're all good ready to  
19 roll?

20 MR. KING: Yes, Your Honor. Ready to go.

21 THE COURT: Okay. All right. See you all in the  
22 morning.

23 MR. KING: Thank you.

24 MS. LINDER: Thank you.

25 (PROCEEDINGS CONCLUDED AT 5:31 p.m.)

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CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, 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 CIRCUIT 9 for CHARLESTON County, South Carolina, on the 27th Day of March, 2023.

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

September 8, 2023

Jeanne Meldrim  
Transcriber

1 CONTINUATION OF PROCEEDINGS - MARCH 28, 2023

2 THE COURT: You guys know one of the jurors who has done  
3 this now they have flying out on Friday morning. So, we do our  
4 best to accommodate that. Sure. All right. Anything before we  
5 start?

6 MS. LINDER: Just very briefly, Judge. I -- yesterday at  
7 the end of the motion about quashing the indictment, when you  
8 denied it, you agreed to amend it. I'd like it this time to  
9 approach to be able to amend that indictment, to write the  
10 detective's name and testified at grand jury.

11 THE COURT: Okay. Subject to the objection. Yes  
12 [Indiscernible] Okay.

13 MS. LINDER: And then aside from that, just a standard  
14 motion for sequestration. There's a bunch of people in this  
15 case that we think it would be best to have a motion for  
16 sequestration for witnesses. And then I talked to Mr. King  
17 prior. I'm sure he also would like this for law enforcement  
18 witnesses to everybody.

19 MR. KING: Yes, sir. That's fine.

20 THE COURT: Okay. All right. Yeah. Question the witnesses.  
21 Please instruct them not to discuss their testimony with each  
22 other after they're concluded. Okay. I'm going to make these  
23 two juror notes court's exhibits. Okay. Have a great day.

24 MS. LINDER: [Indiscernible]

25 MR. KING: Yes, I'm ready.

1 THE COURT: Okay. [Indiscernible].

2 THE COURT OFFICER: All jurors are present Your Honor.

3 THE COURT: All right. Thank you. All right. Thank you,  
4 welcome back. Have you had a pleasant afternoon this evening?  
5 And we are ready to begin by placing you all under oath.

6 THE CLERK: Please stand I'm sorry. Please help me raise  
7 your right hand. Do you swear or affirm that you shall well and  
8 truly try and a true deliverance make between the state of  
9 South Carolina and the defendant at the bar whom you shall have  
10 in in charge and a true verdict render according to the  
11 evidence and the law, so help you God. Please indicate by  
12 saying I do.

13 JURY: I do.

14 THE CLERK: You've accepted this oath. Please be seated.  
15 Please let the record reflect all jurors seated.

16 THE COURT: All right. Now, we're going to begin with part  
17 one of the trial, which are the opening statements. Please give  
18 them your full attention.

19 MS. LINDER: Thank you, Your Honor. May I Please approach?

20 THE COURT: Yes, ma'am.

21 MS. LINDER: On March the 14th of 2019, this defendant,  
22 Thomas McFadden, planned, coordinated and executed Damien  
23 Stokes ---

24 MR. KING: Objection, Your Honor. Inflammatory and closing  
25 argument.

1 THE COURT: Gosh, just don't be argumentative. Thank you.

2 MS. LINDER: That day Damien was working. He was working

3 at Cummins Turbo. He went out for his break from Cummins Turbo,

4 which is on Palmetto Commerce Parkway up in the Ladson area

5 here in Charleston County. He went out on a break that day, but

6 he didn't know what or who was awaiting him. This defendant

7 murdered him back on that day, on March the 14th of 2019. None

8 of this started, though, on March the 14th. This actually

9 started months earlier. In January of 2019, Justin Stewart was

10 murdered in Dorchester County. Justin Stewart hung around the

11 town of Lincolnvillie. No arrest was ever made in Justin

12 Stewart's murder in Dorchester. However, a rumored suspect was

13 our victim, Damien Stokes. Damien Stokes hung out and was from

14 Robinwood. Other people who hung around the town of

15 Lincolnvillie along were Justin, who passed in Dorchester

16 County, included this defendant Thomas McFadden, and included

17 Clay Van Alstyne, included Ishmael Weston, included Jamal

18 Smalls, among others. At Justin's funeral back in January of

19 2019, many of his friends from Lincolnvillie wore memorial t-

20 shirts, rest in peace, t-shirts with Justin's picture on it

21 memorializing him. They also wore those shirts other times. I

22 told you Damien worked at Cummins Turbo. Next door to Cummins

23 Turbo is ARD Logistics. Two people from Lincolnvillie worked at

24 ARD Logistics. Ishmael Weston and Jamal Smalls. The defendant

25 knew this and capitalized on it. He reached out to Ishmael

1 Weston, first on Facebook Messenger and then via telephone.  
2 This defendant wanted to find out when Damien would be  
3 vulnerable. When Damien would be going on a break from work.  
4 Ishmael Weston and Jamal Smalls got in Ishmael's white Dodge  
5 Charger and they drove from their work over to Cummins. The  
6 victim then exited Cummins and went out for a break. This  
7 defendant then comes into the parking lot in a blue Honda CRV.  
8 He drives around the parking lot. He parks. He moves and parks  
9 in another spot closer to the victim. He again moves to  
10 approach the victim. When he decided it was time he got out of  
11 his vehicle and when he got out holding the firearm, a t-shirt  
12 fell from his lap. That t-shirt was memorial t shirt from his  
13 friend Justin from months prior. This defendant got out of the  
14 car and began firing again and again at Damien. Damien ran for  
15 his life. This defendant chased him and continued to fire.  
16 Ultimately, Damien fell to the ground and this defendant went  
17 back in his car, started to take off and then stopped, got back  
18 out, went back over where Damien was laying and continued to  
19 shoot. The defendant then got in his blue CRV and took off.  
20 Shortly thereafter, that white Dodge Charger with Ishmael  
21 Weston and Jamal Smalls, his Lincolnville friends. There were  
22 numerous 7.62 fired cartridge cases located on that scene at  
23 Cummins. When this defendant was arrested about a month and a  
24 half after he was found with a mini Draco, a mini Draco uses  
25 7.62 cartridge cases. Ladies and gentlemen, you are going to

1 hear a lot of names and nicknames in this trial. You are also  
2 going to hear a lot of different types of evidence. You are  
3 going to hear witness testimony. You are going to hear about  
4 DNA evidence. You are going to hear about firearms  
5 identification evidence. You are going to hear about phone  
6 provider records. You're going to hear about social media  
7 records. You are also going to see a bunch of surveillance  
8 footage. I Thank you in advance for your service. I ask that  
9 you pay attention with everything that's going on this week,  
10 and I'm confident that at the end of this week, you will come  
11 back with a guilty -- with a verdict of guilty for murder and  
12 possession of a weapon during the commission of a violent crime  
13 on Thomas McFadden.

14 MR. KING: Thousands of years ago in a foreign land, a high  
15 priest would take a goat and this priest put all the sins of  
16 the community under this cover. Then they would have the first  
17 who was a fit man because it would make a fit man to take this  
18 goat, carry it deep into the desert to barren lands and leave  
19 it there. No water, no food, the supplement. And then that man  
20 would come back and the high priest, all the sins of the  
21 community and taken away by this God. And that was called the  
22 scapegoat. We still use that term today. Thomas McFadden is the  
23 scapegoat here today. He's been waiting four years, almost  
24 bearing the sins of someone else. When you come into this  
25 courtroom in criminal court, you're not here to determine which

1 side you believe you be on the other. There is a presumption of  
2 innocence, and the law requires you to have a resistance to  
3 believe that he's guilty until unless they can present evidence  
4 that shows that he did. You can hear from some witnesses, don't  
5 you think about what they have to gain. One is recently said  
6 that when he told the police was not true and Mr. McFadden is  
7 innocent. Not sure what they're going to say this week, but pay  
8 attention to what they have to gain by what they testify to.  
9 They're also charging murder. Mr. McFadden, they did find what  
10 they believed to be the firearm in a car owned by his brother.  
11 There is a fragment of DNA on that firearm that could be used.  
12 But you're going to hear about DNA, cuts DNA, trace DNA that  
13 can transfer from one surface to another like inside of a car.  
14 And it doesn't necessarily mean that Mr. McFadden touched that.  
15 There are two missed calls from a Facebook Messenger account,  
16 Mr. McFadden. And that's how he's calling. There's one  
17 reference to another phone number on the account earlier. You  
18 didn't have that phone when he was arrested. [Indiscernible]  
19 phone. And the best they're going to be able to show is that  
20 phone number or that phone is in the general area around the  
21 time of the shooting by using certain cell towers that the  
22 phone connects with, not GPS, but connecting different phone  
23 towers. There's a surveillance video of the shooting. We're  
24 going to see. But you haven't been able to tell the person.  
25 Looks like you can't see. The face is too far away. Thomas is

1 counting on you. He's been waiting almost four years for his  
2 day in court. And while we're all doing this. He didn't do it  
3 and the real cheaters getting away with this. So, we're asking  
4 to find Thomas not guilty after you all this evidence and all  
5 the questions and the witnesses. We believe you find him not  
6 guilty.

7 THE COURT: Okay. Call your first witness.

8 MS. LINDER: State calls. Brad Molina.

9 THE CLERK: You swear or affirm the testimony you should  
10 give the court and the jury in the trial of this case for the  
11 truth, the whole truth, and nothing but the truth, so help you  
12 God?

13 MR. MOLINA: I do, sir.

14 THE CLERK: Please be seated. Please state your first and  
15 last name. And please speak to the mic [Indiscernible].

16 THE WITNESS: My name is Bradford Molina, M-O-L-I-N-A.

17 DIRECT EXAMINATION OF WITNESS, BRADFORD MOLINA

18 BY: MS. LINDER

19 Q Where are you employed?

20 A The city of North Charleston. North Charleston Police  
21 Department.

22 Q And how long have you worked for North Charleston Police  
23 Department?

24 A Just under 15 years.

25 Q And any military?

1 A Yes. I served in the Marine Corps for 23 years. Part of  
2 active duty, part of the reserves.

3 Q And what are your duties at North Charleston Police  
4 Department?

5 A I'm currently assigned to the traffic unit.

6 Q And what do you do with the traffic unit?

7 A We enforce traffic laws, conduct investigations of traffic  
8 collisions, primarily significant ones involving a major injury  
9 or fatalities. We also do traffic control and security for  
10 major events like the bridge run.

11 Q Please tell the jury about your education, training and  
12 experience.

13 A I graduated high school, attended college for a year,  
14 joined the Marine Corps during my time in the Marine Corps,  
15 attended some technical schools involved with my job and then  
16 multiple leadership academies and the police department. I've  
17 attended multiple classes involving a collision reconstruction  
18 investigation, a couple classes on doing interviews with  
19 suspects and witnesses of events.

20 Q And what was your position back in March of 2019?

21 A I was assigned to the traffic unit at that time.

22 Q And were you involved in this case, the State versus  
23 Thomas McFadden in any way?

24 A I was, yes.

25 Q And how did you first get involved with this case?

1 A I was conducting some traffic enforcement on Palmetto  
2 Commerce Parkway where the incident occurred. The incident was  
3 dispatched over the North Channel. It was probably about a  
4 mile, maybe a little further away from the incident location. I  
5 responded to the scene.

6 Q And specifically, when and where did you respond?

7 A Responded -- I don't recall the exact date, but it was, I  
8 guess, about 5 p.m., I think when it occurred. Still daylight  
9 outside, but it's a 9051 Palmetto Commerce Parkway, the Cummins  
10 Turbo plant.

11 Q All right. You said 5:00? Is it possible that it's 6:59?

12 A Oh, I'm sorry. Yes.

13 Q Okay. And Cummins, is that Cummins Commerce Parkway? Is  
14 that Charleston County?

15 A It is, yes.

16 Q What did you observe when you first arrived?

17 A When I first arrived at the scene, it was still daylight.  
18 Pulled into the parking lot. Drove around to the -- I guess,  
19 kind of the rear of the parking lot where the actual incident  
20 was had occurred. I observed a black male laying on his, I  
21 believe, his right side. There was a pool of blood around him,  
22 shoveled several shell casings kind of surrounding him. There  
23 was another black male, I believe there was a witness that was  
24 standing nearby.

25 Q And what did you first do when you arrived on the scene?

1 A Exited my vehicle. Went to the victim, put on some rubber  
2 gloves and checked for a pulse.

3 Q Did he have a pulse?

4 A Did not detect one. No.

5 Q What other personnel arrived on scene after you got there?

6 A Right after I got there, several other officers and also  
7 EMS arrived at the scene.

8 Q And when you responded, were you in your police cruiser,  
9 your market police or your police cruiser?

10 A Yes, I was.

11 Q And was your cruiser equipped with blue lights and sirens?

12 A It is, yes.

13 Q Is your cruiser equipped with in-car camera?

14 A Yes.

15 Q Dash cam, as some people may know?

16 A Yes.

17 Q Was that functioning that day?

18 A It was, yes.

19 Q Were you wearing your police uniform that day with all the  
20 markings that you were with law enforcement?

21 A I was, yes.

22 Q And as part of your police uniform, did you have a body  
23 worn camera?

24 A I did, yes.

25 Q And were you wearing it that day?

1 A I was, yes.

2 Q Was it functioning?

3 A Yes, it was.

4 Q Your Honor, may I approach the witness?

5 THE COURT: Yes, ma'am.

6 Q At this time, I'll show you. It's been marked as state's  
7 Exhibit 1, Exhibits 1, 2 and 3. If you can take a look at  
8 those, please. I'm not trying to rush you. Take your time. But  
9 after you look at those, do you recognize them?

10 A I do, yes.

11 Q And how do you recognize them?

12 A Just from my familiarity with the city in North Charleston  
13 but this is a depiction of Palmetto Commerce Parkway and  
14 particularly the Cummins Turbo Plant.

15 Q And are they fair and accurate representations of the  
16 area?

17 A They are, yes.

18 Q Your Honor. At this time, the state would seek to admit  
19 State's Exhibit 1, 2, and 3 in the evidence?

20 THE COURT: Any objection?

21 MS. LUTHRINGER: No objection.

22 MR. KING: Objection.

23 [State's Exhibit No. 1, 2 and 3 was admitted into evidence]

24 BY: MS. LINDER

25 Q All right. I'm going to put these up on this overhead

1 projector. They're going to come up on these screens and the  
2 monitor in front of you. The monitor in front of you is a touch  
3 screen. So if you want to touch it, you can. And us or my co-  
4 counsel can clear that out for you. All right. Okay. States,  
5 Exhibit 1, if you can show the jury or circle for the jury  
6 where Cummins parking lot is, where you responded.

7 A So this area here that has the push pin on it.

8 Q All right. And then what road is this?

9 A Palmetto Commerce Parkway.

10 Q Okay. And what road is this one?

11 A Ladson Road.

12 Q All right. Now I'm going to show you State's Exhibit 2. If  
13 you want the puck, that little arrow up there, if you can touch  
14 that, a drop down. Then hit clear.

15 A Perfect.

16 Q All right. I'm going to show you State's Exhibit 2. And  
17 what is this showing the jury?

18 A So a closer shot of a appears to be what is the -- I'm  
19 sorry, the Cummins Turbo Plant.

20 Q So this is the Cummins Turbo Plant?

21 A Yes.

22 Q And what is this right here?

23 A That's a warehouse that's associated with the plant.

24 Q And this right here?

25 A Palmetto Commerce Parkway.

1 Q All right. I'm going to show you State's Exhibit 3. All  
2 right. What is this roof? What is this building right here?

3 A That's again, the Cummins Turbo Plant.

4 Q And right here?

5 A So Palmetto Commerce Parkway.

6 Q So what is this whole area?

7 A That's the parking. The employee parking for Cummins.

8 Q All right. And can you kind of circle the approximate area  
9 where you responded, where the victim was?

10 A Came in through the entrance, coming this way, coming in  
11 there. And the incident was, I believe, right around there in  
12 the back of the parking lot.

13 Q [Indiscernible] All right. You previously testified that  
14 your in-car camera was working in your car that day. I'm going  
15 to approach and show you it's been marked as State's Exhibit 4.  
16 Do you recognize this?

17 A I do, yes.

18 Q How do you recognize it?

19 A I viewed this video. However, it's a copy of the dash cam  
20 and initialed this.

21 Q And is that disc contain a fair and accurate  
22 representation of a portion of your dash cam that day?

23 A It doe yes.

24 Q Your Honor, at this time, the State would seek to admit  
25 State's Exhibit 4 into evidence.

1 MS. LUTHRINGER: Judge, I would object to part of the dash  
2 cam being admitted under 403 for proceedings.

3 THE COURT: I'm against you approach.

4 MS. LINDER: The State would seek to admit State's Exhibit  
5 4 into evidence.

6 THE COURT: I believe this without objection. Correct?

7 MS. LUTHRINGER: Correct, Judge.

8 [State's Exhibit No. 4 was Admitted into Evidence]

9 BY: MS. LINDER

10 Q All righty. The jury just brought shirt, in-car camera  
11 portion of your dash camera at this time. Show you it's been  
12 marked the state's Exhibits 5 through 8. You can look at these.  
13 Do you recognize these?

14 A I do. Yes. There are screengrabs from my in-car camera.

15 Q And do they fairly and accurately represent what was on  
16 your in-car camera back on May 14th of 2019?

17 A They do, yes.

18 Q Your Honor, at this time, the state would seek to admit  
19 States 5, 6, 7 and 8.

20 MS. LUTHRINGER: No objection.

21 THE COURT: Thank you.

22 [State's Exhibit 5, 6, 7 and 8 Admitted into evidence]

23 BY: MS. LINDER

24 Q All right. And right here, what is this information at the  
25 top here?

1 A It's a date and time stamp and also a location of where  
2 the camera is located.

3 Q All right. And then this is State's Exhibit 5. This  
4 information down here?

5 A It's the police department that my name and the car  
6 number.

7 Q All right. And can you kind of tell the jury what we're  
8 looking at here?

9 A So you just viewed the video. This is a screenshot as I've  
10 just pulled up to the scene and I believe I'm probably exiting  
11 my car at this -- at this moment.

12 Q All right. And who is this person standing?

13 A That's a witness that...

14 Q Down here?

15 A The victim.

16 Q And for math's sake, it says 19:02. What time is that for  
17 us now [Indiscernible]

18 A It's 7:02 p.m.

19 Q And is this accurate? With how light it was outside at  
20 that time when you arrived?

21 A Yes.

22 Q State's Exhibit 6. All right. This is Exhibit 6. Again,  
23 this fellow?

24 A Witness.

25 Q All right. And who's this right here?

1 A That's me.

2 Q Okay. And then down here?

3 A Victim.

4 Q And who is this over here?

5 A Another officer. He was with the traffic unit at the time,  
6 and he responded with me.

7 Q All right. State Exhibit 7. All right. What are we seeing  
8 generally happening in this picture?

9 A So in this picture here, I had donned the rubber gloves  
10 and I was checking his pulse to check in for a pulse at that  
11 time.

12 Q All right. This time, I'm going to show you what's been  
13 marked as State's Exhibit 9, 10, 11, 12, 13, 14 and 15. Can you  
14 look at all these items, starting with number nine? Do you  
15 recognize State's Exhibit 9?

16 A Yes, it's a copy of my body worn camera that I was wearing  
17 at the time. I recognize it because I initialed this.

18 Q And is that a fair and accurate representation of the clip  
19 of your body worn camera at the time?

20 A Yes.

21 Q All right. And then as far as items, the other items in  
22 front of you, do you recognize those items as well?

23 A I do, yes.

24 Q And how do you recognize them?

25 A These are screenshots of a -- of my body worn camera from

1 the incident.

2 Q And do they fairly and accurately represent what was  
3 happening when you arrived back on March 14th, 2019?

4 A They do, yes.

5 Q All right. Your Honor. The State would seek to admit  
6 State's Exhibit 9 through 15 at this time.

7 MS. LUTHRINGER: Judge, we will have some objection to  
8 those, some of them being graphic.

9 THE COURT: All right. Let me bring them up here and let  
10 me [Indiscernible]. All right. I'm going to show you two  
11 objects in a minute.

12 [State's Exhibit No. 9 through 15 was Admitted into Evidence]

13 BY: MS. LINDER

14 Q All right. I want you to look at State's Exhibit 10? The  
15 more is [Indiscernible] is what is this image from?

16 A It's a screenshot from my body camera.

17 Q Stage 11. What is this?

18 A Again, a screenshot from my body camera showing.

19 Q The information up top. Is the -- you can't see the  
20 information up top here.

21 A It's the date and time stamp.

22 Q Any information down here on the right?

23 A My name and the ID number for the body camera.

24 Q And down here it says Mike Brakes, lights, siren. Which  
25 one is different color?

1 A Mic.

2 Q And why is that?

3 A Because it's activated.

4 Q State's 12. What are we looking at here?

5 A Get another screenshot showing the victim and the witness.

6 The other officer that responded at the same time I did.

7 Q Did you assist in any other way in this case?

8 A I did. Yes.

9 Q And what did you do?

10 A So the description of the suspect vehicle was provided.

11 Blue Honda CRV. And the information was provided that it had

12 traveled and made a left out of the parking lot on Palmetto

13 Commerce Parkway heading toward Ladson Road at the corner at

14 the intersection of Palmetto Commerce Parkway and Ladson Road

15 as a Bojangles restaurant. And from having investigated

16 collisions in that area before, I knew that, that camera

17 captured part of the roadway. So I went down there and reviewed

18 camera to see if the suspect vehicle had traveled that way and

19 we could possibly get a some video of it.

20 Q All right. So aside from trying to get some camera footage

21 from the area, what else did you do on the scene? Anything

22 else?

23 A After locating some video and advising one of the

24 investigating detectives of that video, responded back to the

25 scene and just assisted in securing the scene to the end of my

1 shi ft.

2 Q Thank you so much. I don't have any other questions for  
3 you. If you can answer anything the defense may have.

4 CROSS-EXAMINATION OF WITNESS, BRADFORD MOLINA

5 BY: MS. MS. LUTHRINGER

6 Q Good morni ng.

7 A Good morni ng.

8 Q You weren't on scene when the shooting occurred?

9 A I was not, no.

10 Q So you didn't see any suspects there?

11 A I did not see any suspects. No.

12 Q Just that one witness standing there?

13 A Correct.

14 Q And you didn't see any vehi cles?

15 A I did not, no.

16 Q Thank you.

17 A You're wel come.

18 THE COURT: Any redi rect?

19 MS. LINDER: No. Redi rect, Your Honor.

20 THE COURT: [I ndi scerni bl e].

21 MS. LINDER: We would ask that thi s witness be released  
22 from hi s subpoena?

23 MS. LUTHRINGER: No obj ecti on.

24 MR. KING: No obj ecti on.

25 L2 OP: The State call s Tanya Mal l ette.

1 THE CLERK: Do you swear or affirm that the testimony you  
2 shall give the court and the jury is the truth, the whole  
3 truth, and nothing but the truth? You got it.

4 MS, MALLETTE: I do.

5 THE CLERK: Thank you, ma'am. Please have a seat. Please  
6 state your full name. Spelling your last name [Indiscernible]  
7 for the microphone.

8 MS, MALLETTE: Sure. Tanya Mallette, M-A-L-L-E-T-T-E.

9 DIRECT EXAMINATION OF WITNESS, TANYA MALLETTE

10 BY: MR. MR. ABSHIRE

11 Q Good morning Ms. Mallette

12 A Good morning.

13 Q Could you do me a favor and please tell the jury what you  
14 do for a living?

15 A Sure. Am employed by the Charleston County Consolidated  
16 911 Center, and my current job title is FOIA analyst. I am  
17 responsible for processing subpoenas, the production of the  
18 reproduction, I should say, of 911 calls, CAD reports, radio  
19 audio and any requests that may come from the solicitor's  
20 office from member agencies that we service as well as the  
21 general public.

22 Q How long have you been doing that?

23 A I have been doing that for 33.5 years.

24 Q Ms. Mallette, could you tell us a little bit about your  
25 training that you received for your position?

1 A Sure. So I actually started from the ground up as an  
2 actual 911 dispatcher, I worked my way up through the ranks of  
3 shift supervisor, communications supervisor. And now to my  
4 current position, the 911 center, formerly North Charleston,  
5 was with North Charleston Police Department. We have extensive  
6 training, professional development, which teaches me basically  
7 how to use the recorder basic developments, which leads to  
8 where I am today.

9 Q And I want to talk to you a little bit about 911 calls  
10 specifically.

11 A Yes.

12 Q Whenever a person calls 911, is that call always recorded?

13 A Yes, that call is always recorded.

14 Q And does it immediately start recording at the time of  
15 call?

16 A Yes, it is.

17 Q And is it a regularly conducted activity for you all to  
18 keep those recordings?

19 A Yes, it is.

20 Q And maintain them?

21 A Yes, it is.

22 Q And how are those calls kept or stored?

23 A So the calls are -- the calls are kept on a recorder,  
24 which is kept on the server at the Consolidated 901 center.

25 Q Okay. And in storing them, are you able to alter them at

1 all?

2 A I cannot alter the calls.

3 Q And how long can you store these vocals? Or these  
4 recordings? Excuse me.

5 A Okay. The calls are kept for a -- the audio is kept for a  
6 period of one year. The catalogs are kept for a period of five  
7 years.

8 Q And what happens after five years?

9 A They're automatically erased or from the server no longer  
10 to be accessed.

11 Q And this what you told us that part of your job is  
12 processing subpoenas and responding with law enforcement. Did  
13 you do that in this case?

14 A Yes, I did.

15 Q And were you employed as a 911 dispatch in your current  
16 position on March 14th, 2019?

17 A Yes, in my -- my position now as a dispatcher, but as a  
18 FOIA analyst.

19 Q And did you receive 911 calls and reference to this case?

20 A Yes.

21 Q On that date?

22 A Yes.

23 Q And if you were to see a copy of those articles, would you  
24 recognize them?

25 A Yes. I would.

1 Q You Honor, may I approach?

2 THE COURT: Yes.

3 Q Ms. Mallette, I'm handing you what's been marked as  
4 State's Exhibit 16. Could you please tell me what that is?

5 A It's a CD of the 911 call MR. ABSHIRE versus McFadden, and  
6 it has my initials on the actual CD.

7 Q And with your initials on. Is that how you recognize it?

8 A Yes.

9 Q Does it appear to be changed or altered in any way?

10 A No, it does not.

11 Q Your Honor, at this time, we would say that -- we would  
12 seek to admit State's Exhibit 16.

13 THE COURT: Any objection?

14 MS. LUTHRINGER: No objection.

15 THE COURT: Okay

16 [State's Exhibit No. 16 Admitted into evidence]

17 MR. ABSHIRE: And Your Honor, at this time, we would also  
18 seek to publish.

19 THE COURT: All right.

20 MR. KING: Your Honor may I approach?

21 THE COURT: Yes.

22 MR. ABSHIRE: Thank you Ms. Mallette. That's all I have  
23 for you.

24 THE COURT: Cross-examination.

25 MS. LUTHRINGER: No questions, Judge.

1 THE COURT: All right. Thank you, ma'am you may step down.  
2 Yes, ma'am. Thank you.

3 MS. LINDER: State calls Anthony Parish.

4 THE CLERK: Please place your left hand on the Bible, and  
5 your right hand up. Do you swear or affirm the testimony you  
6 shall give the court and the jury is the truth, the whole truth  
7 and nothing but the truth, so help you God?

8 MR. PARISH: I do.

9 THE CLERK: Please have a seat. Please state your full  
10 name, spelling your last name loudly and clearly into the  
11 microphone.

12 MR. PARISH: My name is Anthony Parrish. Last name, P-A-R-  
13 I-S-H.

14 REDIRECT EXAMINATION OF WITNESS, ANTHONY PARISH

15 BY: MS. LINDER

16 Q Good morning.

17 A Good morning.

18 Q Where are you from?

19 A Harlem, Georgia. Originally.

20 Q And where are you currently living?

21 A I'm living out of town in Rock Hill, South Carolina.

22 Q And what do you do?

23 A I'm a plant manager for Cummins Diesel.

24 Q Where were you living and working back in March of 2019?

25 A I was living in Somerville and working at Cummins Turbo

1 Technologies on Latson Road.

2 Q Were you at work back on March 14th, 2019?

3 A Yes, I was.

4 Q And can you please tell the jury what happened that day?

5 A I was sitting at my desk. It was roughly it was after  
6 6:00. I was talking to our facilities manager and he made  
7 reference that he thought he heard some firecrackers, somebody  
8 shooting fireworks. And so I paused and listened and I said,  
9 no, that's not fireworks. That's gunfire. I said, go to  
10 security. Notify security. I'm going to call 911. And then  
11 proceeded to call 911. I was looking out of my office window. I  
12 saw a young man running in the parking lot with another young  
13 man shooting at him, running behind him. I saw the young man go  
14 to the ground. The young man that was shooting got into a Honda  
15 CRV. He pulled off and then he stopped, came back and shot at  
16 the guy again. Then he proceeded to drive out of the back of  
17 our parking lot over an embankment and through the parking lot  
18 next door. The whole time I'm on the phone with 911, once I saw  
19 the car exit, the far parking lot, I left my office. At the  
20 time, security was getting all the employees into a for --  
21 active shooter, getting them into a location. I ran across the  
22 parking lot. When I got to the young man, the victim, like,  
23 see, he had a gunshot wound in the back of his head. As I went  
24 around to the front, I saw his hand open and his cell phone  
25 come out of his hand and was still talking to 911. So I'm still

1 telling them what I'm seeing. But he -- he was deceased by the  
2 time I got -- got there.

3 Q And did you know this victim?

4 A Yes.

5 he having the safety glasses on. But outside of that, that's  
6 all I knew of him.

7 Q Did you notice anything in particular about the firearm  
8 that the shooter was using?

9 A Yeah, it was -- it was a distance, but it looked like a  
10 TEC-9. It was an automatic semi-automatic weapon. It was black.

11 Q What is it TEC-9 look like to you? Is that a small one? A  
12 big one?

13 A It's -- it's -- it's I guess it's still classified as a  
14 pistol, but it's got a -- like, a automatic machine gun barrel  
15 on the front. It looked like it had something white across the  
16 top. Thought it was tape or something, but it looks like  
17 something white was on the barrel.

18 Q May I force indulgence. All right. At this time, I'm going  
19 to show you what's been marked -- just been marked a Google map  
20 history. I'm going to show you, it's been marked as State's  
21 Exhibit 17. You can take a look at this. And do you recognize  
22 that?

23 A Yeah, that's the parking lot at the plant.

24 Q And does that fairly accurately represent the parking lot  
25 of the Cummins?

1 A Yes.

2 Q Your Honor, at this time, the State would seek to admit  
3 State's Exhibit 17 into evidence.

4 MS. LUTHRINGER: No objection.

5 MR. KING: No objection.

6 [State's Exhibit No. 17 Admitted into Evidence]

7 BY: MS. LINDER

8 Q All right, Mr. Parrish, right in front of you. There's a  
9 monitor that's a touch screen. So if that's helpful, then feel  
10 free to touch on it or whatever. What building is this right  
11 here that the jury is seeing?

12 A That's the actual plant.

13 Q Okay. And when you were looking out your window, was your  
14 window one of these on State 17 or was it a little further  
15 back?

16 A My window was further back. It was roughly maybe 30ft from  
17 these red pack of beans, you can see.

18 Q Okay. And what area of the parking lot of you circle it  
19 generally that's fine. What area of the parking lot did you go  
20 to when you went to tend to the victim Damien in this case?

21 A It was up here.

22 Q All right. I don't have any other questions for you if you  
23 can answer anything that the defense may have.

24 MS. LUTHRINGER: Just briefly, Judge.

25 RE-CROSS EXAMINATION OF WITNESS, ANTHONY PARRISH

1 BY: MS. MS. LUTHRINGER

2 Q Good morning, Mr. Parri sh.

3 A Good morning.

4 Q You're in your office building when you heard the shots?

5 A Yes.

6 Q About the size of a football field from the incident?

7 A Roughly two and a half football fields, maybe. It's a good  
8 200 yards away, I would guess.

9 Q Okay. So it's safe to say you weren't in the middle of this?

10 A No -- no.

11 Q You couldn't see every detail?

12 A No.

13 Q You didn't get a clear visual of the shooter?

14 A No.

15 Q You couldn't pick him or her out of a line up?

16 A No.

17 Q But you knew he was a black male?

18 A Yeah -- yeah he had on a dark hoodie. When he turned to go  
19 to the car, it looked like it was a black male. But like I  
20 said, I couldn't see his face from that distance. Skin color is  
21 a little bit easier to tell. But as far as face and any makeup,  
22 I couldn't -- couldn't tell you.

23 Q Okay. But we're in a gray hoodie?

24 A Yeah, it was a hoodie from what I can remember, a dark --  
25 a dark hoodie.

1 Q And the gun that you talked about had something white on  
2 it?

3 A Yes. Appeared to have something white around the barrel.  
4 Yes.

5 Q And here she drove off in a blue SUV?

6 A Yes. A Honda CRV. Light blue.

7 Q But you couldn't see inside of it?

8 A No.

9 Q You couldn't tell if there was anyone else there?

10 A No.

11 Q Okay. Perfect. Thank you. No further questions.

12 THE COURT: Redirect?

13 MS. LINDER: Your Honor redirect and we would ask that  
14 this witness be released from his statement.

15 THE COURT: Any objection to that?

16 MS. LUTHRINGER: No, Your Honor.

17 THE COURT: Thank you very much.

18 THE WITNESS: All right. Thank you.

19 MS. LINDER: The State calls Michael Cook.

20 THE CLERK: Do you swear or affirm the testimony you shall  
21 give the court or the jury in the trial of this case will be  
22 the truth, the whole truth, and nothing but the truth, so help  
23 you God?

24 MR. COOK: I do.

25 THE CLERK: Please be seated. Please state your first and

1 last name. Your last name loudly and clearly into the  
2 microphone.

3 MR. COOK: Michael Cook, C-0-0-K.

4 DIRECT EXAMINATION OF WITNESS, MICHAEL COOK

5 BY: MS. LINDER

6 Q Good morning.

7 A Good morning.

8 Q Please tell the jury, where are you employed?

9 A With the city of North Charleston Police Department.

10 Q And how long have you been with the city of North  
11 Charleston?

12 A Almost 22 years.

13 Q And did you ever worked at any law enforcement prior to  
14 that?

15 A Did. Worked at Berkeley County for a year and a half.

16 Q What is your position currently at North Charleston?

17 A I am a -- I'm assigned to the patrol division. I am a  
18 supervisor When the sergeant is out and I'm also a field  
19 training officer.

20 Q And then in March of 2019, what was your position at that  
21 time?

22 A I was assigned to the forensics unit.

23 Q And what did your duties include as being part of the  
24 forensics unit?

25 A We were tasked with collection documentation of a scene.

1 Preservation and submission of evidence.

2 Q All right. Can you explain to the jury generally when you  
3 arrive on scene, what do you do?

4 A So the first thing is, is make sure the scene is cordoned  
5 off with crime scene tape, depending on what kind of scene it  
6 is. Then I'll get a debrief from either the detective  
7 supervisor or the case agent that's working the scene or the  
8 case. And after that, I will either I'll start by videoing the  
9 scene and then photographing the scene.

10 Q And were you involved with this case, the state versus  
11 Thomas McFadden in any way?

12 A I was.

13 Q And how did you first get involved with this case?

14 A I am the -- I was the crime scene agent that was on duty  
15 that day.

16 Q And where did you respond?

17 A Cummins Turbo off of Palmetto Commerce.

18 Q And approximately what time did you respond?

19 A It was around 7:30 ish.

20 Q And is that Charleston County?

21 A It is.

22 Q What did you observe when you arrived?

23 A So the first thing I observed when I got there was  
24 multiple police cars on scene and yellow crime scene tape in  
25 the back part of the parking lot.

1 Q All right. And then when you first arrived, what did you  
2 actually do?

3 A So I was debriefed and then I videoed the scene with a  
4 video camera.

5 Q All right. Along with videoing. Did you take photographs  
6 in this case?

7 A I did

8 Q And did you just take them one time or tell tell the jury  
9 how you go about doing the photographing?

10 A So you do what's called overalls, which is from several  
11 different angles. And it's of the entire scene. You do mid  
12 range the same way and then you do close ups of your evidence.

13 Q And do you take photographs only once while you're at the  
14 scene or do you take it in the beginning and more toward the  
15 end?

16 A You take it multiple throughout.

17 Q And why do you take it multiple times?

18 A Clarification of evidence.

19 Q Was the victim on the scene when you arrived?

20 A He was.

21 Q And did you find or did you locate any kind of physical  
22 evidence while you were there?

23 A Yes.

24 Q All right. At this time, I'm going to show you what's been  
25 marked as State's Exhibit 20. Do you recognize this?

1 A I do.

2 Q How do you recognize it?

3 A It's got my initials on it, and it's a DVD.

4 Q Does it fairly accurately represent the crime scene when  
5 you videoed it back on March 14th, 2019?

6 A Yes.

7 Q Your Honor. At this time, the State would seek to admit  
8 State's Exhibit 20 into evidence.

9 MR. KING: No objection, Your Honor.

10 THE COURT: Okay. Thank you.

11 [State's Exhibit No. 20 was Admitted into Evidence]

12 BY: MS. LINDER

13 Q Prior publishing that I would like for you to please --  
14 I'm going to show you what's been marked to start with the  
15 State's Exhibit 21 through 32. If you can just review those,  
16 please. Do you recognize those?

17 A I do.

18 Q How do you recognize them?

19 A They're photos that I took the night of the incident.

20 Q And do they fairly and accurately depict the incident back  
21 on March 14th of 2019?

22 A Yes, ma'am.

23 Q Your Honor, I [Indiscernible] the State would seek to  
24 admit states 21 through 32 in evidence.

25 THE COURT: Any objection?

1 MR. KING: No objection, Your Honor.

2 THE COURT: No objection.

3 [State's Exhibit No. 21 through 32 was Admitted into Evidence]

4 BY: MS. LINDER

5 Q All right. I'm also going to show you what's been marked  
6 as State's 35. All right. Well, there's 33 and then 35 through  
7 42, if you can please. Look at those. Do you recognize them?

8 A I do.

9 Q All right. How do you recognize them?

10 A They're photos that I took.

11 Q And do they fairly accurately represent the photos that  
12 you took back on March 14th, 2019?

13 A Yes, ma'am.

14 Q Your Honor, at this time, the state would seek to admit  
15 State's 33, 35 through 42.

16 MR. KING: Your Honor, we object under rule 403.

17 THE COURT: Okay. you approach [Indiscernible]

18 MR. KING: All right. [Indiscernible] objection.

19 [State's Exhibit No. 33, 35 through 40 was Admitted into  
20 Evidence]

21 BY: MS. LINDER

22 Q All right. Also at this time. We're going to show you some  
23 more. All right. I'm going to show you. It's been marked  
24 State's Exhibit 43. Gave you a bunch of numbers here.

25 A Yes, ma'am.

1 Q 43 through 101. Take your time. Look at those. Let me know  
2 when you're ready.

3 A Yes, ma'am. Okay.

4 Q Do you recognize those?

5 A I do.

6 Q And how do you recognize them?

7 A They're photos I took of the scene that night.

8 Q And do they fairly and accurately represent what you saw  
9 that night and what you photographed?

10 A Yes, ma'am.

11 Q All right. I'm going to take you through all of these. I  
12 will take you to yourself, okay?

13 A Yes, ma'am.

14 Q All right. This first set that I'm showing you. State's  
15 Exhibit 21. Can you explain what this perspective is?

16 A So this is an overall view of the parking lot of where the  
17 victim is located.

18 Q State Exhibit 23. What is this?

19 A It's an overall. I've just moved to the left in the  
20 parking lot to show a better view.

21 Q And who is this right here?

22 A That's the victim.

23 Q State's 24. What is this?

24 A That is in the parking lot. And that's a shirt.

25 Q State's 25.

1 A That's a close up of the shirt.

2 Q State's 36?

3 A Is another is a photograph of a picture that's on the  
4 shirt.

5 Q State 28.

6 A That is a walkie with an ear and mic piece that was  
7 located in the grassy area behind the parking lot.

8 Q State's 29.

9 A I believe that's the victim's vehicle with the victim next  
10 to it.

11 Q State's 31?

12 A They are car keys.

13 Q State's 32.

14 A A photograph of the victim.

15 Q State's 35.

16 A The left shoulder area of the victim.

17 Q All right. So the second series of photos that you take  
18 when you're on scene, do those include evidence markers?

19 A They do.

20 Q And can you explain to the jury what's an evidence marker?  
21 Why are you putting it down?

22 A So a lot of times and I probably didn't mention it in this  
23 one, but when officers get on scene, they'll take business  
24 cards to mark where a shell casing is located. And it kind of  
25 helps me out to know where the shell casings are. So what I'll

1 do is I'll go back through and I'll start numbering items from  
2 one to whatever the end number of the evidence is. And then  
3 I'll photograph it. I'll take an overall a mid range and then a  
4 close up of each item that's numbered.

5 Q Okay. So I'd like to do I'd like to take you through a  
6 couple of these exhibits that have already been admitted with  
7 State's Exhibit 43. What is this showing?

8 A So this is a basically an overall of where the victim is  
9 and evidence, either their evidence markers or their business  
10 cards can't really tell from here. Marking shell casings.

11 Q All right. State's 44.

12 A So this is what I -- I would call a mid range. And it's of  
13 the evidence markers and shell casings.

14 Q So all of these things with numbers, one, two, three,  
15 four, all of these items with numbers. These are evidence  
16 markers?

17 A Yes, ma'am. Just, addition, I don't think we've moved in  
18 43 through 101 yet. 33 through 101.

19 THE COURT: 43 through what?

20 THE WITNESS: 43 through 101.

21 MS. LINDER: Apologies. I can't move through bits 43  
22 through 101.

23 MR. KING: I just have one objection. The number 65, Your  
24 Honor, I have had objections to number 65. Same as before.

25 THE COURT: Let me just take a look at it.

1 BY: MS. LINDER

2 Q All right. I'd like to show you State's Exhibit 48. What  
3 is this?

4 A So that's an evidence marker marking shell casing.

5 Q Exhibit 49 is also has a number one?

6 A That is a photograph of the head stamp that's on each  
7 cartridge casing that's ever bought or made.

8 Q State's 50.

9 A That is a evidence marker with a shell casing.

10 Q State's 51.

11 A That's the head stamp of that cartridge.

12 Q State's 52.

13 A Cartridge and the evidence marker.

14 Q State's 53.

15 A The head stamp with the evidence marker.

16 Q And did you do this for all of the casings that you  
17 located on scene?

18 A I did.

19 Q All right. This time, I'm going to show you what's been  
20 entered as 60 through 66. What's being marked here?

21 A Right here. So 19 is a cell phone and 20 is copper  
22 jacketing.

23 Q Okay. Now I'd like to show you what's been admitted as  
24 Exhibit 95. What is this showing back here?

25 A That's the t-shirt.

1 Q State's 96.

2 A That's the evidence marker. Number 23 with the shirt.

3 Q State's Exhibit 97.

4 A That's the shirt on balled up.

5 Q And what does it say here?

6 A Fly high money.

7 Q And State's 98.

8 A That is a close up of the fly high money.

9 Q State 99.

10 A That is a close up of one of the pictures that's on the  
11 shirt.

12 Q State 100.

13 A It's a close up of the pitchers that are on the shirt.

14 Q State 101.

15 A It's a picture -- it's a close up of a picture that's on  
16 the shirt also.

17 Q All right, let's [Indiscernible]. All right. At this time,  
18 I'm going to show you what's been marked -- okay. One second.  
19 At this time, I'll show you some more of the State's Exhibit  
20 102. Do you recognize this?

21 A I do.

22 Q How do you recognize it?

23 A This is the bag that I put the shirt in.

24 Q And does that appear to be in substantially the same  
25 condition as when you first submitted it?

1 A It does.

2 Q At this time. I'm going to show you State's 103, 104, 105  
3 and 106. You recognize those?

4 A I do.

5 Q And how do you recognize those?

6 A These are shell casings that I collected from the scene.

7 Q And from what you can tell, are they substantially in the  
8 same condition as when you first collected them and submitted  
9 them?

10 A They do.

11 Q All right this time. I'm going to show you State's 107,  
12 108, 109, 110 111, 112, 113, 114, 115, 116, 117, 118, 119,  
13 120, 121, 122, 123. If you can look at all of those.

14 A Okay.

15 Q Do you recognize those?

16 A I do.

17 Q How do you recognize them?

18 A These are all items that were collected at the scene.

19 Q And did you -- what did you do with those items after you  
20 collected them?

21 A Put them in these evidence envelopes with the evidence  
22 marker numbers on them.

23 Q Do they appear in substantially the same condition as when  
24 you first collected them?

25 A They do.

1 Q All right. Now, I'm going to hand you states 181 and 182.  
2 Do you recognize those?

3 A I do.

4 Q How do you recognize them?

5 A These are items that were collected by me at the scene  
6 with the evidence markers, numbers on them.

7 Q And do they appear in substantially the same condition as  
8 they were when you first collected them?

9 A They do.

10 Q Thank you.

11 A Yes, ma'am. Your Honor, this time -- at this time, the  
12 State would seek to admit 107 through 123. 191, 192 into  
13 evidence.

