

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Mar 22 2021

SC Court of Appeals

Appeal from Horry County

Honorable R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SIDNEY STCLAIR MOORER,

APPELLANT

APPELLATE CASE NO 2019-001636

RECORD ON APPEAL

TAYLOR D. GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

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

DAVID SPENCER
Senior Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR APPELLANT

JIMMY A. RICHARDSON, II
Solicitor, Fifteenth Judicial Circuit
Post Office Box 1276
Conway, SC 29528

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRANSCRIPT OF PRE-TRIAL HEARING HELD APRIL 18, 2016	1
TESTIMONY	
GRANT FREDERICKS	
Direct Examination by Ms. Livesay	10
Voir Dire Examination by Mr. Truslow	26
Direct Examination by Ms. Livesay	41
Cross Examination by Mr. Truslow.....	70
Redirect Examination by Ms. Livesay.....	74
Recross Examination by Mr. Truslow	79
BRUCE KOENIG	
Direct Examination by Mr. Truslow	82
Voir Dire Examination by Ms. Livesay	86
Direct Examination by Mr. Truslow	107
Cross Examination by Mr. Livesay	122
MOTION TO CHANGE VENUE	134
ORDER GRANTING CHANGE OF VENUE.....	135
VENUE MOTION	139
TRANSCRIPT OF PRE-TRIAL HEARING HELD JUNE 21, 2021	282
MOTION TO RECONSIDER REVERSAL OF ORDER CHANGING VENUE.....	335
DEFENSE MOTION TO EXCUSE JURY POOL AND CONTINUE TRIAL.....	414
TRANSCRIPT OF TRIAL HELD SEPTEMBER 9-18, 2019	473
JURY SELECTION.....	484
PRE-TRIAL MOTIONS.....	586
OPENING STATEMENT BY MR. HELMS.....	603
OPENING STATEMENT BY MR. BOUCHETTE.....	619

TESTIMONY

JESSICA COOKE

Direct Examination by Ms. Livesay	635
Cross Examination by Jessica Cooke	649
Redirect Examination by Ms. Livesay.....	666

JODIE DAVENPORT

Direct Examination by Ms. Livesay	671
Cross Examination by Mr. Galmore	682

DENNIS HART

Direct Examination by Ms. Livesay	693
Cross Examination by Mr. Bouchette.....	703
Redirect Examination by Ms. Livesay.....	711

RONALD WITT

Direct Examination by Ms. Livesay	713
Cross Examination by Mr. Galmore	728
Redirect Examination by Ms. Livesay.....	737

STEPHANO SCHIRALDI

Direct Examination by Mr. Helms.....	739
Cross Examination by Mr. Bouchette.....	762
Redirect Examination by Mr. Helms	771
Recross Examination by Mr. Bouchette	772

PAMELA SCHIRALDI

Direct Examination by Mr. Helms.....	774
Cross Examination by Mr. Bouchette.....	782

BRIANNA WARRELMANN

Direct Examination by Ms. Livesay	785
Cross Examination by Mr. Bouchette.....	817
Redirect Examination by Ms. Livesay.....	827

CASEY GUSKIEWICZ

Direct Examination by Mr. Helms.....	829
Cross Examination by Mr. Bouchette.....	857

DANNY FURR

Direct Examination by Ms. Livesay	866
Cross Examination by Mr. Bouchette.....	872
Redirect Examination by Ms. Livesay.....	885

CASEY CANTERBURY

Direct Examination by Mr. Helms.....	888
Cross Examination by Mr. Bouchette.....	918
Redirect Examination by Mr. Helms	928

AMANDA NIGRO

Direct Examination by Mr. Helms.....	934
Cross Examination by Mr. Galmore	942

JONATHAN MARTIN

Direct Examination by Ms. Livesay	944
Cross Examination by Mr. Galmore	967
Redirect Examination by Ms. Livesay.....	999
Recross Examination by Mr. Galmore.....	1005

ROXANNE LOVE

Direct Examination by Mr. Helms.....	1010
Cross Examination by Mr. Galmore	1024

BRIAN WILSON

Direct Examination by Mr. Helms.....	1031
Cross Examination by Mr. Bouchette.....	1046
Redirect Examination by Mr. Helms	1050
Recross Examination by Mr. Bouchette	1052

MICHAEL MELSON

Direct Examination by Ms. Livesay	1054
Cross Examination by Mr. Galmore	1098
Redirect Examination by Ms. Livesay.....	1139
Recross Examination by Mr. Galmore.....	1155

JOHN KEEP

Direct Examination by Ms. Livesay	1163
Cross Examination by Mr. Galmore	1170
Redirect Examination by Ms. Livesay.....	1175

JILL DOMOGAUER

Direct Examination by Mr. Helms.....	1176
Cross Examination by Mr. Bouchette.....	1209
Redirect Examination by Mr. Helms	1228
Recross Examination by Mr. Bouchette	1234

WILL LYNCH

Direct Examination by Ms. Livesay	1236
Cross Examination by Mr. Galmore	1277
Redirect Examination by Ms. Livesay	1292
Recross Examination by Mr. Galmore.....	1293