14 MR. KING: No objection, Your Honor.

15 THE COURT: Okay. Thank you very much.

16 [State's Exhibit No. 107 through 123. 191, 192 Admitted into  
17 Evidence]

18 MS. LINDER: [Indiscernible].

19 Q Okay. I don't have any further questions. If you could  
20 answer anything the defense may have.

21 A Yes, ma'am.

22 MR. KING: I have no questions, Your Honor.

23 THE COURT: All right. Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: [Indiscernible] as well.

1 MR. KING: No objecti on, Your Honor.

2 THE COURT: No objecti on?

3 MR. KING: No objecti on.

4 THE COURT: From the State, you want to release it from  
5 subpoena?

6 MS. LINDER: Yes, please.

7 THE COURT: Okay.

8 THE COURT: Ladies and gentlemen, how are you all doing?  
9 Would you like a little short break? Okay. I see you. Yes. Let  
10 me ask you all to do one thing while you're in break. I'd like  
11 to see if you up inside who you would like to be your  
12 foreperson during this trial. Foreperson is the jury's  
13 spokesperson in the courtroom. Should it have become necessary  
14 and the moderator of your discussions during deliberations. So  
15 from the first 12, if you all can decide who you'd like to be  
16 your foreperson, [Indi scerni ble] if not, I'll help you out.  
17 Mi key [Indi scerni ble] All right. Okay. Let's take anything  
18 before we break. But if you want to put on the record.  
19 Objections from the bench conference, please go ahead.

20 MR. KING: [Indi scerni ble]

21 THE COURT: All right.

22 MS. LUTHRINGER: Yes, Judge, I j just want to put on the  
23 record that defense was objecting to the admissi on of State's  
24 exhibi ts, 11 through 14. Those were photos and State's Exhi bit  
25 15. That was the close up body worn camera of Molina. We would

1 just object under 403 for them being present.

2 THE COURT: Okay. And strike that. Okay. We'll take about  
3 10 or 15 minutes. Thank you. Okay. You all ready to go?

4 MR. ABSHIRE: Your Honor, we have one matter we were going  
5 to ask to take up before the jury. We were actually going to  
6 call the pathologists beforehand because he's been in the  
7 courtroom next door, and he's now done. I understand that Mr.  
8 King may object to some of the autopsy pictures, so wanted to  
9 present those to the court.

10 THE COURT: Okay.

11 MR. KING: I do, Your Honor, as stated in the opening, our  
12 defense is a whodunit. So we're not challenging how the person  
13 was shot or anything like that. I think there's minimal  
14 probative value of showing the -- you know, all the different  
15 photographs of the bullet wounds. I think it's any probative  
16 value is substantially outweighed by unfair prejudice.

17 THE COURT: There's specific ones or?

18 MR. KING: There are many, many photos from the autopsy  
19 room. So maybe not every one of them. But -- you know, there a  
20 good many of them, which are graphic. And like I said, I don't  
21 know what exactly it proves at this point that the seen fact in  
22 controversy, because we're not disputing how the person was  
23 shot or anything like that, it's -- we're just arguing who did  
24 it.

25 THE COURT: Okay. I don't have any idea what you're

1 talking about. How many photographs?

2 MR. ABSHIRE: Your Honor, we're talking about about 30  
3 photographs. And the reason for that many is because I plan to  
4 elicit testimony from Dr. Batalis that there are three  
5 independently fatal wounds, so we can't definitively know which  
6 one actually took his life. But also the amount of shots  
7 involved in this, we think, speak to the level of retaliatory  
8 nature in this trial that we think is absolutely a factor and a  
9 necessary point that we need to prove to the jury. So that is  
10 the reason behind the volume of pictures.

11 THE COURT: Well..

12 MR. ABSHIRE: And, Your Honor, I have alternated ---

13 THE COURT: Between talking about. All that you want to  
14 speed it, check it out. So let me see.

15 MR. ABSHIRE: Okay.

16 [Off the record]

17 [Back on the Record]

18 THE COURT: All right. After examining the proposed  
19 exhibits and listening to the Protection and Defense Counsel, I  
20 will allow the admission of black and white [Indiscernible].

21 MR. ABSHIRE: And, Your Honor, that would be State's  
22 Exhibit 136 through 171.

23 THE COURT: Okay. All right.

24 MR. KING: Anything else before we...

25 MR. KING: No, Your Honor.

1 MR. KING: No, Your Honor. Okay. They have a four person,  
2 Your Honor. It's 2:54 [Indiscernible] All right.

3 THE COURT OFFICER: Jury is all present, Your Honor.

4 THE COURT: All right. Thank you very much. Mr. Smith.  
5 Thank you for agreeing, sir. All right. Calling next witness.

6 MR. ABSHIRE: State calls, Dr. Nick Batalis.

7 THE CLERK: Do you swear or affirm that the testimony you  
8 will give the court and the jury is the truth, the whole truth,  
9 and nothing but the truth, so help you God?

10 MR. BATALIS: I do.

11 THE COURT: Please be seated. Please state your name, your  
12 spelling, spelling your last name loudly and clearly into the  
13 microphone.

14 MR. BATALIS: My name is Nicholas Batalis, B-A-T-A-L-I-S.

15 DIRECT EXAMINATION OF WITNESS, NICHOLAS BATALIS

16 BY: MR. MR. ABSHIRE

17 Q Good morning, Dr. Nicholas. I guess it's almost afternoon.

18 A Good morning.

19 Q Could you please tell the jury what you do for a living?

20 A I am a forensic pathologist.

21 Q And how long have you been doing that?

22 A I've been practicing this. I'm wrapping up my 15th year in  
23 about a couple of months.

24 Q Okay. And if you could just tell us a little bit about  
25 your background education.

1 A Sure. I graduated college from Butler University in  
2 Indianapolis, Indiana. After graduating college, I then went on  
3 to medical school at the Indiana -- Indiana University School  
4 of Medicine, also in Indiana. Upon completing medical school, I  
5 then came to Charleston to M.U.L.C. for a residency in  
6 pathology. This is a four year program where you're trained to  
7 be a general pathologist at the completion of those four years,  
8 then pass an examination to become board certified in anatomic  
9 and clinical pathology. At that point, I then went on to a one  
10 year fellowship training program specifically regarding  
11 forensic pathology at the Dallas County Medical Examiner's  
12 Office in Dallas, Texas. Again, at the end of that year, passed  
13 an examination to become board certified and then took my  
14 current position about 15 years ago.

15 Q Got you. And if you could explain for myself and the jury,  
16 what are some of the roles and responsibilities of a forensic  
17 pathologist?

18 A Sure. I'll step back just for a second. So mentioned  
19 pathology a couple of times. So pathology is a field of  
20 medicine that deals with the study and diagnosis of disease. So  
21 a general pathologist. I did my residency -- the pathologist  
22 would be the one to if you had a tumor or a biopsy taken by  
23 your surgeon, the pathologist would be the one to look at it  
24 and say, hey, it's cancer, it's not cancer. What type it is. A  
25 pathologist is also somebody who oversees the clinical

1 laboratory. So if you have any blood drawn, a pathologist would  
2 be overseeing all of that testing. Forensic pathology is a  
3 subspecialty, a branch off of that, that deals with the medical  
4 legal aspects of medicine, predominantly performing autopsies  
5 to determine a cause and manner of death.

6 Q And how many autopsies do you think you've done?

7 A I don't have an exact number, but at this point, somewhere  
8 between 3 and 4000.

9 Q And could you tell us a little bit about your continued  
10 education as a forensic pathologist?

11 A Sure. In order to maintain certification by the American  
12 Board of Pathology and also your state medical license, you  
13 have to attain a certain number of educational credits each  
14 year. So somewhere between 20 and 40 hours of educational  
15 credits each year through national conferences, through  
16 symposiums, through -- through different sorts of those types  
17 of things.

18 Q And have you ever been published in the field of forensic  
19 pathology?

20 A Yeah. Last time I looked, I think I have maybe 40 or 50  
21 publications, the majority of which involve forensic pathology.

22 Q And have you ever testified as an expert in forensic  
23 pathology?

24 A I have, I'm guessing somewhere around 100 times in South  
25 Carolina, along with, I believe twice in Texas and twice in

1 North Carolina.

2 Q Your Honor, at this time, we would move to admit Dr.  
3 Batalis as an expert in the field of forensic pathology.

4 THE COURT: [Indiscernible] Do you have any objection?

5 MR. KING: No.

6 THE COURT: Okay. So admitted.

7 [Dr. Batalis was Admitted as a medical expert]

8 BY: MR. MR. ABSHIRE

9 Q Dr. Batalis, were you in your position at M.U.S.C. in  
10 2019?

11 A Yes.

12 Q And were you involved with this case?

13 A I believe so, yes.

14 Q Just generally starting at the beginning of your process,  
15 what was your involvement with this case?

16 A So regarding our office, so at M.U.S.C. we perform  
17 autopsies for both folks that die in the hospital, but also for  
18 a number of coroners throughout the state. So for this case,  
19 the Charleston County Coroner's office notified that they had a  
20 death that they wanted us to perform an autopsy on. So we take  
21 down those notes. They then transfer the body to our autopsy  
22 facility. And that's where I would have really taken really my  
23 first role in the autopsy, would have been -- hearing about the  
24 case, knowing about it, and then going into the autopsy room to  
25 perform it that next morning.

1 Q Do you remember what day the autopsy was requested?

2 A It looks like the decedent died on March 14th at 7 p.m.  
3 Most of the time those requests come in that that same evening.  
4 So it's likely the evening of the 14th or possibly the morning  
5 the -- the following morning.

6 Q And you say the decedent, do you mean the victim, Damien  
7 Stokes?

8 A Yes.

9 Q And Dr. Batalis, whenever you receive a request from the  
10 coroner, what information is provided to you?

11 A It varies. And you know, this is going back for years now,  
12 so it's kind of evolved over time. But essentially the kind of  
13 the minimum information we need from the coroners when they're  
14 requesting an autopsy is the decedent's name kind of  
15 demographic info as far as date of birth, that sort of thing,  
16 and then some sort of circumstances around the death. Sometimes  
17 they don't know and it's found dead at home, could be -- you  
18 know, shot. But some sort of circumstances about the death and  
19 the demographic information.

20 Q And do you remember what information was provided in this  
21 case?

22 A Just the -- the part I put in my report was that it was a  
23 25 year old who was shot outside of his workplace. I can look  
24 through and find the original request here. Yeah. So the coroner  
25 at the time provided the demographic information, the date and

1 time of death. So it's a homicide with multiple gunshot wounds  
2 to the body shot in the parking lot of his employer, the who --  
3 who -- and the assailants fled in a vehicle.

4 Q So he taught us a lot of about roles and responsibilities  
5 as a forensic pathologist, does that include determining a  
6 cause of death?

7 A Yes, it does.

8 Q Does that include determining the manner of death?

9 A Yes, it does.

10 Q Just like I asked a little bit earlier, let's start in the  
11 very beginning of whenever you received this request, what are  
12 your initial steps when you started examining Damien Stokes?

13 A Sure. And I can kind of just describe in general, and  
14 it'll apply to this case because I followed all the same steps.  
15 So when we receive a body for autopsy and the autopsy suite,  
16 the first thing we'll do, as we did in this case, is photograph  
17 the body from head to toe. Those are -- as is photographs to  
18 document everything before we've done any manipulation. We  
19 would then document any clothing, any evidence. Sometimes  
20 medical therapy, anything that's on the outside of the body, we  
21 would take that down. Again, you know, taking anything that's  
22 important into evidence. Otherwise we would then get the body  
23 cleaned up, take another set of photographs from head to toe.  
24 In a case like this where there were obvious injuries, we would  
25 then also have X-rays ordered so the X-ray technicians would

1       come and take X-rays of the body to help us identify any  
2       retained bullets or foreign material. And then we'll do our  
3       external exam. So that's basically just looking at the body  
4       from head to toe for basic stuff like height and weight and  
5       hair color, eye color, that sort of stuff. But then also, any  
6       indication or any evidence of that -- that could help us  
7       identify you know, why he's dead. So any evidence of trauma or  
8       natural disease. After completing that external examination, we  
9       then move to our internal examination where we perform surgical  
10      type incisions and examine the body from the inside, again  
11      looking for any evidence of natural disease or trauma. In a  
12      case like this with multiple gunshot wounds, we can kind of --  
13      we're able to track the gunshots through the body and see  
14      everything that they may have struck. At the completion of the  
15      autopsy we then compile our findings into a report that we then  
16      issue, usually a couple of weeks after the completion of the  
17      case.

18      Q     And just so we're clear for this one, did you take  
19      pictures during your autopsy of determining sex?

20      A     Yes. Everything I just described as far as our general  
21      procedures, I -- I performed in this case.

22      Q     Did you tell the jury about your initial observations of  
23      Mr. Stokes?

24      A     So the -- the initial observation was that there was lots  
25      of trauma to the body. You know, it was still wearing the work

1 clothes. But -- you know, it was obvious from the get go that  
2 there were numerous -- numerous injuries to the body.

3 Q And you talked about a large number of gunshots. Were you  
4 able to determine how many gunshots were involved?

5 A For the most part, in this case, the way I phrased it was  
6 he had at least 13 gunshot wounds because of the kind of the  
7 wounding pattern of some of these bullets and some of the just  
8 the massive destruction to the -- to some of the tissues. It  
9 was impossible to say. Was there two wounds there? Was there  
10 three wounds because some of the tissues were completely  
11 obliterated, but there were at least 13 wounds that entered the  
12 body along with a couple other probable graze wounds. So  
13 bullets that did not enter the body, but -- you know, kind of  
14 scraped by as the bullet went by.

15 Q Dr. Batalis you said massive destruction. Is it irregular  
16 to see this level of gunshot wounds?

17 A Yes. You know, the -- the destruction in this case is --  
18 it's stuck out for two reasons. One, just the sheer number of  
19 wounds, you know, 13 or more wounds is not a common finding.  
20 We're seeing it more nowadays. But certainly back then, four  
21 years ago, we did not see that many cases with this many  
22 gunshot wounds. The other thing that stuck out was this the  
23 wounding so different, whether it's a handgun, a shotgun, a  
24 rifle, and there's different wounding that will occur. But many  
25 of these wounds had -- you know, massive destruction that were

1 typical of a rifle wound.

2 Q And you said approximately 13 wounds. Did you take  
3 pictures of these as well?

4 A I did.

5 Q And did you note them in your report as you or nothing to  
6 further be included in your report?

7 A I'm sorry. Could you say that again?

8 Q I apologize. Did you note these wounds as you're going  
9 through your autopsy?

10 A Yes, I did.

11 Q And that would eventually be included in your report as  
12 well?

13 A Correct. As we're going through in the autopsy room, we'll  
14 be taking kind of notes on a body diagram sheet. And then once  
15 they get back to my office afterwards, we'll do a dictation  
16 that describes in detail. And then that's what we have in the  
17 report. And then subsequently, because there were so many  
18 wounds that then prepare an additional diagram that's cleaned  
19 up that just has the gunshot wounds.

20 Q And this diagram kind of a cleaner way to keep track of  
21 all of the things you learned during the autopsy.

22 A Correct.

23 Q Especially in a case with this many gunshot wounds?

24 A Exactly.

25 Q If you were to see that diagram and then some of the

1 pictures you took during that autopsy, would you recognize  
2 them?

3 A I believe so.

4 Q Your Honor may I approach?

5 THE COURT: Yes.

6 Q Dr. Batalis, I'm handing you states what's been marked as  
7 State's Exhibit 135 through 171. And I know I just handed you a  
8 large stack of pictures, so please take your time and look  
9 through them to see if you recognize them.

10 A Yes, I do.

11 Q All right. Are those the photographs that you took during  
12 the autopsy?

13 A State's Exhibit 135 is the diagram showing just the -- the  
14 gunshot wounds. And then State's Exhibit 136 through 171 are  
15 reprints of photographs from the autopsy.

16 Q Are those accurate records and -- excuse me, accurate  
17 representations of the pictures you took?

18 A I believe so. You know, they are grayscale. Some of them  
19 may have been cropped, but the pertinent and illustrative parts  
20 of the photos are -- are -- are still intact.

21 Q Your Honor, at this time, we would seek to admit State's  
22 Exhibit 135 through 171.

23 THE COURT: All right. Sorry for?

24 THE CLERK: For 136 through 171 Your Honor.

25 [State's Exhibit No. 135 through 171 was Admitted into

1 Evidence]

2 MR. ABSHIRE: At this time, we would ask to publish these  
3 exhibits as well.

4 THE COURT: All right. [Indiscernible].

5 MR. ABSHIRE: Your Honor, may I approach?

6 THE COURT: Yes.

7 BY: MR. MR. ABSHIRE

8 Q Dr. Batalis, I'm going to take these back from you and  
9 we're going to go through these real quick. All right, Dr.  
10 Batalis, I'm showing you State's Exhibit -- backwards. 136.  
11 What are we looking at here?

12 A Sure. So State's Exhibit 136 is a photograph of the  
13 decedent's right side of the face, and it's depicting what I've  
14 labeled as gunshot wound number one. So as we go through these  
15 gunshot wounds, I have them labeled I believe it's one through  
16 11. That does not imply the order in which the gunshots were  
17 received or the severity. It was simply as I went to examine  
18 the body, The first one I went to, I described that one first.  
19 But so what we see on the -- the face here on the right side of  
20 the face is a gunshot entrance wound which deemed gunshot  
21 entrance wound number one has a little bit of an irregular  
22 appearance, typical gunshot wounds. They're kind of perfectly  
23 circular. But if the bullet has been altered, if it's had a  
24 ricochet, anything like that, if it's passed through anything  
25 else, it can cause a little bit of an irregular appearance.

1 It's certainly possible in this case.

2 Q So just real briefly, how were you able to tell that this  
3 is an injury wound and not an exit wound?

4 A Through examining the -- the wound itself and just with  
5 experience, knowing different features of entrance and exit  
6 wounds, we also pieced that together with other corresponding  
7 injuries. And so if we see that there's a wound on one side and  
8 a wound on the other, we could say, hey, that looks like that  
9 passed all the way through. So in this case, there were both  
10 features of of the wound, although it appeared irregular that  
11 were consistent with the entrance wound. But then also there  
12 was no corresponding exit wound to go along with this and  
13 examine the body and then looking at our X-rays.

14 Q So there's no corresponding exit wound. Where would that  
15 bullet potentially be?

16 A So in this case, there were multiple metal fragments that  
17 were kind of dispersed along the wound path. So starting kind  
18 of in the right cheek, up through the face and into the brain  
19 and skull. And so essentially the bullet basically dissipated  
20 as it struck the body and went into the brain.

21 Q And could this certainly be a fatal shot?

22 A Yes -- yes, certainly by itself.

23 Q So directing your attention to State's exhibit -- turn  
24 that around. There we go. State's Exhibit 138. Dr. Batalis,  
25 that's a touch screen, so feel free to mark on it and we can

1 clear it through the monitor. But what are we looking at here  
2 in State's Exhibit 138?

3 A Sure. State's Exhibit 138 is showing the entrance wound of  
4 gunshot wound number two. So that's here kind of on the outer  
5 aspect of his left arm there. And again, compared to the  
6 previous one, this has more of that typical kind of circular  
7 appearance that is more traditional gunshot entrance wound. So  
8 this is a wound that entered the kind of back outer part of his  
9 left arm.

10 Q And were you able to determine the trajectory of where  
11 this shot exited?

12 A Yes. This one traveled from his back to front and a little  
13 bit from his left to his right. And then it exited the inner  
14 aspect of the left arm.

15 Q Okay.

16 A And sorry, on its way through it, it also fractured his  
17 left tumor. So the major bone in your left arm.

18 Q And looking specifically at this entry wound, are you able  
19 to determine what kind of firearm creates this kind of entry  
20 wound?

21 A Not based on an entrance wound alone and in this  
22 particular wound no.

23 Q Showing you State's Exhibit 140. Did you explain what  
24 we're looking at here?

25 A So State's Exhibit 140, the area we're looking at is going

1 to be right here. So this is going to be the exit wound that  
2 corresponds with we just saw the entrance wound on the back  
3 part of the left arm. This is where that wound exited on the  
4 inner part of that left arm there compared to the kind of nice  
5 circular wound we saw before, We have much more of a gaping,  
6 irregular wound here, which is characteristic of an exit wound.  
7 And again, once we start seeing these more gaping, these really  
8 large type of cavity exit wounds, that tells us there's likely  
9 a rifle being involved just with the -- the bullets coming out  
10 of a rifle, travel so much more speed, they cause more  
11 destruction. So, they more typically leave these -- these  
12 larger exit wounds.

13 Q All right. Then you're directing your attention to State's  
14 Exhibit 141. Could you explain what we're looking at here?

15 A Sure. So, State's Exhibit 141 shows what I've labeled  
16 gunshot wound number three. So, the decedent is face down now.  
17 So, this would be kind of the upper left side of his back,  
18 upper left side of the shoulder. And we have a what I'd call an  
19 entrance and exit wound complex. And so the entrance wound is  
20 going to be this wound up here, and then the exit wound would  
21 be over here. So, that wound is traveling from his left to his  
22 right and a little bit downward. This wound, unlike the first  
23 one that went into the brain, the second wound that fractured  
24 the humerus, this wound pretty much just tunneled through the  
25 skin and soft tissues of the of the back.

1 Q All right. [Indiscernible] Directing your attention to  
2 State's Exhibit...

3 A I think it was this one or not.

4 Q Yeah. There we go. Cool. All right. State's Exhibit 143.

5 A Yeah -- yeah. If you wouldn't mind, I think it'd be better  
6 off the first way you had it there.

7 Q Sorry about that.

8 A So State's Exhibit 143 is showing what I've labeled as  
9 gunshot wound number four. So as reference here, the decedent  
10 is laying at the table. His head would be up here, the feet  
11 would be down here. So we're looking at his right flank. And  
12 then right beneath the tag there, we have again, kind of a  
13 gaping, irregular appearing gunshot wound there on the right  
14 flank. And so this was the fourth gunshot entrance wound.

15 Q And Dr. Batalis, this one looks a little different. Could  
16 you explain why?

17 A Right. So much, like we said, with the -- the gunshot  
18 wound number one, how was irregular? Again, this has it's not  
19 that perfect circle like we saw in gunshot wound number two.  
20 So, again, likely means that this was a ricochet hit, some sort  
21 of intermediate object. So that bullet wasn't traveling like a  
22 perfect spiral when it came through that it was doing some some  
23 tumbling.

24 Q Okay. State's Exhibit 145. What's this?

25 A So State's Exhibit 145. So the-- the previous wounds we --

1 we talked about the first wound, the bullet kind of dissipated  
2 in the brain. Three and four -- sorry. The gunshot wound,  
3 number two and three went through the body. Gunshot wound  
4 number four remained -- the body. So, we saw the entrance room  
5 there on the right flank. After it entered that right flank, it  
6 moved across his body from right to left, went through part of  
7 his intestines, went through his bladder. Some of the blood  
8 vessels down in the lower pelvic area. And then the bullet  
9 embedded itself down in the pelvis. So this is a the bullet  
10 that we recovered from the pelvis that corresponded with the  
11 gunshot wound, number four that we just saw.

12 Q And unlike the one that we saw on the shoulder with this  
13 be a potentially fatal shot.

14 A It potentially could have. We did have some bleeding in  
15 the in the abdomen. Think we had 2 or 300ml of blood. And then  
16 with perforating the intestines and the bladder, that would  
17 certainly make it prone to infection. So maybe not immediately,  
18 but certainly would contribute to -- to -- to -- to death.

19 Q Then State's Exhibit 146.

20 A Yeah. So State's Exhibit 146 So we're kind of zoomed in  
21 the kind of lower right hand corner we can see just a landmark.  
22 That'd be his belly button or his umbilicus there. And then  
23 what we're looking at right here and actually, if you turn it  
24 other way, please. Thank you. So. All right. So again, up top  
25 now we'd have his belly button. And then what we're looking at

1 here is going to be our gunshot wound number five. So this is a  
2 gunshot entrance wound. So on the right side of the abdomen,  
3 just down and to the right of where the belly button is, where  
4 that -- that wound entered. And again, this is more like the  
5 gunshot wound number two, more of a kind of a circular entrance  
6 wound.

7 Q And would that be consistent with the rifle?

8 A It could be consistent with that. There's really nothing  
9 distinguishing about this this particular entrance wound, so.

10 Q Not as pronounced as the other ones where you would be  
11 able to determine it was a rifle?

12 A Really, the -- the determination of the rifle is really  
13 more on the exit where the -- where they enter the body. Those  
14 can be just the same as a handgun. Again, we've seen some  
15 irregular entrances here, but I think it's more due to  
16 ricochets and some intermediate objects. Where we see the rifle  
17 is where we see the exit wounds that are more kind of a blow  
18 out instead of just a smaller defect.

19 Q Got you. All right. And State's Exhibit 147.

20 A Right. So now we're -- this is similar to the picture we  
21 saw earlier, but we're now looking at his left flank. So, his  
22 head would be up this way. Feet would be down here. And again,  
23 we have this really large irregular wound here, again, on the  
24 left flank. So, this corresponds with the entrance wound we saw  
25 before. So, that bullet entered near the belly button, went

1 through again, pass through some of the intestines, some of the  
2 deep tissues and musculature there, and then blew out the left  
3 side here. And then kind of going along with your previous  
4 question about rifle versus handgun, seeing this big gaping  
5 exit defect would be consistent with a rifle wound.

6 Q And just to be clear, you're saying this is the exit wound  
7 of the bullet that we actually just looked at?

8 A This is the exit wound of the entrance wound we just  
9 looked at before the bullet. We looked at would have been the  
10 kind of final termination of gunshot wound number four, exit  
11 number five.

12 Q Moving to State's 149.

13 A So State's 149, we're looking at back to looking at the  
14 right side of his body here. And so right along the right hip,  
15 we have two skin defects. The lower one here is going to be a  
16 gunshot entrance wound. So this is going to be gunshot entrance  
17 wound number six. And then just above it, there's another  
18 smaller defect. This was just kind of a fragment. This was not  
19 an actual gunshot injury. But so that gunshot entrance there on  
20 the right hip.

21 Q Okay. Then State's 152.

22 A So if you could turn that guess one more quarter turn  
23 upside down now. There we go. Oh, no. There we go.

24 Q There we good.

25 A So we -- we always orient the just so when this happens,

1 we put the label. So, you're looking straight at the body. So  
2 what -- what we're looking at here are going to be gunshot exit  
3 wounds that correspond with entrance wounds, six and seven. So  
4 we just saw gunshot entrance wound number six. So entrance six  
5 was on the outer aspect of the right thigh entrance seven was  
6 on the back of the right thigh. But then once they entered the  
7 body, their paths crossed and they both came out here. And so  
8 essentially, this is just the -- what we're seeing down here  
9 would be the pubic area. So just above the area of the  
10 genitalia, we have two exit wounds, again, corresponding with  
11 the entrance wound on the right hip and then the back of the  
12 right thigh.

13 Q State's 153.

14 A So in the -- in the pathway leading from the kind of right  
15 thigh to where we saw the exit wounds, there were several metal  
16 fragments along that pathway. And so these are fragments from  
17 the jacket or bullet that would correspond with the gunshot  
18 wound, number six or seven.

19 Q Okay. And Dr. Bali's is State's 154, a picture of an entry  
20 wound there?

21 A State's Exhibit 154, actually has two different wounds in  
22 it. The top wound where the tag is just beneath here. So the  
23 one up here, again, that is going to be our entrance wound that  
24 would correspond with gunshot wound number eight. Again, a nice  
25 small circular defect. And then the other wound that we're

1 seeing down at the bottom is going to be an exit wound that's  
2 going to correspond with gunshot wound number nine. And again,  
3 you can see just not the best angle, but how small that  
4 entrance wound is and how big and gaping that exit wound is on  
5 the bottom there.

6 Q And State's Exhibit 159.

7 A So State's Exhibit 159, we've now moved to the right arm.  
8 So this is gunshot wound number ten that entered kind of the  
9 outer aspect of the -- of the right arm, not dissimilar from  
10 where we saw gunshot wound number two, getting things started.

11 Q State's 161.

12 A So State's Exhibit 161. We're now kind of holding up the  
13 arm to show the back part of it. And so a very large, gaping  
14 exit wound there that would correspond with the entrance wound  
15 we just saw. So, both the previous exhibit and this one are  
16 both showing gunshot wound number ten. Again, this is showing  
17 that big gaping exit that's consistent with rifle.

18 Q Right. And then this another gunshot entry wound and exit  
19 wound here at State's Exhibit 162.

20 A Yes. And could you -- you again, could you flip that  
21 around for me, please,

22 Q All right.

23 A Upside down? Yeah. So, this exhibit here is showing a  
24 gunshot wound of the one we're looking at right now. Right  
25 there is going to be our gunshot wound, number 11. So, this is

1 another gunshot entrance wound on the kind of outer aspect of  
2 the right elbow. And then what we're getting into on the right  
3 side of the photo that's going to be coming up in the gunshot  
4 wounds of the forearm that we'll talk about here in a second.

5 Q So State's Exhibit 169. Is this part of the arm of the. Of  
6 Mr. Stoke's arm?

7 A Yeah. Could you flip it to that tag to the left a little  
8 bit? There you go. Yeah. So, this is looking at the -- what we  
9 have down here is our identification bracelet. His hand would  
10 be up top. So, we're looking at the kind of this part of the  
11 right wrist. It's kind of hard to see from the photo, but  
12 looking at this kind of circular wound here, consistent with  
13 the entrance wound that's on the kind of outer aspect of the --  
14 of the right wrist.

15 Q All right, then I apologize. Dr. Batali's to State's  
16 Exhibit 171. Just briefly, what are these?

17 A So similar to the previous exhibit where we saw fragments  
18 that have recovered from the thigh? These are multiple  
19 fragments of bullet jacketing that were recovered from the  
20 right forearm. Again, the right forearm had massive destruction  
21 to it, and there were several different fragments throughout  
22 it.

23 Q Okay. And. Dr. Batalis, we talked about it in the  
24 beginning. Does a diagram usually help sum all this up?

25 A I think so.

1 Q All right. So again, feel free to mark on the monitor, but  
2 could you please identify what we're looking at here in State's  
3 Exhibit 135?

4 A Sure. So State's Exhibit 135. Again, it's a diagram put  
5 together recently to kind of help illustrate where exactly  
6 these different wounds that we were seeing in the photos are on  
7 the body. Again, there's a key up top. If there's a circle,  
8 that's where an entrance wound was an X would be an exit. A B  
9 is recovered, bullet. F is recovered, fragments and then G or  
10 what determined to be probable -- probable graze wounds. And  
11 then so you can kind of, you know, basically following it  
12 through you know you're looking at the first one here is  
13 gunshot wound number one. We mentioned that's on the right side  
14 of the face with that one. You know, we did not have an exit.  
15 And the -- the bullet fragments were so small that there was no  
16 recovery to that. So that would be number one. We have gunshot  
17 wound number two here again, shows that that it's entering the  
18 back of the left arm, exiting the inner aspect, gunshot wound  
19 number three, then again, was the one we saw up on the back.  
20 Again, that's working kind of downward from the right side of  
21 his back towards the left, gunshot wounds, number four and  
22 five. Again, those are both entering the left or the right  
23 flank and abdomen traveling across the body. Number four  
24 resulted in that bullet that we recovered. Number five had an  
25 exit. Gunshot wounds, number six and seven. These were the two

1 that were on the thigh. We saw the one picture of the one on  
2 the outer thigh. Again, there's also one on the back. And then  
3 they both exited here. These two exit, these two X's kind of  
4 just above the genitalia. We saw an exhibit of that one.  
5 Gunshot wounds, number eight and nine are both down here on the  
6 left leg and are essentially going opposite directions. And so  
7 we have a small -- we saw a picture of gunshot wound number  
8 eight, the entrance with a small circle. And then beneath that,  
9 in the exhibit we saw there was a big gaping defect and that  
10 would have been the exit for gunshot wound number nine. So  
11 eight is essentially traveling from his left side of his body  
12 across to the right. Nine is going the opposite way. And both  
13 of these wounds, eight and nine fractured and essentially  
14 destroyed the bones of the left leg. Similarly, the gunshot  
15 wounds, number six and seven, fractured the right femur. So, in  
16 addition to his internal injuries, he had fractures of his left  
17 arm, his right arm, his right femur, and then his left leg and  
18 then kind of finishing things off again. Gunshot wound number  
19 ten and 11 are going to be involving the right arm and the back  
20 of the right elbow. And then the last one, which gets a little  
21 bit more confusing here, is on the right forearm. You see, I've  
22 done these kind of larger circles with these complexes. Again,  
23 there there's so much destruction on the forearm. I felt like I  
24 had at least two good entrance wounds, one of which that --  
25 that we saw the exhibit there, one of the most recent

1 photographs. And so I've shown those in these smaller circles  
2 there where I believe entrance wounds were. But then again, the  
3 really -- the most of the rest of the forearm was kind of  
4 destroyed. So, it was hard to tell. There could have been  
5 possibly more entrance wound, but at least two and then the G's  
6 on the head and then two on the chest again were determined to  
7 be probable. Graze wounds did not enter the body, but given all  
8 the other findings, would be consistent with a bullet kind of  
9 scooting by.

10 Q And Dr. Batalis, it's kind of hard to see right here, but  
11 do you have an explanation of all your markings right here?

12 A Yes, I do. There's a key or legend up top there.

13 Q Okay. So in reviewing your autopsy and all the pictures we  
14 just looked through, as well as the diagram, were you able to  
15 determine what gunshots were independently fatal?

16 A Yeah. In this case, the -- I guess the most fatal wound  
17 would have been the one to the face because we did have  
18 resulting skull fractures and then damage to the brain. So,  
19 that would be by itself the one that would be -- you know, no  
20 doubt fatal in and of by itself. Gunshot wound number four and  
21 five, those are the ones that enter the abdomen or right flank  
22 that perforated the intestines, the bladder. And we had some  
23 bleeding in the abdomen. Those both potentially could have been  
24 fatal by themselves, although, again, it would have taken  
25 longer than the one in the head. And then again, those would be

1 the most fatal would be those three. But again, gunshot wound,  
2 number two, fractured the left humerus, six and seven fracture  
3 of the right femur, eight and nine fracture of the left tibia.  
4 You know, these are long bones. So, we're going to have quite a  
5 bit of bleeding that's going to be associated with those. So,  
6 again, don't know if they would have independently would have  
7 died just from his gunshots to the extremities. But they  
8 certainly didn't help all that bleeding when he was also  
9 suffering from the other wounds.

10 Q So, by your own words, the massive destruction that you  
11 observed in this autopsy, there were three different shots that  
12 could have potentially ended his life?

13 A Correct.

14 Q Thank you, Dr. Batalis please answer anything Mr. King has  
15 for us.

16 A Sure.

17 MR. KING: I have no questions, Your Honor.

18 THE COURT: Thank you. We release this witness.

19 MR. KING: No objection.

20 MR. ABSHIRE: That's fine, Your Honor.

21 THE COURT: All right. Thank you very much.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Wait a second you -- okay. Call your next  
24 witness.

25 MR. ABSHIRE: The State calls Lucas Cummins.

1 THE CLERK: On the bottom of your right hand. Do you swear  
2 or affirm the testimony you shall give the court and the jury  
3 is the truth, the whole truth, and nothing but the truth, so  
4 help you God?

5 MR. CUMMINS: I do.

6 THE CLERK: Please be seated. Please state your full name  
7 loudly and clearly into the microphone. Spelling your last  
8 name.

9 MR. CUMMINS: Sgt. Lucas Cummins, C-U-M-M-I-N-S.

10 DIRECT EXAMINATION OF WITNESS, LUCAS CUMMINS

11 BY: MR. MR. ABSHIRE

12 Q Sergeant Cummins, could you please tell the jury where you  
13 work?

14 A I work for the City of Charleston Police Department.

15 Q And how long you been doing that?

16 A 20 years.

17 Q What have been some of your roles at North Charleston?

18 A Base Patrolman was a sergeant over the property crime unit  
19 and sergeant over the person crime unit. And now I'm currently  
20 a sergeant in the Office of Professional Standards.

21 Q Okay. And in March of 2019, were you working for North  
22 Charleston

23 A Yes, I was.

24 Q What was your position there?

25 A I was a sergeant over the persons crime unit.

1 Q And what roles and responsibilities does that entail?

2 A A team of detectives we -- we investigate all homicides,  
3 shootings, assaults, primarily what we do

4 Q And were you involved with this case?

5 A I was.

6 Q Could you walk us through your involvement with this case?

7 A When a call initially came out, we heard over the radio,  
8 we responded to the shooting. It was at the Cummins plant.  
9 Respond on scene. My primary job as a supervisor is to maintain  
10 the scene, make sure the crime scene set up properly, have  
11 detectives interviewing witnesses, and I'm supposed to gather  
12 information from them that relate to my supervision.

13 Q Okay. So when you got on scene, what did you observe?

14 A Observed officers on scene, crime scene, tape fire around  
15 the area, and other detectives on scene are interviewing  
16 witnesses already.

17 Q Right. So, you told us one of your responsibilities is  
18 coordinating. Is that you did in this case?

19 A Yes.

20 Q Could you tell us a little bit about what you did when you  
21 arrived on scene as far as coordinating?

22 A Just gather information the victim's name. Find out where  
23 witnesses were located, make sure detectives were talking to  
24 witnesses, whether they need to go back to the station for a  
25 formal interview or to interview them on scene. Have direct

1 officers to see if they can get video surveillance in the area  
2 and then also answer questions for my supervision.

3 Q Did you personally observe the victim?

4 A I did.

5 Q And did you observe multiple shell casings?

6 A Yes, I did.

7 Q And Sgt. Cummins, did you yourself speak with anybody in  
8 this case on scene?

9 A Yes, I did.

10 Q And who did you speak with?

11 A It was a -- it was an employee at RD Logistics.

12 Q And what did you learn?

13 A I learned that he received a video from one of his truck  
14 drivers and he provided that video to me.

15 Q And what was this video about?

16 A It was really hard to determine. It was he sent a new via  
17 text. It was really small. It was very grainy. It was  
18 supposedly after the incident occurred, after the shooting of  
19 the vehicle leaving the area.

20 Q And you actually watched this yourself?

21 A Yes, I did.

22 Q And you said it was really grainy. Did you find anything  
23 of evidentiary value from this video?

24 A I did not.

25 Q Sorry, did you have any other involvement in this case?

1 A Just the supervisor I just make sure that detectives are  
2 investigated properly, review all the paperwork, and just make  
3 sure I can answer any questions. My supervision has the case.

4 Q Okay. Thank you, Sergeant I have nothing further.

5 A Thank you.

6 CROSS-EXAMINATION OF LUCAS CUMMINS

7 BY: MR. KING

8 Q Sgt. Cummins, you said your job is -- you were there. Part  
9 of it was to gather information?

10 A As a supervisor. Yes, sir.

11 Q And then provide it to the people above you?

12 A Yes, sir.

13 Q So you sit there. You had an idea?

14 A Yes, sir.

15 Q Was it sent to your phone?

16 A Yes, it was.

17 Q Okay. Do you know where it is?

18 A Do I know where it is?

19 Q The video?

20 A I do not.

21 Q It's been lost?

22 A I believe it has. Because I found out last week it was not  
23 in the case file.

24 Q That's not good, right to lose evidence?

25 A That was my -- my guess it was my bad on that.

1 Q But you're saying it risks saying it didn't matter because  
2 in the end, anyway?

3 A It didn't have any evidentiary value to it.

4 Q We don't need to see it?

5 A No.

6 Q I have no questions.

7 THE COURT: [Indiscernible]

8 MR. ABSHIRE: All right. Briefly, Your Honor.

9 REDIRECT EXAMINATION OF WITNESS, LUCAS CUMMINS

10 BY: MR. MR. ABSHIRE

11 Q Sgt. Cummings, your role as a managing a crime scene, do  
12 you collect every little thing that you come across?

13 A Me personally, no.

14 Q Just would -- you just collect things of evidentiary  
15 value?

16 A Correct.

17 Q And from that video, were you able to determine an ID?

18 A No.

19 Q Did you see anything of what was going on?

20 A I could not.

21 Q So with it being low quality. Did you determine that it  
22 had no evidentiary value?

23 A That's true.

24 Q No further questions. Thank you. No question.

25 THE COURT: Thank you, Cummins.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: All right, ladies and gentlemen.

3 THE COURT: Our little bench conference w discussed how  
4 much before we break for late for lunch. And so we're going to  
5 break now. Ask you all to be back at. 1:30 give you all enough  
6 time. That's an hour and 15 minutes. Great. Okay. And we'll see  
7 you then. Don't discuss the case with anybody and have a good  
8 lunch. Thank you. Wait a minute. Let me hang on. So we... 1:45.  
9 How about that? One day I'll learn how to count. I'll tell you  
10 what. Keep the courtroom. Everyone. Please remain while the  
11 jury leaves. Okay. Anything before we break?

12 MS. LINDER: Nothing to say.

13 [Off the Record]

14 [Back on the record]

15 THE COURT: Okay. You have a jury is. They want  
16 clarification on what people can talk about in the  
17 deliberation. And oh, my God. A note. Now, explain whoever made  
18 that statement didn't want to write it down, so they told it to  
19 the bailiff. And this note is a result of that conversation.  
20 Did you send a letter out to the jurors wanted request for a  
21 note for work? Officer, I make both of these reports exhibits  
22 and we'll have a little discussion about discussions and  
23 deliberation. Did I read it?

24 MR. KING: Your Honor, I think we're trying to get  
25 everybody set up where we can test run the computer real quick.

1 THE COURT: I'm sorry. About the jurors, they're not  
2 talking back there about the case of somebody talking to them  
3 or letting them know not to talk about the case.

4 MR. KING: I send a message back and not discuss the facts  
5 of the case, but didn't go in there and listen.

6 THE COURT: Okay.

7 MR. KING: So I don't know. I'll just have to  
8 [Indiscernible]

9 THE COURT: Who is this potential next witness?

10 MR. ABSHIRE: Your Honor, we have some SLED folks. And  
11 then also Stephany Wilcome. Who is with North Charleston.

12 THE COURT: Okay. She's the one that just had a baby?

13 MR. ABSHIRE: Yes, Your Honor. She just texted me and said  
14 that she had just put the baby down for a nap and is about to  
15 drive back.

16 THE COURT: So why are you sleeping out here?

17 MR. ABSHIRE: It's like the side chain people, Your Honor.

18 THE COURT: Oh, okay. You all discussed this briefly?

19 MR. ABSHIRE: Yes, Your Honor. I'm sorry for not  
20 clarifying. It's the chain people we've discussed before and  
21 agreed that they could testify virtually. We will have other  
22 SLED folks come in tomorrow.

23 THE COURT: Okay. All right. Is that correct?

24 MR. KING: Yes. I didn't want to stipulate to the chain,  
25 but I didn't want to make them drive down from Columbia for

1 something that short as well. So I was trying to compromise.  
2 And I'm not -- I'm okay with virtual for them and for Ms.  
3 Wilcome under the circumstances.

4 THE COURT: Okay. Good. [Indiscernible].

5 MS. LINDER: I can tell that you're actually here. Yes.

6 THE COURT: It looks like going welcome. This is a virtual  
7 call.

8 MR. ABSHIRE: Okay. And Your Honor, if you all want to let  
9 her in, I'll just double check that she can hear and see us,  
10 and then we'll...

11 THE COURT: We'll introduce her.

12 MR. ABSHIRE: Hey, Deputy, can you hear me? Hey, Stephanie  
13 can you hear us? Stephanie can you hear me? [Indiscernible].  
14 All right, let's try this again. Can you hear me drifting? Can  
15 you hear me?

16 THE COURT: Still unable to hear her.

17 MR. ABSHIRE: Oh, no. We're -- we can see you, but we  
18 can't hear you. You can still hear me, but we're trying to work  
19 on the audio coming in from your... Hey, Stephany, can you hear  
20 us?

21 THE COURT: Right in Test. Test.

22 MR. ABSHIRE: Stephanie. Nothing on this Stephanie. If you  
23 give me a favor real quick and just sign out and sign back in  
24 and we'll just see if that does anything. We're having a hard  
25 time hearing you. Yeah. Let me see if this works. And...

1       Stephany?

2               MS. WILLCOME: I can hear you.

3               MR. ABSHIRE: There we go. Okay. Great.

4               THE COURT: Well, we're going to bring the jury out, and  
5 then we will -- I'm going to mute you, and we'll be back with  
6 you in a few minutes. Okay. Stay with [Indiscernible] All  
7 right. Let's get the jury. [Indiscernible]. I'll press on the  
8 button. All right, ladies and gentlemen, welcome back. I want  
9 to thank you for your patience, as I told you in my opening  
10 comments. We have three general ways that we receive evidence.  
11 One, was through stipulations of the parties. Two, was the  
12 introduction of tangible items and documents. Three, I told you  
13 was by way of testimony from the witness chair. Well, this is a  
14 little bit of a hybrid. You're going to introduce testimony  
15 through cyberspace with over WebEx. So it's basically the same  
16 as testify testimony. It is live, but it's just not local. One  
17 other thing that came to my attention over the lunch break was  
18 there was some question about what you all could discuss in the  
19 deliberation room. And I would emphasize to you under your oath  
20 that you are not to discuss the facts of this case, not in the  
21 deliberation room, not with any of the bailiffs, not with when  
22 you're not in the deliberation room. And I will tell you that  
23 the more you hear and the more you see during the trial, the  
24 temptation to discuss the case is going to grow. And the people  
25 that you're going to see tonight are going to want to know. You

1 cannot do it. And I told you why in my opening statement.  
2 Opening comments to you. Please remember that this is one of  
3 the ways that you are performing your civic duty. Protect our  
4 system of laws. That's how important it is. If there's improper  
5 discussion, the whole case will be thrown out and start over.  
6 So just hold true to your oath. Let your word be your bond.  
7 Okay. All right. Next witness.

8 MR. ABSHIRE: State call's Stephanie Wilcome.

9 THE CLERK: All right. [indiscernible] Please raise your  
10 right hand. Do you swear or affirm the testimony you shall give  
11 the jury, the court and jury is the truth, the whole truth, and  
12 nothing but the truth, so help you God?

13 MS. WILCOME: I do.

14 THE CLERK: Thank you. Please be seated. Spelling your  
15 last name and speaking loudly and clearly please.

16 THE WITNESS: Wilcome, W-I-L-C-O-M-E

17 DIRECT EXAMINATION OF WITNESS, TEPHANIE WILCOME

18 BY: MR. MR. ABSHIRE

19 Q All right. Just to be sure, can you see and hear me  
20 correctly?

21 A Yes, I do.

22 Q Just want to make sure. So if you could please tell the  
23 jury what you do for a living.

24 A I'm a crime scene investigator with North Charleston  
25 Police Department.

1 Q And how long have you been doing that?

2 A I've been with the crime scene unit for four years.

3 Q And do you hold any other positions?

4 A I also worked patrol, so I've been in law enforcement for  
5 a total of May will be eight years.

6 Q Okay. And were you -- what was your position in 2019?

7 A In May of 2019, I was a crime scene investigator.

8 Q Okay. And are you familiar with the -- this case?

9 A I am.

10 Q And what was your involvement with this case?

11 A I assisted executing a search warrant with detectives.

12 Q Okay. Can you give us a little background information as  
13 to where you were executing the search warrant or what you were  
14 doing exactly.

15 A I was told to respond to [REDACTED]. Yeah, [REDACTED] Cozy Corner Road  
16 and monks corner. due to a suspect being detained.

17 Q And was that suspect detained and then arrested?

18 A Yes.

19 Q And was that suspect Thomas McFadden?

20 A Yes.

21 Q And tell me if you could just walk us through your  
22 involvement of that search warrant.

23 A So when I got there, all the evidence had been removed,  
24 and so I just photographed everything and packaged it.

25 Q Okay. And going through packaging, could you walk us

1 through the safety procedures you take to make sure nothing is  
2 contaminated?

3 A I always utilize gloves and then everything is packaged  
4 separately in different bags and then secured into my patrol  
5 vehicle.

6 Q Okay. And did you do that in. In this case?

7 A Yes.

8 Q Was there a firearm recovered in this case?

9 A I've recovered two firearms.

10 Q And was ---

11 MR. KING: Your Honor, objection. I'd renew my pretrial  
12 motion to suppress.

13 THE COURT: Same thing with you.

14 MR. ABSHIRE: May we approach Your Honor?

15 THE COURT: Yeah.

16 MR. ABSHIRE: Thank you.

17 THE COURT: All right. You may proceed.

18 BY: MR. MR. ABSHIRE

19 Q Did you recover a 7.62 firearm?

20 A I did.

21 Q And is there another name for that firearm?

22 A A mini Draco.

23 Q Okay. And what kind of firearm are we talking about?

24 A It's a rifle.

25 Q Okay. And did you -- you told us you packaged. Did you

1 also package this firearm?

2 A I did.

3 Q And did you secure it to be taken in North Charleston?

4 A I did.

5 Q Or more specifically, evidence at North Charleston.

6 A Correct.

7 Q All right. If you were to see that packaging, would you  
8 recognize it?

9 A I should.

10 Q I apologize. Did you also collect a couple of magazines?

11 A I did.

12 Q Were those magazines loaded?

13 A Yes.

14 Q Were they loaded with 7.62?

15 A Yes.

16 Q And was all of that packaged separately, but also  
17 together?

18 A Yes.

19 Q And what I mean by that is each individual piece of  
20 evidence to that receiver bag?

21 A And with the firearms, they probably would have  
22 and I'm [Indiscernible] of the firearm.

23 Q Okay. And if you were to see those, would you recognize  
24 all of that?

25 A Yes.

1 Q Stephanie, I'm going to attempt to show you State's  
2 Exhibit 134, 193 and 194.

3 MR. KING: Your Honor, objection in evidence is being  
4 published in a jury that hasn't been entered yet.

5 THE COURT: It had been introduced yet. So.

6 BY: MR. MR. ABSHIRE

7 Q Okay. Your Honor may I approach? Stephanie can you see me?

8 A Yes.

9 Q Okay. So I'm going to hold this up. Can you see the  
10 numbers on this packaging?

11 A Barely. Nope. I can see my initials.

12 Q Okay. Do you recognize this as the package in which you  
13 put the Draco?

14 A Yes.

15 Q As well as the magazines?

16 A Yes.

17 Q And does it appear to be in the same condition as when you  
18 put them in there?

19 A Yes.

20 Q Your Honor, at this time, we would seek to admit in  
21 evidence State's Exhibit 134, 193 and 193.

22 MR. KING: This new pre-trial objection motion to suppress

23 ---

24 THE COURT: The previous objections.

25 BY: MR. MR. ABSHIRE

1 Q So, Stephanie, after you package these items, you told us  
2 a little bit about taking them to North Charleston evidence.

3 What's a chain of custody?

4 A So chain custody is a piece of paper that has a  
5 description of each item listed, and then it has a list of  
6 names of who has custody of items and whether it's transferred  
7 to another person. It lists all of that on there.

8 Q And when you take a new piece of evidence to North  
9 Charleston evidence, does it create a new chain of custody?

10 A Yes.

11 Q And would that include your name as the person bringing  
12 that evidence?

13 A Yes.

14 Q And like you said, any transfer, would your name also be  
15 on that?

16 A Yes.

17 Q Would that include the date of transfer as well?

18 A Yes.

19 Q Okay. Did you transport the items we just looked at to  
20 North Charleston?

21 A I do.

22 Q And what day did you transport them?

23 A On May 1st.

24 Q And did you note in the chain of custody that you -- you  
25 were taking them to North Charleston evidence?

1 A Say that again.

2 Q I apologize. Okay. When you were bringing them in and  
3 creating the chain, was that noted on May 1st of 2019?

4 A Yes.

5 Q With your name on it?

6 A Yes.

7 Q And once you had processed it, is that where crime scene  
8 tech ivy would have been able to access them?

9 A Correct.

10 Q And where he did, in fact, access one of the items on May  
11 2nd?

12 A Correct.

13 Q Okay. And Stephany, did you ever perform any kind of  
14 testing on one of the items that we just talked about?

15 A I did.

16 Q And what did you do?

17 A I took DNA swabs and fingerprints.

18 Q Okay. And we already established that you had brought it  
19 to North Charleston Evidence then crime scene tech Ivy had  
20 received it. Did you have to sign from him to receive it in the  
21 chain of custody?

22 A Correct.

23 Q And would that have been on May 2nd?

24 A Yes.

25 Q So what did you do when you signed it out and then perform

1 these tests? Could you walk us through that?

2 A So I began with taking a DNA swab, which requires its two  
3 cotton swabs. One is wet, one is dry, and we go over the  
4 firearm and it'll collect any DNA that will be on the firearm.  
5 And then those swabs were placed into a box and sealed.

6 Q And what do you use to swab?

7 A Just the cotton swabs and that are sterile.

8 Q Okay. And with that cotton swab, would that then also  
9 create another chain of custody?

10 A Yes.

11 Q And would that also include all the paperwork you had just  
12 discussed, like with the other items you brought in?

13 A Yes.

14 Q And did you enter those swabs at North Charleston Evidence  
15 on May 2nd?

16 A I did.

17 Q Following your testing?

18 A Yes.

19 Q And did you sign your name on it?

20 A I did.

21 Q And that's where evidence technician cop would have been  
22 able to access them. Okay. And in fact, did on May 3rd, 2019?

23 A Yes.

24 Q Stephanie, I apologize. I forgot to ask. After you swabbed  
25 them, what safety precautions do you take so that nothing is

1       contami nated?

2       A     Again, I always utilize gloves, and then it's sealed  
3       immedi ately with evidence tape, which I initial on the tape as  
4       well as the envelope, so it can't be tampered with.

5       Q     Okay. And where all did you swab on the Draco?

6       A     Would have been the handle, like the grip, the trigger, as  
7       well as the wooden part.

8       Q     And then after you finished your analysis, you've taken  
9       the swabs to North Charleston Evidence. Did you take the  
10      firearm back to North Charleston Evidence?

11      A     Yes.

12      Q     And would that have been noted in the chain of custody?

13      A     Yes.

14      Q     Did you do that on May 2nd, 2019?

15      A     Yes, I did.

16      Q     And would that have been where evidence technician Wilder  
17      would have accessed it on May 6th, 2019?

18      A     Yes

19      Q     Stephany. Excuse me. If you were to see those swabs that  
20      you took off of the mini Draco, would you recognize them?

21      A     Yes.

22      Q     Okay. I'm going to attempt to show the camera. State's  
23      Exhi bi t 172.

24      A     Yeah.

25      Q     Do you see that?

1 A Yes.

2 Q And what is this [Indiscernible].

3 A That is swabs with the chain of custody.

4 Q Does this appear to be the swabs that you collected?

5 A And can you flip it around? Yes.

6 Q Okay. And does it appear to be altered in any way since  
7 you packaged it?

8 A No.

9 Q Your Honor, at this time, we would see to it that State's  
10 Exhibit 172.

11 MR. KING: It's just going on my previous pretrial motion  
12 to suppress.

13 THE COURT: State's 172, [Indiscernible] the same  
14 objection. Go ahead.

15 BY: MR. MR. ABSHIRE

16 Q And Stephany you told us that you not only swabbed the  
17 mini Draco, but you printed it. Were you able to left any  
18 prints off of it?

19 A I don't believe so.

20 Q Thank you, Stephany. That's all I have.

21 A Thank you.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION OF WITNESS, STEPHANIE WILCOME

24 BY: MR, KING

25 Q You said you tested that firearm for prints and no prints

1 found?

2 A No, I don't believe so.

3 Q Did you recover a cell phone from inside on the couch?

4 A I did recover the cell phone.

5 Q And did you recover a cell phone from the front seat of  
6 the car?

7 A Yes.

8 Q I have no further questions, Your Honor.

9 THE COURT: Okay. Anything else?

10 MR. ABSHIRE: No, Your Honor.

11 THE COURT: Okay. Thank you, Ms. Wilcome. You are released  
12 from cyberspace, ma'am.

13 THE WITNESS: Thank you.

14 MS. LINDER: State calls Sam Souther.

15 THE CLERK: Raise your right hand. Please raise your right  
16 hand and put your left hand on the Bible. Do you swear or  
17 affirm the testimony that you shall give the court and the jury  
18 is the truth, the whole truth, and nothing but the truth, so  
19 help you God?

20 MR. SOUTHER: I do.

21 THE CLERK: Please be seated. Please state your full name,  
22 spelling your last name loudly and put it into the microphone.

23 MR. SOUTHER: Samuel Stevens Souther. That's, S-O-U-T-H-E-  
24 R.

25 DIRECT EXAMINATION OF WITNESS, SAMUEL SOUTHER

1 BY: MS. LINDER

2 Q Good afternoon.

3 A [Indiscernible]

4 Q Where are you employed?

5 A North Charleston Police Department.

6 Q And how long have you been with North Charleston Police  
7 Department?

8 A I've been a police officer since 2006. With North  
9 Charleston since 2008.

10 Q And what are your current duties?

11 A Currently, I'm the supervisor for the L.P. Unit, which is  
12 the it's essentially the fugitive unit intelligence led  
13 policing.

14 Q And can you please tell the jury a bit about your  
15 education, training and experience?

16 A I have an associate's degree in criminal justice from  
17 Cowley County Community College in Kansas. Joined the Mount  
18 Pleasant Police Department in 2006. Moved over to North  
19 Charleston in 2008. I was assigned to the Special Operations  
20 Division in 2009, where I've been ever since. I spent seven  
21 years with the US Marshals Fugitive Task Force. From there I  
22 was promoted and put over the L.P. unit.

23 Q All right. And what was your position in your duties back  
24 on May -- in May of 2019.

25 A I was with the US Marshals Fugitive Task Force.

1 Q And what was your primary role as that with the task force  
2 with the marshals?

3 A Role is to gather and develop intelligence on locations of  
4 wanted subjects, find them and arrest them.

5 Q And were you involved with this case, the state versus  
6 Thomas McFadden in any way?

7 A Yes, ma'am.

8 Q How did you first get involved in this case against  
9 McFadden?

10 A I was contacted by the North Charleston Police Department  
11 detectives unit where they briefed me on the case and then sent  
12 me the warrants. And that's when I began my investigation.

13 Q When you say sent you the warrants, what does that mean?

14 A It's either emailed to me or handed to me you know, the  
15 papers. So it's I don't recall which one.

16 Q In these warrants. These are arrest warrants?

17 A Yes, ma'am. Active arrest warrants. Yes.

18 Q You have an arrest warrant in hand, and you're trying to  
19 locate this person to serve their arrest warrant?

20 A Correct.

21 Q Okay. All right. When you receive that request from the  
22 North Charleston detectives, what did you do?

23 A Once I got the case, that's when I began my investigation.  
24 Like I say, gathering and developing intelligence on where he  
25 may be.

1 Q And after gathering this intel, when and where did you act  
2 on apprehending Mr. McFadden?

3 A It was May 1st, and it was ■■■ cozy, cozy corner in Moncks  
4 corner.

5 Q And Moncks Corner is at Berkeley County or Charleston  
6 County?

7 A Berkeley County.

8 Q Can you take the jury through what happened on May 1st,  
9 please?

10 A So on May 1st. You know, through my investigation, I  
11 developed this this particular residence as being a possible  
12 place for the defendant. I drove up there. I drove past the  
13 residence. I saw an individual that matched his description --  
14 description standing in the doorway of the residence. I'm in an  
15 undercover vehicle. It doesn't look like a police car at all. I  
16 drove down the road, waited for a little bit, obviously  
17 stopping right in front of the house and staring. It's not  
18 going to be that great of an idea. So I continued down, waited  
19 for a while, turned around, proceeded back up the road, and  
20 when I passed by again, I saw him again and confirmed it was  
21 Mr. McFadden, the defendant.

22 Q And after you confirmed it was the defendant at ■■■ cozy  
23 corner near Berkeley County. What did you do next?

24 A Then I notified the rest of my team. The task force and  
25 the task force comprises of officers from all different

1 agencies, along with the US Marshals. One of the task force  
2 officers is a Berkeley County deputy. So then he, in turn  
3 contacted, Berkeley County units. Another individual is a  
4 Charleston County deputy. Being that it was a very serious  
5 case, we wanted to have a helicopter out there, so we contacted  
6 the helicopter Unit.

7 MR. KING: Objection. The reference to a helicopter.

8 THE COURT: I'm sorry.

9 MR. KING: Can we -- may I approach, Your Honor?

10 THE COURT: Okay.

11 THE COURT: BY: MS. LINDER

12 Q All right. So you have Berkeley County, the Marshals, I  
13 believe you said North Charleston and Charleston County all out  
14 there helping.

15 A Correct.

16 Q After all those other agencies got involved, can you take  
17 through what happened next?

18 A So our team will keep -- keep a visual on the house. That  
19 way we know that the suspect doesn't leave. While that's going  
20 on, I will get a staging area for all the units that are  
21 showing up to the scene and I'll brief them on the case and get  
22 a game plan on how we're going to approach the House as safely  
23 as possible. Once that's done, then we all converge on the  
24 residence and surround it.

25 Q And law enforcement observed the defendant going into or

1 in the doorway of the residence.

2 A Correct. Before we converged on the residence.

3 Surveillance unit -- units observed the defendant exit the  
4 house.

5 MR. KING: Hearsay.

6 THE COURT: Well, I don't think you said what -- don't say  
7 anything. Anybody tells you what you can do. Testify to what  
8 you did as a result of what you learned in the investigation.

9 THE WITNESS: Yes, sir.

10 BY: MS. LINDER

11 Q All right. So you said surveillance was going on and you  
12 are all staging after the staging what did you do next to start  
13 affecting warrant service?

14 A We -- we surrounded the residence on all sides. At that  
15 point, we turned on all of our lights. I got on the PA system  
16 with my truck, hit the siren numerous times. Get on the PA,  
17 start calling everyone out of the residence.

18 Q And did anybody come out immediately not quite  
19 immediately. But the defendant and another subject eventually  
20 did come out.

21 A All right. And was the defendant taken into custody at  
22 that time?

23 A Yes.

24 Q And the female who came out of the house? Was she living  
25 at that residence?

1 A Yes, ma'am.

2 Q And did anyone else return home while you were there on  
3 scene?

4 A Yeah. The female's mother showed up to the scene after the  
5 fact.

6 Q And did she live at the residence?

7 A Yes, ma'am.

8 Q Based upon the information that the two females gave.  
9 Well, actually, let me go back. I apologize. There's this.  
10 There's this house at [REDACTED] cozy corner, and the vehicles right  
11 there?

12 A Yes -- yes there was one vehicle.

13 Q What vehicle?

14 A It was an Infiniti. I don't recall the particular year off  
15 the top of my head. An Infiniti SUV.

16 Q All right. And based on the information that the  
17 females...

18 MR. KING: Objection. Hearsay.

19 THE COURT: She just asked a question. What was your  
20 question?

21 MS. LINDER: My question is, based upon the information  
22 received, what did he do?

23 THE COURT: Okay. That's fine. Go ahead.

24 BY: MS. LINDER

25 Q Based upon the information received from the females, what

1 did you do?

2 A So the females, both individually and separately, stated  
3 that ---.

4 MR. KING: Objection, hearsay.

5 BY: MS. LINDER

6 Q What did you do as a result of the information from the  
7 females?

8 A I let the Brooklyn County unit know that the vehicle  
9 needed to be taken off the property.

10 Q All right. And then with that vehicle was a tow truck  
11 called out for it?

12 A Yes, ma'am.

13 Q And did Berkeley County call that tow truck out for it?

14 A Yes.

15 Q Is this in compliance with their policy?

16 A Yes.

17 Q Whenever law enforcement tows a car, can you kind of  
18 explain what y'all do? First things first, what your policy is?

19 A Yeah. So anytime a vehicle is towed in any circumstance,  
20 an inventory will be made of any items that are in that  
21 vehicle. That way there's -- they're all accounted for because  
22 it's going to be, you know, touching numerous hands. And -- and  
23 you know, if someone shows back up to pick up that vehicle and  
24 they're missing something, then at least it was documented by  
25 the law -- by law enforcement prior to it getting towed away.

1 Q And did you assist in this inventory?

2 A Yes.

3 Q What door did you open?

4 A The rear, right door.

5 Q And what did you see immediately upon opening it?

6 A A mini Draco assault weapon.

7 Q And where was it located?

8 A On the floorboard of the rear right or rear passenger  
9 floor floorboard.

10 Q Was there anything significant about the Mini Draco?

11 A Yes.

12 Q And what is that?

13 A It perfectly matched the description of the murder weapon.

14 Q And what was done with that mini Draco that you saw  
15 immediately upon opening the door?

16 A As soon as I saw it, I contacted detectives and let them  
17 know about the weapon.

18 Q And that mini Draco was the serial number clearly visible?

19 A Yes.

20 Q And did Crime Scene come out and document the scene and  
21 assist with completing any inventory?

22 A Yes.

23 Q And do you recall who from crime scene that was?

24 A I do not.

25 Q All right. This time I'll show you some State'e Exhibit 18

1 and 19. You can look at these, please. Do you recognize them?

2 A Yes, ma'am.

3 Q How do you recognize them?

4 A That's the location of the residence that defendant was  
5 arrested at.

6 Q Do those fairly accurately represent the location back in  
7 2019?

8 A Yes, they do.

9 Q Your Honor, at this time, the state would seek to admit  
10 I'm sorry, State's 18 and 19 into evidence.

11 THE COURT: No objection?

12 MR. KING: No objection, Your Honor.

13 THE COURT: Okay. No objection.

14 [State's Exhibit No. 18 and 19 was Admitted into Evidence]

15 BY: MS. LINDER

16 Q Bring your attention to State 18. All right. Can you  
17 please tell the jury that's a touch screen in front of you? If  
18 that helps. Can you please tell the jury what they're looking  
19 at here in this picture?

20 A Yes. So this is Cozy Corner. This is the residence where I  
21 observed the defendant and which she was subsequently arrested  
22 at.

23 Q And what do you mean? What is this right here?

24 A That's the Highway 52.

25 Q All right. And then states Exhibit 19. What is this?

1 A That's the house. ■ Cozy Corner.

2 Q All right. At this time, I'll show you some more of the  
3 State's 124, 125, 127, 128, 129, 130 and 131. You can take a  
4 look at these, please. After you've looked at them. Do you  
5 recognize them?

6 A Yes, ma'am.

7 Q And how do you recognize them?

8 A That's the vehicle. The the one and only vehicle that was  
9 at the residence. And it's also the vehicle that the Mini Draco  
10 was located.

11 Q All right. Do those photos fairly and accurately represent  
12 what you witnessed and what you were a part of back on May the  
13 1st of 2019?

14 A Yes, ma'am.

15 Q Your Honor, at this time, the State would seek to admit  
16 124, 125, 127, 128, 129 130 and 131 into evidence.

17 [State's Exhibit No. 124, 125, 127, 128, 129 130, 131 were  
18 Admitted into Evidence]

19 MR. KING: Subject to my pretrial motions to suppress.

20 THE COURT: Okay.

21 BY: MS. LINDER

22 Q All right. The state's Exhibit 124. What is this show?

23 A That's the rear end of the vehicle. The Infiniti.

24 Q State 125.

25 A That's the location where the Mini Draco was right there

1 on the floorboard.

2 Q State 127.

3 A That is the mini Draco.

4 Q State 128.

5 A A mini Draco.

6 Q And what is this information right here?

7 A That's the caliber. And then you get the serial number.

8 Q 129.

9 A That's again, I mean, mini Draco.

10 Q And what is this information over here?

11 A The maker of the -- of the weapon.

12 Q 130.

13 A That's a 30 round magazine that goes in that mini Draco.

14 Q 131

15 A Another 30 round magazine loaded

16 Q All right. I'm going to show you where I've been marked

17 and entered into evidence as states. 134. Do you recognize it?

18 Q Yes, ma'am. Can you please tell the jury what this is?

19 A That is the mini Draco that was located in the vehicle.

20 Q And this is the firearm that you found in the back

21 passenger floorboard?

22 A Yes, ma'am.

23 Q [Indiscernible]. Aside from your involvement there on May

24 the 1st of 2019, did you do anything whatsoever with the murder

25 incident, aside from what you just told the jury about?

1 A Yeah. I was also tasked to locate and arrest a co-  
2 defendant in this case.

3 Q Okay. And did you do that as well?

4 A Yes, ma'am.

5 A Thank you. Don't have anything further for you. Please  
6 answer anything the defense may have.

7 MR. KING: Just a question. So in your report, you put  
8 that he was taken into custody without incident, right?

9 THE WITNESS: Yes.

10 THE COURT: That's all. All right. Thank you. You may  
11 stand down. Thank you.

12 MS. LINDER: Your Honor, we request that this witness be  
13 released from his subpoena.

14 THE COURT: No objection?

15 MR. KING: No objection.

16 THE CLERK: The left hand on the Bible. Hold your right  
17 hand back. Do you swear or affirm the testimony you shall give  
18 the court in this trial? The Court and the jury in this trial  
19 is the truth, the whole truth, and nothing but the truth, so  
20 help you God.

21 MR. IVEY: I do.

22 THE CLERK: All right. Thank you. Please have a seat.  
23 Please state your full name, spelling your last name loudly and  
24 clearly into the microphone.

25 THE WITNESS: Clinton Ivey. Last name, I-V-E-Y.

1 DIRECT EXAMINATION OF WITNESS, CLINTON IVEY

2 BY: MR. MR. ABSHIRE

3 Q Good afternoon Mr. Ivey.

4 A How are you, sir?

5 Q I'm doing well. Where are you currently work Mr. Ivey?

6 A Fayetteville, Tennessee. Fayetteville Police Department.

7 Q Okay. And did you work in North Charleston before?

8 A I did, sir.

9 Q And what did you do in North Charleston Police?

10 A I was a supervisor of the crime scene unit.

11 Q How long did you do that?

12 A Five years. Four -- four to five years.

13 Q Okay. And what are the roles and duties of a crime scene  
14 technician?

15 A Crime scene technicians will go out to the scene. They'll  
16 process the scene collecting evidence, looking for trace  
17 evidence, packaging, submitting, and then turning over via  
18 chain of custody to evidence.

19 Q Okay. And where are you in that position in 2019?

20 A Yes, sir, I was.

21 Q Were you involved with the state versus McFadden?

22 A Yes.

23 Q McFadden. Excuse me.

24 A Yes, sir.

25 Q And what was your involvement?

1 A Did not go to the initial scene. I believe there were a  
2 couple of pieces of evidence that came in past the incident  
3 date. And that's where my involvement came in.

4 Q Okay. If you could please tell the jury what your  
5 involvement was.

6 A There -- there was a firearm that came into possession of  
7 North Charleston Police Department. One of our jobs in the  
8 crime scene unit. Any weapon that came in as evidence, we would  
9 swab for DNA and then we'd fingerprint to try to collect  
10 further evidence in the case via chain of custody was released  
11 to me. I swabbed it, packaged the swabs, fingerprinted the gun,  
12 and then submitted it back into evidence.

13 Q Okay. So I'm going to make you back up just a hair.

14 A Yes, sir.

15 Q When you are retrieving this firearm to test it, are you  
16 referring to a mini Draco?

17 A Yes, sir.

18 Q And in retrieving it, would you have signed off with the  
19 chain of custody?

20 A Yes, sir. There was a chain of custody form that documents  
21 any transfer to any individual that takes possession of that  
22 piece of evidence.

23 Q And we learned a little bit about chain of custody but  
24 does that include the date? Date?

25 A Yes, sir.

1 Q And what you're transferring it?

2 A Yes, sir.

3 Q As well as your name?

4 A Yes, sir.

5 Q Did you receive that mini Draco from Stephany Wilcome on  
6 May 1st, 2019?

7 A Do you have the chain of custody handy by chance, just so  
8 I can confirm that?

9 Q Yeah.

10 A I just want to make sure my dates are correct. Yes, sir.

11 Q And did you retrieve that from Stephany Wilcome in order  
12 to collect those swabs?

13 A Yes, sir.

14 Q And you told us you did, in fact, take the swabs. Tell us  
15 a little bit about making sure there's nothing contaminated,  
16 whatever you collect that.

17 A So in the -- in the crime scene laboratory, what we have  
18 is we have surgical stainless steel counters that are cabside  
19 wiped after every piece of evidence. We also use butcher paper  
20 to put over the surgical surgical steel to ensure there's no  
21 cross-contamination. The canvas side wipes clean the surfaces  
22 so there's no cross-contamination. Once the evidence is  
23 swabbed. And this one, there was a Draco that was swabbed. And  
24 the magazine's part of our practice is when we're handling the  
25 gun, we use a set of gloves. We won't take these gloves off to

1 ensure there's no cross-contamination between the gun and the  
2 magazine. We'll put on new pair of gloves magazine. We'll swab  
3 after the DNA swabs were done, they were packaged individually  
4 and then sealed up and then the gun was printed.

5 Q Okay. And where do you swab again? Whenever you're  
6 swabbing for DNA?

7 A That is in the lab with the stainless.

8 Q Where on the gun physically do you swab?

9 A Okay. What -- what we do is we swab the grips. My main  
10 thing, over 5000 guns that I've processed through North  
11 Charleston Crime scene. I would do the grips left, right  
12 backstrap. I would do exterior of the trigger guard interior  
13 the trigger guard, and then the physical trigger of the gun.  
14 The magazines, we would do the butt plate up the back, the  
15 loading mechanism where your thumb would normally be pushing  
16 down rounds and then left and right.

17 Q Okay. And you packaged these swabs separately. Did you  
18 also print this gun?

19 A Yes, sir.

20 Q And what's the process for printing?

21 A What we do is we we take it to the print room. We would  
22 use black fingernail fingerprint powder and a print brush, use  
23 ultraviolet -- ultraviolet light to see if there's any prints  
24 with these. Looking back at my notes, there were no viable  
25 prints on this weapon and or magazine.

1 Q Did that surprised you at all?

2 A No -- no, sir. It's -- it's -- I don't want to say rare,  
3 but it's pretty rare to get a print back on the gun due to the  
4 textures of the gun. All cleaning. You got to remember, when  
5 you shoot a gun, there's high heat. That muzzle flash that can  
6 a lot of variables that that can mess up prints on the gun. So  
7 it's pretty rare to get get a print back.

8 Q Okay. And once you finished this analysis, did you make  
9 sure everything was packaged securely?

10 A Yes, sir.

11 Q And did you resubmit it back to North Charleston?

12 A Yes, sir. It's via chain of custody. It would be  
13 resubmitted back to evidence from my custody to their custody.

14 Q More specifically, Stephany Wilcome on May 2nd, 2019?

15 A Yes, sir.

16 Q Signing for it?

17 A Yes, sir.

18 Q So it would be documented in the chain of custody?

19 A Yes, sir.

20 Q Now, you told us that you packaged the swabs separately.  
21 If you were to see that packaging, would you recognize it?

22 A Yes, sir.

23 Q Mr. Ivey, I'm handing you what's been marked as State's  
24 Exhibit 174 and 175. What is it?

25 A Those are my north. The North Charleston evidence bags

1 inside appears to be a Richland County evidence bag. But the  
2 white ones on the interior, what we would pack is the DNA swabs  
3 in.

4 Q And do those appear to be the swab that you took from the  
5 mini Draco?

6 A Yes, sir. Case number 7409.

7 Q Does it appear that they've been changed or altered in any  
8 way?

9 A No, sir.

10 Q All right. At this time, we would seek to admit State's  
11 Exhibit [Indiscernible] through 174 and 175.

12 MR. KING: The same objection based on the pretrial  
13 motion.

14 THE COURT: The previous.

15 MR. KING: Yeah.

16 [State's Exhibit No. [Indiscernible] though 174 and 175 was  
17 Admitted in Evidence]

18 MR. ABSHIRE: Thank you, Mr. Ivey. That's all I have for  
19 you.

20 THE WITNESS: Thank you sir.

21 MR. KING: I have no questions. Your Honor.

22 THE COURT: All right. Thank you, sir.

23 THE WITNESS: Thank you, sir.

24 THE COURT: Any objection to released from subpoena?

25 MR. ABSHIRE: Thank you, sir. State calls Officer Hannah

1 Weathington.

2 THE CLERK: Push your left hand on the button. I'll be  
3 right back. Do you swear or affirm that the testimony you shall  
4 give the court and the jury in this case is the truth, the  
5 whole truth, and nothing but the truth, so help you God?

6 MS. WEATHINGTON: I do.

7 THE CLERK: Thank you. Please be seated. Please state your  
8 full name, spelling your last name loudly and clearly into the  
9 microphone.

10 MS. WEATHINGTON: Hannah Weathington, W-E-T-H-I-N-G-T-O-N.

11 DIRECT EXAMINATION OF WITNESS HANNAH WEATHINGTON

12 BY: MR. MR. ABSHIRE

13 Q Hi Ms. Weathington?

14 A Hi.

15 Q Ms. Weathington could you tell the jury where you were work?

16 A I currently work at Thorne Research, but I was a prior  
17 evidence tech at North Charleston Police Department.

18 Q And how long did you do that for?

19 A Five years.

20 Q What roles and responsibilities does an evidence  
21 technician have in North Charleston?

22 A We collect and preserve all the evidence submitted to us  
23 from all the officers.

24 Q Does that include transfer of evidence between yourself  
25 and other officers?

- 1 A It does.
- 2 Q And does that include creating checkouts?
- 3 A It does.
- 4 Q And were you involved with this case in any capacity?
- 5 A I was. Yes.
- 6 Q What was your involvement with this case?
- 7 A Intake casings and, I believe some personal items.
- 8 Clothing.
- 9 Q Okay. You receive a t shirt on March 15th, 2019?
- 10 A Yes.
- 11 Q And would that have been noted in the chain of custody?
- 12 A It was.
- 13 Q Did you receive that from Det. Cook?
- 14 A I did.
- 15 Q And did you also receive 7.62 shell casings?
- 16 A I did.
- 17 Q Are those those casings?
- 18 A Yeah, that's the casings that I was speaking of.
- 19 Q Okay. And would that also be noted in the chain of custody
- 20 on March 15th, 2019?
- 21 A Yes, sir.
- 22 Q Okay. If you were to see those items, would you recognize
- 23 them?
- 24 A Yes.
- 25 Q [Indiscernible]. May I approach Your Honor?

1 THE COURT: Uh-huh

2 Q That's why I'm showing you what's been marked for ID.  
3 purposes is State's Exhibit 102.

4 A Okay.

5 Q 103, 104, 105 and 106.

6 A Okay.

7 Q Would you -- I apologize. Would you please examine these  
8 and tell us what they are?

9 A Okay. This is the t shirt with printed picture on front.  
10 And then each of these are 7.62 casing. Another 7.6, two casing  
11 another one. And so it's four total.

12 Q And do these appear to be the items that we were just  
13 discussing?

14 A Yes, sir.

15 Q The items that are these the items that you would have  
16 noted in your chain of custody?

17 A Yes, sir.

18 Q Receiving from Det. Cook on March 15th, 2019.

19 A Yes.

20 Q And then in turn, where Sgt. Ledford would be able to  
21 access them in North Charleston?

22 A Yes.

23 Q And in fact, it access to them on March 25th, 2019?

24 A Correct.

25 Q Thank you, Ms. Weathington. That's all I have for you.

1 A Thank you.

2 MR. KING: I have no questions, Your Honor.

3 THE COURT: All right. Thank you, ma'am. You're released  
4 from subpoena absent any objection.

5 THE WITNESS: Okay. Thank you. Sure I need to see this.

6 THE COURT: Leave them right there ---

7 THE WITNESS: Okay.

8 MR. KING: The State calls Officer Vanessa Kopp.

9 THE COURT: Okay.

10 THE CLERK: Standing left hand on by the right hand. Do  
11 you swear or affirm the testimony you shall give the court and  
12 the jury in the trial of this case is the truth, the whole  
13 truth, and nothing but the truth, so help you out?

14 MS. KOPP: I do.

15 THE CLERK: Thank you. Please be seated. Please state your  
16 full name, spelling your last name loudly and clearly into the  
17 microphone.

18 THE WITNESS: My name is Vanessa Yvonne Kopp. Last name is  
19 spelled K-O-P-P.

20 DIRECT EXAMINATION OF WITNESS, VANESSA KOPP

21 BY: MR. MR. ABSHIRE

22 Q How are you doing, Vanessa?

23 A Doing good. How are you?

24 Q Absolutely good. Could you tell us where you currently  
25 work?

1 A I currently work at Cane Bay High School.

2 Q Okay. And did you work at North Charleston before?

3 A Yes. Yes, I did.

4 Q And what did you do at North Charleston Police?

5 A I was an evidence technician.

6 Q And we've heard a little bit about what evidence  
7 technicians do. Would that include the transfer of evidence  
8 between officers?

9 A Yes, sir, it would.

10 Q As well as to North Charleston evidence locker?

11 A Correct.

12 Q And annotating that in the chain of custody?

13 Q Yes, sir.

14 A Including their name?

15 A Correct.

16 Q Your name?

17 A Yeah.

18 Q And date of transfer?

19 A Yes, that is correct.

20 Q Were you involved with this case?

21 A Yes, sir.

22 Q And what was your involvement with this case?

23 A I did intake on a few of the evidence items that were  
24 brought in from crime scene and patrol.

25 Q Okay. Do you remember what those items were?

1 A Those items were two of the buccal -- buccal swabs from  
2 the mini Draco and then one DNA swab.

3 Q Okay.

4 A And the t shirt.

5 Q So would a buccal swab be from a person?

6 A It can be from a person. It can also be from the gun.

7 Q Okay. Did you receive a buccal swab from the defendant in  
8 this case?

9 A Correct.

10 MR. KING: Objection, Your Honor. Based on my pretrial  
11 motion to suppress.

12 THE COURT: Okay. Same ruling. Go ahead.

13 BY: MR. MR. ABSHIRE

14 Q Did you also receive swabs from another item?

15 A I'm sorry. Did you receive swabs from the defendant  
16 buccal?

17 Q Correct.

18 A Did you receive DNA swabs from another item?

19 Q From another item? Yes.

20 Q Okay. In -- would that have been from the mini Draco?

21 A Yes, sir.

22 Q Did you -- whenever you received those items, did you note  
23 it in the chain of custody?

24 A Yes, I did.

25 Q And whenever -- let's start with the mini Draco swab. Did

1 you receive that item on May 2nd, 2019?

2 A Yes.

3 Q And did you receive that from Stephanie Wilcome?

4 A Correct.

5 Q And then note it in the chain of custody?

6 A Yes.

7 Q If you were to see that item, would you recognize it?

8 A Yes, sir, I would.

9 Q Yeah. That part's right.

10 THE COURT: Yes.

11 Q But that's -- you. I'm showing you State's Exhibit 175 and

12 State's Exhibit 174 for identity -- identification purposes.

13 Excuse me. Are these the swabs that you received from Stephany

14 Wilcome?

15 A Yes, sir.

16 Q And are these the swabs from the mini Draco?

17 A Yes, sir, they are.

18 Q Here, I'll take those back

19 A Thank you.

20 Q So moving to the buccal swab, you told us that you

21 received that a buccal swab from the defendant. Did you receive

22 that on May 10th, 2019?

23 A Correct.

24 Q And would you have noted that in the chain of custody?

25 A Yes, sir, I would have.

1 Q And did you receive that from Det. Prichard on that day?

2 A Yes, I did.

3 Q And what'd you do with it? Did you put it in North  
4 Charleston evidence?

5 A Correct. I made sure it was properly packaged, notated  
6 where I was putting it and put it in the appropriate area.

7 Q And what is that where Sergeant Ledford then was able to  
8 access it on May 16th, 2019?

9 A Correct.

10 Q If you were to see that buccal swab, would you recognize  
11 it?

12 A Yes, sir.

13 Q [Indiscernible] I'm showing you what's my mark for  
14 purposes as State's Exhibit 173. Is this the buccal swab that  
15 we're referring to?

16 A Yes -- yes, sir.

17 Q And how do you know what it is?

18 A How do I know that it is? Because the bag is sealed and it  
19 is labeled T. McFadden.

20 Q Okay. I'll take it back. So you told us that you handled  
21 some casings as well, right?

22 A Correct. I believe so.

23 Q And would you have received those casings from Sgt.  
24 Leppard on May 2nd, 2019?

25 A Yes, sir.

1 Q Would that be noted in the chain of custody?

2 A Yes, it would.

3 Q And do you remember what you did with it? Did -- would you  
4 have taken it to North Charleston evidence?

5 A Yes.

6 Q And secured it?

7 A Correct.

8 Q And would that be where it would be accessed by Jody Hunt  
9 on January 24th of 2020?

10 A Yes, sir.

11 Q And if you were to see those casings, would you recognize  
12 them?

13 A Yes, sir.

14 Q That's why I'm showing you what's earmarked for ID  
15 purposes as State's Exhibit 103, 104, 105, and 106. Are these  
16 the casings that you're referring to?

17 A Yes, sir.

18 Q The ones you received from Sgt. Ledford?

19 A Correct.

20 Q Okay. Thank you, Vanessa. That's all I have.

21 A Thank you,

22 THE COURT: R e c r o s s

23 MR. KING: I have no questions, Your Honor.

24 THE COURT: All right. Thank you, ma'am. Absent of  
25 objection to release from subpoena.

1 THE WITNESS: Thank you. [Indiscernible].

2 MR. KING: State calls Sgt. Ledford.

3 THE CLERK: [Indiscernible] Do you swear or affirm that  
4 the testimony you shall give the court and the jury is the  
5 truth, the whole truth, and nothing but the truth, so help you  
6 God?

7 MR. LEDFORD: I do.

8 THE CLERK: Please be seated.

9 MR. LEDFORD: Okay.

10 THE CLERK: Please state your full name, spelling your  
11 last name loudly and clearly into the microphone.

12 THE WITNESS: Jeremy Michael Ledford. Last name is L-E-D-  
13 F-O-R-D.

14 DIRECT EXAMINATION OF WITNESS, JEREMY LEDFORD

15

16 BY: MR. MR. ABSHIRE

17 Q Sgt. Ledford, where are you currently work?

18 A City of Charleston Police Department.

19 Q And what do you do there?

20 A I'm currently assigned as a supervisor for North Day Shift  
21 team two.

22 Q Okay. And how are you doing with North Charleston PD?

23 A Just over 17 years.

24 Q Okay. And what was your position in 2019?

25 A I was the supervisor for the property and evidence unit.

1 A Okay. And what does that entail from the supervisor role?

2 A We pretty much maintain any type of evidence that comes in  
3 from our street officers or forensics investigators. We pretty  
4 much would catalogue, check the contents to make sure that  
5 what's being selected is make sure all the it's properly sealed  
6 and then we catalog those items until proper disposition or if  
7 it was selected to go to SLED, an outside source for testing.  
8 And pretty much maintain. Control of that evidence until its  
9 final disposition.

10 Q Does what your role mean that you would have to submit  
11 yourself to the chain of custody?

12 A Yes, sir.

13 Q And include your name and date and what you're  
14 transferring. Data or evidence? Excuse me.

15 A Yes, sir.

16 Q And were you involved with this case?  
17 Yes, sir.

18 Q Were you involved with handling several pieces of evidence  
19 in this case?

20 A Yes, sir.

21 Q Sgt. Ledford. Did you handle a t shirt with printed  
22 pictures on it?

23 A Yes, sir.

24 Q And would you have received that from North Charleston  
25 evidence on March 25th, 2019?

1 A Yes, sir.

2 Q Did you then take it to SLED?

3 A I did.

4 Q And whenever you go to SLED, does it also create a chain  
5 of custody on their end?

6 A Yes, sir, it does.

7 Q Does your name appear in that chain as well?

8 A It should, yes, sir.

9 Q And are you responsible with bringing items back from  
10 SLED?

11 A Yes, sir.

12 Q And whenever you bring them back to North Charleston, does  
13 that also get noted in the chain of custody?

14 A Yes, sir. That gets noted on our chain of custody.

15 Q And did you return that same t shirt to from SLED to North  
16 Charleston evidence on May 2nd, 2019?

17 A Yes, sir.

18 Q And if you were to see that t shirt, would you recognize  
19 it?

20 A I would have to look at the proper -- I'm sorry. Look at  
21 the packaging itself because a lot of the items, when they do  
22 come in. If they're in a brown paper bag, we go off of, you  
23 know, what's the item description itself.

24 Q I do. If I were to show you, could you try and see if you  
25 could?

1 A Yes, sir.

2 Q I'm showing you states what's marked as State's Exhibit  
3 for ID is 102.

4 A Item description matches with the case number that would  
5 have been submitted for this case and shows the initials for  
6 us, sealing it hard for it to go into the SLED for testing.

7 Q And Sgt. Ledford, whenever you're handling that t shirt,  
8 at any point, was there any issue with the packaging?

9 A No, sir.

10 Q Was it secure the entire way?

11 A Yes, sir.

12 Q And, Sergeant, did you handle a buccal swab of Thomas  
13 McFadden in this case?

14 A Yes, sir, I did.

15 Q Did you receive that buccal swab from North Charleston  
16 Evans Locker?

17 A Yes, sir.

18 Q On May 16th, 2019?

19 A Yes, sir.

20 Q And note that in the chain of custody?

21 A Correct.

22 Q Would you have then taken it to SLED?

23 A Yes.

24 Q If you were to see that, would you recognize it?

25 A Yes, sir.

1 Q May I approach Your Honor? I'm showing you what's been  
2 marked as State's Exhibit for ID purposes is 173. Is that the  
3 buccal swab that you handled in this case?