JAMES PERRY

Direct Examination by Ms. Livesay	1296
Voir Dire Examination by Mr. Bouchette.....	1298
Direct Examination by Ms. Livesay (Continued).....	1301
Cross Examination by Mr. Bouchette.....	1312

JOHN CAULDER

Direct Examination by Ms. Livesay	1316
Cross Examination by Mr. Bouchette.....	1324
Redirect Examination by Ms. Livesay.....	1327
Recross Examination by Mr. Bouchette	1328

JIMMY GUNTER

Direct Examination by Mr. Helms.....	1331
Cross Examination by Mr. Bouchette.....	1349

JOYCE ALAND

Direct Examination by Mr. Helms.....	1352
Cross Examination by Mr. Bouchette.....	1371
Redirect Examination by Mr. Helms	1375

DAVID QUANDT

Direct Examination by Mr. Helms.....	1380
Cross Examination by Mr. Galmore	1403

JEREMY LEACH

Direct Examination by Ms. Livesay	1411
Cross Examination by Mr. Bouchette.....	1422

GRANT FREDERICKS

Direct Examination by Ms. Livesay	1426
Cross Examination by Mr. Bouchette.....	1496
Redirect Examination by Ms. Livesay.....	1529

PETER CESTARE

Direct Examination by Ms. Livesay	1532
Cross Examination by Mr. Bouchette.....	1578
Redirect Examination by Ms. Livesay.....	1595

JIMMY SCHROERING

Direct Examination by Mr. Helms.....	1602
Cross Examination by Mr. Galmore.....	1614
Redirect Examination by Mr. Helms.....	1618
Recross Examination by Mr. Galmore.....	1619

LINDSEY MCGRAW

Direct Examination by Ms. Livesay.....	1624
Cross Examination by Mr. Galmore.....	1642
Redirect Examination by Ms. Livesay.....	1661
Recross Examination by Mr. Galmore.....	1668

JEFFERY SILVER

Direct Examination by Mr. Helms.....	1670
Cross Examination by Mr. Galmore.....	1675

JACOB MELTON

Direct Examination by Ms. Livesay.....	1678
Cross Examination by Mr. Bouchette.....	1694

LAURA GARLITZ

Direct Examination by Mr. Helms.....	1699
Cross Examination by Mr. Galmore.....	1702

DONALD DEMARINO

Direct Examination by Mr. Helms.....	1705
Cross Examination by Mr. Galmore.....	1710
Redirect Examination by Mr. Helms.....	1717
Recross Examination by Mr. Galmore.....	1719

JESSICA ADAMS

Direct Examination by Mr. Helms.....	1721
Cross Examination by Mr. Bouchette.....	1725

THE STATE RESTS	1727
-----------------------	------

MOTION FOR MISTRIAL.....	1727
--------------------------	------

COURT'S RULING	1728
----------------------	------

MOTION FOR DIRECTED VERDICT.....	1728
----------------------------------	------

COURT'S RULING	1731
----------------------	------

TESTIMONY

BRUCE KOENIG

Direct Examination by Mr. Bouchette	1740
Voir Dire Examination by Ms. Livesay	1748
Direct Examination by Mr. Bouchette (Continued).....	1753
Cross Examination by Ms. Livesay	1768
Redirect Examination by Mr. Bouchette	1779
Recross Examination by Ms. Livesay.....	1779

ASHLEY CAISON

Direct Examination by Mr. Galmore	1781
Cross Examination by Ms. Livesay	1794

WILL LYNCH

Direct Examination by Mr. Galmore	1814
Cross Examination by Ms. Livesay	1822
Redirect Examination by Mr. Galmore.....	1831

JERRY STEVENS

Direct Examination by Ms. Livesay	1832
Cross Examination by Mr. Galmore	1837
Redirect Examination by Ms. Livesay.....	1843

MICHAEL KATHMAN

Direct Examination by Mr. Helms.....	1844
Cross Examination by Mr. Bouchette.....	1848

RENEWAL OF MOTION FOR DIRECTED VERDICT	1851
--	------

COURTS RULING.....	1851
--------------------	------

CLOSING ARGUMENT BY MS. LIVESAY	1854
---------------------------------------	------

CLOSING ARGUMENT BY MR. BOUCHETTE	1879
---	------

JURY CHARGE	1902
-------------------	------

VERDICT	1931
---------------	------

SENTENCING	1936
------------------	------

STATE'S EXHIBIT NO. 7 (REIS E-MAIL)	1948
---	------

SENTENCING SHEET (OBSTRUCTION OF JUSTICE).....	1961
--	------

INDICTMENT (KIDNAPPING).....1962
CERTIFICATE OF COUNSEL1964

THE FOLLOWING EXHIBIT’S ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT NO. 1 (DVD INTERVIEW), STATE’S EXHIBIT NO. 33 (AERIAL MAP), STATE’S EXHIBIT NOS. 35-37 (PHOTOGRAPHS OF CAR), STATE’S EXHIBIT NO. 55 (DVD INTERVIEW), STATE’S EXHIBIT NO. 60 (WAL-MART VIDEO), STATE’S EXHIBIT NO. 61 (KANGAROO/PAYPHONE VIDEO), STATE’S EXHIBIT NO. 62 (WAL-MART RECEIPT), STATE’S EXHIBIT NO. 64 (MELSON SLIDE PRESENTATION), STATE’S EXHIBIT NO. 66 (AERIAL MAP), STATE’S EXHIBIT NOS. 91-95 (PHOTOGRAPHS), STATE’S EXHIBIT NO. 123 (FREDERICK’S REPORT), STATE’S EXHIBIT NO. 124 (FREDERICK’S REPORT ON DVD), AND STATE’S EXHIBIT NO. 127 (AERIAL MAP)