4 A Yes, sir, it is. Thank you.

5 Q Thank you. I apologize. Sorry. Whoever -- did you handle  
6 some shell casings in this case as well?

7 A Yes, sir, I did.

8 Q And would you have received those from North Charleston  
9 evidence on July 31st, 2019?

10 A Yes, sir.

11 Q And did you then take them to SLED?

12 A Yes, sir, I did.

13 Q Would that also be noted in their chain of custody?

14 A Yes, sir.

15 Q And then did you bring them back on September 19th, 2019?

16 A Yes, sir.

17 Q And then note it as you process it in the North Charleston  
18 evidence?

19 A Yes, sir.

20 Q And that would that have been where evidence technician  
21 Wylder would have accessed them?

22 A Yes, sir.

23 Q On that same day?

24 A Yes, sir.

25 Q And again, would you recognize those if you saw them?

1 A Yes, sir.

2 Q May I approach Your Honor? I'm showing you some art for  
3 purposes of State's Exhibit 103 through 106.

4 The superiority of shell casings you handled?

5 A Yes, sir.

6 Q Thank you Sgt. Ledford, that's all I have for you.

7 THE COURT: Cross?

8 MR. KING: No questions, Your Honor.

9 THE COURT: All right. Absent of objection to release from  
10 subpoena.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: How are you all doing on a short break? Nope.

13 MR. KING: Your Honor, the State calls Natalia Wilder.

14 THE CLERK: All right. Could place your left hand on the  
15 Bible and hold your right hand up. Do you swear or affirm the  
16 testimony you shall give in court and jury is the truth, the  
17 whole truth, and nothing but the truth, so help you God?

18 MS. WILDER: Yes.

19 THE CLERK: Please have a seat. Please state your full  
20 name, spelling your last name loudly and clearly into the  
21 microphone.

22 MS. WILDER: Natalia Chavez Wilder. W-I-L-D-E-R.

23 DIRECT EXAMINATION OF WITNESS, NATALIA WILDER

24 BY: MR. MR. ABSHIRE

25 Q How are you doing?

1 A Good. How are you?

2 Q I'm doing good. Could you please tell us what you do for a  
3 living?

4 A Evidence technician.

5 Q Is that a North Charleston Police Department?

6 A Yes, sir, it is.

7 Q What are some of your roles and responsibilities there?

8 A Properly intake evidence from patrol and crime scene. I  
9 ensure that the package is sealed. Initials dated.

10 Q And does that include also noting these transfers in the  
11 chain of custody?

12 A Yes.

13 Q Were you in that position in 2019?

14 A Yes.

15 Q And did you handle evidence in the case of State versus  
16 Thomas McFadden?

17 A I did.

18 Q And what evidence did you handle?

19 A I handled some casings. Also, cell phones.

20 Q And talking about those casings. Did you receive those  
21 casings on March 13th, 2020?

22 A I did.

23 Q And would that have been noted in the chain of custody?

24 A Yes.

25 Q And would that have been noted as the return of those

1 chains, of those casings?

2 A Yes.

3 Q And if you were to see them, would you recognize them?

4 A I would

5 Q I'm showing you what's been marked as ID purposes as  
6 State's Exhibit 103 through 106. Are these the casings that  
7 you're referring to?

8 A Yes, sir, it is

9 Q Right. And when you receive those was there any issue with  
10 the packaging?

11 A No, sir.

12 Q And would you have then taken them to the North Charleston  
13 evidence locker?

14 A Can you repeat that?

15 Q Once you received them, did you take them to be secured in  
16 the evidence locker in North Charleston?

17 A Yes, sir.

18 Q Natalia, you you mentioned cell phones. Did you -- how  
19 many cell phones did you handle in this case?

20 A I believe I handled three.

21 Q Okay. Would you have received a white in color iPhone on  
22 April 12th, 2019?

23 A Yes.

24 Q And would that have been from Officer Butler and North  
25 Charleston?

1 A Yes.

2 Q And what that -- was that iPhone -- do you remember what  
3 the name that was associated with that white iPhone?

4 A I do not.

5 Q If I can see it would you recognize it?

6 A Yeah. Okay. Yes.

7 Q Okay. Do you remember the name that was associated with  
8 that?

9 A Yes.

10 Q And what name was that?

11 A Clayton Austin.

12 Q Would that have been Claiborne Alston?

13 A Claiborne. Yeah.

14 Q And once you receive that cell phone, did you know that  
15 the chain of custody that you were receiving it from Butler?

16 A Yes.

17 Q And then did you take it to the North Charleston evidence  
18 locker?

19 A Yes.

20 Q Did you handle a iPhone Xs Max on April 12th, 2019?

21 A I did.

22 Q And was that also noted in the chain of custody?

23 A It was.

24 Q Receiving it from Officer Butler on that day?

25 A Yes.

1 Q And do you remember what the name that was associated with  
2 that cell phone was?

3 A I do not recall the name.

4 Q May I approach, Your Honor?

5 THE COURT: Yeah.

6 A Okay. Yes.

7 Q And one name was affiliated with that?

8 A Ishmael Weston.

9 Q Natalia, did you handle a mini Draco in this case?

10 A I did.

11 Q And would you have handled it on May 2nd, 2019?

12 A Yes.

13 Q Receiving it from Stephany Wilcome?

14 A Yes.

15 Q And then would you have then. Did you then place it in an  
16 arson evidence locker?

17 A Yes.

18 Q And with this entire transfer have been noted in the chain  
19 of custody?

20 A Yes.

21 Q Did this also include two magazines as well as some live  
22 ammunition?

23 A Yes, sir.

24 Q Would this also be included in that chain of custody of  
25 the mini Draco?

1 A Yes, si r.

2 Q And from that evidence locker, is that where Sgt. Ledford  
3 would have been able to access?

4 A Yes.

5 Q And then did, in fact, access it on August 2nd, 2019?

6 A Yes.

7 Q And did Sgt. Ledford then bring it back to North  
8 Charleston, where you received it on September 19th, 2019?

9 A Yes.

10 Q Also noted in the chain of custody.

11 A Yes, si r.

12 Q And whenever you receive that item, would you have then  
13 taken it to the North Charleston and secured it in the evidence  
14 locker on that same day?

15 A Yes, si r.

16 Q And Natalia we touched a little bit about the Thomas  
17 McFadden buccal swab that you handled. Would that have been  
18 handled by Sgt. Ledford, who took it to SLED on May 16th, 2019?

19 A Yes.

20 Q And then what he had then -- do you remember who received  
21 that DNA from the SLED? That buccal swab.

22 A Can you repeat that question?

23 Q I apologize for being confused. Sgt. Ledford, did he take  
24 it up to SLED?

25 A Yes.

- 1 Q And that was noted in the chain of custody?
- 2 A Yes.
- 3 Q Did you then actually retrieve that buccal swab from SLED?
- 4 A Once it was returned, yes.
- 5 Q And would that have been on March 8th, 2023?
- 6 A Yes.
- 7 Q And would you have taken it back to North Charleston?
- 8 A Yes.
- 9 Q And placed it securely in North Charleston evidence?
- 10 A Yes, sir.
- 11 Q And that would be reflected in the chain?
- 12 A Yes, sir.
- 13 Q Natalia, did you then take that buccal swab that you had
- 14 entered into your Charleston Evidence and then take it to
- 15 Richland County Sheriff's Office?
- 16 A I did.
- 17 Q And would that have been this year?
- 18 A Yes.
- 19 Q And was that also noted in the chain of custody?
- 20 A It was.
- 21 Q And do you remember who would have received that?
- 22 A I received it as well.
- 23 Q I apologize. You would have received it at Richland ---
- 24 A Richland County? Richland County Officer.
- 25 Q Would it have been Deputy Gary Wallach?

1 A Yes, si r.

2 Q And then that would also be noted in the chain of custody

3 A It would.

4 Q And you're telling us that you also brought it back to  
5 Richl and County. Did you receive it from Richl and County  
6 Sheri ffs?

7 A Yes, si r.

8 Q That was noted in the chain of custody?

9 A Yes, si r.

10 Q And then when you brought it back to North Charleston,  
11 would that again be noted as the chain crest?

12 A Yes, si r.

13 Q And I apologize. Having to keep returning to this Italian.  
14 So the swabs of the mini Draco in the magazines, did you also  
15 take those up to Richl and County?

16 A I did.

17 Q And that would have been included in the same custody as  
18 the buccal swab?

19 A Yes, si r.

20 Q And was that then received by Gary Wallach?

21 A Yes.

22 Q And then it was returned to you by Richl and County  
23 Sheri ffs?

24 A Yes.

25 Q All of that noted in the chain of custody?

1 A Yes, sir.

2 Q And then you brought did you bring it back to North  
3 Charleston?

4 A I did.

5 Q And again, noted in the chain of custody?

6 A Yes, sir.

7 Q Placed it securely in North Charleston Evidence?

8 A Yes.

9 Q And were there any issues with it? With its packaging or  
10 anything? Any of those items? Packaging?

11 A No issues.

12 Q Thank you, Natalia.

13 MR. KING: No, Your Honor.

14 THE WITNESS: Thank you.

15 THE COURT: Absent of objection to release from subpoena.

16 MS. LINDER: The State calls Jennifer Butler.

17 THE CLERK: Please push your button on the bottom of your  
18 right hand up. Do you swear or affirm to this court and jury  
19 that the testimony you shall provide is the truth, the whole  
20 truth, and nothing but the truth, so help you God?

21 MS. BUTLER: Yes, sir.

22 THE CLERK: Please have a seat. Please state your full  
23 name, spelling your last name loudly and clearly into the  
24 microphone.

25 MS. BUTLER: Det. Jennifer Butler. Last name? B-U-T-L-E-R.

1 DIRECT EXAMINATION OF WITNESS, JENIFER BUTLER

2 BY: MS. LINDER

3 Q Good afternoon.

4 A Good afternoon, ma'am.

5 Q Where are you employed?

6 A I am currently employed with City of North Charleston at  
7 the North Charleston Police Department.

8 Q And in what capacity?

9 A I am currently a person's crime detective.

10 Q How long have you been in law enforcement?

11 A I started in law enforcement 2008 as a dispatcher with the  
12 city of North Charleston. And I transferred. I moved into law  
13 to become a police officer in 2010. I apologize.

14 Q And what are your duties as a detective in the Persons  
15 Crimes unit?

16 A We respond to active calls when we're at work. Those are  
17 to include armed robberies, shootings, murders, homicides. In  
18 addition to that, aggravated assaults and other minor cases in  
19 comparison to a homicide, get assigned to us and then we follow  
20 up with the victims of those cases and work those cases.

21 Q And were you involved with this case, the state versus  
22 Thomas McFadden?

23 A Yes, ma'am.

24 Q And how did you first get involved?

25 A Myself and Detective Pritchard overheard the call go out

1 on the radio, and as soon as we were notified of the shooting,  
2 we responded to the scene.

3 Q And what did you observe upon arrival?

4 A As soon as we were coming into the comments parking lot, a  
5 large portion of the parking lot was roped off with crime scene  
6 tape.

7 Q [Indiscernible] At this time, I'll show you some more  
8 State Exhibit 189. Could you please take a look at it. Do you  
9 recognize it?

10 A Yes, ma'am.

11 Q How do you recognize it?

12 A That is the parking lot for Cummins.

13 Q Does it fairly and accurately represent the parking lot of  
14 comments from back in 2019?

15 A Yes, ma'am.

16 Q Your Honor, at this time, the state would seek to admit  
17 States 189 into evidence.

18 MR. KING: No objection, Your Honor.

19 THE COURT: Okay.

20 [State's Exhibit No. 189 Admitted into Evidence]

21 BY: MS. LINDER

22 Q All right in front of you touch screen. So if you want to  
23 touch your anything. Can you explain to the jury what this  
24 picture is?

25 A Yes, ma'am. This portion right here is the Cummings plant.

1 So that's like the awning or the roof of the building. This is  
2 the incident location where the homicide took place. This whole  
3 parking lot here is the Cummings parking lot. And then over  
4 here is ARD Logistics, which is a warehouse that supplies or  
5 works with Cummins Turbo. And then Palmetto Commerce is out  
6 here.

7 Q And when you responded to the scene there at Cummins in  
8 the parking lot, did you take place in any interviews?

9 A Yes, ma'am.

10 Q And based on the information learned during the interviews  
11 with people there. Were you able to develop any kind of sketch  
12 of a person's face or anything like that?

13 Q No, ma'am.

14 A Did you attempt to get any video surveillance from the  
15 incident location from Cummins or from ARD?

16 A Yes, ma'am. Upon arrival. Detective Prichard. Kind of like  
17 went up to the scene of where everything was happening and went  
18 inside the business and made contact with him in order to  
19 immediately start collecting video of the incident.

20 Q And did you end up reviewing that footage?

21 A Yes, ma'am.

22 Q Did you also try to get surveillance footage from other  
23 businesses a little further out from this area?

24 A Yes, ma'am. The Sphinx Gas Station and the Sunoco gas  
25 station on Latson Road.

1 Q And were you able to get surveillance from both of those  
2 places?

3 A Yes, ma'am.

4 Q Then you reviewed that?

5 A Yes, ma'am.

6 Q Did you create any sort of flyers looking for more  
7 information on a vehicle?

8 A Yes, ma'am. From the video obtained from Cummins and  
9 subsequent video where you can see the same vehicle, we  
10 observed a blue Honda CRV as being the suspect vehicle. And we  
11 were able to get a very good photograph of that vehicle from  
12 Cummins video. And we put out a what we call an R.F.I. flyer, a  
13 request for information flyer or a BOLD. Be on the lookout for  
14 a flyer to surrounding agencies.

15 Q And did you speak with anybody in this case related to the  
16 victim?

17 A Yes, ma'am. His family and his girlfriend

18 Q Were they witnesses to the shooting?

19 A No. None of them witnessed the shooting. No, ma'am

20 Q Did you learn that this victim is from an area known as  
21 Robin Wind?

22 A Yes, ma'am.

23 Q And based upon your investigation, Any other background on  
24 this Defendant did. What was his name again?

25 A His name was Damien Stokes.

1 Q Did he always go by Damien?

2 A No. He had a nickname of Kodak Light or Light Skin.

3 Q And generally speaking, what route did Robin Wynne not get  
4 along with?

5 A Through -- through the course of an investigation, we  
6 worked with several surrounding agencies because a lot of these  
7 groups that will be referred to are not necessarily within the  
8 Northshore -- within the city of North Charleston. And through  
9 reaching out to other agencies to obtain further information,  
10 we learned that Robin Wynne did not get along with the group  
11 called T.O.L, Town of Lincolville.

12 Q And based upon everything you had learned thus far in your  
13 investigation, did you do any research or Internet searching  
14 then?

15 A Yes, ma'am. On individuals, we would have done what we  
16 call which is our internal system, D.M.V. records to see if  
17 there's any vehicles such as the one that we observed on the  
18 Cummins video. We have a couple different databases,  
19 [Indiscernible] T.L.O and just reaching out to other agencies  
20 on what information they have in their databases as well.

21 Q Did you attempt to -- based upon what was on the t shirt  
22 found at the scene, did you attempt to look at social media for  
23 anything?

24 A Yes, ma'am. The t shirt that was recovered on scene, we  
25 knew it to be based on my experience in law enforcement, a

1 memorial t shirt for someone that has passed away. That  
2 information immediately that night while we were spawning was  
3 relayed back to our crime analysis unit. They discovered that  
4 person to have been killed earlier this year and to be a part  
5 of a group called T.O.L, Town of Lincolnville. And as a result  
6 of that, we started -- we reached out to surrounding agencies,  
7 got lists of individuals that is a part of that group and would  
8 have done -- I did research through Facebook on any individuals  
9 that were a part of that group.

10 Q Did you look into Claiborne Alston?

11 A Yes, ma'am.

12 Q Did you look into Jamal Smalls?

13 A Yes, ma'am.

14 Q Did you look into Ishmael Weston?

15 A Yes, ma'am.

16 Q And did you look into Thomas McFadden?

17 A Yes, ma'am.

18 Q And what types of information did you attempt to  
19 investigate all these people?

20 A Any Facebook profiles or accounts related to these  
21 individuals, any phone numbers related to these individuals,  
22 and also a thorough search of these individuals and people that  
23 they reside with. Again, looking for that vehicle that was  
24 observed on video. And also we do the research through other  
25 agencies and our reporting system to see if we have any further

1 or previous reports on these individuals.

2 Q And did the defendant, Thomas McFadden, have a Facebook  
3 page at this time?

4 A Yes, ma'am.

5 Q And what was his profile name?

6 A Untamed Gorilla.

7 Q And the image on the profile at this time. What was that?

8 A The photo of Thomas McFadden.

9 MR. KING: And Your Honor, I'm just reading my pre-trial  
10 objection. Motion to suppress.

11 THE COURT: Okay. Same ruling.

12 BY: MS. LINDER

13 Q Did Ishmael Weston have a Facebook page name?

14 A Yes, ma'am

15 Q And what was this profile name?

16 A Free smoke ish.

17 Q What about Claiborne Alston? Is he on Facebook

18 A Yes, ma'am.

19 Q What's his Facebook name or profile name?

20 A Johnny Dang

21 Q Johnny Dang?

22 A Yes, ma'am.

23 Q Okay. What about Jamal Smalls? Is he on Facebook?

24 A Yes, ma'am.

25 Q And what was his name?

- 1 A I'm going to do my best to pronounce his Green Gualas.
- 2 Q And did you end up drafting a search warrant on the
- 3 defendant's Facebook profile of Untamed Gorilla?
- 4 A Yes, ma'am.
- 5 Q And did the judge sign off on that?
- 6 A Yes, ma'am.
- 7 Q Based upon your investigation, did you end up learning the
- 8 defendant's phone number at that time
- 9 A Yes, ma'am.
- 10 Q And did you do a search warrant for the defendant's phone
- 11 provider records?
- 12 A Yes, ma'am.
- 13 Q And a judge signed that?
- 14 A Yes, ma'am.
- 15 Q Did you ever interview Jamal Smalls?
- 16 A Yes, ma'am.
- 17 Q Did you interview him before or after he was arrested?
- 18 A After he was arrested?
- 19 Q Was he cooperative?
- 20 A Yes, ma'am.
- 21 Q Where was Jamal Smalls arrested?
- 22 A In Georgia
- 23 Q And what was he charged with?
- 24 A Murder.
- 25 Q Related to this case?

1 A Yes, ma'am.

2 Q Did you do any follow up on Jamal Smalls, knowing where he  
3 was arrested?

4 A Yes, ma'am. I reached out to I believe it was Fulton  
5 County, Georgia. I reached out to the Fulton County Jail where  
6 he was arrested in Georgia to see if there was any jail calls.  
7 And there was not.

8 Q And then a little bit later after that, warrants that were  
9 sworn out for the shooter, in this case, the defendant. Were  
10 those warrants ever served?

11 A Yes, ma'am.

12 Q What date was that?

13 A May 1st.

14 Q And what area of town was that?

15 A In Berkeley County.

16 Q And did you ever respond up to Cozy corner up in Berkeley  
17 County?

18 A Yes, ma'am, I did.

19 Q And did you observe any significant firearm at that location?

20 A Yes, ma'am. I observed the mini Draco.

21 Q And why was it significant to you?

22 A Having responded to the case, collected a lot of video on  
23 the case the firearm collected at cozy corner. The mini Draco  
24 appeared to be looked similar to the firearm used in the video  
25 of the shooting. In addition, the caliber of the rounds used

1 match what was collected on scene.

2 Q Was there other magazines that would also fit a mini Draco  
3 located up in Berkeley that day?

4 A Yes, ma'am too.

5 Q Not some other ammunition 7.62?

6 A Yes, ma'am.

7 Q All right. Thank you for your indulgence. I don't have any  
8 other questions for you. If you can answer anything the defense  
9 may have.

10 THE WITNESS: Yes, ma'am. Thank you.

11 THE COURT: Mr. Jason?

12 MR. KING: No question, Your Honor.

13 THE COURT: All right. Bring the next witness in.

14 MS. LINDER: Your Honor, we may approach for scheduling.

15 THE COURT: Oh, okay. If you want. [Indiscernible]. I can  
16 just tell you all ready for a break. We actually have some more  
17 -- we have X witnesses to present. So we're going to take a  
18 break, try to get that set up while you all are [Indiscernible]  
19 Don't talk about the case. Thank you. Okay. Let's  
20 [Indiscernible] We can do.

21 MS. LINDER: Yes, Judge, just I appreciate going quickly.  
22 So we're moving some people around what we have and we want to  
23 just try to set up with the SLED people we have. We have five  
24 SLED people that are just chain. It will be fast. It will be  
25 virtual. And then we have one other North Charleston person

1 from North Charleston here. I don't I mean, without without a  
2 bunch of crosses and stuff, I don't think that's going to take  
3 very long at all. And that's pretty much what we have three  
4 today. We're kind of having a little tug of war with some other  
5 counties as far as when the experts are driving down. So we're  
6 going to go a little more out of order tomorrow, which is fine.  
7 But at this rate and everything, I would assume we would finish  
8 tomorrow. But I can't get any other witnesses. To be frank,  
9 there's a lot of [Indiscernible] and I guess I can talk about  
10 this at the end, but the three charged co-defendants are all  
11 going to be called tomorrow. And so this is a little more --  
12 they take a little more time than me calling them over lunch  
13 and having them here an hour later and not knowing the length  
14 of time for all of them. So, those will be tomorrow. So, it  
15 will hopefully be a little more interesting. But it's the  
16 virtual people. If we can practice with right now and we should  
17 be good, but we may be done before 5:00. I just want to get  
18 [Indiscernible] Your Honor.

19 THE COURT: All right, that's fine. Okay. Then, yeah.

20 MR. KING: I wanted to put on the right I had to put  
21 something on the record the bench conferences we had earlier.

22 THE COURT: Yes.

23 MR. KING: There was a mention by Wilcome. She said that  
24 she recovered two guns. It's just that one reference to it. And  
25 that was true. There was another gun that was recovered. It's

1 not relevant to this case. And I was told that, you know, we  
2 weren't going to go into that, but there was a reference to  
3 them finding two guns when Mr. McFadden was arrested. The other  
4 would be...

5 THE COURT: If you do that so...

6 MR. KING: When Officer Souther testified, they started  
7 off he was talking about fugitive task force. So, you know, I'm  
8 hearing the word fugitive and I'm paying attention, not  
9 objecting at that point. But as it went further, he talks about  
10 bringing in all these other police agents and then he's talking  
11 about a helicopter coming in. And that's -- you know, standing  
12 up objecting because at this point, they're making it sound  
13 like like it's prejudicial to him to make it sound like he's a  
14 scary person. They have to do all that for that, even though he  
15 was arrested for that incident. So, there wasn't any indication  
16 of that. So, they've created this atmosphere that makes them  
17 look a dangerous and scary individual. The other thing was the  
18 hearsay evidence they got in, the -- I objected, I think at  
19 least twice they're trying to get in that the two women, when  
20 he was arrested, told the police to take that basically hearsay  
21 got across from the two lady witnesses who were at Cozy Corner  
22 Lane who told the police to tow the car. I was trying to keep  
23 any hearsay out regarding to what they said.

24 THE COURT: He testified what they said. But you got up  
25 and objected and said he could testify to what he did as a

1 result of the conversation, which is not objection.

2 MR. KING: There were -- I had no two objections. And I  
3 think he was -- they were able -- I feel like they were able to  
4 get across hearsay testimony about what was said by other  
5 people at Cozy Corner Lane about towing that car.

6 THE COURT: All right.

7 MR. KING: In a move for a mistrial based on all of those  
8 things, the two guns, the reference to the fugitive and  
9 helicopter and hearsay testimony coming through.

10 THE COURT: Okay. I don't think any of that in and of  
11 itself is I don't believe he testified any actual hearsay that  
12 could be wrong about that. But with respect to the two guns, I  
13 know that was totally up here, there was a discussion we had  
14 prior to the trial prosecutor. I don't know that that's  
15 objectionable here. And then the helicopter is just -- I guess,  
16 their standard operating procedure would they had a warrant on  
17 them for someone charged with murder, whether they're -- you  
18 know, they're going to go to rescue them? I don't think that's  
19 certainly I don't think it's overly prejudicial that is their  
20 standard operating procedure.

21 MR. KING: I don't know how it's relevant. How is it  
22 relevant to this case that they had to have a helicopter to  
23 arrest him? What fact does that prove for them other than he's  
24 a dangerous person.

25 THE COURT: Other than that's their standard operating

1 procedure. So I don't think that that was emphasized. They  
2 certainly cut it off immediately when he raised it as an issue.  
3 So I don't think you realize the prejudice and show me based on  
4 that and I can grant a mistrial.

5 MR. KING: Thank you.

6 THE COURT: Okay. Sir James. Yeah, we're on break. We're  
7 just going to try to set this up. I lost... Sorry. Oh, wow.  
8 Okay. I just want to make sure that everybody's aware that cell  
9 phone use is prohibited in the court. And I'll make that  
10 announcement again.

11 THE COURT OFFICER: All rise.

12 [Off the record]

13 [Back on the record]

14 THE COURT OFFICER: [Indiscernible] You Honor.

15 THE COURT: All right. Call you next witness.

16 MR. ABSHIRE: State calls Hannah Jefferson.

17 THE COURT: Okay. Are you Hannah Jefferson? Can you hear  
18 me? Jesus.

19 MR. KING: Test. Test. Test. [Indiscernible].

20 THE COURT: Okay. Let's go through that again.

21 MR. ABSHIRE: State calls Hannah Jefferson.

22 THE COURT: All right. Ms. Jefferson?

23 MS. JEFFERSON: Yes, sir.

24 THE CLERK: Okay. Just raise your right hand. Can you  
25 raise your right hand? Do you swear or affirm the testimony?

1 You shall tell the court and the jury is the truth, the whole  
2 truth, and nothing but the truth, so help you?

3 MS. JEFFERSON: Yes.

4 THE CLERK: Thank you. All right. Please state your name  
5 for the record and spell your last name, please.

6 MS. JEFFERSON: My name is Hannah Jefferson, J-E-F-F-E-R-  
7 S-O-N.

8 THE COURT: Your witness. Ms. Jefferson [Indiscernible].

9 DIRECT EXAMINATION OF WITNESS, HANNAH JEFFERSON  
10 BY: MR. MR. ABSHIRE

11 Q Ms. Jefferson, could you please tell the jury what you do for  
12 a living?

13 A Yes, sir. I work for South Carolina Law Enforcement  
14 Division, also known as SLED, where I'm a forensic technician.

15 Q And how long have you been working at SLED?

16 A Since March of 2021.

17 Q Okay. And what are some of the roles of an evidence  
18 technician?

19 A We assist outside agencies with intake of evidence as well  
20 as assist the agencies inside our department with distributing  
21 evidence.

22 Q And could you tell us what a chain of custody is?

23 A Yes, sir. It is an electronically generated document that  
24 tracks evidence.

25 Q And do you use chain chains of custody at SLED often?

- 1 A Yes, sir. Every day.
- 2 Q Okay. And does SLED use the barcode scanner?
- 3 A Yes, sir. We use unique barcode scanners that track each  
4 individual item.
- 5 Q And, well, each person that touched that item. Will it  
6 also generate their name?
- 7 A Yes, sir.
- 8 Q And time that they are transferring?
- 9 A Yes, sir.
- 10 Q Were you in evidence tech in 2019?
- 11 A Yes, sir.
- 12 Q Okay. What was your role in 2019?
- 13 A In 2019, I worked in Richland County Coroner's office. I  
14 started working for South Carolina law enforcement in 2001.
- 15 Q My apologies. I missed [Indiscernible] What are -- were  
16 you, an evidence tech in 2022?
- 17 A Yes, sir.
- 18 Q And were you involved with the evidence in this case?
- 19 A Yes, sir.
- 20 Q Would that evidence be generated in a lab report?
- 21 A Yes, sir.
- 22 Q And would that report be 119? 06768?
- 23 A Yes, sir.
- 24 Q Is that also another name for the chain of custody?
- 25 A Anythin g.

1 Q Okay. And did you handle the buccal swab of Thomas  
2 McFadden labeled item two?

3 A Yes, sir, I did.

4 Q And did you retrieve this item from evidence room 150?

5 A Yes, sir, I did.

6 Q Would that have been on October 31st, 2022?

7 A Yes, sir.

8 Q And would that have been where Madison Willis had placed  
9 it in July 19th, 2022.

10 A Yes, sir.

11 Q And did you notice any issues with packaging?

12 A Yes, sir.

13 Q And if there was any issue with the packaging, would you  
14 have noted it?

15 A Yes, sir.

16 Q And where did you take this item?

17 A I placed it into the secured evidence transfer container.

18 Q And just briefly, what is the secured evidence container?

19 A It is a secured container that we place evidence in for  
20 the movement between one lab to the next.

21 Q Okay. And again, like you told us, with the barcode  
22 scanner, pick up this information.

23 A Yes, sir.

24 Q And include it in the chain of custody?

25 A Yes, sir.

1 Q And is that where -- is it that same container where  
2 Bailey Haines accessed it on November 7th, 2022?

3 A Yes, sir.

4 Q Okay. And just briefly, Anna, if you were to see that  
5 buccal swab, would you recognize it?

6 A Yes, sir. We based all our evidence off the unique SLED  
7 barcode that should be on there.

8 Q Okay. Your Honor may I approach? And I'm showing you  
9 what's been marked as State's Exhibit for I.D. purposes as 173.  
10 Can you see that?

11 A Yes, sir.

12 Q Are you able to tell if this is the buccal swab you  
13 handled?

14 A I do not see a buccal. There we go. Yes, sir. That is it.

15 Q Okay. And, Hannah, did you have any other involvement in  
16 this case?

17 A No, sir.

18 Q That's all I have for you, Hannah. Thank you.

19 A Thank you.

20 THE COURT: Recross?

21 MR. KING: No, Your Honor.

22 THE COURT: You're excused. Thank you.

23 MR. ABSHIRE: State calls Bailey Haynes.

24 THE CLERK: Please raise your right hand. Do you swear or  
25 affirm the testimony that you shall give the court or the jury

1 is the truth, the whole truth and nothing but the truth, so  
2 help you God?

3 MS. HAYNES: I do.

4 THE CLERK: Thank you. Please state your first and last  
5 name. Spelling Your last name.

6 MS. HAYNES: My name is Bailey Haynes. H-A-Y-N-E-S.

7 DIRECT EXAMINATION OF WITNESS, BAILEY HAYNES

8 BY: MR. MR. ABSHIRE

9 Q Good afternoon, Ms. Haynes.

10 A Good afternoon.

11 Q Could you please tell the jury where you currently work?

12 A I work at the South Carolina State Law Enforcement  
13 Division, otherwise known as SLED.

14 Q Where. Where exactly is SLED?

15 A SLED is our forensic lab is in South Carolina.

16 Q Okay. So not in Charleston?

17 A No, sir.

18 Q And why you're testifying virtually?

19 A Yes, sir.

20 Q Okay. What do you do at SLED?

21 A I am a forensic technician through the evidence control  
22 department.

23 Q Okay. And we've heard a little bit about evidence  
24 technicians. Just briefly, what's your role at SLED as an  
25 evidence technician?

1 A I'm responsible for the intake of evidence from agencies  
2 across the state of South Carolina and the distribution of that  
3 evidence throughout our laboratory.

4 Q Okay. And did you work at SLED in 2019?

5 A No, sir, I did not.

6 Q Okay. When did you start working for SLED?

7 A I started at SLED in June of 2020.

8 Q Okay. And in June of 2020, did you start as an evidence  
9 technician?

10 A Yes, sir.

11 Q Okay. Were you involved in this case?

12 A Yes, sir, I was.

13 Q Okay. And we've heard about chains of custody with your  
14 name included in this chain of custody as well.

15 A Yes, sir.

16 Q In other words, what would that be included in lab report,  
17 L19 06768?

18 A Yes, sir.

19 Q Okay. And did you handle what is labeled as item 1.1  
20 scrapings from the interior underarm and collar of a t shirt?

21 A I handled the t shirt pouch containing that item. Yes.

22 Q Okay. And did you retrieve this item from secured evidence  
23 transfer container 20?

24 A Yes, sir.

25 Q On November 30th, 2022?

1 A Yes, sir.

2 Q And does the chain reflect that Noel Johnson had placed it  
3 there November 28th, 2022?

4 A Yes, it does.

5 Q And with -- any kind of issues with the packaging?

6 A No, sir.

7 Q Was it otherwise secure?

8 A Yes, sir, it was.

9 Q And where did you take that item?

10 A I put it on a daily intake shelf in our evidence room  
11 number three.

12 Q Was that also on November 30th, 2022?

13 A Yes, sir.

14 Q And was this generated in the chain of custody?

15 A Yes, sir, it was.

16 Q And did you then move it to a different location on  
17 December 2nd, 2022?

18 A Yes, sir. I just moved it to another DNA intake shelf. We  
19 were still in the process of moving, so I was just moving it to  
20 another location.

21 Q Okay. And as you move in evidence, is it absolutely  
22 important to keep it secure?

23 A Yes, sir.

24 Q Especially as you all are moving locations?

25 A Yes, sir.

1 Q And all of the moves from the old lab to the new lab,  
2 would that have also been documented in this chain of custody?

3 A Yes, sir.

4 Q And whenever you had placed it in that position on  
5 December 2nd, is that where Ms. McGuinness would have been able  
6 to access it January 4th of this year?

7 A Yes, sir.

8 Q And did you also handle an item labeled 1.2 as hair from  
9 the t shirt?

10 A I handled the t shirt pouch containing that item. Yes.

11 Q Okay. What's the item number associated with that?

12 A Number 1.2.

13 Q Okay. And then did you handle item label 1.21?

14 A Yes, sir. I handled the t shirt pouch containing that  
15 item.

16 Q Okay. And then item 1.22.

17 A Yes, sir. I handled the t shirt pouch containing an item.

18 Q Got you. And were these also stored in the secured  
19 evidence powder container? Excuse me.

20 A Yes, sir.

21 Q And is that where Noel Johnson had placed on November 28th,  
22 2022?

23 A Yes, sir.

24 Q Okay. And did you retrieve this item also on November 3rd?  
25 These items from the container on November 30th?

1 A Yes, sir.

2 Q Did you also scan these items in?

3 A Into what, exactly?

4 Q My apologize. Did you use the barcode scanner?

5 A Yes -- yes, sir.

6 Q And would that generate the transfer and the chain of  
7 custody?

8 A Yes.

9 Q Okay. And just like item 1.1, did you transfer these to  
10 another location in evidence room 133?

11 A Yes, sir.

12 Q Would that have been on December 2nd of last year?

13 A Yes, sir.

14 Q And then finally, would it have been placed in evidence  
15 Room 133, Shelf L32?

16 A Yes, sir.

17 Q Where Mr. McGuinness would have accessed it on January 4th  
18 of this year?

19 A Yes, sir.

20 Q Okay. And then finally, did you handle item 1.3 labeled as  
21 the intact collection of the exterior of the t shirt?

22 A I handled digital pouch containing that item. Yes, sir.

23 Q Okay. And where did you retrieve it from?

24 A I retrieved it from the secured evidence transfer  
25 container chain.

1 Q Okay. And do you -- was that transfer documented in the  
2 chain of custody?

3 A Yes, sir.

4 Q Any issues whatsoever with the packaging of that t shirt?

5 A No, sir.

6 Q And is that also where Ms. McGuinness would have accessed  
7 it January 4th of this year?

8 A Yes, sir.

9 Q Thank you, Mr. Haynes. That's all I have for you.

10 A Thank you.

11 MR. KING: No.

12 THE COURT: No cross. All right. Thank you, ma'am. You're  
13 released.

14 THE WITNESS: Thank you.

15 MR. ABSHIRE: Your Honor, Start calls Rachel Noel Johnson.

16 THE CLERK: Please raise your right hand.

17 MS. JOHNSON: Can you repeat that for me.

18 THE CLERK: Please raise your right hand. Raise your right  
19 hand, please. Thank you. Do you swear or affirm that the  
20 testimony you shall give the court and the jury in this trial  
21 is the truth, the whole truth, and only the truth, so help you  
22 God?

23 MS. JOHNSON: Yeah.

24 THE CLERK: Thank you. Please state your name for the  
25 record. Spelling your last name loudly and clearly.

1 MS. JOHNSON: Thank you. Rachael Noel Johnson, J-O-H-N-S-  
2 O-N.

3 DIRECT EXAMINATION OF WITNESS, RACHAEL JOHNSON

4 BY: MR. MR. ABSHIRE

5 Q Good afternoon, Ms. Johnson. Can you hear me?

6 A All right. Yeah. It's not that long, but I can you.

7 Q I can move over. Is that better?

8 A Yes, it is.

9 Q Okay. And, Ms. Johnson, do you go by Noel?

10 A Thank you.

11 Q And Noel, what do you do for a living?

12 A I'm forensic technician that control the [Indiscernible]

13 Q Okay. And what are some of the roles of your duty?

14 A I responsible for the intake of evidence from different  
15 agencies across the state of South Carolina and the  
16 distribution of that evidence to the lavatory.

17 Q And when did you start working for SLED?

18 A I began in June of 2022.

19 Q Okay. And did you handle some of the evidence in this case  
20 as an evidence tech?

21 A Yes, sir.

22 Q And would that have been generated in the chain of  
23 custody?

24 A Yes, sir.

25 Q Okay. And did you handle item 1.1 scrape labeled scrapings

1 from underarm and collar of t shirt?

2 A Yes, sir.

3 Q And did you also handle what is labeled as item 1.2 of  
4 hair from the t shirt?

5 A Yes, sir.

6 Q And item 1.21.

7 A Yes, sir.

8 Q I apologize. Labeled as [Indiscernible] of hair from the t  
9 shirt. All right. I was just identifying the name and it's --  
10 is it identified as 1.21 sealed pouch repair?

11 A Yeah, that's right.

12 Q As well as item 1.22?

13 A Yes, sir.

14 Q And did you retrieve these items from evidence room 150?

15 A Yes, sir.

16 Q And did you do this on August 1st of 2022?

17 A Yes, sir.

18 Q And as you do this, are you utilizing a barcode scanner?

19 A Well, we use a barcode scanner to scan the unique barcode.  
20 So we track the movement with the evidence.

21 Q Okay. Would that generate the information and the chain of  
22 custody?

23 A Yes, sir.

24 Q Okay. And was there any kind of issues with the packaging?

25 And if there was, would you have noted it?

1 A Yes, sir.

2 Q And did you -- where did you move these items?

3 A Where did I go?

4 Q Did you move them to the secured evidence transfer  
5 container? Yeah. Speak.

6 A Yes, sir.

7 Q And did you do this on November 28th, 2022?

8 A Yes, sir.

9 Q And would this be where Bailey Haynes would have retrieved  
10 it on November 20th, 2022?

11 A According to the chain. It's November 30th, 2022.

12 Q Excuse me. And with the chain of custody reflected your  
13 movement. And then Ms. Haynes retrieving it?

14 A Yes.

15 Q And Noel, did you have any other involvement in this case?

16 A [Indiscernible]

17 Q May I approach the witness? Noel, just a couple more  
18 questions. Did you receive item two of labeled as the buccal  
19 swab of Thomas McFadden on March 7th, 2023?

20 A Which item?

21 Q Item two.

22 A Yes, sir. I received it from [Indiscernible].

23 Q Okay. And did you then transfer it to room -- evidence  
24 room 133 on that same day?

25 A Yes, sir. I'll put it on the agency return shelf.

1 Q Okay. And what's an agency return shelf?

2 A It's what we put in if it's ready to go back to the  
3 original agency.

4 Q Like police department?

5 A Can you repeat that?

6 Q Like a police department?

7 A Yes.

8 Q Okay. And was that evidence, then, in the chain of custody  
9 retrieved by Natalia Wilder on March 8th of this year?

10 A Yes, sir, that is correct.

11 Q That's all I have for you, Noel. Thank you.

12 A Thank you.

13 THE COURT: Recross.

14 MR. KING: No recross.

15 THE COURT: All right. Thank you, ma'am. You're excused.

16 MR. KING: And State calls Ann McGuinness.

17 THE CLERK: Please raise your right hand. Do you swear or  
18 affirm the testimony you shall give the court and the jury in  
19 the trial of this case is the truth, the whole truth, and  
20 nothing but the truth, so help you God?

21 MS. MCGUINNESS: Yes, I do.

22 THE CLERK: Thank you. Please state your full name,  
23 spelling your last name loudly and clearly.

24 MS. MCGUINNESS: My name is Leanne McGuinness, M-C-G-U-I-  
25 N-N-E-S-S.

1 DIRECT EXAMINATION OF WITNESS, LEANNE MCGUINNESS

2 BY: MR. MR. ABSHIRE

3 Q Ms. McGuinness, can you. Can you hear me clearly?

4 A Yes, I can.

5 Q Okay. Good deal. Ms. McGuinness, where do you work?

6 A I work at the South Carolina Law Enforcement Division.

7 Q And are you in evidence back there?

8 A I am the program coordinator and supervisor. And, yes, I  
9 am in the evidence team.

10 Q Okay. And how long have you been doing that for?

11 A I started as a supervisor in 2021 -- 2021.

12 Q Okay. And do as part of your role, do you handle evidence  
13 transfers?

14 A Yes, sir.

15 Q Okay. Were you involved with handling evidence in this  
16 case?

17 A Yes, sir.

18 Q And would your involvement have been highlighted in the  
19 chain of custody as well?

20 A Yes, sir.

21 Q Ms. McGuinness, did you handle item 1.1 labeled scraping?

22 Q From underarm and collar of t shirt?

23 A May I look at your notes?

24 Q Absolutely.

25 A You said 1.1?

1 Q 1.1. Yes, ma'am.

2 A Yes, sir.

3 Q And did you handle item 1.2? Hair from the t shirt?

4 A Yes, sir.

5 Q And item 1.21?

6 A Yes, sir.

7 Q As well as item 1.22.

8 A Yes, sir.

9 Q Then finally, item 1.3.

10 A Yes, sir.

11 Q And is item 1.3 labeled the back of the t shirt?

12 A Yes, sir, it is.

13 Q Okay. And did you retrieve all these items from evidence  
14 room 133 on January 4th, 2023.

15 A Yes, sir.

16 Q And where Bailey Haynes had left them on November 30th of  
17 last year?

18 A Yes, sir.

19 Q Okay. And did you note any issues with the packaging?

20 A Yes, sir.

21 Q Were all the items otherwise secure?

22 A Yes, sir. That's correct.

23 Q Okay. And where did you take these items?

24 A I took them from shelf L32 and secured evidence room 133  
25 and transferred them to the forensic scientist Catherine

1 Morri ssey.

2 Q Okay. And did she accept them?

3 A Yes, si r.

4 Q Did you also handle i tem number two l abeled as the buccal  
5 swab of the defendant?

6 A Yes, si r.

7 Q Was this retrieved from evidence room 133 on January 4th  
8 of thi s year?

9 A Yes, si r.

10 Q And is that where Bailey Haynes had clocked it in on  
11 November 7th of last year?

12 A Yes, si r. That's correct.

13 Q Did you also take that into analyzi ng? [I ndi scerni bl e]

14 A I did, Yes, si r.

15 Q Did she accept it?

16 A Yes.

17 Q And would all of these transfers be noted in the chain of  
18 custody?

19 A Yes, si r.

20 A And Ms. McGui nness, did you have any other i nvolvement i n  
21 thi s case?

22 A No, si r.

23 Q Okay. That's all I have for you. Thank you.

24 A Okay. Thank you.

25 MR. KING: No cross, Your Honor.

1 THE COURT: No cross examination. Thank you, ma'am.  
2 Release.

3 MR. KING: State calls Madison Willis.

4 THE CLERK: Okay. Please raise your right hand. Do you  
5 swear or affirm the testimony you shall give the court and the  
6 jury in the trial of this case is the truth, the whole truth,  
7 and nothing but the truth, so help you God.

8 MS. WILLIS: I do.

9 THE CLERK: Thank you. Please spell out your last name and  
10 speak clearly and fully your full name.

11 MS. WILLIS: My last name is Willis. W-I-L-L-I-S. First  
12 name is Madison.

13 DIRECT EXAMINATION OF WITNESS, WILLIS MADISON

14 BY: MR. MR. ABSHIRE

15 Q Ms. Willis can you hear me?

16 A Yes, I can.

17 Q Okay. Mr. Willis, do you work at SLED?

18 A Yes.

19 Q And what's your position at SLED?

20 A I am currently a forensic scientist in the drug analysis  
21 department with SLED, but was a former forensic technician with  
22 the evidence control department and SLED.

23 Q Okay. And being an evidence technician, does that involve  
24 transfer of evidence from different locations within SLED?

25 A Yes.

1 Q And are those noted in a chain of custody?

2 A Yes.

3 Q Would you were you involved with this case?

4 A Yes, I was.

5 Q And did you handle item 1.3 label the back of the t shirt?

6 A Yes, it is

7 Q Was this on November 29th of last year?

8 A Yes.

9 Q And did you retrieve it from room 150 where Christine Dabo  
10 had left it on July 21st of last year?

11 A Yes, sir.

12 Q Okay. And where did you take this item?

13 A This item was placed into a secure as a transfer  
14 container. We use these transfer containers to move evidence  
15 from the old lavatory to the new lavatory.

16 Q Okay. And was this also used the barcode scanner for this  
17 to reflect in the chain of custody?

18 A Yes.

19 Q Okay. And would this also be where Bailey Haines would  
20 have retrieved it the very next day?

21 A Yes, sir.

22 Q Okay. Did you also handle item number two labeled as the  
23 buccal swab of Thomas McFadden?

24 A Yes.

25 Q Was this also retrieved from evidence room 150?

1 A Yes, sir.

2 Q On July 19th, 2022.

3 A Yes.

4 Q Where did you take this item?

5 A This item was placed into a bulk container again to  
6 prepare for the move to the new laboratory. And then it was  
7 immediately placed back onto the intake shelf in evidence room  
8 150.

9 Q Okay. And was there any kind of issue with the packaging?

10 A No, sir.

11 Q Would you have noted it if there was?

12 A Yes, sir

13 Q And was all of this transfer reflected in the chain of  
14 custody?

15 A Yes, it was.

16 Q And where you placed it, is that where Hannah Jefferson  
17 retrieved it on October 31st of last year?

18 A Yes.

19 Q This was -- did you have any other involvement in this  
20 case?

21 A No, it's not.

22 Q Thank you. That's all I have for you.

23 A Thank you.

24 THE COURT: Recross.

25 MR. KING: No, Your Honor.

1 THE COURT: You're excused. Thank you, ma'am.

2 THE WITNESS: Thank you.

3 MR. ABSHIRE: Your Honor, State calls Michael Sanchez. You  
4 know, he's impressed by what?

5 THE COURT: We've done with the ---

6 MR. ABSHIRE: [Indiscernible] You Honor. We are.

7 THE COURT: [Indiscernible]

8 MR. ABSHIRE: I believe so.

9 THE COURT: [Indiscernible]

10 THE CLERK: Please raise your right hand. Put your left  
11 hand on the Bible. Do you swear or affirm the testimony you  
12 shall give the court and the jury in the trial of this case is  
13 the truth, the whole truth, and nothing but the truth, so help  
14 you God?

15 MR. SANCHEZ: I do.

16 THE CLERK: Please have a seat. Please state your full  
17 name, spelling your last name loudly and clearly into the  
18 microphone.

19 MR. SANCHEZ: Michael Sanchez. S-A-N-C-H-E-Z.

20 DIRECT EXAMINATION OF WITNESS, MICHAEL SANCHEZ

21 BY: MR. MR. ABSHIRE

22 Q Michael, where do you work?

23 A The North Charleston Police Department.

24 Q And what's your role at the North Charleston Police  
25 Department?

1 A I'm a detective in the investigative division doing proper  
2 -- persons crime cases.

3 Q Okay. How long have you been doing that?

4 A Investigations ten years. Overall Law enforcement 16.

5 Q Okay. And what are some of your roles and  
6 responsibilities?

7 A The investigation of criminal cases involving crimes  
8 against a person where somebody has been injured, whether it be  
9 shot, robbed or otherwise.

10 Q Does part of your role involve doing cell phone  
11 extractions?

12 A Yes. I'm also a forensic cell phone examiner, so I had  
13 been doing that about four years.

14 Q Okay. And how many times have you done that?

15 A Well, over 200, more than likely, just as a conservative  
16 estimate.

17 Q Okay. Is there a report that's generated whenever you're  
18 doing an extraction?

19 A Yes, there is a report that's generated. That's usually a  
20 digital copy of the data that was removed from the phone. That  
21 would include anything that was found to be in the phone's  
22 memory at that time. This would be the done as a PDF file that  
23 would be exported and sometimes also a one that's done through  
24 the user interface that's accompanied by the software that we  
25 use so that you can easily search it, explore it at your

1       leisure and search the document a little bit better.

2       Q     Okay. Do people sometimes call these phone dumps?

3       A     Yes, that's the -- more lay term for it.

4       Q     Okay. And just briefly, could you walk us through start to  
5       finish how you conduct a phone number?

6       A     So typically, the phone is given to me by a detective  
7       involved in the case. Or if it's my case, I'll work it myself.  
8       That case that phone will usually be examined to make sure that  
9       it's the correct phone that we received, either on a search  
10      warrant or a consent verified that the serial numbers match,  
11      item model, make all that stuff matches correctly. The phone  
12      will then be connected to a device that we call the UFED. It's  
13      a universal forensic examination device. It's provided by  
14      several different companies, namely Cellebrite, as the more  
15      common one, that one that device will then basically do a  
16      complete copy of the phone's data without manipulating or  
17      changing the data and export it in a fashion that then we can  
18      look at it and look through the device for any information that  
19      might be on it.

20      Q     And just so I understand you on these phone numbers, are  
21      you able to access text messages that are sent and received?

22      A     Yes.

23      Q     Contacts and that phone?

24      A     Yes.

25      Q     Phone calls that are received and sent?

- 1 A Yes.
- 2 Q Sometimes social media?
- 3 A Yes, that's possible.
- 4 Q There's a lot of information.
- 5 A Yeah, almost with some very slight limitations, with  
6 almost everything that's in the phone to include some data that  
7 the typical user wouldn't find, which we would call metadata.  
8 Such as like times that phone powers on and off, those kind of  
9 little intricacies.
- 10 Q And whenever you conduct these phone dumps. Are you the  
11 custodian of these records?
- 12 A Yes, I am.
- 13 Q Did you receive a cell phone from Claiborne Alston?
- 14 A Yes, I did.
- 15 Q And how did you receive that cell phone?
- 16 A That phone was given to me by the -- the case agent or the  
17 co case agent in this case was transferred me that phone
- 18 Q Okay. And are there sometimes forms that accompany a phone  
19 to explain where it came from?
- 20 A Yeah. So there's always going to be some kind of  
21 documentation as to whether who that phone came from, if it was  
22 a consent or a search warrant, that -- that form and  
23 documentation will also accompany the phone so that I can  
24 verify that, that's the means or the lawful authority we have  
25 to go into the phone.

1 Q Okay. And did you receive a consent form for that for  
2 Alston's cell phone?

3 A I did.

4 Q And then did you in turn perform an extraction on that  
5 phone?

6 A I did.

7 Q And did it generate an extraction report?

8 A Yes, it did.

9 Q If you were to see that consent form and extraction  
10 report, would you recognize it?

11 A I should, yes.

12 Q May I approach, Your Honor?

13 THE COURT: Yes.

14 Q I'm showing you what's been marked as State's Exhibit 197,  
15 as well as State's Exhibit 133. Could you explain what those  
16 are?

17 A State's Exhibit 197 is a standardized North Charleston  
18 Police Department consent for search and seizure form. In this  
19 case, this is the search and seizure form that was given to me  
20 for Claiborne Alston's phone. As it details the serial number  
21 and make and model of his phone. And 133 is an extraction  
22 report generated through the Cellebrite system. In this case,  
23 this extraction coincides with the same phone based on the  
24 serial number and I do recognize this as being also a cell  
25 phone extraction from this phone.

1 Q Okay. And is that an accurate representation of the  
2 extraction report that you yourself did as well as the consent  
3 form you received?

4 A Yes, sir.

5 Q Does it appear to be changed or altered in any way?

6 A No, it does not.

7 Q Your Honor, at this time, we would seek to admit State's  
8 Exhibit 133 and 197.

9 MR. KING: You can see the 197 [Indiscernible] one more  
10 time. I can't see it going for [Indiscernible]

11 MR. ABSHIRE: Yeah, for sure. 197 is the consent form.  
12 Exhibit 133.

13 MR. KING: No objection, Your Honor.

14 THE COURT: No objection [Indiscernible]  
15 [State's Exhibit No. 133 and 197 was Admitted into Evidence]

16 BY: MR. MR. ABSHIRE

17 Q Did you also perform an extraction on another phone?

18 A Yes, I did.

19 Q And do you remember the name of the song that was?

20 A At this moment actually I had forgotten.

21 Q Would that have been Ishmael Weston?

22 A That -- that's the one. Yes.

23 Q Was there also a consent form included on this one?

24 A Yes, there was.

25 Q And did you actually, in turn perform an extraction?

1 A Yes.

2 Q And in performing a dump on somebody's phone, we talked  
3 about phone calls and other data. Are you able to access also  
4 pictures?

5 A Yes. Any pictures, audio files? Almost everything that  
6 would be on a phone.

7 Q Okay. And that would inevitably include numbers that were  
8 -- they were receiving phone calls as well?

9 A Yes.

10 Q Okay. If you were to see this consent form as well as that  
11 extraction report, would you recognize it?

12 A Yes, I should.

13 Q May I approach, Your Honor? I'm handing you what is marked  
14 as State's Exhibit 196 and State's Exhibit 132.

15 A State's Exhibit 196 appears to be also another  
16 standardized consent form for search and seizure. This one for  
17 Ishmael Weston. Again, in this one it's for a phone. We have an  
18 iPhone listed in this one as well. This is the report. State's  
19 Exhibit 132 was a report from an extraction that I did back in  
20 March. Yes, this would be the the other phone.

21 Q Okay. Are those accurate representations?

22 A Yes, absolutely.

23 Q Do they appear to be changed or altered in any way?

24 A No, not at all.

25 Q Your Honor, at this time we would seek to admit State's

1 Exhibit 196 and 132.

2 MR. KING: No objection, Your Honor.

3 THE COURT: All right. Admitted.

4 [State's Exhibit No. 196 and 132 was Admitted into Evidence]

5 BY: MR. MR. ABSHIRE

6 Q Just to clear up one thing for a consent form, does that  
7 mean that the person who is consenting is allowing for their  
8 phone to be searched?

9 A Yes.

10 Q Okay. And whenever you perform an extraction report, are  
11 you able to identify that actual device's phone number?

12 A Yes. There will be a section that will actually pop up the  
13 phone number that the phone is tied to directly, and it'll also  
14 be seen within the text message as a header that's included in  
15 every text message sent and received.

16 Q Okay. So State's Exhibit 197 on the second page, what is  
17 the number affiliated with that device?

18 A Just to clarify, this is 132.

19 Q Excuse me. 132.

20 A What was the question again?

21 Q On the second page, what number is affiliated? Let me make  
22 sure.

23 A The number of affiliated is (843) 925-9867.

24 Q And is that -- is the number that's associated with the  
25 phone that was given by Ishmael Wesson to be served?

1 A Yes.

2 Q Okay. Thank you. That's all I have for you.

3 THE COURT: Cross?

4 MR. KING: No question, Your Honor.

5 THE COURT: Okay. All right, ladies and gentlemen. We have  
6 reached the breaking point for the day. And in exchange, you  
7 all ask you to be back at 9:30 again in the morning. If you  
8 have any question about whether or not you should discuss this  
9 case with anyone. I'll answer it for you. No, don't go do  
10 research. Don't get on the Internet. Don't get on any social  
11 media sites. Protect your rights by allowing everything that  
12 you use to decide this case to be heard in this courtroom.  
13 Okay. Those rights belong to each and every one of us. So with  
14 that, ladies and gentlemen, have a good night and we'll see you  
15 tomorrow.

16 MR. KING: [Indiscernible] Yes, Your Honor. Thank you.

17 THE COURT: Yeah. All right. Anything before we break?

18 MS. LINDER: Just for housekeeping and planning purposes,  
19 Judge. So tomorrow we have I believe, one SLED chain person who  
20 will be in person. Um, we have a forensic examiner who'll be in  
21 person from SLED. Also in the morning, the firearms expert from  
22 SLED who we heard from earlier in the week for counsel. He is  
23 also under in Lexington and he's going to be there at nine. So  
24 he'll be here afterwards and just kind of takes people out.  
25 Order. The DNA expert who also is virtual during the counsel

1 hearing will be here in person. We have other law enforcement  
2 tomorrow who are local. And then most importantly, we have all  
3 three of the charged co-defendants in this case that we intend  
4 to call as witnesses. One of them is currently incarcerated at  
5 the county jail. We've been in communication prior to this week  
6 with court security and the sheriff's office also spoken with  
7 the clerk's office regarding his transport details and his  
8 details for when he's here. And then the other two co-  
9 defendants are currently out on bond and they will be obviously  
10 not transported from the jail. So they will be coming here. And  
11 -- you know, like I said, we've spoken with the sheriff's  
12 office about this and we would just, you know, ask for their  
13 continued assistance with any security issues with those  
14 individuals.

15 THE COURT: Okay. I trust that they will do that and keep  
16 everyone safe in this courthouse. Okay.

17 MS. LINDER: Thank you, Judge.

18 THE COURT: All right, then. See you all in the morning.

19 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING IS CONCLUDED)  
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CERTIFICATE OF TRANSCRIBER

I, ERIN REILLY, a court-approved transcriber, 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 South Carolina Circuit Court 9, Charleston County, South Carolina, on the 28th day of March, 2023.

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

September 8, 2023

ERIN REILLY

TRANSCRIBER

1 CONTINUATION OF PROCEEDINGS - MARCH 29, 2023

2 THE COURT OFFICER: Yes. All right. Jury present Your  
3 honor.

4 THE COURT: All right. Thank you, sir. Welcome back,  
5 ladies and gentlemen. Hope you had a pleasant night. And we are  
6 ready to resume the trial. Please call your next witness.

7 MR. ABSHIRE: State calls Bethany Davidson.

8 THE CLERK: Please stand right there and place your left  
9 hand on the Bible and move your right hand up. Do you swear or  
10 affirm the testimony you shall give the court and the jury in  
11 the trial of this case, is the truth, the whole truth, and  
12 nothing but the truth, so help you God?

13 MS. DAVIDSON: Yes.

14 THE CLERK: Please be seated. Please state your full name,  
15 spelling your last name loudly and clearly into the microphone.

16 MS. DAVIDSON: Bethany Davidson, D-A-V-I-D-S-O-N.

17 DIRECT EXAMINATION OF WITNESS, BETHANY DAVIDSON

18 BY: MR. ABSHIRE

19 Q. Good morning, Ms. Davidson. How are you?

20 A. I'm good. How are you?

21 Q. I'm doing good. I'll preface this before we start talking.  
22 I understand that these questions are not the most riveting,  
23 but I appreciate you being here this morning. Could you please  
24 tell the jury what you do for a living?

25 A. I'm currently employed for the South Carolina Law

1 Enforcement Division, also known as Sled. I am the admin  
2 coordinator for our training unit, but previously I was a  
3 forensic technician in our Evidence Control Department.

4 Q. Okay. And as an advanced tech, does that mean you handle  
5 evidence and transfer it from different places within Sled?

6 A. That's correct.

7 Q. And when you transfer those, are those noted in the chain  
8 of custody?

9 A. Yes. Every item of evidence that goes through our  
10 laboratory is documented on our chain of custody.

11 Q. Okay. And did you handle evidence in this case?

12 A. I did.

13 Q. And what did you handle item one labeled heat seal pouch  
14 of a t shirt with printed pictures on the front?

15 A. Yes, sir, I did.

16 Q. And did you receive this from Jeremy Ledford on March  
17 29th, 2019?

18 A. I would have retrieved it from the evidence submission  
19 locker where Jeremy Ledford placed it. Yes, sir. On March 29th,  
20 2019.

21 Q. Got you. And that -- in placing it there would have been  
22 noted in the chain of command -- chain of custody. Excuse me.

23 A. So when you use the evidence submission locker to submit  
24 evidence, which is what all of our outside agencies do, they  
25 have their chain of custody, which states what time and date

1 they dropped it off at Sled. Our chain of custody -- I'm sorry.  
2 Our chain of custody is going to begin when I retrieve that  
3 item from the evidence submission locker. So it's going to  
4 state that he did submit it into the evidence submission  
5 locker. But the chain of custody is going to begin from that  
6 moment that I retrieve that item physically.

7 Q. Yeah. And where did you take item one?

8 A. When we retrieve items of evidence from the evidence  
9 submission locker, we will take that to our secured evidence  
10 room where we ensure that the evidence is secured and sealed  
11 properly to meet our laboratory standard. Once we see that the  
12 item of evidence meets our standards, we then log it into the  
13 system that we use, which is how it's generated a unique lab  
14 and item number, which is how the chain of custody is  
15 generated. Once we log that evidence in, we then transfer it to  
16 our secured evidence room where it will stay until a technician  
17 or an analyst requests to retrieve the item of evidence for  
18 analysis.

19 Q. Okay. So coming back to item one, the t-shirt. Do you take  
20 that to evidence Room 150?

21 A. That is correct, I did.

22 Q. And did you take it that same day on March 29th, 2019?

23 A. That is correct.

24 Q. And is that where Rachel Nguyen would have been retrieved  
25 it on April 22nd, 2019?

1 A. That is correct.

2 Q. And did you note any issues with the packaging?

3 A. There was no issues noted with the evidence. No, sir.

4 Q. So otherwise the t shirt was secure during the transfer?

5 A. Yes, sir. That item of evidence was secured -- secured and  
6 sealed to meet our laboratory policies.

7 Q. Okay. And did you handle item 1.1, labelled as scrapings  
8 from underarm in collar t shirt?

9 A. Yes, sir.

10 Q. As well as item 1.2 hair from the t shirt?

11 A. That is correct.

12 Q. And item 1.21 label is seal patch repair [Indiscernible]?

13 A. That is correct.

14 Q. And then finally, item 1.22 also labeled sealed patch  
15 repair?

16 A. That's correct.

17 Q. And did you retrieve those items from Rachel the on April  
18 29th, 2019?

19 A. Yes, sir, I did.

20 Q. Okay. And where to take them?

21 A. I would have placed it back into our secured evidence room  
22 on the intake shelf.

23 Q. Was that done on the same day?

24 A. Yes, sir. That was.

25 Q. Okay. And was all this transferred documented in the chain

- 1 of custody?
- 2 A. Yes, sir. It is documented.
- 3 Q. And is that where Noel Johnson then retrieved it on August  
4 1st, 2022?
- 5 A. That is correct.
- 6 Q. Okay. Finally, did you handle item 10, labeled as envelope  
7 containing cartridge case EX1CC?
- 8 A. I'm sorry if I'm referring to my notes.
- 9 Q. You got another couple of these at you?
- 10 A. Yes, sir. I did handle that piece of evidence.
- 11 Q. Okay. And then item 11 labeled as cartridge case EX2CC?
- 12 A. Yes, sir. I also handled that piece of evidence.
- 13 Q. Okay. As well as item 12, also containing cartridge case  
14 TF3CC?
- 15 A. That is correct.
- 16 Q. And item 13 labeled as envelope containing cartridge case  
17 EX4CC?
- 18 A. Yes, sir.
- 19 Q. Okay. Did you receive all these items on August 7th, 2019?
- 20 A. Yes, sir. August 7th, 2019.
- 21 Q. Okay. Where Sgt. Ledford had brought them in from North  
22 Charleston PD?
- 23 A. That is correct.
- 24 Q. Okay. And he had actually dropped them off on July 31st,  
25 2019. So just a couple of days prior?

1 A. Correct.

2 Q. And did -- this was all reflected in the chain of custody?

3 A. Yes, sir.

4 Q. Any issues with the packaging?

5 A. No, sir. There was no signs of issues with the packaging.

6 Q. Did you take it directly to Paul Greer?

7 A. He -- Paul Greer actually would have come down to --  
8 outside of our evidence room. And that is where we transfer all  
9 the evidence with our laboratory for them to retrieve a piece  
10 of evidence. They have to scan their barcode and put in their  
11 passcode to be able to physically take that evidence from us  
12 and evidence control.

13 Q. Okay. And if you could tell the jury real quick, who is  
14 Paul Greer as well.

15 A. Paul Greer is a forensic scientist in our firearms  
16 department. So, he examines all of the firearms evidence that  
17 comes into the laboratory.

18 Q. Right. [Indiscernible] Thank you Ms. Davidson that's all I  
19 have.

20 A. Thank you.

21 THE COURT: Cross examination?

22 MR. KING: No, Your Honor.

23 THE COURT: All right. Thank you, ma'am. Your absent of  
24 objection released from the subpoena.

25 MS. DAVIDSON: Thank you.

1 MR. ABSHIRE: State calls Rachel Nguyen.

2 THE CLERK: Please [Indiscernible] Do you swear or affirm  
3 the testimony you shall give the court and the jury in the  
4 trial of this case is the truth, the whole truth, and nothing  
5 but the truth, so help you God?

6 MS. NGUYEN: I do.

7 THE CLERK: Please be seated. Please state your full name,  
8 spelling your last name loudly and clearly into the microphone.

9 MS. NGUYEN: Rachel Nguyen, N-G-U-Y-E-N.

10 DIRECT EXAMINATION OF WITNESS, RACHAEL NGUYEN

11 BY: MR. ABSHIRE

12 Q. Good morning Ms. Nguyen?

13 A. Good morning.

14 Q. Could you please tell the jury where you work?

15 A. I work for the South Carolina Law Enforcement Division,  
16 most commonly known as Sled.

17 Q. And what do you do at Sled?

18 A. I'm a forensic scientist within the casework department  
19 within the forensics laboratory.

20 Q. Right. So what are some of your roles and  
21 responsibilities?

22 A. So I do body fluid identification, which would be  
23 screening or looking for a different body fluids, such as  
24 blood, semen or saliva. I also do collection methods for the  
25 possible presence of DNA, which include trying to collect touch

1 DNA from handling an object or ownership DNA, which would be  
2 from wearing an article of clothing. I also participate in a  
3 portion of the DNA analysis, and then when required, I provide  
4 courtroom testimony.

5 Q. Do you work it also sometimes in the serology lab?

6 A. Yes. So a component of the serology section would be that  
7 body fluid identification I mentioned, as well as trying to  
8 collect any possible DNA off an item from handling it or  
9 wearing it.

10 Q. And I apologize. What exactly is serology?

11 A. Serology is body fluid identification.

12 Q. Okay. And in your role, you told us a little bit about  
13 preparation. Do you sometimes prepare items for DNA analysis?

14 A. Yes. So once I've what we call processing, so any body  
15 fluid screening, any collection methods, we'll do what's called  
16 preparing it. So if it's collected by swabs or cut from an  
17 article of clothing, I will then cut a portion of the cutting  
18 or the swabs, and that portion will be forwarded to a DNA  
19 analyst for further analysis.

20 Q. And how do you go about determining where you're going to  
21 cut on an item?

22 A. It depends on what's requested, what type of item it is  
23 and what ideally you're looking for, whether it is a body fluid  
24 or just potential DNA left from handling an object.

25 Q. And what's the idea behind doing serology before the DNA

1 analysis?

2 A. So body fluids are very rich in DNA. So ideally, you would  
3 want a body fluid if that's requested of an item and if it's a  
4 collection method for your skin cells, for the touch DNA, as I  
5 mentioned, I'm collecting it and putting it on a smaller item,  
6 such as a swab for the DNA analysis process instead of a large  
7 item such as a shirt or a pair of pants being forwarded for DNA  
8 analysis, which it would be kind of harder to perform that  
9 analysis on such a large article of clothing.

10 Q. Got you. And I know this kind of sets the obvious, but  
11 throughout this entire process, are you taking as many  
12 precautions as you can to avoid contamination?

13 A. Yes. So we have many things in place. We wear personal  
14 protective equipment, such as a lab coat, mask, gloves. There's  
15 frequent changing of gloves, changing between items. We  
16 decontaminate any surfaces between items, and we decontaminate  
17 our keyboards, our mouses, When we're typing in information  
18 that pertains to the case, we're making sure only one item of  
19 evidence is out at a time. Just there's so many things we do,  
20 and that's just a few of them.

21 Q. Were you working in serology in 2019?

22 A. I was.

23 Q. And did you handle evidence in this case?

24 A. I did.

25 Q. And could you tell us a little bit about how you received

1 the evidence in this case?

2 A. So our process is we have an evidence control department  
3 which houses all of the evidence as it's submitted by the  
4 various agencies, as well as is maintained there to be returned  
5 to the agencies. So when a case has basically come up for it's  
6 time to be processed, I will request that item of evidence or  
7 items of evidence from the evidence control department and then  
8 they will remove them from the shelves that they're being  
9 stored on. And then they'll transfer it to me and then I will  
10 proceed on with whatever is requested of that item.

11 Q. We have heard a lot about chain custody. Is that what  
12 you're referring to?

13 A. Yes. So, our chain of custody is electronic, so every  
14 location as well as every individual has a barcode. And those  
15 locations are people's barcodes are scanned to show  
16 electronically the transfer of an item of evidence. The items  
17 of evidence also have a barcode to show what's being tracked.  
18 And while this is electronically happening, it is also  
19 physically happening. So once my barcode is scanned. So the  
20 evidence is transferred to me. I will then also take that  
21 physical item with me.

22 Q. Coming to the evidence that you analysed in this case.

23 A. Okay.

24 Q. Did you receive a t shirt?

25 A. I did. I received item one, which is described as a white

1 t shirt with printed pictures on front.

2 Q. Okay. And if you were to see that, would you recognise it?

3 A. Possibly.

4 Q. Okay. Your Honor, may I approach?

5 THE COURT: Yes.

6 Q. Your Honor, can I request [Indiscernible]. All right. I'm  
7 handing you State's Exhibit 102. Is this the t-shirt?

8 A. Yes, this is the t-shirt. I'm looking at the unique case  
9 number, the unique item number, my initials, as well as the  
10 dates I've opened this item.

11 Q. So if you can we please open that and we're going to go  
12 through actually examining that item.

13 A. Okay.

14 Q. Okay. So there's this brown bag, the one that the tissue  
15 was in?

16 A. Yes. So, that appears to be one of the outer layers of  
17 packaging that the t-shirt was found in.

18 Q. Okay. Would that be included with the secure packaging?

19 A. Yes. So, it would have -- I would have examined it to see  
20 if there was any rips or tampering within the seal. If there  
21 was, I would have noted it. In this case, there was not.

22 Q. Okay. Could you do me a favor and cut this open and then  
23 actually remove the T-shirt?

24 A. May I stand?

25 Q. Yeah, absolutely. Whatever is comfortable.

1 A. Do you want me to hold it up?

2 Q. I'll hold it up.

3 A. Okay.

4 Q. I'm happy to grab it from you. Yeah. All right. Just so  
5 we're clear on what we're talking about, is this the t shirt  
6 with pretty pictures that you analyzed?

7 A. Yes.

8 Q. So before I handed it to you, I looked for the unique case  
9 number, item number and my initials within the shirt, which is  
10 when I label it after processing. In addition, I have  
11 documentation that says -- I described the shirt as various  
12 photograph images on front with fly high money printed on  
13 front. And then I also have listed the brand in the size.

14 Q. Okay, so I'm going to pull this collar back is -- are  
15 those your initials right there?

16 A. Those are my initials.

17 Q. Okay. And then could you please explain what we're looking  
18 at with some of these arrows in the numbers on the back?

19 A. So, this item of evidence was ---

20 Q. [Indiscernible]

21 A. -- was processed twice. The original processing request  
22 was ownership. Ownership once again, is to identify the primary  
23 wearer of an article of clothing. So, to perform ownership  
24 processing, I'm going to use this sterile scraper and scrape  
25 areas of high friction that you would have from wearing an

1 item. So for a t shirt, it's going to be the underarms inside,  
2 as well as the collar. So, I scrape those areas and then I  
3 follow behind with a swab that's been moistened with water. And  
4 basically I'm just going to rub those areas to try to collect  
5 any skin cells. After that processing occurred, request came to  
6 me through the DNA analysts on this case that said, the subject  
7 not -- might not have necessarily been wearing this shirt. So,  
8 they wanted to do touch, which would be trying to collect skin  
9 cells from handling an object. We use a special collection  
10 method called the in back. It's used to try to collect any DNA  
11 on an article of clothing or any kind of object that may have  
12 very low DNA present. What that pertains is basically a vacuum.  
13 So I'm going to put this shirt in a sterile bin and first rinse  
14 it with a sterile buffer solution that does not have any DNA  
15 within it. Then I'll go back across it and suck up any  
16 solution. The idea is that, if there's any DNA present on the  
17 shirt, it'll get trapped within this buffer solution and  
18 therefore it's getting sucked through the vacuum. Once it's  
19 going through the vacuum, it goes through a filtration unit.  
20 The filtration unit kind of looks like an hourglass. So it has  
21 a chamber in the top and a chamber in the bottom separated by a  
22 filter. So, the liquid will go through to the top. It'll be  
23 filtered through the filter and then the remaining liquid will  
24 go to the bottom. What's important in this unit is the filter.  
25 So, once that process is done, the filter will be set out to

1 dry. Once it's dry, the filter will be removed from the  
2 filtration unit and then prepared for DNA analysis.

3 Q. Okay. There are a lot of us there.

4 A. Yes.

5 Q. I'm a backup [Indiscernible].

6 A. That's fine.

7 Q. So as we've looked at some of these numbers, you told us  
8 that whenever you're looking for DNA, you -- it depends on the  
9 item. Why did you choose these certain areas on this shirt?

10 A. So the -- this 1.3 with the arrows, it's showing that  
11 that's a part of the area that was processed within that  
12 collection. Essentially, the entire shirt was processed within  
13 that collection. If you were to flip the shirt inside out, you  
14 would see item or labeled 1.1, which would be, as I mentioned,  
15 the initial ownership processing. So that signifies the areas  
16 where I swabbed.

17 Q. Two seconds, I'll pull it up.

18 A. So it'll be here under each underarm and then as well as  
19 up on the collar.

20 Q. And why do you pick those areas?

21 A. So, for the ownership processing, those are areas of high  
22 friction. You know, you're moving a lot, your underarm and then  
23 the collar is another area that's coming into contact with your  
24 body often.

25 Q. Okay. And you're scraping -- actually, can I show them

1 that tool as well as this is interesting. What exactly is this?

2 A. So it's a sterile scraper. It -- they're individually  
3 packaged. And the reason why we package it with the item after  
4 is to show that it was not used on another item and it will  
5 travel with that item throughout its time.

6 Q. And when you're using that scraper, are you scraping or  
7 skin cells as well as other things you may find that may  
8 contain DNA?

9 A. Yeah. So, I'm scrap -- scraping the surface. Ideally it's  
10 for skin cells, but anything that's present will be collected  
11 as I'm swabbing it afterwards, as well.

12 Q. Okay. And back up just here. Do you mind if I hold this?  
13 So, I want to make sure we got all of our numbers right. Do you  
14 generate a report whenever you're doing all of this?

15 A. Yes, I generated two reports.

16 Q. Okay. And item 1.1 from your report, we -- they heard all  
17 about transferring to or from throughout Sled. Just to be 100%  
18 clear, what was item 1.1?

19 A. So item 1.1 is the swab from scraping interior, underarms  
20 and collar of t shirt.

21 Q. Okay. And item 1.2?

22 A. Item 1.2 was hair from t shirt. Collecting hair is also a  
23 part of the ownership processing method.

24 Q. Right. And then item 1.21 and 1.22?

25 A. So 1.21 and 1.22 are the actual individual hairs that were

1 forwarded from neck for analysis. So when we collect the hair  
2 from an item of ownership, it's being collected on a Post-it  
3 note. So the item 1.2 is signifying the collection as a whole.  
4 And then that 1.2.1 and 1.2.2 are signifying individual hairs.

5 Q. Got you. And so you did find hairs on this t shirt?

6 A. Yes.

7 Q. And if you find a hair, does that guarantee that there's  
8 going to be DNA?

9 A. That would be a more suitable question for the DNA  
10 analyst.

11 Q. Awesome. So you told us about the in back process. Did you  
12 generate a report for this as well?

13 A. Yes. So a second report was generated for the processing  
14 with the in back.

15 Q. Okay. And would that have been item 1.3?

16 A. Yes. So item 1.3 is described as in back collection from  
17 entire exterior of white t shirt with printed pictures on  
18 front.

19 Q. Okay. And whenever you took these scrapings and the hairs,  
20 did you individually package them?

21 A. Yes. So the set of swabs will be in one envelope. The hair  
22 collection would be in another envelope, and then the in back  
23 collection would be in another envelope separately.

24 Q. Okay. And if you were to see those envelopes, would you  
25 recognize them?

1 A. Yes.

2 Q. May I approach, Your Honor?

3 THE COURT: Yes.

4 Q. Okay. I'm handing you what's been marked as State's  
5 Exhibit 185, 190 and 126. Could you please tell us what this  
6 is.

7 A. Can I open this?

8 Q. Yeah, absolutely. Are the scissors still up there? They  
9 don't give you a lot. There you go.

10 A. Okay. So within States Exhibit 185, 190 and 126, I have  
11 the items 1.1 and 1.2, which are the swabs from scraping the  
12 shirt and the hair collection.

13 Q. Okay. And do these appear to be in the same state as  
14 whenever you packaged them?

15 A. Yes.

16 Q. Have they been changed or altered in any way?

17 A. There's just an initial on the front of each of the  
18 envelopes, which is from the DNA analyst.

19 Q. Okay. And Your Honor, at this time, we would seek to admit  
20 those items into evidence.

21 MR. KING: No. Objection, Your honor.

22 THE COURT: Without objection.

23 [State's Exhibit No. 185, 190 and 126 was Admitted into  
24 Evidence]

25 BY: MR. ABSHIRE

1 Q. Whenever you had completed all of this, the in back, all  
2 the scrapings, the analysis of the t shirt, did you securely  
3 package them?

4 A. Yes. So I prepared these items for DNA analysis, as I  
5 mentioned. That's just cutting a small portion of the hairs was  
6 separating them out from the Post-it note, putting it in a tube  
7 and that's forwarded to the DNA section for further analysis.  
8 So I have a little pouch that's in here, that's also in here.  
9 But then I seal the samples within that pouch, and then I will  
10 seal the heat sealed pouch again, and then it will go on  
11 further for analysis.

12 Q. Okay. And then all of that was it taken to the DNA for  
13 analysis?

14 A. It appears I returned it to the evidence control  
15 department and then it would have later been retrieved by a DNA  
16 analyst.

17 Q. Okay. So I know I just brought you a lot of evidence. I'll  
18 help you pack it up. That's all the questions I have.

19 MR. KING: I have a few questions.

20 THE COURT: You have just a few. You don't really need to  
21 step out.

22 MR. KING: No.

23 Okay. Cross examination.

24 CROSS-EXAMINATION OF WITNESS, BETHANY DAVIDSON

25 BY: MR. KING

1 Q. Good morning Ms. Davidson.

2 A. Good morning.

3 Q. I just have a few questions. The traditional way of  
4 obtaining DNA samples is a cotton swab. Is that right?

5 A. Depending on what kind of processing is required. But in  
6 this case, yes, a sterile cotton swab was used for the  
7 ownership collection.

8 Q. You said you swabbed certain areas of that shirt?

9 A. Yes. So the interior underarms and the collar were  
10 swabbed.

11 Q. And that's where you think the most likely place your DNA  
12 might be found?

13 A. Yes, that's the area of it's probable that there's a lot  
14 of DNA present due to the friction on the body.

15 Q. In addition to that, you've got a like a little vacuum  
16 cleaner ---

17 A. So it's kind of like a -- it's not quite like a vacuum.  
18 It's a sterile filtration, somewhat suction device.

19 Q. Is that better at collecting DNA in the swab method?

20 A. So it's used -- kind of we don't use it on the general  
21 everyday course of work in back collection is kind of used as a  
22 last resort to -- to collect any possible DNA that's present on  
23 an item that is anticipated that there's not a lot present.

24 Q. The in back is brought out on special occasions?

25 A. It's upon request.

1 Q. And that in back was effectively a vacuum cleaner. Do you  
2 vacuum the whole shirt, entire surface of shirt with the in  
3 back. Is that right?

4 A. Yes, I did the entire exterior of the shirt.

5 Q. So and that's the most you could possibly do to try to  
6 extract DNA from that shirt. The best method available?

7 A. Yes. In terms of trying to collect any touch DNA. I am  
8 soaking this shirt in this buffer solution, trying to kind of  
9 trap any DNA within the solution and then going back in,  
10 sucking it up with this -- it's kind of a small nozzle that  
11 tries to remove all the water.

12 Q. No question, Your Honor.

13 THE COURT: Any redirect?

14 MR. ABSHIRE: No, Your Honor.

15 THE COURT: All right. Absent of objection, you are  
16 released from subpoena. Thank you.

17 MS. LINDER: State calls Clayvon Elston.

18 THE COURT: Okay.

19 THE CLERK: Please [Indiscernible] Do you swear or affirm  
20 the testimony you shall give the court and the jury in the  
21 trial of this case is the truth, the whole truth, and nothing  
22 but the truth, so help you God?

23 MR. ELSTON: Yes.

24 THE CLERK: Please be seated. Please state your full name,  
25 spelling your last name loudly and clearly into the microphone.

1 MR. ELSTON: Clayvon Elston, C-L-A-Y-V-O-N.

2 DIRECT EXAMINATION OF WITNESS, CLAYVON ELSTON

3 Q. Is that the spelling of your last name?

4 A. E-L-S-T-O-N.

5 Q. Thank you. Where do you live?

6 A. Lincolville, South Carolina.

7 Q. And is there like a neighborhood group associated with  
8 Lincolville, T.O.L?

9 A. No.

10 Q. I want to bring you back to 2019. Did you know somebody by  
11 the name of Justin Stewart who was killed?

12 A. Yes, that was my cousin.

13 Q. And what was his nickname?

14 A. Money.

15 Q. Did you attend his funeral?

16 A. Yes.

17 Q. What did you wear to his funeral?

18 A. A shirt.

19 Q. Anything specific about the shirt?

20 A. Yes, I guess.

21 Q. Can you describe the shirt?

22 A. I can't really describe it. Like, how?

23 Q. Was it a collared shirt like you're wearing right now?

24 A. No, it was a t shirt.

25 Q. It was a t shirt. Was there anything on that t shirt? Any

1 pictures or words?

2 A. A picture of him.

3 Q. A picture of him?

4 A. Yes.

5 Q. All right. Was that the only t shirt like that or was that  
6 a special t shirt that was made for you to wear?

7 A. As far as I know.

8 Q. Yeah. Your Honor may I approach the witness?

9 THE COURT: Yes.

10 Q. Right. You don't need to. I'm going to put some things up  
11 on this overhead. It'll show up on these TV screens and that  
12 monitor just in front of you. Okay?

13 A. Yeah.

14 Q. I'm going to ask you a couple questions. I'm going to show  
15 you what part of State's Exhibit 133 that's already been  
16 admitted into evidence. Who's in that picture?

17 A. Me.

18 Q. All right. And whose grave is this down here?

19 A. My cousin.

20 Q. Your cousin? And what's his name?

21 A. Money.

22 Q. All right. And is this a special t shirt for Money?

23 A. Yes.

24 Q. I'm going to show you what -- this is also still part of  
25 what's already been admitted to State's Exhibit 133. Who is

1 this right here?

2 A. Me.

3 Q. And is this that same special t shirt for Money?

4 A. Yes.

5 Q. And who's this guy right here?

6 A. Jamal .

7 Q. Did Jamal have a nickname?

8 A. Grind.

9 Q. Grind? And is he wearing a special shirt for Money as  
10 well?

11 A. I guess so.

12 Q. All right. This is also part of State's Exhibit 133 that's  
13 already been admitted. And that is a touch screen in front of  
14 you. So you can point or draw lines or circle people. Can you  
15 identify everybody who's in this picture? We'll start here.  
16 Who's this right back here?

17 A. That is me.

18 Q. All right. And then I think you already in another photo.  
19 Who's this fella right here?

20 A. That is Jamal .

21 Q. All right. Can you tell the jury who else is in this  
22 picture? And what is this picture taken?

23 A. I think that was at the funeral . Yeah, that was the  
24 funeral .

25 Q. Okay. Can you tell the jury who else was there in that

1 picture? Was that everybody at the funeral or is that just some  
2 of the people?

3 A. I guess they're just some.

4 Q. All right. Can you tell the jury who all those other  
5 people are?

6 A. Oh, yeah. I can't see people is I don't know if ---

7 Q. It helps you. I'm going to bring this over to you. I don't  
8 know if it'll help sometimes the glare is not the best. Is that  
9 easier?

10 A. No, I don't know anybody else who is in that picture.

11 Q. You don't know everybody else in that picture?

12 A. Look very familiar.

13 Q. This guy right here.

14 A. Who is this?

15 Q. Okay.

16 A. And...

17 Q. Okay. So those pictures were from the funeral. Did you  
18 ever go up and like, pay your respects to your cousin Justin  
19 ever again, to his gravesite?

20 A. Multiple times.

21 Q. Multiple times. And did you go up there a little bit  
22 before all of why we're here today happened?

23 A. Any time. I'd still go.

24 Q. Okay. And did you ever wear that t shirt again up there?

25 A. Yes.

1 Q. And the last time that you went up there before the  
2 shooting happened. Who were the people who were there with you?

3 A. It was me -- me -- I think it was Ishmael. I think it was  
4 me, Ishmael whoever. I can't remember everyone's name. That was  
5 -- that was a while ago. And I have seizures. My memory is  
6 messed up.

7 Q. All right. How did you get up to the gravesite that day?  
8 Did you ride or did you drive?

9 A. I rode with someone, I think.

10 Q. All right. Did...

11 A. Because I don't drive. I don't have a car.

12 Q. Okay. So I believe you said Ishmael. Does he have any kind  
13 of nickname? Do you ever call him Ish?

14 A. Yeah.

15 Q. What kind of car was Ish driving at the time?

16 A. They run that time he had a Charger.

17 A. Charger? All right. I want to bring you to the actual  
18 morning where all of this where this whole shooting happened,  
19 which is March 14th, 2019, that morning where did you wake up?

20 A. I don't know, ma'am. 2019, March. I don't -- I don't  
21 remember that morning, ma'am.

22 Q. Okay. Do you remember what you were doing that day?

23 A. That day? I was drinking that day I think. I'm not sure.  
24 You know I was drinking that day.

25 Q. Do you know where you were drinking?

- 1 A. I was home.
- 2 Q. Home and was home at that time also in Lincolnville?
- 3 A. Yeah.
- 4 Q. Did anybody come over to your house that day?
- 5 A. Me and my friend Jamal was chilling.
- 6 Q. Jamal, is that the same Jamal that we saw in those  
7 pictures?
- 8 A. No.
- 9 Q. It's a different Jamal? All right. Where were you around  
10 7:00 that day? Were you still at home?
- 11 A. Most likely.
- 12 Q. Were you at the Cummins Turbo Plant?
- 13 A. No.
- 14 Q. Did you ever hear about the guy who was shot and killed at  
15 Cummins Turbo in that parking lot?
- 16 A. I saw it on Facebook.
- 17 Q. And did you recognize? Had you ever seen that person in  
18 person or social media before?
- 19 A. I never saw or heard of that dude a day in my life.
- 20 Q. Okay. If he -- is the fellow who was killed, do you know  
21 if he's thought to hang out with any certain neighborhood  
22 group?
- 23 A. As far as I know, no. Because I don't know him.
- 24 Q. Have you ever heard of Robin Wynne?
- 25 A. Yes, I have.

1 Q. How would you say? How does Town of Lincolnville get along  
2 with Robin Wynne at this time?

3 A. We have no problems with Robin Wynne.

4 Q. So I think one of the few names that we heard today was  
5 Ishmael. You said you've called him Ish. Do you know his full  
6 name?

7 A. Weston, I went to school with him.

8 Q. And you went to school with Ishmael Weston?

9 A. Yeah, I've been with him because -- and another thing they  
10 tried to say that I lied inside the interrogation room about  
11 knowing Ishmael and Jamal. And why would I lie about knowing  
12 him for when I knew them since elementary school.

13 Q. Okay. What I want to talk to you. So you've known him  
14 since elementary school. So you all are friends or were friends  
15 because you've known him for so long? Is that right?

16 A. Yeah.

17 Q. Okay. And we you all Facebook friends?

18 A. Yeah.

19 Q. Did you all ever communicate over Facebook, like through  
20 Messenger and stuff like that?

21 A. Yeah.

22 Q. And did you all have each others -- did you ever talk to  
23 him or communicate with him over the phone, Facebook or any  
24 other way? The day this murder happened?

25 A. Not that I'm aware of because I don't remember the day

1 that that murder happened on. So, no.

2 Q. All right. Do you remember being interviewed by detectives  
3 at North Charleston Police Department on March the 18th of  
4 2019?

5 A. I was going through that transcript just now.

6 Q. All right. So do you recall being up there for that  
7 interview?

8 A. Somewhat, because I was under the influence and -- you  
9 know, going through all the drugs and stuff. So.

10 Q. Would it help refresh your recollection if you look at  
11 that transcript from that interview?

12 A. I was already. I'm going through it.

13 Q. All right. Would help refresh your recollection if I  
14 showed you within the transcript who you're present with at the  
15 gravesite the day before this murder?

16 A. I mean, it could help.

17 Q. Your Honor, I ask to approach?

18 THE COURT: Yes, ma'am.

19 Q. This is page here after

20 A. I'm, here on it.

21 Q. Page 57. Pardon?

22 A. Could I bring in my -- my diagnosis. I'm -- I'm seeing  
23 that I have seizures and stuff like that. Just to -- I'm just  
24 to verify my memory as a witness.

25 THE COURT: As a witness, you just answer questions. Okay.

1 All right. Thank you.

2 THE WITNESS: Okay.

3 BY: MS. LINDER

4 Q. All right. So this is -- you can look at the top pretty  
5 much. It starts at line number ten. It just read that you want  
6 to read it aloud, just read it to yourself. When you're done  
7 reading it, let me know.

8 A. Okay.

9 Q. Does that help refresh your recollection as who was with  
10 you at the grave site the night before this murder?

11 A. Yes, but what murder?

12 Q. The fellow that was shot and killed at Cummins, I believe  
13 you testified that you saw about it on Facebook.

14 A. Yes, I saw it on Facebook after he was murdered.

15 Q. Correct.

16 Q. I'm asking you before that the day before any of that  
17 happened, did this help refresh your recollection as far as who  
18 you were with at the grave site visiting Justin?

19 A. I never said I was with him exactly the day before that  
20 guy got killed.

21 Q. All right. And I believe you testified that you were with  
22 Ish going up there. Do you remember where you were sitting in  
23 that car and who was sitting where in the car?

24 A. I was in the passenger seat this is.

25 Q. Do you remember that?

1 A. I don't remember it, but that's what it says on the paper.  
2 My memory is messed up, ma'am.

3 Q. Do you remember giving consent to law enforcement to to do  
4 it? We call it a digital extraction. They pretty much plug in  
5 your phone, you sign a few things so they can plug in your  
6 phone and check out your phone.

7 A. I don't remember doing that.

8 Q. Okay.

9 A. I know they took my phone, but I don't remember doing  
10 that.

11 Q. All right.

12 A. Because I know they took my phone and...

13 Q. At this time I show you what's [Indiscernible] up. I'd  
14 like you to look at the screen in front of you. State's Exhibit  
15 197. It's already been admitted. This is not good handwriting,  
16 but what name does that say?

17 A. [Indiscernible]

18 Q. When you zoom in, would that be helpful?

19 A. I don't even know.

20 THE COURT: Yes. Zoom in.

21 Q. You know, piece by piece?

22 A. Yes.

23 Q. Right here.

24 A. I don't even know who [Indiscernible].

25 Q. Okay. First, let's start here. Do we see the date? What

- 1 date does that say? Does that say March 18th, 2019?
- 2 A. Yeah.
- 3 Q. Location, it says 2500 City Hall Lane?
- 4 A. Yeah. I see it.
- 5 Q. Then this name, I Clayvon Elston, right?
- 6 A. Uh-huh.
- 7 Q. And then down here. What's this?
- 8 A. My signature.
- 9 Q. Your signature. Okay.
- 10 A. Who God knows. I was under the influence I did...
- 11 Q. All right. So why we're all here today is because the
- 12 fellow who was killed at Cummins Turbo happened on March the
- 13 14th in the -- I guess it depends who you are early evening
- 14 hours. Late afternoon hours. Did you place any phone calls? Did
- 15 you place a phone call to Ishmael on March the 14th at 7:11
- 16 p.m.?
- 17 A. No.
- 18 Q. And the shooting happened like just 4:07 p.m. At 7:50 p.m.
- 19 and. 7:51 p.m. on your phone. Did you search Live 5 News and
- 20 Crime?
- 21 A. Not that I recall, no.
- 22 Q. At 8:00. Did you get a call for -- from Ish or Free Smoke
- 23 Ish that lasted two minutes and 39 seconds?
- 24 A. No, I don't know. I don't remember that.
- 25 Q. Okay. Also, that same day, March 14th at 828 in the

1 evening. Did you search Live 5 News and then link to an article  
2 called Police Responding to Incident at North Charleston  
3 Manufacturing Business?

4 A. I don't remember that.

5 Q. Although you may not be familiar, would you like would it  
6 maybe refresh your recollection if you can see part of this  
7 phone distraction from your phone?

8 A. Yes.

9 Q. Okay. An extraction, I just have I'm going to call it by  
10 these numbers. I'm going to tell you your page numbers.

11 A. Yeah.

12 Q. All right. I'm going to show you what's been marked as  
13 State's Exhibit 198 for ID purposes. Okay.

14 A. Uh-huh.

15 Q. It's two pages long. I'll try to guide you through this.  
16 On the far left, it has small little numbers. Just say, kind of  
17 like what happens on the timeline. It's a chronological. Can  
18 you look at what is on the far left? It's 2417?

19 A. Okay.

20 Q. Okay. Can you tell me what's happened in there? Just look  
21 at it and read it. And if that refreshes your recollection,  
22 I'll tell you the number ones that I'm talking about. So you  
23 just read it. And if it helps, then you can read it and then we  
24 can talk about it on.

25 A. On the first page?

1 Q. I can show you. So it's these tiny numbers right here,  
2 2417.

3 A. Okay.

4 Q. You see, it says, I don't need to say all this out loud,  
5 but you see what it says here? This is from your phone and it  
6 has 2417. Time, this is two. You see how that's red?

7 A. Okay.

8 Q. And then while I'm here, I'm also going to talk to you if  
9 you can look at numbers on the side. 2423, 2424, 2425, 2426,  
10 2428. You can see if that refreshes you at all. And then we're  
11 looking here at 2431. You see what it is. And here's times and  
12 content. Just look at it. If that refreshes you and then I can  
13 go to the next page and show you.

14 A. I don't -- don't remember making these calls, but I  
15 probably called him to check on him at work, seeing how I saw  
16 that on like the news to make sure my friend was okay.

17 Q. Okay. So you're saying you must have called him for that?

18 A. Yeah, but I don't remember calling him though.

19 Q. Okay.

20 A. It could have been the reason.

21 Q. All right. So then that call was 8:00, So then it -- here  
22 item 2466. This is at 8:28. That really specific one. You  
23 remember that?

24 A. Don't remember the specific one.

25 Q. See how some of the -- if this refreshes you good. If not,

1 then I can just ask other questions. That's fine. So there's  
2 this versus this.

3 A. Okay.

4 Q. If this refreshes you, great. If not, then that's okay.

5 A. They're not refreshing.

6 Q. All right. So you said you may have called to check on  
7 your friend. Where was Ish working at the time?

8 A. He was working at Cummins I think.

9 Q. Okay. Did you have any other friends or know anybody else  
10 who was working up there?

11 A. Him and Jamal was working there.

12 Q. Okay. So that shirt that we saw the pictures of -- that  
13 was yours. Do you still have that shirt?

14 A. No, I don't.

15 Q. What happened to the shirt?

16 A. Last time I saw that shirt was when I went to my cousin's  
17 gravesite, when I was drinking and stuff and doing other stuff.  
18 And I got hot and I took the shirt off. And that was the last  
19 time I saw that shirt.

20 Q. Okay. And you don't know what happened to that shirt

21 A. No, ma'am.

22 Q. And this was the day before this whole shooting happened?

23 A. I'm not sure if that's a before that shooting happened,  
24 but I know I lost my shirt.

25 Q. Okay. Very briefly here. Do you know of, heard of

1 recognized seeing this Defendant before?

2 A. No, ma'am.

3 Q. You've never seen him before?

4 A. No, ma'am.

5 Q. In person?

6 A. No, ma'am.

7 Q. On Facebook?

8 A. Not on Facebook, but not in person.

9 Q. In Lincolnville?

10 A. No.

11 Q. I don't have anything further. Thank you.

12 THE COURT: Okay. Cross.

13 MR. KING: I have no questions, Your Honor.

14 THE COURT: Okay. All right. You may step down please.

15 MS. LINDER: Judge, [Indiscernible] you just have maybe  
16 five minutes and then we'll be able to call our next witness.

17 THE COURT: All right. We'll take a little more than five.  
18 A nice time for a morning break. We'll get back with you. 10 or  
19 15. All right. See you all in just a few. Don't discuss the  
20 case. Now everyone else in the please remain where you are  
21 until the jury exits. Okay.

22 MS. LINDER: Thank you, Your Honor.

23 THE COURT: Yeah.

24 THE COURT: All right. Are you ready to go? Oh, sorry,  
25 ma'am. Mr. McFadden. Sorry. Okay.

1 THE COURT OFFICER: All jury are present, Your Honor.

2 THE COURT: Thank you, sir. All right.

3 MS. LINDER: State calls Jamal Weston.

4 THE CLERK: All right. Please raise your right hand and  
5 put your left hand on the Bible. Do you swear or affirm the  
6 testimony you shall give the court and the jury in the trial of  
7 this case is the truth, the whole truth, and nothing but the  
8 truth, so help you God?

9 MR. WESTON: I do.

10 THE CLERK: Thank you. Please state your full name,  
11 spelling your last name loudly and clearly into the microphone.

12 MR. WESTON: Ishmael Weston, W-E-S-T-O-N.

13 DIRECT EXAMINATION OF WITNESS, ISHMAEL WESTON

14 BY: MS. LINDER

15 Q. Mr. Weston, I'd like to bring you back to 2019. What type  
16 of car were you driving?

17 A. I wanted to plead the Fifth.

18 Q. Your Honor, may I approach?

19 THE COURT: Yeah.

20 Q. Where -- what -- where are you from?

21 A. I want to plead the Fifth. I wasn't even trying to --  
22 excuse me, Your Honor. I wasn't even trying to come down here  
23 in the first place. They forced me to come down here. And for  
24 the record, it's like going against my constitutional right  
25 because I haven't received a rule five motion of discovery in

1 this case going on 4 or 5 years.

2 THE COURT: Mr. West, you've been subpoenaed as a witness.  
3 And so that's why you're here. And rule five doesn't work in  
4 your case. Does not apply today. Okay?

5 THE WITNESS: Okay. I just want to let you know I have  
6 nothing to say.

7 THE COURT: I'm sorry.

8 THE WITNESS: I just -- I want to let you know I have  
9 nothing to say, Your Honor. I don't know nothing. So that's why  
10 I wasn't trying to come up here.

11 THE COURT: So just answer her questions.

12 BY: MS. LINDER

13 Q. Where are you from?

14 A. I plead the Fifth. I have nothing to say.

15 THE COURT: Mr. Weston, you're under oath. And you're in a  
16 court of law [Indiscernible] for a subpoena. You need to answer  
17 the questions or you'll be subject to contempt of court.

18 THE WITNESS: Yes. Yes, Your Honor. I understand that, but  
19 I have nothing to say.

20 THE COURT: Well, of course you're doing is asking some  
21 questions about your background. Why don't you answer those  
22 and...

23 THE WITNESS: You already know where I'm from, so it's not  
24 -- there's no need for me to.

25 THE COURT: [Indiscernible] answer that.

1 THE WITNESS: Well, you can just attempt to court me  
2 because I don't got nothing to say.

3 THE COURT: Ladies and gentlemen, we will -- we're just  
4 going to take a short break. We'll discuss the case. We'll be  
5 back with you shortly. Mr. Weston what you're incarcerated. Is  
6 that right?

7 THE WITNESS: Yes, sir.

8 THE COURT: Where are you?

9 THE WITNESS: In Charleston County Detention Center

10 THE COURT: And why are you incarcerated?

11 THE WITNESS: Well, they locked me back up for a -- a  
12 bench warrant because they said I failure to appear to court,  
13 but my lawyer never let me know I had court, So the people just  
14 come and picked me up, and I was in here ever since I was  
15 sitting here, probably like 11 months on a bench one.

16 THE COURT: Okay. What's the original charge?

17 THE WITNESS: Murder.

18 THE COURT: Murder. Okay. And you are a co-defendant for  
19 Mr. McFadden, is that right?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay. You have the Fifth Amendment applies to  
22 incriminating evidence.

23 THE WITNESS: Okay.

24 THE COURT: And where are you from I don't believe  
25 qualifies as incriminating evidence against yourself. So I

1 suggest that you answer the questions put to you that don't  
2 incriminate you.

3 THE WITNESS: Yeah, I say yes, Your Honor. Hey, you but  
4 they already know where -- where I'm from, so.

5 THE COURT: Well, the jury doesn't know. The jury doesn't  
6 know anything about this case. I'm not from around here. I  
7 don't know where you're from. So I would implore you. Urge you  
8 to answer the questions that are not incriminating. Okay?

9 THE WITNESS: Yes, sir.

10 THE COURT: Can you do that?

11 THE WITNESS: Yes, sir.

12 THE COURT: Okay.

13 MR. KING: Probably have to put an objection on the  
14 record, Your Honor.

15 THE COURT: Sure. Yeah.

16 MR. KING: You're giving him legal advice. His lawyer's  
17 not here. And to ask him a question of where he's from. If the  
18 answer is Lincolnton, then that could be incriminating.  
19 Because the whole point of this case is that there's a beef  
20 between Lincolnton and Robin Wynne. Yeah, that's the theory  
21 of the whole case. So to say that, that question is not  
22 intimidating -- not incriminating possibly could be. So he  
23 doesn't have his lawyer here I just have to object.

24 THE COURT: Yeah. Where is his lawyer?

25 MS. LINDER: Mr. Abshire is getting a hold of him now, as

1 I indicated to Your Honor, in chambers, his lawyer and my  
2 office, we spoke last week, and he was served a subpoena well  
3 ahead of that by my investigator at the jail. His attorney was  
4 in a deposition, I believe, and we had communicated with him  
5 yesterday, earlier this morning. And Mr. Abshire is reaching  
6 out to him right now. As far as what Mr. King says, as far as  
7 Lincolnville, I mean, I'm not -- I don't think casting that. I  
8 mean, frankly, when we spoke I heard about how he was living in  
9 Florida and then he moved here.

10 THE COURT: Okay. So that's all. I mean, the fact that  
11 he's from Lincolnville is not in and of itself incriminating.  
12 There are plenty I'm sure I'm not familiar with Lincolnville,  
13 but there are plenty of citizens in Lincolnville who would not  
14 have any association with the events that are involved in this  
15 case. So I disagree with your assessment that is incriminating,  
16 but let's get the lawyer up here, okay?

17 MS. LINDER: I kept texting him saying, come here now. I  
18 can send my message out with my cell phone and she can call him  
19 as well. Tell me answers. Okay.

20 THE COURT: Yeah, do you have to do that?

21 MS. LINDER: So I don't know.

22 THE COURT: Yeah, you can go talk to them.

23 MS. LINDER: Okay. He is on his way here. He's currently  
24 in West Ashley, so he's on his way here.

25 THE COURT: Okay.

1 THE COURT: Which is what? A 20 minute?

2 MS. LINDER: No, there's close to West Ashley. If it's  
3 where his office is, it's just over the bridge in West Ashley.  
4 So I would guess maybe 15 minutes, 20 tops to get actually  
5 through and up and over to here.

6 THE COURT: Okay.

7 MS. LINDER: If Your honor, would like, we have our fun  
8 quick little chain witness that Mr. Weston can we take it out?  
9 We can do him to. At least I'll have the jury wait and  
10 hopefully I'll take some of that time.

11 THE COURT: Okay. All right, Mr. Weston.

12 THE COURT OFFICER: All jury present, Your Honor.

13 THE COURT: Thank you, sir. Okay. Call your next witness.

14 MR. ABSHIRE: The State calls Gary Wallick. Please come  
15 forward, sir.

16 THE CLERK: Please stand right here. Please place your  
17 left hand on the Bible and raise your right hand. Do you swear  
18 or affirm the testimony you shall give the court and the jury  
19 in the trial of this case is the truth the whole truth, and  
20 nothing but the truth, so help you God?

21 MR. WALLICK: I do.

22 THE CLERK: Thank you. Please be seated. Please state your  
23 name your full name. Spelling your last name loudly and clearly  
24 into the microphone.

25 MR. WALLICK: Gary S. Wallick, W-A-L-L-I-C-K.

1 DIRECT EXAMINATION OF WITNESS, GARY WALLICK

2 BY: MR. ABSHIRE

3 Q. Good morning Mr. Wallick?

4 A. Good morning sir.

5 Q. IF you could please tell the jury what you do for a  
6 living.

7 A. I work for the Richland County Sheriff's Department. I'm  
8 an evidence technician, and what I do is I take in evidence  
9 from the officers put in, and I answer it in our computer  
10 system -- computer management system. Find a place for it to  
11 put it on the shelves. And then I sign it back out to an  
12 analyst who needs it for whatever stuff that they're going to  
13 do.

14 Q. Sir the jury has already heard a lot about evidence  
15 technicians and what they do but just to be clear, do you also  
16 use a chain of custody?

17 A. Yes, we do.

18 Q. And did you use the chain of custody and the items that  
19 you received in this case?

20 A. Yes, I did.

21 Q. And Mr. Wallick, what items, if you remember, did you  
22 receive in this case?

23 A. Can I refer to my notes?

24 Q. Absolutely.

25 A. I need my glasses. Okay. I received 3-13. March 13th at

1 14:01 for swabs from the North Charleston Police Department.

2 Q. Okay. And just so we're clear on all the swabs, I'm going  
3 to present them to you and have them -- have you identify them.  
4 Is that all right?

5 A. Sure.

6 Q. Okay. Do you remember that?

7 A. Okay. No, I haven't seen the swabs open. It was just in a  
8 package. Just...

9 Q. That's fine Mr. Wallick, I'll show you the back.

10 A. Oh, okay. Okay.

11 Q. Okay. I'm going to hand you State's 172, 173, 174 and 175.  
12 Here we go.

13 A. Okay. So let's see on the back, on the barcode, we have  
14 items two, three, four and make them one. Yes. These are the  
15 ones that didn't match.

16 Q. Just so we're 100% clear. 173, is that the buccal swab  
17 from the Defendant, Thomas McFadden?

18 A. I had my items by case number. It's 23039031. Let's see  
19 point...

20 Q. It's probably 0.1. I'm confused [Indiscernible].

21 A. Here I go by the different set of numbers.

22 Q. The State's exhibit are for court purposes.

23 A. Okay.

24 Q. State's Exhibit 173. I apologize for the confusion. Is  
25 that a buccal swab that you received?

1 A. That's what it says on the envelope. Yes.

2 Q. Okay. And then I'm going to check my number real quick.  
3 It's State's 172. That is a swab of a 7.62. Does that coincide  
4 with what you have?

5 A. 7.622, two black magazine. Two black magazines. Yes, it  
6 is.

7 Q. And then 174, 175. I'll hand this right back to you. Is  
8 that the -- a swab from a mini Draco as well as magazines?

9 A. Yes.

10 Q. Okay. I'll take that back from you. So when you receive  
11 these items we talked about chain of custody, but would it  
12 generate your name in that chain of custody whenever you  
13 receive them?

14 A. It'll generate it when I enter those items into our system  
15 or management system.

16 Q. Okay. And I believe you told us that was on March 13th of  
17 this year?

18 A. That's correct.

19 Q. Okay. And once you receive it, where did you take it?

20 A. In this particular case, I -- 17 minutes later, I signed  
21 it out to analyst David McClure.

22 Q. Okay. And who's Mr. McClure?

23 A. He's the DNA analyst.

24 Q. Okay. And then in the chain of custody, does it reflect  
25 when he was done with it? It was then out processed?

1 A. I show on 3.1 at 8:11. He returned it back to evidence and  
2 it was signed in by another evidence technician, Darius Lane.

3 Q. Okay. And is that where law enforcement agency would come  
4 and pick it up?

5 A. Usually. Yes.

6 Q. Okay. Mr. Wallick, did you have any other involvement in  
7 this case?

8 A. No.

9 Q. We appreciate your time Mr. Wallick.

10 THE COURT: Cross?

11 MR. KING: No cross, Your Honor.

12 THE COURT: All right. Thank you. An absent of objection,  
13 your released from subpoena. Thank you.

14 THE WITNESS: Thank you, Your Honor.

15 MS. LINDER: [Indiscernible] step one.

16 THE COURT: Yeah. All right, ladies and gentlemen. Trying  
17 to accommodate logistics. Logistics has become so important in  
18 today's world. It's always been important in the court system  
19 but which results now in us breaking for lunch. And so we will  
20 ask you to be back at 1:15. Okay. You all have a good lunch.  
21 Don't talk about this case. It's human nature to want to do it.  
22 The deeper you get into it, the more you want to talk about it.  
23 Just don't do it. We'll see you at 1:15. Okay. Anything else  
24 before we break for lunch?

25 MS. LINDER: Nope. Nothing else for lunch.

1 MR. KING: No, Your Honor.

2 THE COURT: Okay. See you at 1:15.

3 [Off the record]

4 THE COURT: There is the air purifier. Air purifier makes  
5 it hard to hear from the number eight seat. So we turned off  
6 the air purifier. Make us part of the record. Two page notes.  
7 Second page is blank. Thank you. All right. Ready to roll?

8 MS. LINDER: Yes, sir. We're ready. And yeah, for the  
9 record, Mr. Weston is present and his attorney, Greg Voight, is  
10 also present. And they've been -- they didn't talk during the  
11 lunch break.

12 THE COURT: Okay. Great. And are we all ready?

13 MR. KING: We're ready. Yeah.

14 THE COURT: Okay.

15 THE COURT OFFICER: [Indiscernible] Jury is present, Your  
16 Honor.

17 THE COURT: Thank you, sir. State has recalled Mr. Ishmael  
18 Weston. And we would remind you, sir, you're still under oath.

19 DIRECT EXAMINATION OF WITNESS, ISHMAEL WESTON

20 BY: MS. LINDER

21 A. All right. Mr. Weston, where are you from?

22 Q. I'm from Lincolnville.

23 A. Lincolnville?

24 A. Yeah.

25 Q. And where were you living in 2019

- 1 A. I was living in Somerville.
- 2 Q. Somerville?
- 3 A. Yeah.
- 4 Q. In 2019, did you still have any family who was living in  
5 Lincolnville?
- 6 A. Yeah.
- 7 Q. Who was that?
- 8 A. My dad.
- 9 Q. Where did he live in there? The street is fine.
- 10 A. West Carolina Avenue.
- 11 Q. In 2019. Were you working?
- 12 A. Yes, ma'am.
- 13 Q. Where were you working?
- 14 A. At Cummins Turbo and Technology.
- 15 Q. And were you working specifically at Cummins or what about  
16 next door at ARD?
- 17 A. I was working at ARD.
- 18 Q. All right. And did you know a fellow by the name of Justin  
19 Stewart who was killed in Dorchester County?
- 20 A. Yeah.
- 21 Q. And what was your relation to him? Did you have any  
22 friends or cousins or what were you?
- 23 A. A close friend
- 24 Q. And what was his nickname?
- 25 A. [Indiscernible].

- 1 Q. Did you attend Justin's funeral in January of 2019?
- 2 A. Yes.
- 3 Q. Did a bunch of people go to his funeral?
- 4 A. Yeah.
- 5 Q. As part of kind of paying tribute to Justin. Did you or  
6 did anybody else at that funeral have special t shirts that  
7 were made?
- 8 A. Yeah.
- 9 Q. And did you have a special t shirt?
- 10 A. Yes.
- 11 Q. Aside from just the day of the funeral and the burial. Did  
12 you ever go out to Justin's gravesite to kind of honor him and  
13 remember him and visit?
- 14 A. Yeah.
- 15 Q. It was one of those times just shortly before all this  
16 happened, which is why we're here today?
- 17 A. Yeah, I think so.
- 18 Q. When you went out there a little bit before all of this  
19 happened, who all was out there with you?
- 20 A. I've been me, my homeboy Clay and my other homeboy Cook.
- 21 Q. All right. And Clay. Do you know his full name?
- 22 A. I didn't know. His name's Clayvon.
- 23 Q. Clayvon. All right. Cook. Do you know Cook's actual name?
- 24 A. No, ma'am.
- 25 Q. Are you Facebook friends with Cook or with Clay?

- 1 A. Yeah.
- 2 Q. Do you know the Facebook name Johnny Dang?
- 3 A. No. Did you ever -- have you ever communicated through  
4 Facebook Messenger with any of your friends?
- 5 Q. Sometime we used to, like, call them through Facebook  
6 Messenger?
- 7 A. Yeah.
- 8 Q. Okay. You all who are up not this day, but you all were up  
9 at shortly before, like the day before, up visiting Justin's  
10 gravesite. Where are all those people from?
- 11 A. Lincolnville.
- 12 Q. And was Clay wearing any kind of special t shirt that  
13 night when you all were up there at the gravesite?
- 14 A. Yeah.
- 15 Q. And what kind of t shirt was that?
- 16 A. It was the long live money shirt.
- 17 Q. Long live money shirt and who is Money?
- 18 A. It's supposed to be Justin.
- 19 Q. All right. Did you have any friends who worked with you at  
20 A. R. D. ?
- 21 A. Yeah.
- 22 Q. And did Jamal Small's work at ARD with you?
- 23 A. Yeah.
- 24 Q. And do you know about Jamal by any other name?
- 25 A. Just Jamal.

- 1 Q. You didn't -- he didn't have a nickname?
- 2 A. You all had to tell me his name was Grind but...
- 3 Q. You did not know him as Grind?
- 4 A. I just call him Jamal.
- 5 Q. So he wouldn't be in your phone as Grind
- 6 A. Uh-uh. No, not that I know of.
- 7 Q. Back in 2019, generally speaking, what kind of car were
- 8 you driving?
- 9 A. 2016 Dodge Charger.
- 10 Q. What color was it?
- 11 A. White.
- 12 Q. All right. I want to bring you to the day that all of us
- 13 are gathered here today for which is March the 14th of 2019.
- 14 Did you work that day?
- 15 A. Yes.
- 16 Q. Was Jamal working that day?
- 17 A. Yeah.
- 18 Q. Did you drive that white Dodge Charger to work that day?
- 19 A. Yes.
- 20 Q. When you went to work at ARD, where do park your car? You
- 21 park it at or down the street or where do you park it?
- 22 A. Park it at ARD.
- 23 Q. Throughout your time working at ARD, did you and Jamal
- 24 ever take breaks together? Like, ever take a break together or
- 25 anything?

- 1 A. Yeah, we used to take breaks all the time.
- 2 Q. When you would take a break, did you leave the building?
- 3 A. Yeah.
- 4 Q. And did you ever go to your car for a break?
- 5 A. Yeah, I go to my car.
- 6 Q. If you went to your car with Jamal for a smoke break, did  
7 you just sit in your car or would you normally do?
- 8 A. We sit at ARD or either we would go next door to sit  
9 because we didn't want to sit in front of the actual job  
10 because we'd be smoking.
- 11 Q. And when you say next door, where are you talking about?
- 12 A. At the actual plant, the turbo.
- 13 Q. Okay. Did you know the victim in this case, Damien Stokes,  
14 or know of him? Know of.
- 15 A. I kind of know him.
- 16 Q. You know of him. How do you know of him?
- 17 A. Just we went to school together a while back ago.
- 18 Q. Okay. Do you know does he have a nickname or did he have a  
19 nickname?
- 20 A. No, I don't know his nickname.
- 21 Q. Have you ever heard of Light skinned or Light before?
- 22 A. I heard of it.
- 23 Q. Did you know that to be associated with the victim in this  
24 case? That guy. Mr. Stokes. Damien Stokes. Did he work at ARD?
- 25 A. I think he worked next door.

1 Q. And my next door. You mean that Cummins Turbo?

2 A. Yeah.

3 Q. And Cummins Turbo to ARD. Just in case the jury doesn't  
4 know. Is this, like, on the same -- in the same neighborhood?  
5 Is it on the same block? Is it kind of next door to each other?  
6 You said next door, is it?

7 A. It's like right next door.

8 Q. Okay. Generally speaking, did people from the two  
9 businesses ARD and Cummins, did anybody from those businesses  
10 ever walk over to the other business for anything?

11 A. Yeah, he used to -- yeah, he used to do that all the time.

12 Q. All right. So this day, March 14th that we're talking  
13 about, you already testified that you were working. So is Jamal  
14 that you drove that white Charger? Did you park that at ARD  
15 that day?

16 A. Yeah.

17 Q. Did you ever take a break or a smoke break with Jamal that  
18 day?

19 A. We took a few breaks.

20 Q. Okay. And did you ever get in your car for one of those  
21 breaks with Jamal?

22 A. Yeah.

23 Q. Did you all ever ride over to Cummins on one of those  
24 breaks?

25 A. Yeah, we went over there to go smoke.

1 Q. Did you see, I know you just knew of him because you all  
2 went to school, but did you ever see Damien Stokes that day?

3 A. No.

4 Q. Did you talk to Clay at all that day or evening?

5 A. Probably early that day I did -- I did, but I don't  
6 remember what we were talked about.

7 Q. All right. So when you and Jamal went to the car and you  
8 said you brought over to Cummins, can you tell the jury what  
9 happened over there?

10 A. We just went over there smoking and then we -- we left.

11 Q. All right. When you go over there to smoke, do you park in  
12 a parking spot or do you ride around the whole time?

13 A. I find a parking spot.

14 Q. All right. And so you went over there and you parked and  
15 then you said you spoke to them and you left. Do you remember  
16 when you left?

17 A. No, I don't remember.

18 Q. Do you remember how long you were in the parking lot?

19 A. Not long. Probably like 30 minutes.

20 Q. Did you see anybody come through the parking lot when  
21 y'all were out there?

22 A. No.

23 Q. Okay. So your testimony that you left there and when you  
24 left in your car, was Jamal still with you?

25 A. Yes.

1 Q. And where did you all go?

2 A. We left. We went down the street because I was trying to  
3 air out the car before I go back to work and I turn back into  
4 my parking lot. And then we decided to just not go back to work  
5 right now. So we left again.

6 Q. Did you all leave together?

7 A. Yeah.

8 Q. Where'd you go?

9 A. We went down the street to my daddy house. Then we sat  
10 there for a little bit and then after that, we just went to go  
11 drive around.

12 Q. All right. When you left your daddy's house, that's the  
13 one on West Carolina. Is that right?

14 A. Uh-huh.

15 Q. Okay. When you left his house, you said you went to go  
16 drive around. Where did you go drive around?

17 A. We go to Summerville. We've been Ridgeville, Nixon. Then  
18 I worked my way all around, and I hit Larson's and came back to  
19 the job.

20 Q. Did you make any stops along the way after you left your  
21 daddy's house? When you're driving out Ridgeville and  
22 Summerville and everything.

23 A. I stopped by the store to get some gas and some water.

24 Q. Oh. All right. This will happen on March the 14th, 2019.  
25 Do you remember talking to North Charleston Police Department

1 on March the 15th of 2019?

2 A. Uh-uh.

3 Q. You don't remember going to North Charleston Police  
4 Department and talking to them on the 15th?

5 A. Is that when they had come and picked me up? They try to  
6 question me?

7 Q. Yes.

8 A. Yeah.

9 Q. And when you talk to them, that was at North Charleston  
10 Police Department?

11 A. Yes.

12 Q. All right. And then a couple days after that March the  
13 19th of 2019. Do you remember again, going to North Charleston  
14 Police Department giving an interview?

15 A. When they came back and picked me up from the job again?

16 Q. Yes.

17 A. Yeah.

18 Q. And then there was a third time, April 11th, 2019. You  
19 were also arrested. Do you remember going in on Charleston at  
20 that time and they tried to talk to you?

21 A. Yeah, that's when they put me in handcuffs when I left the  
22 job.

23 Q. All right. And then do you remember a couple months after  
24 you were arrested. September the 17th of 2019, you entered into  
25 what's known as a proffer agreement with my office?

1 A. Yeah, he was telling me about it.

2 Q. And then in that proffer agreement in my office, you were  
3 there with your lawyer, Mr. Voight?

4 A. Yes.

5 Q. And you were there with Josh Cheney. Who -- somebody who  
6 works at my office. Do you remember that?

7 A. Yeah, I think so.

8 Q. And you understand that a proffer agreement has a number  
9 of things outlined as far as what makes up that agreement. And  
10 part of that is that you're going to tell the truth in that  
11 agreement?

12 MR. KING: Your Honor, objection. Bolstering.

13 THE COURT: No. Overruled. Let's go ahead.

14 MS. LINDER: Where's the [Indiscernible].

15 BY: MS. LINDER

16 Q. And [Indiscernible] in that proffer agreement, it says  
17 that you waive your right or constitutional right to remain  
18 silent. Is that right?

19 A. I guess so. I don't remember.

20 Q. All right. So do you remember that back on September 17th  
21 of 2019, when you called for -- you remember you gave some more  
22 details about what happened that day at work?

23 A. Yeah, that's why I had write the -- I had write the  
24 solicitor and I told you I had to give a copy to the lawyer  
25 letting you all know that. So I was under a lot of distress. I

1 didn't know what was going on. I was smoking weed and on pills.

2 Q. Okay.

3 A. So my memory wasn't there, and they would just pressure me  
4 to say something.

5 Q. Okay. Do you remember how you told during your proffer  
6 about how this Defendant, but you used a different name, was  
7 calling you and you all were talking all day that day?

8 A. I don't remember.

9 Q. Do you remember how you were supposed to go over for  
10 Cummins and let this Defendant know when you saw the victim  
11 leaving to go on his break that day?

12 A. Uh-uh. Yeah. You all just telling me what my co-defendant  
13 was -- was saying. So I basically just went along with it to  
14 tell you what you all were trying to hear.

15 Q. And do you remember telling the police that one of the  
16 times after you let the Defendant know that the victim had left  
17 work and was in the parking lot? He told you he knows he was  
18 already there?

19 A. No -- no, I don't remember that.

20 Q. Would it help to refresh your recollection by looking at  
21 the transcript of your proffer?

22 A. If that's -- I don't know. It's not -- it's not going to  
23 refresh nothing because I don't remember.

24 Q. Do you remember saying during the proper that you and  
25 Jamal followed this Defendant to your daddy's house in

1 Lincolnville that day?

2 A. No.

3 Q. Do you remember in your proffer saying how we all got to  
4 your daddy's house? The Defendant handed you a bag to put in  
5 your trunk?

6 A. Uh-uh. No, ma'am.

7 Q. Do you remember during a proffer say that there was a gun  
8 in that bag?

9 A. No, ma'am.

10 Q. Do you remember in your proffer saying that the Defendant  
11 told you and Jamal to follow him to the country that day?

12 A. Uh-uh.

13 Q. Do you remember your proffer saying how you followed him  
14 up to a spot up in Berkeley County that day?

15 A. No, ma'am.

16 Q. Do you remember in your proffer saying that after you  
17 followed him up there, the Defendant came and took that bag out  
18 of your trunk and he gave you earlier to Daddy's house?

19 A. No, ma'am.

20 Q. Do you remember in your proffer that day saying how at  
21 that time the Defendant gave you some money?

22 A. Uh-uh. To be honest, I don't remember it saying none of  
23 that. That's why I was letting you all know. That's why I write  
24 a letter telling you all I didn't know what I had been talking  
25 about.

1 Q. Do you remember that day saying that when after he gave  
2 you money and gave the bag back, the Defendant was talking  
3 about the shooting and how the victim was run around the car  
4 like a little bitch?

5 A. No, you all were just telling me what my co-defendant had  
6 said to you all.

7 Q. Do you remember referring to the Defendant as Trigger  
8 throughout your proffer agreement?

9 MR. KING: Yeah. Just for your protection from pre-trial.

10 THE COURT: Okay. Same rule.

11 MS. LINDER: All right. No further questions at this time.  
12 Please answer any defense questions they may have.

13 CROSS EXAMINATION OF WITNESS, ISHMAEL WESTON

14 BY: MR. KING

15 Q. This was the police interviews. The police took you down  
16 to the Charleston Police Department three times?

17 A. Yes, sir.

18 Q. And each time you told them you didn't know anything,  
19 right?

20 A. Yes, sir. The second time when he came back and dropped me  
21 back off, they was just telling me that we going to have you  
22 and all your little friends locked up. Then they just dropped  
23 me back off.

24 Q. So they picked you up one time from work, took you down  
25 and talk to you, right?

- 1 A. Yes, si r.
- 2 Q. Did you feel pressured?
- 3 A. Yeah.
- 4 Q. They came in and picked you up again later and brought you  
5 down for Charleston Police Department, right
- 6 A. Yes, si r.
- 7 Q. Tried the same thing. They approached that third time,  
8 right? And you told them you would -- that you had told them  
9 the truth. First time you told the truth, the second time you  
10 told them truth the third time?
- 11 A. Yes, si r.
- 12 Q. And then they take you can take you to jail, right?
- 13 A. They handcuffed me the third time, took me down there. And  
14 then they find the people on the table like you by the face 25  
15 to life. Then I told them just to get my lawyer. I asked to use  
16 the bathroom. They ain't even uncuffed my hands, so I could  
17 have took a shit or nothing.
- 18 Q. And you went to jail and you were stuck without a bond  
19 right?
- 20 A. Yes, si r.
- 21 Q. At some point, you would talk to Jamal, right? Like  
22 between those interviews, you would talk to Jamal?
- 23 A. Yes.
- 24 Q. You didn't talk to him when you were in the jail, right?
- 25 A. Yes.

- 1 Q. So if you went to jail in April 2019?
- 2 A. Yes, sir.
- 3 Q. Now, in September, around five months later, you've been
- 4 sitting in jail with no bond. Right? And they talk to you
- 5 again, right?
- 6 A. Yeah.
- 7 Q. And what did you tell them the truth then?
- 8 A. No, sir.
- 9 Q. But after you told them that. After you talked to them,
- 10 you got a bond, right?
- 11 A. Yes, sir.
- 12 Q. A minimum?
- 13 A. Yes, sir.
- 14 Q. Like 25,000 sure?
- 15 A. Yes, sir.
- 16 Q. It's for a murder charge is really good, right?
- 17 A. Yeah.
- 18 Q. And you were able to bond out?
- 19 A. Yeah, that I found out my co-defendant had gone home, and
- 20 then people back there were just telling me that once one of
- 21 your co-defendants get a bond, either you going to get a bond,
- 22 like somewhere close to it, but you, like, you'll be home soon.
- 23 Q. So you knew what Jamal told the police?
- 24 A. Yes.
- 25 Q. And you were just trying to imitate what he had told the

1 police?

2 A. Yeah, because they was putting pressure on me.

3 Q. I have no questions, Your Honor.

4 THE COURT: Any redirect?

5 MS. LINDER: Very briefly.

6 REDIRECT EXAMINATION OF WITNESS, ISHMAEL WESTON

7 BY: MS. LINDER

8 Q. When you did the proffer with my office, that was at my  
9 office. That's downtown. It's like a building over from here,  
10 right?

11 A. Yeah. I think so.

12 Q. So you agree that's not North Charleston Police  
13 Department, right?

14 A. I'm not too sure. I'm really. This been my first  
15 time ever being locked up. So the proffer agreement, I never  
16 knew what that meant or not.

17 Q. Okay. And then when you were down here for proffer  
18 agreement, your attorney was with you. Right?

19 A. Yeah.

20 Q. And then were there any uniformed police officers here  
21 during the proffer agreement?

22 A. It was a good amount of people in there. I don't really  
23 remember.

24 Q. Anne Williams, who's a female prosecutor in my office, was  
25 there, right?

1 A. Yeah.

2 Q. And Josh Chaney, who also works in my office, was there  
3 right? Your attorney was there?

4 A. Yeah, my attorney was there. I don't know the people that  
5 was there. I just know my lawyer.

6 Q. Okay. I believe you testified on cross that you didn't  
7 talk to Jamal at all when you were in jail?

8 A. I had talked -- I had talked to him when I had, like,  
9 walked by him in the hallway. I think it was.

10 Q. That was it?

11 A. They was doing, like, a DNA test.

12 Q. But nothing big?

13 A. No.

14 Q. All right. So you didn't really talk to Jamal in jail?

15 A. Uh-uh.

16 Q. I don't have anything further. Thank you.

17 MR. KING: Brief recross, Your Honor.

18 RE-CROSS EXAMINATION OF WITNESS, ISHAMAEL WESTON

19 BY: MR. KING

20 Q. She'd asked you about the problem, and she came down to  
21 the solicitor's office, right?

22 A. Yes, sir.

23 Q. You tried to correct that, didn't you?

24 A. Yes, sir. I had sent them a letter and had sent a -- well,  
25 I put like CC so they could have copied that and sent it to my

1 attorney, letting them know that I didn't know what I was  
2 talking about I was incoherent. I was on -- you know, pills and  
3 smoking weed, so I didn't know what was going on. I just been  
4 talking because there was pressure me to say something and I  
5 was letting them know that Thomas -- you know, he'd been a good  
6 dude. I don't see that he should get plead guilty for something  
7 he didn't do.

8 Q. You said you couldn't live with yourself if an innocent  
9 man was convicted of a crime you didn't commit?

10 A. Yes, sir.

11 Q. So you tried to take back what you told them with that  
12 problem?

13 A. Yes, sir.

14 Q. No question.

15 THE COURT: Okay. Ladies and gentlemen, we're going to  
16 take another little short break. Don't discuss the case. We'll  
17 be right back with you. This will be a short one.

18 [Off the record]

19 [Back on the record]

20 THE COURT: Are you all in? [Indiscernible]. All right.  
21 What's next?

22 MS. LINDER: Jamal Smalls. And he's the next door locked  
23 court room. So he'll just...

24 THE COURT: Is he on bond?

25 MS. LINDER: Yes, he's here.

1 THE COURT: All right.

2 THE COURT: Just a minute. Getting organized and getting  
3 in. [Indiscernible].

4 [PAUSE]

5 THE COURT OFFICER: All Jury present, Your Honor.

6 THE COURT: Thank you sir. Okay. Call your next witness.

7 MS. LINDER: The State calls Jamal Smalls.

8 THE CLERK: [Indiscernible] Please raise your right hand  
9 sir. Place your left hand on the Bible. Raise your right hand.  
10 Do you swear or affirm the testimony you shall give the court  
11 and the jury in the trial of this case is the truth, the whole  
12 truth, and nothing but the truth, so help you God?

13 MR. SMALLS: Yes, sir.

14 THE CLERK: Please be seated. Please state your full name,  
15 spelling your last name loudly and clearly into the microphone.

16 MR. SMALLS: Jamal Smalls. Smalls, S-M-A-L-L-S.

17 DIRECT EXAMINATION OF WITNESS, JAMAL SMALLS

18 BY: MS. LINDER

19 Q. Good afternoon.

20 A. Hello. How are you doing?

21 Q. How are you? I'm sorry. How are you? How old are you?

22 A. I'm 27.

23 Q. How far did you go in school?

24 A. The 12th grade.

25 Q. And what type of jobs had you had?

- 1 A. Warehouse, fast food, but mostly warehouse jobs.
- 2 Q. Where were you living back in March of 2019?
- 3 A. Somerville.
- 4 Q. What is T.O.L? What does that stand for?
- 5 A. The Town of Lincolnville. Any [Indiscernible]
- 6 Q. And do you know what Robin Wynne is?
- 7 A. A neighborhood.
- 8 Q. And what area of town is that in?
- 9 A. Sommerville.
- 10 Q. And the jury heard that your name is Jamal Smalls. But do
- 11 you have a nickname or Facebook name?
- 12 A. Yes, ma'am. Grind -- Grind.
- 13 Q. Grind?
- 14 A. Yes, ma'am.
- 15 Q. Have you ever been convicted of a crime before?
- 16 A. No, ma'am.
- 17 Q. Do you currently have charges pending?
- 18 A. Yes.
- 19 Q. And does that include murder in this case?
- 20 A. That's the only charge. Yes, ma'am.
- 21 Q. All right. And before we get into this, I want to bring
- 22 you back a little bit before March. I want to bring you to
- 23 January of 2019. Do you remember when Justin Stewart died?
- 24 A. Yes, ma'am.
- 25 Q. And what was his nickname?

- 1 A. Money.
- 2 Q. Was he murdered?
- 3 A. Yes, ma'am.
- 4 Q. To your knowledge, was anyone arrested for that?
- 5 A. No, ma'am.
- 6 Q. Were there rumors about who was responsible for Justin's
- 7 death?
- 8 A. Yes, ma'am.
- 9 Q. And what do people believe?
- 10 A. That the dude Light Skinned kill them from Robin Wynne.
- 11 Q. And who is Light Skinned?
- 12 A. Do you know him by any other name?
- 13 Q. Damien. I know his real name now.
- 14 Q. Is it common to -- or at least back in 2019, to only know
- 15 people by nicknames?
- 16 A. Yes, ma'am.
- 17 Q. Did you go to -- do you want me to call him Justin or
- 18 Money?
- 19 A. Justin.
- 20 Q. Okay. Did you go to Justin's funeral?
- 21 A. Yes, ma'am.
- 22 Q. And were lot of people there?
- 23 A. Yes, ma'am.
- 24 Q. Can you just tell the jury, who are some of the people who
- 25 were there? Who all was there?

- 1 A. It was me -- me -- me, Cody, Jecla, Clayvon, Ishmael.  
2 Mi gamble [Indiscernible], Sheldon. This girl Nautica I know.  
3 That's all the people that come in here right now.
- 4 Q. Were a lot of people at the funeral?
- 5 A. Yes, ma'am.
- 6 Q. Was this Defendant there?
- 7 A. Yes, ma'am.
- 8 Q. What nickname did he go by?
- 9 A. Trigger.
- 10 Q. Was he friends with Justin?
- 11 A. Yeah.
- 12 Q. Did people wear any special clothes to honor Justin at his  
13 funeral?
- 14 A. Oh, yes.
- 15 Q. Like what?
- 16 A. We all got shirts. Like shirts with his -- like a picture  
17 of him.
- 18 Q. Did everybody have the exact same shirt?
- 19 A. No, ma'am.
- 20 Q. Or you had different shirts?
- 21 A. No, we all got, like, our own shirts. Different times,  
22 different places. Got our own shirts.
- 23 Q. Did Clayvon have a shirt?
- 24 A. Yes, ma'am.
- 25 Q. So can you tell the jury a little bit about that funeral?

- 1 A. I got to the funeral. I went there with this girl named --  
2 I sat next to this girl named Nautica. Me and her sat next to  
3 each other after the funeral was over. Like the service and  
4 everything. We went outside, took pictures. Everybody took  
5 pictures. After that, we walked over to like -- it's like  
6 another side of the funeral, like a parking lot where we parked  
7 at. So we went over there. After we took some pictures, we just  
8 talking and everything about what we going to do next.
- 9 Q. All right. I'm going to fast forward you here to March the  
10 14th, 2010. That's the day that Light Skinned or Damian was  
11 killed. Where were you working?
- 12 A. A. R. D.
- 13 Q. And what was your position or your job there?
- 14 A. Oh, a lead of container management.
- 15 Q. And where is A. R. D. located?
- 16 A. In Latson.
- 17 Q. Do you remember what street citing Latson?
- 18 A. Palmetto -- Palmetto Commerce.
- 19 Q. And did Ishmael Westin work at the ARD same time?
- 20 A. Yes, ma'am.
- 21 Q. And did Light Skinned work up there, too?
- 22 A. He worked at Cummins. It was right next door to ARD.
- 23 Q. So you say it was right next door?
- 24 A. Yeah.
- 25 Q. On March the 14th. Were you actually working that day?

- 1 A. Yes, ma'am.
- 2 Q. And was Ishmael working that day?
- 3 A. Yes, ma'am.
- 4 Q. Did you and Ishmael ever see each other that day at work?
- 5 A. Yes -- yes, ma'am.
- 6 Q. Did you and Ish take any breaks together that day at work?
- 7 A. Yes, ma'am.
- 8 Q. When you and Ish came off one of your breaks, we please
- 9 tell the jury what happened.
- 10 A. We came off our break. We was walking back to where we
- 11 used to work at -- we work in the back of the warehouse. We was
- 12 walking back there and someone we knew his name, Jermaine. We
- 13 call him Blacker. That's his nickname. We call it -- he pulled
- 14 up on us. He was like, on the forklift. He pulled up next to us
- 15 and was like, you all friend over there? And we was both like,
- 16 who? He was like -- he's like -- he did like this. He like
- 17 this, hey. And then we looked and then we saw who it was, who
- 18 he was talking about. He was talking about Light Skinned. And
- 19 then we was both ---
- 20 Q. You talked about Light skinned?
- 21 A. Yes, ma'am.
- 22 Q. Okay.
- 23 A. And we both was like, man. Well, I know. I was like, I
- 24 don't want to see this dude. And so Jermaine -- he -- he ride
- 25 up on the forklift laughing. It's Small, went a certain way,

- 1 and I walked to the back, but I was on my phone, like, I walked  
2 straight to the back -- got to my station, and I was just  
3 sitting there on my phone when I -- when I got to my station.  
4 Ishmael walked up to me and he was like, I called Cook and he  
5 was like -- I was like, oh, okay.
- 6 Q. And who's Cook?
- 7 A. Somebody we know from Lincolnville.
- 8 Q. And he, you know his real name?
- 9 A. Malecki.
- 10 Q. Malecki?
- 11 A. Yeah.
- 12 Q. Okay. Go ahead. Sorry.
- 13 A. He been like -- I called Cook and I was like, oh, okay.  
14 And then he was like -- he was like -- I was like, okay. Yeah,  
15 and time went by, and then he got a call again. And then he was  
16 like -- he came at me again. Like, they want to know what time  
17 they want me to know what time he get off work. And I was like,  
18 okay. And he's like, I want you to come with me. I got a bun in  
19 the car. And I was like, okay. And...
- 20 Q. So you ended up going with Ish to the car?
- 21 A. Yes, ma'am.
- 22 Q. [Indiscernible]?
- 23 A. Yes, ma'am.
- 24 Q. Okay.
- 25 A. We went ---

1 Q. Where did you go when you left to go out? What kind of car  
2 did you go to?

3 A. Ishmael's car, a white Charger.

4 Q. And where was that parked?

5 A. In the parking lot at ARD.

6 Q. All right. So once you all got an issue, a Dodge Charger  
7 that was parked in ARD, did you all go anywhere in that car?  
8 What did you do?

9 A. Yeah, we went to -- we went over to Cummins.

10 Q. All right. And then was Ish making any phone calls or  
11 talking on the phone during any of this time?

12 A. Yeah, he -- he made a call like we over here, and he's  
13 like, I'm over here. He ain't say nobody else is in the car. He  
14 said, I'm over here. And he was like, okay, that was it and...

15 Q. And who's he talking to?

16 A. Trigger -- Trigger.

17 Q. And how do you know who he's talking to?

18 A. Because he's, like, on a -- in the Charger. He got, like,  
19 a Bluetooth radio. Like, if you can activate your phone, you  
20 can talk to somebody on the radio.

21 Q. Okay. All right. And then -- so as you and Ish are smoking  
22 in the Cummins parking lot. What are you all talking about?  
23 What do you see?

24 A. Well, I'm on the phone. So we just in the car, we just  
25 really listening to music and talking. Well, when we just

1 started talking, he was like, man -- I don't think this -- I  
2 don't think he -- I don't think he's going to come up. And ---.

3 Q. Who is he?

4 A. Light Skinned.

5 Q. What do you mean? You don't think he's going to come out?  
6 What are you doing?

7 A. Like he ---

8 Q. Thinking about that?

9 A. Like, think he's -- he's already gone. Like, he's not  
10 going to come up. And he's like -- but what if we what if we  
11 really get his -- I mean, I'm -- I hear him, but I'm -- I'm  
12 acting like I don't hear him because I'm on the phone with my  
13 mom, and I'm just -- I'm just listening to him, and I'm like.

14 Q. Did you see anybody walk out of that Cummins building?

15 A. Yeah, like a couple of minutes later.

16 Q. Did you see anybody walk out of that Cummins building?

17 A. Yeah, I saw him.

18 Q. Who was it?

19 A. It was Light Skinned.

20 Q. What did Ish do after seeing Light skinned come out of  
21 Cummins?

22 A. He called Trigger.

23 Q. And how do you know he called him?

24 A. Dude, I can hear it in the car.

25 Q. This is still on the Bluetooth?

- 1 A. Yes. Yes, ma'am.
- 2 Q. So he called and what did he tell Trigger?
- 3 Q. Just like he -- he -- he walking out now. He outside.
- 4 A. All right. What happened next, then?
- 5 Q. Ishmael hang up the phone and he say, bruh, I think he  
6 about to leave him here. And I said, how do you mean, leave him  
7 here? He said, I think he about to leave him here. I said, what  
8 do you mean leave him here? And he said, I think he's going to  
9 kill him right here. I said, Stop playing. He said, no, for  
10 real. I said, bro, this is what I said. I said, bro, I tried to  
11 fuck off. He said -- he said, what if he get mad? I said, boy,  
12 I don't give a fuck. And he said, what are we going to go? I  
13 said, I don't know, just dip. And he did drove off.
- 14 Q. So Ishmael then did drive off?
- 15 A. Yeah.
- 16 Q. Away from the Cummins?
- 17 A. Yes, ma'am.
- 18 Q. And are you with him in the car still?
- 19 A. Yes, ma'am.
- 20 Q. And where did you all drive around to?
- 21 A. We just drove around like...
- 22 Q. Did you drive back to ARD?
- 23 A. Not right away. Not like it, anything.
- 24 Q. Okay.
- 25 A. But yes, we did.

1 Q. All right. And then did you all ever leave ARD together  
2 after that?

3 A. Yes.

4 Q. And why did you all leave ARD together after that?

5 Q. Because it's Trigger for him and want us to meet him at  
6 his dad's house.

7 Q. All right. And where is Ish's Dad live?

8 A. In Lincolnville.

9 Q. And do you remember kind of what route? What roads or  
10 turns Ish took? Gets off to his dad's house?

11 A. Yes, ma'am. We went from Palmetto Commerce, like, right as  
12 Bojangles onto, like, Latson Road.

13 Q. Okay.

14 A. And we turned onto Lincolnville Road.

15 Q. All right. And did you end up going to your Ish's dad's  
16 house?

17 A. Yes, ma'am.

18 Q. And who and what did you see when you got there?

19 A. I seen a Honda Hawk in the side, like, over to this other  
20 trailer. It's like another trailer, and Ish's dad you all got,  
21 like, two trailers. I've seen a Honda over there and then I  
22 seen Trigger -- get Trigger get out the car.

23 Q. You say a Honda? What kind of Honda? Like a car or an SUV?  
24 Or do you know what type of Honda?

25 A. Like a Honda CRV. Like a SUV.

1 Q. Okay. All right. So you see this Honda CRV? Do you see the  
2 Defendant?

3 A. Yes, ma'am.

4 Q. What happened? What do you do there

5 A. He went to the car, got, like, a black bag, and...

6 Q. Was it a tiny black bag?

7 A. No, it's a big -- it's a big, like a trash bag. Like a big  
8 black trash bag. And it looked like it had, like, laundry in  
9 it. Like it was just full of clothes.

10 Q. Okay. And what did what did the defendant do with that big  
11 black bag?

12 A. He -- he put it in the trunk of his car.

13 Q. Okay. And then did you all all stay at Ish's dad's house?

14 A. No, ma'am. After he put his stuff in his car, he told his  
15 follow me to the spot and I got back in the -- when they got  
16 back in the car, they said we going to the spot and said,  
17 what's the spot? He said, the spot. I don't know what the spot  
18 is because I've never been to the spot. So we stopped following  
19 him to the spot.

20 Q. So even Ish's dad's house, who is in the white Charger?

21 A. He's just driving and I'm in the front seat.

22 Q. And did that CRV leave? The Honda leave?

23 A. Yes. We follow him in the car like, well, we supposed to  
24 be following the car, but we following the car.

25 Q. All right. You say you're supposed to be following the

1 car. What happened?

2 A. Like, he -- he just can't keep up with him. Like he going  
3 too fast. So he call us and be like, damn bro, keep up. And  
4 it's like, you know, the police hard. I can't -- I can't drive  
5 that fast. And then he's just like, oh, all right, then that  
6 was it.

7 Q. All right. And on the way out to the spot, did you stop  
8 anywhere?

9 A. Yeah, we stopped to the gas station, like in Moncks Corner  
10 or something.

11 Q. All right. Because you all stuck -- because you all  
12 stopped. Did I sh get any other phone calls on Bluetooth?

13 A. After we -- I think after we leave. Yeah, after we left.  
14 He did.

15 Q. All right.

16 A. After we left that gas station.

17 Q. So can you describe what this spot is when you get out  
18 there?

19 A. Oh, it's just like a dirt road. Like a dirt road. Like a  
20 abandoned house. Like on the dirt road to the right. It's a  
21 ditch to the left. And it's another -- another house, like  
22 right over there across from the ditch.

23 Q. All right. And when you arrived to the spot, did you see  
24 this Honda CRV?

25 A. Yes, ma'am.

1 Q. Where did Ish pull in?

2 A. Like behind the Honda.

3 Q. And did the Defendant come over or interact at all with  
4 you or with Ish?

5 A. No -- no. He called Ish again, Like, I'm not over here.  
6 You got to come over here. And it's like, all right, he back up  
7 and he drove over to the house that was over there.

8 Q. Okay. All right. And did Ish ever get out of the car?

9 A. Yes, ma'am.

10 Q. And what happened then?

11 A. He got out the car when Trigger walked over there. Get  
12 Trigger bag out the trunk. Him and Ish walk off. Ish came back  
13 to the car then Trigger came back to the car. But before  
14 Trigger came back to the car. Ish was just in there counting  
15 like some money. He was just, like, just wrapping, counting  
16 some money then Trigger come to the car.

17 Q. And what was Trigger saying when he got back to the car?

18 A. We was just quiet at first then he just, like -- then  
19 everything been talking shit. He's talking about I'm still  
20 alive. I'm still alive. I had to run back and get the shirt,  
21 hit his ass again, throw the shirt over him, and then ran back  
22 to the car and then me. And it's just sitting there shaking our  
23 head like we ain't shaking out. We just sitting down looking  
24 down like where we kind of is shaking head like, damn. And then  
25 he's like, where you all go about to do. And we just, like, go

1 back to work. And then he was like, all right, you all, boy, be  
2 safe. Dapped us up. And we did. We left there.

3 Q. All right. So did the Defendant stay up there at the spot?

4 A. Yes, ma'am.

5 Q. Or at least when you all left?

6 A. Yes, ma'am.

7 Q. And where did you and Ish go?

8 A. Back to ARD.

9 Q. All right. Were you able to get back into work?

10 A. No.

11 Q. Did you all ever go to Clayvon's house later on that  
12 evening?

13 A. Oh, yes, ma'am. After -- after we left ARD.

14 Q. And did Clayvon have his special shirt about Justin?

15 A. No.

16 Q. What happened to that?

17 A. He's like, he gave it to Trigger. Then Trigger called him  
18 for it and be like he need it for something.

19 MR. KING: Objection. Hearsay, Your Honor.

20 THE COURT: No. You can't say what someone else said. Go  
21 ahead.

22 MR. KING: I move to strike, Your Honor.

23 THE COURT: Disregard that, please, ladies and gentlemen,  
24 go ahead.

25 BY: MS. LINDER

1 Q. All right. I'd like to move  
2 did you attend a barbecue or a cookout at your buddy Cook's  
3 house?

4 A. Yes, ma'am.

5 Q. And where's -- where's Cook's house?

6 A. In Lincolnville.

7 Q. And who else was there? Were you there?

8 A. Yes, ma'am, I was there. Ish ---

9 Q. Was Clayvon there?

10 A. Yes, ma'am.

11 Q. Was the Defendant there?

12 A. Yes, ma'am.

13 Q. Hopefully. Was Cook there?

14 A. Yes, ma'am.

15 Q. And a couple other people were there?

16 A. Yeah.

17 Q. When you all were there at this barbecue, did you notice  
18 anything unusual about a car coming by?

19 A. Oh, yeah. A car. Like it's a -- it's a like a street, like  
20 in just woods on the other side of the street. A car just kept  
21 riding by, and everybody was looking at the car like, damn who  
22 that is. After the third time, they was like, we like everybody  
23 like, damn, who that could be then. Yeah.

24 Q. What was the Defendant's reaction to people getting a  
25 little nervous in that car? Kind of slow rolling by over and

1 over.

2 A. Do you all got you all scrapped? Like, do anybody got any  
3 scrap?

4 Q. And after asking about that, what did he do?

5 A. After everybody was like, yeah, we got our scrap, all of  
6 that. He was like --well, he pulled up the street and was like,  
7 we -- we good? I got the Draco.

8 Q. He pulled out the Drac?

9 A. Yes.

10 Q. And where did he pull that out from?

11 A. From, like under the seat in the Infiniti truck.

12 Q. And did he make any comments about killing Damien Stokes  
13 with that?

14 A. When he pulled the gun out he was like, we street, I got  
15 the Draco. I killed a bitch ass nigga with this right here and  
16 put it down.

17 Q. And had you ever seen the Defendant in or around that  
18 Infiniti any other time?

19 A. Yeah. When it was the time.

20 Q. Was it once? More than once?

21 A. I've seen him in there, like, twice.

22 Q. All right. Thank you for your indulgence. And were you  
23 interviewed by police with regard to this case?

24 A. Yes, ma'am.

25 Q. And do you remember speaking with detectives March the

1 15th, 2019, up at North Charleston?

2 A. Yes, ma'am.

3 Q. At that time, did you give a full statement to the police?

4 A. Yes, ma'am.

5 Q. Did you speak with North Charleston on April the 19th of  
6 2019, about North Charleston?

7 A. Yes, ma'am.

8 Q. At that time, did you tell the police that you knew who  
9 shot and killed Damien?

10 A. Yes, ma'am.

11 Q. A few months after that, August the 13th, 2019, did you  
12 enter into what's known as a proffer agreement with my office?

13 A. Yes, ma'am.

14 Q. And you understand that a proffer agreement says that you  
15 want to cooperate and then it's your choice?

16 A. Yes, ma'am.

17 Q. You understand that you have your attorney there with you  
18 during that and if at any time you want to stop and talk to  
19 your attorney, you're welcome to?

20 A. Yes, ma'am.

21 Q. And you understand that it does not promise any leniency  
22 or any kind of deal from me or from my office?

23 A. Yes, ma'am.

24 Q. And are you aware that that proffer agreement was recorded  
25 in my office?

1 A. Yes, ma'am.

2 Q. I don't have anything else for you. Please answer anything  
3 the defense may have.

4 CROSS EXAMINATION OF WITNESS, JAMAL SMALLS

5 BY: MR. KING

6 Q. Mr. Small s sir.

7 A. How are you doi ng?

8 Q. Are you related to Shel don McFadden?

9 A. Yes, si r.

10 Q. You're not related to Thomas McFadden?

11 A. I don't really know, to be honest.

12 Q. Didn't you say that they have di fferent fathers, Shel don  
13 and Thomas?

14 A. Yeah.

15 Q. So you're related to Shel don through hi s dad?

16 A. Yeah.

17 Q. Related to Thomas because he has a di fferent father?

18 A. Yeah.

19 Q. Shel don goes by Turner?

20 A. Is that right?

21 Q. Yeah. So you've been charged wi th murder?

22 A. Yes, si r.

23 Q. And, you know, murder carri es a minimum 30 years i n  
24 pri son?

25 A. Yes, si r.

- 1 Q. You got to serve that day for day?
- 2 A. Yes, sir.
- 3 Q. For 30 years?
- 4 A. Yes, sir.
- 5 Q. And it possibly carries up to life in prison, right?
- 6 A. Yes, sir.
- 7 Q. Spend the rest of your life in prison?
- 8 A. Yes, sir.
- 9 Q. You were taken to North Charleston Police Department on
- 10 March 15th, 2019, right?
- 11 A. Yes, sir.
- 12 Q. Is that when they picked you up from where you worked?
- 13 A. March 15th. That's what you did?
- 14 Q. Yeah.
- 15 A. March 15th. Yes, definitely picked me up from the ARD.
- 16 Q. First time the police picked you up. Took me down the
- 17 police station?
- 18 A. Yes, sir.
- 19 Q. And they talked to you then and you told them you denied
- 20 any involvement in this, right?
- 21 A. Yes, sir.
- 22 Q. You told me your momma's house.
- 23 A. Yes, sir.
- 24 Q. And then you got, right?
- 25 A. Yes, sir. They took me back to ARD.

- 1 Q. And at some point you left and went to Georgia, right?
- 2 A. Yes, sir.
- 3 Q. And you were arrested down in Georgia?
- 4 A. Yes, sir.
- 5 Q. Extradited back here?
- 6 A. Yes, sir.
- 7 Q. And served a warrant for murder?
- 8 A. Yes, sir.
- 9 Q. And that's when they talked to you again from North  
10 Charleston Police Department. Right? April 18th, 2019?
- 11 A. April 19th. Yes, sir.
- 12 Q. Did you talk with Det. Pritchard and Det. Butler?
- 13 A. Yes, sir.
- 14 Q. And when you started that interview, you told them again  
15 that you weren't involved, right?
- 16 A. That day I don't -- I don't remember that part.
- 17 Q. Then the beginning, April 19th interview. Right. This is  
18 the second one even brought from Georgia. Yes, sir. Charged  
19 with murder?
- 20 A. Yes, sir.
- 21 Q. Told him again that you smoked with Ishmael in the Dodge  
22 Charger, right? You told him you went to your momma's house,  
23 right?
- 24 A. On April. I don't remember that part.
- 25 Q. If you saw a transcript, would that help to refresh your

1 memory?

2 A. I would like to see that. Is -- if there are certain?

3 Q. Page 16. You see line 12 to 16?

4 A. I didn't remember seeing that but now that I see it, I did  
5 see that.

6 Q. You said you told him then you went to your mom's house?

7 A. Yes, sir.

8 Q. And that you left your phone in Ishmael's car?

9 A. Yes, sir.

10 Q. Okay. And take the pressure a little bit later after you  
11 hear what they're saying, it tells you that's a bunch of bull  
12 you just gave me right after that?

13 A. I remember Detective Pritchard saying something, but I  
14 remember another ball head guy that looked like a wrestler  
15 being in there and seeing. I don't remember -- I do remember  
16 Det. Pritchard saying something, but I remember another guy  
17 near saying, bullshit but he said a lot of other stuff too. But  
18 yeah, he did say that.

19 Q. And on page 20 you said, no, it isn't right?

20 A. Very last one. Page 20.

21 Q. Again, I don't remember saying no, it isn't because it's  
22 been a while, but if it's right here and I believe yes it is.

23 A. You agree that's what you said back then?

24 A. Yes, sir.

25 Q. You remember they started asking you about your son?

- 1 A. Yeah. Yes, sir -- yes, sir.
- 2 Q. You got a son who just turned one?
- 3 A. Yes, sir.
- 4 Q. And you had another son due in August?
- 5 A. Yes, sir.
- 6 Q. And the detectives -- do you remember me asking you how  
7 old your kid is?
- 8 A. Yes, sir.
- 9 Q. That's when you told him he just turned one. He had one on  
10 the way?
- 11 A. Again, it's kind of hazy, but I do -- I do remember it  
12 then.
- 13 Q. And you told them, you said at that point, I'm not trying  
14 to lie to you. I swear to God. Do you remember that?
- 15 A. I definitely don't remember seeing that. What part is that  
16 on?
- 17 Q. Page 46 line 11. Okay. Do you see that?
- 18 A. Oh, yeah, I see it.
- 19 Q. And what you had been saying was, I truly don't know who  
20 Ishmael was on the phone with? Right?
- 21 A. I do -- I do not remember saying that.
- 22 Q. If you look on page 45, just up the page on line 12. He  
23 said, I truly do not know who was on the phone.
- 24 A. I really -- this is -- this is what it says. Okay. Yeah,  
25 I really -- I really don't. I really -- I truly do not know who

1 he was on the phone with. I was on the phone. I was on -- if  
2 you -- I was on if you got my phone records, I was. That I  
3 don't remember saying that. I'm not saying that's a lie. I'm  
4 saying I don't remember seeing it.

5 Q. But you could have said that?

6 A. I did not say. I truly do not know who he was on the phone  
7 with. I would not say that. I truly knew who he was on -- I  
8 truly do not know who he was on the phone with. That just does  
9 not sound like something I would say.

10 Q. But the police were trying to get you to cooperate with  
11 them, right?

12 A. Yes.

13 Q. So at this point, you're still kind of sticking with the  
14 story about going to your mom's house and the police are saying  
15 bullshit at that point. Right?

16 A. This is April 19th that you're talking about?

17 Q. Yes. And do you remember them telling you, depending on  
18 your cooperation, you may never see a trial. Remember that?

19 A. No, I really don't. Again, I'm not saying it didn't  
20 happen. I'm saying I do not remember that.

21 Q. And do you remember me telling you a story about a girl  
22 who was charged with murder and lied to the police and sat in  
23 jail for two years?

24 A. Victoria? Yeah.

25 Q. Victoria you been talking about that?

- 1 A. Yeah.
- 2 Q. They told you that she did -- she lied and sent to jail
- 3 two years, right?
- 4 A. Uh-huh
- 5 Q. Did she tell you that?
- 6 A. Yeah, I remember her saying that.
- 7 Q. They said she missed her daughter's sixth birthday?
- 8 Remember telling that?
- 9 A. I don't remember saying the exact date and all that, but I
- 10 remember them saying something like that. Yes, sir.
- 11 Q. They told you that she lost custody of her daughter?
- 12 A. I don't remember all that either. I honestly.
- 13 Q. Do you remember telling you that they're going to give
- 14 you a chance to give your side and cooperate, that they can
- 15 call the solicitors and let them know. You keep bullshitting
- 16 and you're going to go -- you're going to sit in jail. Remember
- 17 saying that?
- 18 A. No, I really don't.
- 19 Q. Do you want to look at page 75?
- 20 A. Yes, sir. Line?
- 21 Q. Line 19. [Indiscernible] We can call this line
- 22 [Indiscernible].
- 23 A. Now, what was your question again?
- 24 Q. Do you remember I'm saying that to you about if you don't
- 25 cooperate, then you're going to sit in jail. Right. That's what

1 you're telling me? You said two years referred back to that  
2 Victoria story [Indiscernible].

3 A. That's the part that got me hesitant because I remember  
4 listening to it, but I don't remember having a rebuttal. I  
5 don't remember seeing anything back. I remember sitting there  
6 and just thinking because I didn't know her personally. I know  
7 that Victoria person. So I'm -- I'm sitting there thinking  
8 about it. I'm -- I'm saying ---

9 Q. Two years [Indiscernible] or more. Do you remember that?

10 A. No, sir, I really don't.

11 Q. That's when you start pointing the finger back. Right? At  
12 that point.

13 A. Page 75?

14 Q. Page 70 -- 76. The next one.

15 A. Line?

16 Q. 13.

17 A. Okay. I'm ready to see.

18 Q. That's when you first you say Trigger, right?

19 A. I'm going to ask you a question. Alright. What's the name  
20 of Trigger -- Trigger?

21 Q. [Indiscernible]

22 A. What I'm saying is I remember this happening, but I don't  
23 remember seeing the stuff like this so. But okay. You know, I  
24 remember seeing this stuff, but I don't remember going like  
25 this.

1 Q. Yeah. Today, I have you seen that you're seeing that this  
2 McFadden gave Draco to Ishmael?

3 A. No, I did not say that.

4 A. Okay.

5 Q. Did you say he put that himself?

6 A. The Draco? No, I said he got a black bag out of the car  
7 and he put it inside Ishmael's car trunk.

8 Q. Okay. But back on this April 18th interview, after you  
9 started talking about Trigger, you said that he gave Ishmael a  
10 black bag. It was heavy and took two hands to carry. And they  
11 walked around the corner and came back empty handed?

12 A. Well, I think he walked around the corner, meaning I'm  
13 sitting in the car and when he walked around the corner,  
14 meaning he was behind the car, they walked behind the car and  
15 they put the bag in the car. That's the corner from the car  
16 they had from Ishmael car. You got to turn to put the bag in  
17 the trunk. That's the corner.

18 Q. And you to say at some point that sugar got the car, got  
19 the gun back out of Ishmael car?

20 A. Not the Draco did not say that.

21 Q. And in fact, in that interview, you said you never saw a  
22 gun back in April, right?

23 A. At -- no, not the -- no didn't.

24 Q. [Indiscernible] 32.

25 A. No, I don't need to look at it. This day I did not say

- 1 that I seen a Draco. I did not see a Draco.
- 2 Q. It's the end of the interview on April 19th, do you  
3 remember they let you call your grandmother?
- 4 A. Yeah.
- 5 Q. Did you call your grandmother?
- 6 A. Yes, sir.
- 7 Q. And is Denisha your grandmother?
- 8 A. No, that's not my grandmother name.
- 9 Q. That was your was your girl friend?
- 10 A. Denisha does -- at the time. Yeah.
- 11 Q. You talked to your grandmother. You talked to Denisha from  
12 the interrogation room?
- 13 A. Yeah. In the room. Yeah.
- 14 Q. They put your child is Z?
- 15 A. Z
- 16 Q. Z They put Z on the phone?
- 17 A. I don't remember that part, but it probably did happen but  
18 she always got my son.
- 19 Q. And the child was crying?
- 20 A. I don't remember that, honestly.
- 21 Q. And you told them I don't know when I'll be able to hug  
22 Z again. Did you tell them that?
- 23 A. We'll be there on.
- 24 Q. Page 163. Fine. Okay.
- 25 A. What -- I don't know when I'll be able to hug Z again

1 but I'll do my best to make it back out there to you all though  
2 -- I don't know when I'll be able to hug [Z] again. I'll do my  
3 best to make it back out there to you all though.

4 Q. Is that what she said?

5 A. This [Indiscernible] got me going. I don't remember saying  
6 that. I'm not saying it's a lie. But I don't know when I'll be  
7 able to hug [Z] again. I'll do my best to make it back out  
8 there to you all though.

9 Q. Yeah. We can end it by saying, I'm going to try my best to  
10 get back to normal, remember saying that?

11 A. No.

12 Q. Page 160.

13 A. No. I see -- I've seen it, but I -- I don't remember  
14 saying that.

15 Q. You agree that -- did you say that and forgot?

16 A. That could be a possibility. I could have said that and  
17 forgotten that I did not -- that I said that.

18 Q. And then he told the police she wanted to see her son grow  
19 up, you remember that?

20 A. I'm seeing all of this. I'm going to look again. That's  
21 the same page?

22 Q. Page 172. Okay. But you said I'm probably looking at  
23 couple nothing today. But yeah, that's how long it take for  
24 this stuff at the minute we're then going to talk about  
25 [Indiscernible] in here but I don't get no it's fucking

1 appointments all bone [Indiscernible] gets the [Indiscernible].

2 Now, what was your question again say?

3 Q. That you said at that point, that you wanted to see your  
4 son grow up. Page 172, line five.

5 A. Yeah, man, I got my daddy didn't see me grow up, man. So  
6 I'm going to at least try to see my sons grow up. Yeah, I could  
7 have said it. Yeah.

8 Q. And then you went to jail, right?

9 A. I went back to jail. Yeah.

10 Q. And you had no [Indiscernible]?

11 A. Yeah. Yes, sir, that's correct.

12 Q. And a few months later, this August 13th, the prosecutor,  
13 they consented to give you a bond, right?

14 A. In August -- in August? That's what you said? In August?

15 Q. August 13th, 2019.

16 A. I don't remember the date. If I don't remember -- I don't  
17 remember.

18 Q. But you did get him on?

19 A. Yes, sir, I did get him on while I was locked up. Yes, I  
20 did.

21 Q. A good mom?

22 A. Yes.

23 Q. [Indiscernible]

24 A. Yes.

25 Q. And you got out?

- 1 A. Yes, sir.
- 2 Q. And you met with the solicitor -- in the solicitor's  
3 office. You remember that?
- 4 A. Uh-huh.
- 5 Q. Meeting with them?
- 6 A. Yes, sir.
- 7 Q. Where you talked about that proffer?
- 8 A. So you're -- you're telling me.
- 9 Q. That's when you came to the solicitor's office, not the  
10 police department?
- 11 A. And they tell me about the proffer. Yes. They tell me  
12 about the proffer. Yes.
- 13 Q. And that's when you started giving more information about  
14 Mr. McFadden saying, admitting that he shot the person. Right?  
15 You're adding more facts. Do you remember that?
- 16 A. I've -- I -- I remember telling them everything that I  
17 said that day while I'm in that room. I said everything that I  
18 said before when I met with them before. So I'm -- if I'm  
19 adding new facts, I don't remember adding new facts. I remember  
20 seeing the same story over and over and over and over and over.
- 21 Q. Do you remember you were talking about how Mr. McFadden  
22 had left in the CRV and you were following him?
- 23 A. Yes, sir.
- 24 Q. [Indiscernible]
- 25 A. Yes, sir.

1 Q. And you said for the rest of the way, we didn't see his  
2 car. Seemed like Mr. McFadden took off, right?

3 A. Yes, sir.

4 Q. And then Det. Pritchard's interrupts and says, let me back  
5 you up and tells you about how the surveillance video shows you  
6 one behind the other. Right?

7 A. At a point in time.

8 Q. So Det. Pritchard was trying to correct your story, but...

9 A. I guess you could say that's what he was doing.

10 Q. You said you left the parking lot that night March 4 --  
11 March 14th. Did you hear any shots?

12 A. No, sir.

13 Q. Did you see any shooting?

14 A. No, sir.

15 Q. And you met with the solicitor's office recently, right?

16 A. Yes, sir.

17 Q. Like within the past week. Two weeks?

18 A. Yes, sir.

19 Q. And that's when you added the additional fact about the  
20 Bi-Lo parking lot. See Mr. McFadden and the Bi-Lo parking lot  
21 for the Draco and the Infiniti?

22 A. I said this before, I just didn't say the Bi-Lo parking  
23 lot. I said that I seen him more than one time in that Infiniti  
24 with the Draco and yeah.

25 Q. But you didn't say that in connecting?

- 1 A. I don't remember.
- 2 Q. You didn't say anything about Bi-Lo parking lot?
- 3 A. No, I didn't -- no, I didn't say nothing about the Bi-Lo  
4 parking lot. I did not.
- 5 Q. And you are back with your family, right?
- 6 A. How you mean?
- 7 Q. Well, when you're on the phone with them at the police  
8 station in 2019, you said you're going to do everything you can  
9 to get back?
- 10 A. Oh, yes, sir. Yeah, I'm -- I'm ---
- 11 Q. Your family back?
- 12 A. I wouldn't say that. I'd like to see my kids.
- 13 Q. Were you in jail?
- 14 A. No, sir.
- 15 Q. You're free?
- 16 A. To an extent. Yes, sir.
- 17 Q. And you're hoping to get some sort of benefit by  
18 testifying today?
- 19 A. I'm hoping to clear the road that I was supposed to have  
20 played in this. Yes, sir.
- 21 Q. Will you take the Pritchard telling you depend on your  
22 cooperation. You may never see a trial. Right?
- 23 A. I remember Det. Pritchard. Yeah, I remember him saying  
24 that. Yes, sir.
- 25 Q. That's all the questions I have.

1 THE COURT: Any redirect.

2 MS. LINDER: Yes, Judge. [Indiscernible].

3 REDIRECT EXAMINATION OF WITNESS, JAMAL SMALLS

4 BY: MS. LINDER

5 Q. All right. So when you were first talking to police the  
6 day after the murder, I mean, it just happened, did you tell  
7 them everything that happened and all the details?

8 A. The day after the murder, they -- they came and tell me  
9 and get me from. No, I didn't tell them that. No.

10 Q. And then you got picked up in Georgia. And then you got  
11 brought back to Charleston, right?

12 A. Yes, ma'am.

13 Q. And do you have any other convictions on your record?

14 A. No, ma'am.

15 Q. Is it scary getting arrested for murder and then being  
16 brought back here?

17 A. Yes, ma'am.

18 Q. Mr. King went through -- that's 173 page transcript with  
19 you. Do you have that with you?

20 A. Yes, ma'am. Yes, I do.

21 Q. As soon as page 64. Are you talking about after the  
22 shooting -- going to Ish's house in Lincolnville to meet up?

23 A. I can start from any line or just --

24 Q. Go over to this line.

25 A. I can see it. No -- no. I mean like I kind of I it because

1 when we left it was like, yes, I see that part. Yes, ma'am.

2 Q. And then going on a little further on page 76. What is it  
3 you give -- and this is well prior proffer. What's it you're  
4 giving on page 76 already like around?

5 MR. KING: Prior consistent statement and bolstering.

6 THE COURT: Yeah, go ahead. Come on up for a second.

7 BY: MS. LINDER

8 Q. Mr. Smalls?

9 A. Yes, ma'am.

10 Q. Did you tell the police who shot and kill Light skinned?  
11 Well, before the police ever mentioned anything about your  
12 grandmama or you calling your grandmama?

13 A. Yes.

14 Q. And did you tell the police before any conversation or  
15 threat about your grandmama that you went to West Carolina in  
16 Lincolnvillie?

17 A. Yes.

18 Q. Did you tell the police prior to anything, any call with  
19 your grandma that it was there was a Honda up there in  
20 Lincolnvillie on West Carolina?

21 A. Yes.

22 Q. Did you tell the police that you saw Light Skinned come  
23 out at Cummins before the shooting? Before any kind of call to  
24 your grandma?

25 A. Yes, ma'am.

1 Q. Did you tell the police that the Defendant gave a big ass  
2 black bag to Ishmael up in Lincolnville all before you called  
3 your grandma?

4 A. Yes, ma'am.

5 Q. Thank you for your indulgence. I don't have anything else  
6 for you.

7 MR. KING: Briefly, Your Honor.

8 THE COURT: Very briefly, in response to that.

9 RE-CROSS EXAMINATION OF WITNESS, JAMAL SMALLS

10 BY: MR. KING

11 Q. As we said in my cross, just before you mentioned this in  
12 your partner's name, after they said this is your chance to  
13 cooperate, we can call the solicitor's office and let them know  
14 you keep bullshitting. You're going to sit in jail. And you  
15 said two years and they said, or more. Right? And that's when  
16 you started talking about this in the bag. That's where on page  
17 76. Right?

18 A. How you knew this person or more wait -- or more wait  
19 that's -- that's this court. Okay -- okay -- okay -- okay --  
20 okay -- okay. Then I'm going to ask you a question. All right.  
21 What's the name of the shooter -- shooter?

22 Q. Look on page 75 or 75 in the very bottom paragraph.

23 A. Page 75. By all means, this is your chance to give your  
24 side. By all means [Indiscernible] we can call them. Let the  
25 officers know, hey, man, you told us this, but you said they're

1 pushing him. You've been bullshitting for over an hour. You  
2 just keep doing it. You're going to send it to two years or  
3 more.

4 Q. Right? You remember that.

5 A. Yeah. I remember.

6 Q. Okay.

7 A. You asked me about that.

8 Q. It was at the end when they let you call your grandma.

9 Correct?

10 A. At the end of ---

11 Q. At the end of all this interview sir?

12 A. At the end of every -- yes. At the ---

13 Q. And your reward for telling what they wanted to hear, was  
14 it?

15 A. Not necessarily. He not -- I don't remember him. I don't  
16 remember them saying, do you want to make a phone call? I am --  
17 I am in my recollection right now. I remember asking them, like  
18 after like -- like, damn, can I call my grandmother or?

19 Q. Everybody did that?

20 A. That would, yes.

21 Q. I have nothing further, Your Honor.

22 THE COURT: Okay. All right. Thank you. You may step down.  
23 Thank you very much.

24 MS. LINDER: Your Honor. We would ask to be released from  
25 the subpoena.

1 THE COURT: Any objection?

2 MR. KING: No objection, Your Honor.

3 THE COURT: No objection.

4 THE WITNESS: May I step down?

5 THE COURT: Yes, sir. You're released from your subpoena.

6 All right. Let me talk lawyers for one brief second up here.

7 [Murmuring at Sidebar]

8 THE COURT: Okay. Call your next witness.

9 MS. LINDER: The State calls Paul Greer.

10 THE COURT: Here, sir. I just reading my objection to the  
11 pretrial counsel hearing ruling.

12 THE CLERK: Please place your left hand on the Bible and  
13 raise your right hand. Do you swear or affirm the testimony you  
14 shall give the court and the jury in the trial of this case is  
15 the truth, the whole truth, and nothing but the truth, so help  
16 you God?

17 MR. GREER: I do.

18 THE CLERK: Please be seated. Please state your full name  
19 and spell your last name loudly and clearly into the  
20 microphone.

21 MR. GREER: Thank you. My name is Paul Greer, G-R-E-E-R.

22 DIRECT EXAMINATION OF WITNESS, PAUL GREER

23 BY: MS. LINDER

24 Q. Where do you work?

25 A. I am employed at the South Carolina Law Enforcement

1 Division, which is commonly known as Sled.

2 Q. And how long have you been with Sled?

3 A. I've been at Sled just over nine years.

4 Q. And what is your current role at Sled?

5 A. At Sled, I'm a forensic scientist in the firearms  
6 department of our Forensic Services Laboratory.

7 Q. And what -- if you could just briefly explain to the jury  
8 what does firearms examination entail?

9 A. Sure. Firearms examination and firearms identification is  
10 just a discipline within forensic scientists, where my main  
11 objective is to examine fired ammunition components that could  
12 be a fired cartridge case or a fired bullet in order to  
13 determine if they were fired by a specific firearm.

14 Q. And can you describe for the jury your education, training  
15 and experience?

16 A. Yes, ma'am. I received a bachelor's of science and  
17 biological sciences from the University of South Carolina upon  
18 my appointment at Sled in 2014. I began the sled firearm until  
19 my course of instruction, and this is an extensive  
20 apprenticeship style training program that's conducted at Sled  
21 under the supervision of other court qualified examiners. And  
22 during this time, which took approximately three years to go  
23 through all of this training, I completed multiple written and  
24 practical examinations. I assisted other qualified examiners,  
25 prep their cases for -- for court purposes, and also conducted

1 many microscopic comparisons during -- during that long three  
2 year period. At the conclusion of that I was given a final exam  
3 which had multiple parts and components, and that also included  
4 some mock casework. I completed that successfully and was then  
5 allowed to begin casework on my own.

6 Q. And have you ever testified in court before?

7 A. Yes, ma'am, I have.

8 Q. Have you ever been qualified as an expert before?

9 A. Yes, ma'am, I have.

10 Q. Do you have an idea of approximately how many times you've  
11 testified as an expert?

12 A. Approximately 32 times.

13 Q. Your Honor, at this time, the State would seek to admit  
14 Paul Greer as an expert in firearms identification.

15 A. Just my previous pretrial ---

16 THE COURT: Subject to the previous objection.

17 [Paul Greer Admitted as State's Expert in Firearm's  
18 Identification]

19 BY: MS. LINDER

20 Q. All right. Just -- if you don't mind kind of going back to  
21 the basics here. Can you explain to the jury what a cartridge  
22 case is and all the different components that deals with?

23 A. Sure. Terminology is one thing that is very important to  
24 us in the firearms department. Commonly, you'll hear people  
25 refer to what we say are unfired cartridges or cartridges as as

1 bullets when they're using or shooting a firearm and they're  
2 using their ammunition. And we are very specific in our  
3 reporting and what we do. So we'll go through a little bit  
4 about the anatomy of a cartridge, if you will. So if you think  
5 of an unfired piece of ammunition, you have a cartridge which  
6 typically has some type of cylindrical component. That is the  
7 cartridge case. And sometimes you'll see that as brass or a  
8 nickel material. So a gold or silver color that's cylindrical  
9 part, that holds it all together. Within there, you have a  
10 primer on one end, which is a little round disk, and that's  
11 what the firing pin of the firearm strikes in order to fire  
12 that cartridge. On the other end, you have the bullet that is  
13 specifically just the bullet that copper colored, sometimes a  
14 round projectile. There can be other metals and shapes. The  
15 bullet is that projectile that travels through the barrel of a  
16 firearm towards a target. And inside that cartridge case, to  
17 make all of that function is the gunpowder. So you have an  
18 unfired cartridge and we can break that down to the cylindrical  
19 portion that holds it together as the cartridge case. And on  
20 each end of that cartridge case, you have a primer and then the  
21 bullet which travels down the barrel.

22 Q. And can you explain the difference between an automatic  
23 and a semi-automatic firearm?

24 A. Sure. A semi-automatic firearm is a type of firearm that  
25 uses the energy from firing that cartridge in order to perform

1 some of the operating or action of that firearm. So in a semi -  
2 automatic firearm, when you pull the trigger one time and  
3 there's a cartridge in the chamber, that cartridge will ignite,  
4 combust and that bullet will go down the barrel of that gun.  
5 And you can fire one cartridge when that cartridge is fired,  
6 the energies from discharging that cartridge will help to cycle  
7 that firearm. So that's when the firearm slide. If you have a  
8 pistol will move rearward. And then as it's moving rearward,  
9 that cartridge case that you just fired is kicked out of the  
10 gun. So it's extracted and ejected from the gun as that slide  
11 is moving back forward as a result of firing that. It's going  
12 to pick up the next available cartridge. There is a cartridge  
13 that's loaded in that firearm and you can fire it with another  
14 pull of the trigger for an automatic type firearm. It's similar  
15 except for pull -- when you pull the trigger. There's  
16 cartridges in that cycle of that firearm will keep happening  
17 until you release the trigger or there's a malfunction in the  
18 gun or if you run out of ammo.

19 Q. All right. And can you explain the process of firearms  
20 identification, how you go about doing that?

21 A. Sure when firearms are manufactured, they go through many  
22 different machining processes that are used to create those  
23 parts and those components of that firearm during that time.  
24 Those surfaces that are being worked on at the at the factory  
25 are being marked by different tools. And that's leaving behind

1 individual markings. And so when a cartridge case is fired in a  
2 gun or a cartridge is fired and you have the cartridge case or  
3 a bullet goes down the barrel, that machining process that it  
4 went through is going to leave behind individual markings that  
5 we're going to use to look at under the microscope. So we look  
6 at many different areas on a cartridge case and on a barrel.  
7 And when a bullet travels down a barrel that has a rifle, the  
8 barrel. We can look at all those different things that are  
9 individual in those scratches and striations that are left on  
10 these fire components. And when I say scratches and striations  
11 or impressions that we're going to look at, these are  
12 microscopic small markings that we're going to look at under  
13 high magnification using what's called a comparison microscope.  
14 And so under that magnification and using that microscope, if  
15 you'll think back to maybe a lab that you've had, you had a  
16 microscope that you could look at as a specimen. This is a  
17 fancy version of that where we can look at two things at one  
18 time through a set of binoculars and we're looking at all these  
19 striations and scratches that have been imparted onto those  
20 fire components. And those markings can also be influenced by  
21 the wear and tear of the gun. So as someone's using it,  
22 cleaning it and damaging that gun, that can also add to some of  
23 those markings that we're going to look at that translate to  
24 those fire components.

25 Q. And in your work at Sled, do you have the opportunity to

1 ever compare firing cartridge cases with one another?

2 A. Yes, ma'am, absolutely.

3 Q. And then do you also have the opportunity to compare fired  
4 cartridge cases to a firearm itself to see if the those  
5 cartridge cases were fired from that firearm?

6 A. Yes, ma'am.

7 Q. And were you involved with this case, the State versus  
8 Thomas McFadden?

9 A. Yes, ma'am. I did receive evidence and issue a report.

10 Q. And what evidence did you receive?

11 A. I received as evidence in this case. Sled items, ten  
12 through 13. Each of those were found to be one fired 7.62 by 39  
13 millimeter caliber cartridge case. So four cartridge cases. And  
14 I also received one firearm, which was sled item 14 and that  
15 was determined to be one Romarm model mini Draco semi-automatic  
16 pistol and 7.62 by 39 millimeter caliber with a serial number  
17 of PE-1037-2018R0. Oh, excuse me. And that came with two  
18 magazines and 62 unfired 7.62 by 39 millimeter caliber  
19 cartridges.

20 Q. All right. And who brought you the evidence?

21 A. I'm going to refer to my notes, Your Honor. The evidence  
22 was delivered to the Sled Laboratory on sled items ten through  
23 13 by Jeremy Ledford of the North Charleston Police Department  
24 and Sled, item 14, which was the firearm, was also delivered to  
25 the Sled Laboratory by Jeremy Ledford of the North Charleston

1 Police Department.

2 Q. And while at Sled, you all maintain a chain of custody to  
3 be able to keep track and record who handles any evidence that  
4 comes in to Sled?

5 A. Yes, ma'am, we do. And we do when evidence is submitted to  
6 the laboratory I mean, it's given its own unique lab number and  
7 each item receives its item number as a part of that, a chain  
8 of custody is kept for all of these items. And that's simply  
9 just a record that is kept electronically of each time this  
10 evidence transfers to a shelf, to a person, to a shelf, to  
11 somewhere else. And that chain of custody will document where  
12 that evidence has been throughout its time at the lab from when  
13 it's received all the way to when it leaves.

14 Q. All right. At this time, I'm going to show you what's been  
15 marked as State's Exhibit 103, 104, 105 and 106. You can look  
16 at those. Take your time. Now, you've looked at those. If you  
17 could let me know if do you recognize them?

18 A. What I'm looking for on some of these cartridge cases is  
19 when this evidence is received and I begin my examination, all  
20 of market inscribe it with those sled item numbers, lab numbers  
21 and my initials. I do recognize these items and they are also  
22 still unpackaged in the packaging that I prepared. And I still  
23 see my initials and seal date at the top of each of these.

24 These States exhibits are my fire cartridge cases. Yes, ma'am.

25 Q. And then are they in substantially the same condition as

1 when you received them, as your seal markings are still on  
2 them?

3 A. Yes, ma'am.

4 Q. At this time, the State would seek to admit those items  
5 into evidence.

6 MR. KING: Just so my pretrial objection,

7 THE COURT: Subject to the previous objection.

8 [State's Exhibit No. 103, 104, 105, and 106 was Admitted into  
9 Evidence]

10 BY: MS. LINDER

11 Q. All right. At this time, I'm also going to hand you --  
12 this is stage 134, 193 and 194. You can take a look at that.  
13 Those rather.

14 A. And this firearm is unloaded, it's safe for me to handle.  
15 I'll keep it pointed in my direction. Yes, ma'am. This does  
16 appear to be my Sled item 14, which was the Romarm pistol.

17 Q. And then the other items in that box was that also -- is  
18 also part of the -- when you had them labeled earlier, identify  
19 the two magazines and 62, 7.6262 ammunition?

20 A. Yes, ma'am. These are the two magazines that were  
21 received. These are then marked as State's Exhibits 194. Those  
22 are the two magazines. And this bag is marked as State's  
23 Exhibit 193. And this does appear to be the 62 unfired, 7.62 by  
24 39 millimeter caliber cartridges. And I see that my initials  
25 and seal date are still intact at the top.

1 Q. And are those items all in substantially the same  
2 condition as they were when you received them?

3 A. Yes, ma'am, it appears so.

4 Q. At this time, the State would admit to take these items  
5 into evidence with 134 at is all.

6 THE COURT: Subject to the previous objection.

7 [State's Exhibit No. 193 and 194 was Admitted into Evidence]

8 BY: MS. LINDER

9 Q. All right. I want to kind of talk to you first about the  
10 casings that you received. Those four casings that you received  
11 in this case are items ten, 11, 12 and 13. Can you take the  
12 jury through what you did with just those casings at first?

13 A. Yes, ma'am. So when evidence is submitted to the  
14 laboratory, it can be submitted to the lab with several  
15 different assignments. These cartridge cases received defined  
16 assignments. So that means it came to me to begin my  
17 examination. I received the evidence, and I began to document  
18 what I received through photography and also with our  
19 departmental worksheets. And so I opened the containers that  
20 the evidence was submitted in and took pictures of it as I was  
21 opening it -- opening the evidence, taking note to collect any  
22 foreign material or trace material that could be biological  
23 fluids or anything that manner to preserve it for any further  
24 testing. I then, after documenting with photography, would  
25 begin those worksheets and all those worksheets we're going to

1 document our packaging and a little more information about the  
2 cartridge cases itself. And that could be the caliber, the  
3 headstamp information which is on that cartridge case. And it  
4 tells us a little more about the manufacturer of that cartridge  
5 case. We're going to document the metallic properties of it,  
6 what that cartridge case appears to be made of and its  
7 construction. And then we're going to look at it kind of  
8 microscopically. We're going to look at it to determine what  
9 those characteristics on the breech face area, where that  
10 cartridge case rested up against when it was firing and see  
11 what those microscopic markings look like and investigate that  
12 the firing pin impression and other areas as well. So that kind  
13 of information is documented and determined that they're  
14 suitable to be compared with other items. So at that point in  
15 time, I would have compared those four cartridge cases just  
16 like we discussed before, looking at them under the comparison  
17 microscope to in order to reach a conclusion about those  
18 cartridge cases, if they were fired by the same firearm or not.

19 Q. And were you able to make a conclusion as far as Sled  
20 items, 10 through 30, Were they fired from the same firearm?

21 A. 10 through 13?

22 Q. Yes, that's right.

23 A. Yes, ma'am. 10 through 13 were fired from the same  
24 firearm.

25 Q. And the firearm that you were provided in this case, can

1 you kind of take the jury how what you went through with any  
2 analysis of that firearm and how that relates to the four  
3 casings that you received?

4 A. Sure. Very similar to how I worked in approach those  
5 cartridge cases, I would have opened the packaging from that  
6 firearm note. Making sure that it was sealed and intact would  
7 make sure that it hasn't been tampered with. And before we  
8 begin our examination, notate any foreign material that may  
9 have been on it. I did have a notation that there appeared to  
10 be some material that looked to me like black fingerprint  
11 powder that was on the firearm in those magazines and did not  
12 collect that material. I then began to look at that firearm a  
13 little more closely and document things such as the make the  
14 model and the caliber of it, on the serial number and just some  
15 of its construction. I then would look down the barrel,  
16 determine what that rifling looked like inside the barrel and  
17 make sure that there was nothing in the barrel so that I can  
18 test fire it safely. I would have also notated and looking at  
19 that firearm to make sure that it was assembled correctly, that  
20 it looked like it was safe for me to handle and test fire  
21 safely. After that, and determining that it was safe for me to  
22 fire, I would have gathered some ammunition to test fire in the  
23 gun. At SI ed, we have several different ways we can test fire  
24 right there in the laboratory. And one of those commonly is our  
25 water tank, where we just test fire the gun into the a body of

1 water and collect our bullets and our cartridge cases after  
2 shooting that. After shooting that firearm and collecting those  
3 test specimens, I would then compare those test specimens,  
4 specifically the cartridge cases in this case to each other to  
5 see how that firearm was marking and look at all those tiny  
6 microscopic mark, markings on those cartridge cases under  
7 magnification. And then, if necessary, compare that to any  
8 evidence that was submitted.

9 Q. And were you able to have any conclusions based upon your  
10 work with the firearm in this case?

11 A. Yes, ma'am, I was.

12 Q. And what were those?

13 A. It was determined that there were matching individual  
14 identifying characteristics that I found on those Sled items,  
15 10 through 13, which were the fire cartridge cases that we just  
16 discussed to determine that they were fired by item 14.

17 Q. And did you I believe you testified, but did you create a  
18 report to document your findings in this case?

19 A. Yes, ma'am, I did.

20 Q. At this time, I'll show you some pertinent State's Exhibit  
21 182. Do you recognize that?

22 A. Yes, ma'am, I do.

23 Q. How do you recognize that?

24 A. This appears to be a copy of my report. I see the same  
25 information that's displayed in my report that I brought with

1 me and prepared. That is in this copy that you provided with  
2 your copy having some redaction. But I do recognize this  
3 material.

4 Q. Your Honor, at this time, the State would seek to admit  
5 State's 182 in evidence.

6 MR. KING: Just ---

7 THE COURT: Subject to the prior objection.

8 [State's Exhibit No. 182 was Admitted into Evidence]

9 BY: MS. LINDER

10 Q. All right. I'm going to go ahead and put this up on the  
11 overhead projector so it'll show up on that screen in front of  
12 you. State 182

13 Let me take them through piece by piece. What is this  
14 information up here?

15 A. All the information up there above the that header line is  
16 information that's generated based on what is entered by the  
17 submitting agency. So that information came through during the  
18 login process. Of course, we have our -- our laboratory title  
19 and governor and our chief there. But below that is Michael  
20 Cook, which is the person that the report was addressed to  
21 based on information when it was submitted. And to the right,  
22 there is the date that my report was issued by the firearms  
23 department. You'll see the unique Sled Lab number that that  
24 case was given once it entered to the Sled Laboratory. Your  
25 case number is the case number of the submitting agency. In

1 this case, that would be North Charleston Police Department's  
2 case number along with their incident date and the names of the  
3 people that are associated with this case.

4 Q. All right. Now. Right. It is possible. Okay. Can you kind  
5 of take the jury through what is down here that you have in  
6 your report?

7 A. Yes, ma'am. So in this portion of the report is just a  
8 list of all the items with the correct item descriptions after  
9 I've examined them. So you'll see a top Sled items 10 through  
10 13. Beside each of those item numbers, 10, 11, 12 and 13,  
11 you'll see the description of what that item was. And then it  
12 says listed as in parentheses with some information. And that's  
13 just basic information that came on the submission document. So  
14 we could kind of figure out what we were looking for once it  
15 arrived. I do not really have any knowledge as to the EX1CC.  
16 And that's all information that was generated by the North  
17 Charleston Police Department, and I listed it in my report just  
18 to help them visualize what items I was referencing.

19 Q. And then with your results for I think you talked about 10  
20 to 13 and 14. Can you tell the jury about that?

21 A. Sure. That is the conclusion that I reached during my  
22 examination and that is just reported there that says we  
23 physically examined the evidence and we microscopically  
24 compared all of those cartridge cases with each other and with  
25 those test cartridge cases that I fired in that item 14 pistol.

1 And based on that comparison that we found matching individual  
2 characteristics and we concluded that items 10 through 13 were  
3 fired by item 14.

4 Q. All right. That's all the questions I have for you. Please  
5 answer anything the defense may have.

6 A. Thank you.

7 CROSS-EXAMINATION OF WITNESS, PAUL GREER

8 BY: MR. KING

9 Q. You work for the South Carolina Law Enforcement division?

10 A. Yes, sir, that's correct.

11 Q. That's a law enforcement agency?

12 A. It is.

13 Q. Now, the method that you use, you fire a test cartridge  
14 from the weapon. Is that right?

15 A. Yes, sir. I did test fire the firearm to recover my own  
16 test fired cartridge cases and bullets.

17 Q. And then you take the cartridge casings from the scene,  
18 right?

19 A. Yes, sir.

20 Q. [Indiscernible]

21 A. Yes, sir.

22 Q. And you look at them, right?

23 A. Uh-huh.

24 Q. And you compare and then you decide whether or not they're  
25 a match. Right?

1 A. I do compare those cartridge cases under magnification.  
2 And based on my training and experience that I went through  
3 during that extensive training program, use that knowledge and  
4 -- and training to determine whether those cartridge cases were  
5 suitable and see if they were fired by the same firearm. And  
6 then I compare those test specimens that I fired from that  
7 firearm to each other to see how the firearm was marking the  
8 evidence. After I did all of that, I then compared those test  
9 cartridge cases from the gun to the cartridge cases that were  
10 submitted as Sled items 10 through 13. I compare that and  
11 looked at the totality of those markings on the cartridge case  
12 in order to determine and reach my conclusion.

13 Q. But there's a subjective element in your method, right?

14 A. Firearms identification is -- is an applied science. It's  
15 kind of like -- like a doctor, if you will maybe. There's a lot  
16 of knowledge that -- and training that goes into at a lot of  
17 book work. There's also a lot of experience and knowledge  
18 that's gained through actually working on the job and learning  
19 and practice, and that's why we have such an extensive training  
20 program. So there's a lot of science and a scientific approach  
21 that we use to reach these conclusions. There's a guideline to  
22 reach those identifications that we -- that we follow. And so  
23 it's kind of like -- like being a doctor where you learn a lot  
24 in school and then you learn more as you're on the job. And so  
25 your residency. But we -- we take that time during training to

1 I learn and -- and look at these markings and evaluate and  
2 understand the importance of each of these scratches. However,  
3 our last step, even though firearms identification is an  
4 applied science, we're using objective standards to reach a  
5 certain threshold. But the identification portion of that is  
6 subjective in nature. Yes, sir.

7 Q. There's a subjective element?

8 A. In the identification portion, but again, it's based on  
9 using a sound scientific method and approach to work each case  
10 and basing that also on some objective standards.

11 Q. That's true. You have no calculated error rate?

12 A. I do not have a personal calculated error rate. That's  
13 just -- it's not feasible and I -- I don't -- that's not  
14 something that we have at Sled. And I don't know that other  
15 firearms examiners have a calculated error rate. There are some  
16 error rate studies that have been conducted throughout the  
17 years of firearms identification and validity studies that many  
18 have participated. I've participated in some of these studies  
19 during my training process, and these are worldwide studies  
20 that use this information from firearms examiners, that they  
21 have participated in these studies to generate an error rate.  
22 And typically and traditionally, that error rate has been very  
23 low and we're seeing 1% or less. And that has been refuted in  
24 multiple validity studies throughout the years by firearms  
25 examiners across the nation and across the world who

1 participated in that. And that comes down from local  
2 laboratories, from the F.B.I. studies, from Department of  
3 Justice, and in studies as well.

4 Q. The error rates, how often are you wrong?

5 A. An error rates are calculated differently in different  
6 studies. So it just depends on which study and how they're  
7 looking at that. But again, typically those error rates have  
8 been very low, like 1% or less. And sometimes those studies  
9 don't even take into effect the -- the quality procedures that  
10 are set forth in a laboratory. So when using proper scientific  
11 techniques and the quality procedures that are applied in a  
12 laboratory setting, we would imagine those error rates to be  
13 even less than what they are reported as.

14 Q. How many firearms have you examined

15 A. Hundreds or thousands at this point.

16 Q. So like 5000?

17 A. I can't put a number on it. I've been in the firearms  
18 department since 2014 and I'm from day one, I began this  
19 training program, so I don't have a number necessarily.

20 Q. So if you examine 1000 firearms and you sit there, 1%  
21 error rate. Right? Average, is that an average error rate?

22 A. It depends -- it depends.

23 Q. That would mean you're wrong at 1000 times you're wrong.  
24 You're a mathematician ten times?

25 A. And again, on these error rate studies, it depends on what

1 you're looking at. And in some of those studies that -- like I  
2 said, they're not employing all the quality procedures because  
3 it's a -- based on what the design of the study is. So while we  
4 don't have a personal calculator error rate in the laboratory,  
5 it's just not feasible to -- to really do that for us. We can  
6 prove that these studies are working and showing that firearms  
7 identification is -- is reliable.

8 Q. But if you don't know your error rate right, you said, if  
9 it's more than 1%, then you would be more wrong. More than ten  
10 times out of 1000. Right. The rate can be higher than 1%.

11 A. I don't have a personalized error rate. No, sir. I will  
12 say that when we're doing these comparisons in the laboratory,  
13 we're going to use a series of pattern matching to look at  
14 these evidence cartridge cases and test fires and compare. So  
15 when we're comparing this, we're looking at that which using  
16 the pattern matching method, which is a very widely accepted  
17 practice throughout firearms identification, that's the common  
18 way of doing this. We're going to look at that, arrive at our  
19 conclusion and write that down as part of our quality control  
20 process at SLED, everything is also 100% micro verified. So  
21 that means another qualified examiner, after I reach my  
22 conclusion about the evidence, comes in behind me, examines the  
23 evidence on their own, and arrives at a conclusion. If they  
24 agree with that conclusion, then a report can be issued and --  
25 and we can go from there. So in this case, I did have agreement

1 from another qualified examiner on my conclusion that I  
2 reached. So that's another quality control measure that we can  
3 put in place to help reduce those errors that could be  
4 calculated.

5 Q. Some scientists have criticized what you do as having no  
6 validity right here, no scientific method.

7 A. There have been some -- some scientists or people, I  
8 should say, that have called that into question.

9 Q. People, how about are you familiar with the President's  
10 Council of Advisors on Science and Technology?

11 A. Yes, sir, I am.

12 Q. Scientists from Harvard?

13 A. May I refer to my notes, Your Honor?

14 THE COURT: Yes

15 A. Yes, sir.

16 Q. Eric Lander from the Broad Institute of Harvard, MIT?

17 A. No, sir. I don't know him personally. No, sir.

18 Q. But that's one of the scientists with you? What do you do?

19 A. I -- I would have to check the authors of the report. He  
20 may have been involved in that.

21 Q. Can you refresh your memory if you saw him?

22 A. Sure. Yes, sir.

23 Q. May I approach Your Honor? That's the working group,  
24 right?

25 A. Yes, sir. According to this, he is listed. Yes, sir.

1 Q. Those aren't just some people. Those are scientists from  
2 Harvard and MIT, right?

3 A. It appears so. I do know that based on this PCAPS, which  
4 was a report from the Presidential Council, just it was a group  
5 of individuals that were put together and assembled to to make  
6 recommendations for forensic science. I do know that none of  
7 the people employed on that program that issued that report had  
8 any experience of working in a forensic laboratory, doing  
9 firearms identification. So based on what they said, none of  
10 them had gone through any of the training that I've been  
11 through, the extensive years of training and reading and  
12 looking at this information. They had not spent any time in  
13 forensics, but they did issue that report.

14 Q. Harvard?

15 A. No, sir, I did not.

16 Q. M.I.T.?

17 A. No, sir, I did not.

18 Q. One of the criticisms that these Harvard, M.I.T.  
19 scientists gave was that you can't tell us how often you're  
20 wrong. Right?

21 A. I'm not sure what they if that's what they said or not.

22 Q. Because there's no error rate. You don't have an error  
23 rate [Indiscernible].

24 A. I do not have a personally calculated error rate as that's  
25 not feasible but that's why we participate in these studies.

1 I've participated in these studies that have proven throughout  
2 the years firearms identification has been around since in its  
3 current form, really since the early 1900s. And since then  
4 we've just built upon that foundation that was set forth back  
5 then using sound scientific approaches to do this -- this job.  
6 And we just built on that with advancements and technology and  
7 advancements in microscopy. And looking at all of this  
8 information as we learn more and more about the field. There is  
9 a software that's coming that kind of puts 3D microscopy in  
10 front of us that's still being worked on and worked through and  
11 validated. Some laboratories are utilizing that and that's kind  
12 of at our F.B.I. and N.I.J. Department of Justice level and  
13 rolling out from there. So there's lots of statistics and  
14 things that have to be worked out and determined. But in what  
15 has been issued so far, again, we don't have a -- I don't have  
16 a personal calculated error rate based on that technology and  
17 that approach and using that from my reading, it seems to be  
18 that that 3D microscopy is kind of validating what all these  
19 validation studies have said in the past. What we're doing is  
20 correct and we're making the correct-- and arriving at those  
21 correct conclusions when using these sound scientific  
22 approaches to work a case.

23 Q. You can't tell us who fired that firearm?

24 A. No, sir, I do not know who fired the firearm.

25 Q. That's all I have for you.

1 THE COURT: All right. Anything else?

2 MS. LINDER: Nothing from State.

3 THE COURT: All right. Thank you, sir. You may step down.  
4 And without absent of an objection, you are released from  
5 subpoena.

6 THE WITNESS: Thank you.

7 THE COURT: All right, ladies and gentlemen, we're going  
8 to take a short recess. Don't discuss the case. I'll be back  
9 with you shortly. Thank you. Ain't no more break.

10 MS. LINDER: Thank you Judge.

11 MR. ABSHIRE: [Indiscernible]

12 THE COURT: Ten minutes.

13 [Matter on recess]

14 [Matter back on record]

15 THE COURT: All right. Are you ready to roll?

16 MS. LINDER: Yes. Judge, just -- of course, I write myself  
17 Post-it notes and lose track of them. I said there were three  
18 people, Cell map, DNA and the lead. There is one other person  
19 that we wanted to called Josh Cheney, who is the investigator  
20 from my office, who did Ishmael Weston's proffer. We would like  
21 to call him. So understanding that, you know, we have to go to  
22 vary a little bit tomorrow or whatever, that's fine with us,  
23 too. We -- our intention talked to Mr. King about it during the  
24 break. Our intention to call Mr. Cheney is twofold. First of  
25 all, we look to call him to give the kind of background as far

1 as the proffer itself, namely the Defendant, number one, the  
2 like -- the mechanism of the proffer and how it actually went  
3 down that day. Number two, we think that we can, through  
4 extrinsic evidence, put in the audio recording of Ishmael  
5 Weston's proffer. The reason we think these items are when we  
6 asked -- well, Investigator Cheney will testify that there was  
7 no police present at the time of proffer, the Defendant, being  
8 Weston, was taken from the jail to our office and then back to  
9 the jail. He will also talk about how it's -- you know, all  
10 these open ended questions are asked because I believe that  
11 Weston testified that there was police and then he was high on  
12 pills and weed. And we he said more than once. And when I was  
13 asking him specifically about an item in the proffer, he said  
14 he didn't remember. I then asked if it would help refresh his  
15 recollection and he said no. And so then he just kind of  
16 floundered. So I think because of that, under the rules, we can  
17 use extrinsic evidence of this proffer and the responses to it.  
18 So those are one of the two things that I think that I should  
19 be able to arguably get in under Josh Cheney and Mr. King  
20 wanted to help you on that.

21 MR. KING: The Ishmael Weston is the witness we're talking  
22 about. By the end of his testimony, what he was saying was, he  
23 wasn't denying what he had said. What he said is that none of  
24 it was true. And what they want to do is basically just play --  
25 try to play his entire proffer. I think if there were certain

1 things that were inconsistent, they can bring in prior  
2 inconsistent statements. But to play his entire proffer is  
3 going to be putting a lot of consistent statements, prior  
4 consistent statements in front of a jury. And like I said, I  
5 think his ultimate position he took was that what I told the  
6 police -- what I told them wasn't true. Not that he's denying  
7 that he said it. He hadn't said I never said any of that. He  
8 said it wasn't true. I'm sorry.

9 THE COURT: Which [Indiscernible]

10 MR. KING: I think by the end of the testimony.

11 THE COURT: Yeah.

12 MR. KING: That he was saying, it's not true.

13 THE COURT: Of course he testified and said -- he said he  
14 didn't say anything. I remember. Isn't that right?

15 MS. LINDER: Yes, Judge [Indiscernible]

16 MR. KING: But I just wanted to object this bolstering and  
17 a prior consistency.

18 MS. LINDER: Oh, my gosh. Maybe it's not a flash drive.  
19 Maybe 30 minutes but judge, with that in mind, if we want to do  
20 the three witnesses who are here and then we can always address  
21 this first thing tomorrow and then roll into closings if need  
22 be. That's what we're also fine with that, obviously. Mr.  
23 Jamie's here at our office. But he's going to pull this up. I  
24 have it on the flash drive. He can pull it up and feel it and  
25 pull it up and tell you how long it is. Oh, it's 14 minutes

1 long.

2 THE COURT: I don't have any problem with the investigator  
3 getting up to testify. I presume he's going to say he was not  
4 intoxicated.

5 MS. LINDER: Yes, Judge.

6 THE COURT: You don't object to that, do you?

7 MR. KING: No, no. My main objection is for them to get up  
8 and just try to replay his entire prior consistent statement  
9 with without not ---

10 THE COURT: That consistent statement. Right?

11 MR. KING: We -- he did not deny ---

12 THE COURT: I don't know what's in it. Okay. I haven't  
13 heard it. But this isn't you're trying to claim it's a  
14 consistent statement just because he acknowledged that he said  
15 it, but now he denies it's true?

16 MR. KING: Right. I think if she had gone through and  
17 found certain facts that he disagreed with, he said, I didn't  
18 say that or I didn't say this. They can bring in individual,  
19 maybe prior inconsistent state short statements, but the play  
20 is entire proffer or large parts of the proffer. I think that  
21 is -- that's not inconsistent with what he said. He didn't deny  
22 making the statement.

23 THE COURT: Well, proffer is inconsistent with which time  
24 he said what he changed. From what I remember hearing changed  
25 his tune up there on the witness stand.

1 MR. KING: It would be his last and final position.

2 THE COURT: So why does that you think that cures the  
3 problem of the dispersed?

4 MR. KING: Yes. If I ask the witness, did you say this and  
5 this? And the witness says no and I put some pressure on the  
6 witness. Okay. I did say that if they ultimately admitted it,  
7 then you don't bring in the prior inconsistent statement at  
8 that point. Once they admit it, they can't prove it by  
9 extrinsic evidence. And I believe he admitted making the prior  
10 statement, but just said it wasn't true by the end of his  
11 testimony in my cross-examination.

12 THE COURT: I'll have to think about that. I don't have  
13 any problem with you all putting up your investigator if that's  
14 necessary. All right. Well, are you ready to call whoever you  
15 got.

16 MR. KING: Yes, Judge.

17 THE COURT: Okay.

18 THE COURT OFFICER: All jury present, Your Honor.

19 THE COURT: Thank you, sir. Okay. Call your next witness.

20 MS. LINDER: State calls David Pritchard.

21 THE CLERK: Please place your left hand on the Bible and  
22 raise your right hand up. Do you swear or affirm the testimony  
23 you shall give to the court and the jury in the trial of this  
24 case is the truth, the whole truth, and nothing but the truth,  
25 so help you God?

1 MR. PRITCHARD: I do.

2 THE CLERK: Please be seated. Please state your full name,  
3 spelling your last name loudly and clearly into the microphone.

4 MR. PRITCHARD: David Pritchard, P-R-I-T-C-H-A-R-D.

5 DIRECT EXAMINATION OF WITNESS, DAVID PRITCHARD

6 BY: MS. LINDER

7 Q. Where are you employed?

8 A. North Charleston Police Department.

9 Q. And how long have you been in law enforcement?

10 A. I started in 2006.

11 Q. What are your current duties with North Charleston?

12 A. I'm currently assigned to the persons Crime division  
13 within the Detective Bureau.

14 Q. And involved with this case, the State versus Thomas  
15 McFadden in any way?

16 A. Yes, ma'am, I was

17 Q. And what was your role or title in that?

18 A. The lead investigator.

19 Q. And what day did you first get involved with this case?

20 A. March 14th, 2019.

21 Q. How did you first get involved?

22 A. I was working whenever it happened. I was on the evening  
23 shift, so the call came out just before 7:00. I was in my  
24 office and heard it go out over the North Channel. And once  
25 patrol officers got there and discovered it was a shooting with

1 a deceased male, I responded.

2 Q. And who was with you when you responded?

3 A. Det. Butler.

4 Q. What did you observe when you arrived?

5 A. When I first arrived, a large portion of the parking lot  
6 was cordoned off a crime scene tape. Several police officers  
7 were already there. There was a hysterical female that was  
8 there crying. A couple other employees appeared to be wandering  
9 about just outside the -- the crime scene, just within the  
10 crime scene. I can see several spent shell casings and also a  
11 what appeared to be a deceased black male beside a vehicle.

12 Q. And who was the victim in this case?

13 A. The victim's name is Damien Stokes.

14 Q. Are you aware if he had any sort of nickname?

15 A. Several. I've heard Light Skinned. He goes by Light or  
16 Kodak Light.

17 Q. Were there people on the scene, aside from law enforcement  
18 that you or your team ended up interviewing?

19 A. Yeah, there was several employees and 911 callers.

20 Q. And did you interview any 911 callers?

21 A. Yes, ma'am.

22 Q. Did you interview Anthony Parrish?

23 A. I did.

24 After interviewing the 911 callers, did you go back into the  
25 scene?

1 A. I did. Once the kind of the surrounding crime scene  
2 started -- was collected the coroner arrived and me, the crime  
3 scene tech in the corner, I entered the crime scene to examine  
4 the body.

5 Q. And with a closer look at the scene, what did you observe?

6 A. There's still some shell casings around his body that  
7 hadn't been picked up yet. I'd observed that he'd been shot a  
8 lot. He appeared to be employee just by how he was dressed.  
9 Actually, he was wearing a reflective vest.

10 Q. And did you notice any shirt on scene?

11 A. Yeah, about a short distance away from the body, there was  
12 a white t shirt and it had some a picture of a person on it.

13 Q. And that shirt you said it was a picture on there. Was  
14 there any kind of name on the shirt?

15 A. Yeah, it was a picture of a black male and just under  
16 that, there was a big wording with a name money on it.

17 Q. And who was the person on that memorial t shirt?

18 A. A person by the name of Justin Stewart.

19 Q. And do you know where and when he was killed?

20 A. Yes, ma'am. He was killed off Orangeburg Road in  
21 Dorchester County on January 12th, 2019.

22 Q. And was his nickname Money?

23 A. Yes, it was.

24 Q. Was anyone arrested in Dorchester County for that  
25 murder?

1 A. No, ma'am.

2 Q. Were there any rumored suspects in that murder?

3 A. Yeah; there were several persons of interest, one being  
4 our victim, Damien Stokes and a several other members of the  
5 community in Somerville.

6 Q. And what community in Somerville?

7 A. It's the Robin Wynn neighborhood.

8 Q. Did you try to locate any -- your team trying to locate  
9 any surveillance footage in this case?

10 A. Yeah. Whenever we got there and after speaking to  
11 witnesses, we learned that the suspect vehicle traveled up  
12 Palmetto Commerce to Latson Road. So we can canvassing for any  
13 video that would capture any roadway traveling that way and  
14 include Latson Road.

15 Q. And based upon the information received from witnesses,  
16 did you know what kind of car you're looking for?

17 A. Yeah, we were looking for a blue and colored Honda CRV.

18 Q. And after pulling all those surveillance videos, did those  
19 all get reviewed?

20 A. Yes, ma'am.

21 Q. And did you capture any blue CRV or other vehicles of  
22 interest on any of those cameras?

23 A. Yes, ma'am. On several.

24 Q. At this time. The State moves to mark State's Exhibit 186.  
25 Do you recognize this?

1 Q. Yes, ma'am, I do.

2 Q. How do you recognize it?

3 A. It's an overview map within that map, it shows all the  
4 locations of the places that we collected video.

5 Q. And does it fairly and accurately represent the places  
6 that you collected video?

7 A. Yes, ma'am, it does.

8 Q. Your Honor, at this time, the state would seek to admit  
9 State's Exhibit 186 into evidence.

10 MR. KING: No objection, Your Honor.

11 THE WITNESS: No objection.

12 THE COURT: All right.

13 [State's Exhibit No. 186 was Admitted into Evidence]

14 BY: MS. LINDER

15 Q. This is State's 186. What road is this right here?

16 A. You're on Palmetto Commerce Parkway right there.

17 Q. Okay. And this road?

18 A. That would be Latson Road.

19 Q. All right. And then  
20 what's this intersection right here?

21 A. Your finger is right on Lincolnville Road.

22 Q. All right. So if you can use that screen in front of you.

23 A. Yeah.

24 Q. Circle, whatever -- can you just kind of point out where  
25 the murder happened and what all these little yellow images

1 are?

2 A. Yeah. So the murder happened right where you see the red  
3 dot right there. All the yellow indicates places that we've  
4 collected video.

5 Q. And when you and your team were reviewing all their  
6 surveillance from all these places, which one are the names of  
7 all these places that you collected?

8 A. Cummins Diesel, A.R.D. Logistics, which is the warehouse  
9 right next to it. Next one up is a Shimano on Palmetto Commerce  
10 at the corner of Palmetto Commerce and Latson, all safe storage  
11 Spinks. Bojangles just up from that is Walmart and Sunoco. And  
12 then going back the other way on Latson is Palmetto one, which  
13 is at the corner of Lincolnville and Latson. Latson Elementary,  
14 which is just further up and then public storage.

15 Q. All right. And when you reviewed these cameras, did you  
16 have to review them and make sure that timestamps were okay?  
17 Did any of them have to have any adjustments on the time  
18 stamps?

19 A. Yes, ma'am, they did.

20 Q. All right. At this time, I'm going to show you what's been  
21 marked as State's Exhibit 178. That's a big one. If you just  
22 take your time, you can look at that and let me know if you  
23 recognize it.

24 A. Yes, ma'am. These are screen grabs from several of the  
25 surveillance videos that we recovered.

1 Q. Do those screen grabs appear to fairly and accurately  
2 represent the stills from the surveillance that you reviewed or  
3 your team reviewed back in March of 2019

4 A. They do. Yes, ma'am.

5 Q. Your Honor, at this time, the State would seek to admit  
6 State's Exhibit 178 into evidence.

7 MR. KING: No objection, Your Honor.

8 THE COURT: Okay.

9 [State's Exhibit No. 178 was Admitted into Evidence]

10 BY: MS. LINDER

11 Q. All right. I'm going to take you through these. Who's --  
12 on your top right corner. You see that arrow on your screen?  
13 You press the arrow, there's a drop down, and then if you can  
14 hit clear, and then the arrow again, that's how you can clear  
15 out if you draw in any of these.

16 A. Okay.

17 Q. Okay. All right. So which parking lot are we looking at?

18 A. This is the front parking lot of A.R.D. Logistics.

19 Q. And what is the date and time?

20 A. It is March 14th, 2019, 18:13.

21 Q. And what kind of car is this?

22 A. It is a white Dodge Charger.

23 Q. All right.

24 A. Sorry.

25 Q. Okay. Oops. What time and date is this?

- 1 A. This is March 14th, 2019 at 18:14.
- 2 Q. All right. And where is this one?
- 3 A. Now, this is the Cummins lot towards the back of the lot.
- 4 Q. [Indiscernible]
- 5 A. There's a white Dodge Charger.
- 6 Q. Again. What is this parking lot?
- 7 A. This is the Cummins Turbo Plant.
- 8 Q. And what is circled in red?
- 9 A. That's the same white Dodge Charger.
- 10 Q. And 6:15 -- at 6:15 p.m.. What do we see in this picture
- 11 and where is it?
- 12 A. Well, it's the same parking lot of Cummins Turbo and
- 13 that's showing the white Dodge Charger parts. And that's in the
- 14 red circle.
- 15 Q. At 6:47 p.m.. What is this we're looking at?
- 16 A. The same view and the same car still parked.
- 17 Q. At 6 -- oops. At 6:48 p.m.. What are we seeing over here?
- 18 A. That's the smoking section of the parking lot where
- 19 employees take their break and that is the victim sitting down
- 20 smoking.
- 21 Q. All right. At 6:49. What are we seeing here?
- 22 A. This is also the Cummins plant. This is the main entrance.
- 23 That's the blue Honda CRV entering the parking lot.
- 24 Q. And I'm zooming in because I only have my glasses on but
- 25 there are times and dates on the bottom of these, correct?

- 1 A. Yes, ma'am.
- 2 Q. 6:49, what's happening?
- 3 A. That's the same view. That was the blue Honda CRV taking a  
4 left in the parking lot.
- 5 Q. 6:50?
- 6 A. Same blue Honda CRV coming back from the area of the  
7 parking lot. It just turned down.
- 8 Q. Few seconds later, at 6:50.
- 9 A. Yeah. Going across to the other side of the parking lot.  
10 The Turbo plant.
- 11 Q. Still a few seconds later. 6:50.
- 12 A. Yeah, That's the far right corner of the parking lot.
- 13 Q. What vehicle is this up here?
- 14 A. That's still the blue Honda CRV circled in red.
- 15 Q. 6:50, still?
- 16 A. Same parking lot in circle and red. Is the blue Honda CRV.
- 17 Q. 6:51?
- 18 A. Same parking lot, just different view circled in red is  
19 the blue Honda CRV.
- 20 Q. And what car is this right here?
- 21 A. That is the white Dodge Charger.
- 22 Q. 6:52?
- 23 A. Another view of the same lot, that is the blue Honda CRV.
- 24 Q. What car is right here?
- 25 A. The white Dodge Charger.

- 1 Q. Issued at 6:55.
- 2 A. Same parking lot. That is the blue Honda CRV circled.
- 3 Q. And what's happening right here? Oops, [Indiscernible]
- 4 Sorry. What's happening right here?
- 5 A. That's the white Dodge Charger is backing out of its
- 6 parking place.
- 7 Q. Back a little bit on this one. All right. 6:55 What's up
- 8 here?
- 9 A. That's the blue Honda CRV.
- 10 Q. What about this right here?
- 11 A. That's the white Dodge Charger. Appears to be driving
- 12 towards the exit.
- 13 Q. All right. 6:55. What's up here?
- 14 A. It's the blue Honda CRV, circled red.
- 15 Q. Let's switch the marker over here.
- 16 A. That's the tail end of the white Dodge Charger.
- 17 Q. All right. I'm going to release
- 18 6:55, what's happening with this parking spot back here?
- 19 A. Circled in red, that's the blue Honda CRV. It's getting
- 20 ready to starting to move.
- 21 Q. 6:56?
- 22 A. Circled in red is the blue Honda CRV.
- 23 Q. And right here, is it directly attached to a spot or are
- 24 there empty spots on either side?
- 25 A. Looks like there's empty spots on either side.

1 Q. All right. Next one is still at 6:56. What's in that  
2 circle?

3 A. Well, it's the blue Honda CRV.

4 Q. And here, is that the same spot we just saw or no?

5 A. No. It is moved up a row.

6 Q. And it's kind of tough to tell but what's over in this  
7 area that's kind of off the map up here?

8 A. Yeah, just to the right of your finger, right there is the  
9 smoking area.

10 Q. All right. 6:57, we are heads up here. We're looking right  
11 here. What is that right there?

12 A. That's the blue Honda CRV.

13 Q. 6:57, and so what is that we're looking at?

14 A. That's the blue Honda CRV as well.

15 Q. And...

16 A. It's hard to tell in the screenshot, but it appears the  
17 door is opening.

18 Q. Still 6:57. What's this up here?

19 A. Well, that's still the blue Honda CRV.

20 Q. Okay. And then what's this right here?

21 A. That appears to be the suspect.

22 Q. All right. We'll get back to State Exhibit 78 with you in  
23 a minute. All of these, I believe you described them as screen  
24 grabs. Did you actually gather and watch surveillance videos?

25 A. Yeah.

1 Q. All of them?

2 A. Yeah, a lot of video.

3 Q. All right. At this time, I show you what's been marked as  
4 Exhibit 177. When you look at this please.

5 A. Okay.

6 Q. Do you recognize it?

7 A. I do.

8 Q. How do you recognize it?

9 A. It's a disk that has my initials on it.

10 Q. All right. And does that disk fairly and accurately  
11 represent the clip of one of the surveillance videos from  
12 Cummins during this shooting?

13 A. Yes, ma'am, it does.

14 Q. Your Honor, at this time, the State would seek to admit  
15 State's 177 into evidence.

16 Q. No objection, Your Honor.

17 THE COURT: Without objection.

18 [State's Exhibit No. 177 was Admitted into Evidence]

19 BY: MS. LINDER

20 Q. And Det. Pritchard. Is there any audio that came with this  
21 video?

22 A. No. No, ma'am.

23 THE COURT: All right.

24 Q. So now we get back into State's Exhibit 178 and. At 6:59  
25 p.m., what parking lot is this?

1 A. This is A.R.D. Logistics. The warehouse just next door.

2 Q. And what's this? That's in the circle?

3 A. That's the blue Honda CRV coming up to Palmetto Commerce  
4 Parkway.

5 Q. All right. And this is 6:59 and two seconds. 6:59 and  
6 three seconds. What's that?

7 A. The blue Honda CRV.

8 Q. All right. And then this is at 7:00. Which parking lot is  
9 this?

10 A. The front parking lot of A.R.D. Logistics.

11 Q. This car right here.

12 A. That is a white Dodge Charger.

13 Q. And which par -- which camera is this from?

14 A. This is from Shimano, just up the street on Palmetto  
15 Commerce.

16 Q. Okay. And what is the street down here that we're seeing?

17 A. That's Palmetto Commerce Parkway.

18 Q. This vehicle?

19 A. That's the blue Honda CRV.

20 Q. This vehicle?

21 A. That's a white Dodge Charger.

22 Q. All right. This where is this camera from?

23 A. So this is the back of the Spinks at the corner of  
24 Palmetto Commerce Parkway and Latson Road. So if you're looking  
25 straight ahead, that's Palmetto Commerce. And directly behind

- 1 this would be Latson Road.
- 2 Q. So this is Latson Road?
- 3 A. No, ma'am. That's ---
- 4 Q. Palmetto Commerce.
- 5 A. -- Palmetto Commerce.
- 6 Q. So back this direction is where you [Indiscernible] Back
- 7 this direction. If you go down the road this way, that's back
- 8 towards...
- 9 A. The plant. Yes, ma'am.
- 10 Q. Okay. What, if anything, do you see in this picture?
- 11 A. The first car going away from Cummins that we see is the
- 12 blue Honda CRV.
- 13 Q. And this. This car is headed towards Latson Road?
- 14 A. Yes, ma'am.
- 15 Q. What do we see here?
- 16 A. Oh, that is the white Dodge Charger.
- 17 Q. And is this white Dodge Charger heading towards Latson
- 18 Road?
- 19 A. Yes, ma'am.
- 20 Q. All right. So which intersection is this? Which camera is
- 21 this?
- 22 A. This is Palmetto. This is the corner of Latson Road and
- 23 Lincolnville Road.
- 24 Q. And what is this right here?
- 25 A. That's the blue Honda CRV.

1 Q. About a minute later?

2 A. The white Dodge ---

3 Q. Right here.

4 A. -- that is the white Dodge Charger.

5 Q. What do you see here?

6 A. White Dodge Charger is turning on to Lincolnville Road as  
7 well.

8 Q. And after review of all these cameras that you got, were  
9 you able to get any more footage in further down Lincolnville  
10 Road?

11 A. No, ma'am. We canvassed towards Lincolnville, but between  
12 that Palmetto and into the town of Lincolnville itself, there  
13 were no cameras that captured the roadway.

14 Q. All right. And that CRV that we saw in all of those, were  
15 you ever, ever able to enhance the license plate on it?

16 A. Yeah. At the actual Cummins Turbo plant, we were able to  
17 zoom in and get the license plate.

18 Q. And who is that? That CRV plate, 1002?

19 A. The tag that was on the Honda CRV was actually a stolen  
20 tag. It was supposed to be on a Jaguar. It was stolen from  
21 Summerville.

22 Q. Okay. All right. So I want to go back to that t shirt that  
23 was found on scene.

24 A. Okay.

25 Q. What did you do after observing that t shirt? What did you

1 in law enforcement do with that information?

2 A. Well, after we identified who was on it, we did research  
3 on who this person was. It appeared to be a remembrance shirt  
4 of some kind. That's whenever we learned that he was killed in  
5 January in Dorchester County. So we reached out to them and  
6 started to get some information about people who were maybe  
7 tied to him as far as his friends. And then we started doing a  
8 research on their social medias.

9 Q. And when you did research on social media, did you see a  
10 lot of people wearing memorial shirts?

11 A. Yes, ma'am.

12 Q. Did you see this shirt on there at all?

13 A. I did. We located a Facebook by the name of Johnny Dang,  
14 who we later identified as Clayvon Elston. And all the research  
15 that we did on everybody's social media. He's the only person  
16 ever wearing that shirt.

17 Q. And is there -- are there any -- is T.O.L. on that shirt  
18 anywhere?

19 A. Yeah, A lot of the friends and people that Justin Stewart  
20 associated with on social media, they had a lot of shirts that  
21 had the letters T.O.L. and a lot of their social media also  
22 referenced that and post.

23 Q. Did you ever interview Clayvon Elston?

24 A. Yes, ma'am.

25 Q. And during his interview, did he consent to an abstraction on

1 of his cell phone?

2 A. Yes, ma'am. He can sign a consent search for us to search  
3 a cell phone and also provided us with his passcode.

4 Q. All right. I'm going to show you what's already been  
5 admitted as State's 132 and also for ID purposes, States 199.  
6 What is all that for us?

7 A. This is a Cellebrite extraction provided to me by Det.  
8 Sanchez.

9 Q. All right. And does 199 appear fair and accurate from part  
10 of the extraction that was done by Det. Sanchez?

11 A. Yes, ma'am, it does.

12 Q. At this time, the State would seek to admit State's  
13 Exhibit 199 in evidence.

14 MR. KING: So my previous pre-trial objection.

15 THE COURT: All right. Same ruling to that.

16 [State's Exhibit No. 199 was Admitted into Evidence]

17 BY: MS. LINDER

18 Q. All right. It's going to go a couple of things here. So  
19 this is the first page of State's Exhibit 132. How is this  
20 label up here?

21 A. Extraction report, Apple iPhone logical.

22 Q. And then what is the phone number associated with this  
23 phone?

24 A. (843) 925-9867.

25 Q. And then the owner name