GRANT FREDERICKS - CROSS-EXAMINATION

1 classes that I have attended and have taken. It is
2 also well published in a number -- I have references
3 here for you if you would like them.

4 Q Let me ask you this. Again the -- for example,
5 the Handbook of Forensic Services --

6 MS. LIVESAY: Your Honor, Mr. Fredericks is
7 trying to ask a question and Mr. Bouchette may have
8 missed it, but he was --

9 THE COURT: Well, he said he had something, but
10 he was going on with his question, so he was leading
11 into that, I assume.

12 MR. BOUCHETTE: Yes, sir, Your Honor. We're
13 going to the next question.

14 Q So, for example, the FBI publishes a forensic
15 services handbook; are you aware of that?

16 A The FBI publishes a number of documents, I'm not
17 aware of all of them.

18 Q Is that one of them?

19 A The Forensic Sciences Handbook?

20 Q Correct.

21 A I would have to take a look at it, please.

22 Q Okay. In other words, if someone is looking to
23 engage the services of the FBI.

24 A (Witness examines document.) This is for the FBI
25 lab. The FBI lab does not do video analysis. The

GRANT FREDERICKS - CROSS-EXAMINATION

1 organization in the FBI or unit in the FBI is the
2 Forensic Audio Video Image Analysis Unit, it's not part
3 of the lab.

4 Q And you were not an FBI employee at any point,
5 correct?

6 A No, but I train them and I've taken classes from
7 them.

8 Q For example -- I'll move on. Just a moment.

9 Moving on, when did you go from the Vancouver
10 Police Department into your own business?

11 A I had my own business before when I was with the
12 Vancouver Police Department. I was doing video
13 processing for agencies in the area. That is where I
14 got my interest in policing from a forensic
15 perspective. So I was doing that work before I became
16 a police officer. And then throughout my tenure as a
17 police officer, I was doing video work until I took
18 over as the head of the video unit, then it was full
19 time.

20 Q So you were moonlighting for a period of time,
21 and then you went to do this full time; is that
22 correct?

23 A Well, what do you mean by "moonlighting"?

24 Q Well, I just mean in addition to your employment
25 with the police department.

GRANT FREDERICKS - CROSS-EXAMINATION

1 A Well, before that.

2 Q Okay.

3 A Before that I had a video production company
4 where I was doing -- on the side for my broadcast
5 work -- I was doing casework for police agencies.
6 Again, that is how I got interested in the police
7 department -- more interested in being a police
8 officer, but because of my experience, I would be
9 pulled off the street to do video work on major crime
10 cases. Back then, it was videotape until it evolved
11 and transitioned into digital. So when I was in charge
12 of the video unit, we were migrating between digital
13 and analog.

14 Q When did you go full time into the company you
15 are running now?

16 A Full time?

17 Q Correct.

18 A I left the department in 2000, and I was hired by
19 an American company that produced video examination
20 tools for the U.S. government, the military. I managed
21 their forensic division for seven years, and during
22 that transition -- I was there for seven years, and
23 sort of at the end of it, I started my company to go
24 full-time. So I basically stepped from that business
25 after seven years doing the same kind of thing. I was

GRANT FREDERICKS - CROSS-EXAMINATION

1 representing their tools and video analysis cases, and
2 then I just stepped into my full-time work in January
3 of 2007 doing this. But I had been -- it's hard to
4 find the definition -- or the time when one was taking
5 up more than the other.

6 Q Fair enough. But at this point, this is how you
7 earn your living? This is your full-time job, correct?

8 A Yes.

9 Q As opposed to -- sometimes we see experts that
10 are professors or something along those lines that are
11 called in to testify, you are a full-time private
12 expert in forensic video analysis; is that correct?

13 A Yes.

14 Q And how many employees do you have at your
15 company?

16 A When I did this work, I had five employees. I'm
17 trying to retire, so I'm trying to transition down. I
18 now have two full-time employees, but my other
19 employees I migrated to a software company that we run
20 in forensics, so I call on them as needed. So it's
21 hard to say how many I have right now. We're expanding
22 in the other area, and I can utilize their assistance,
23 which I do. So, you know, I would say when I did this
24 job, I had five full-time employees that were working
25 on forensics.

GRANT FREDERICKS - CROSS-EXAMINATION

1 Q Okay. All right. Now, let me ask you this.

2 Your customers in some situations you mentioned are
3 defense attorneys, correct?

4 A Yes.

5 Q Sometimes civil lawyers, either on the plaintiff
6 or defendant's side?

7 A That's correct.

8 Q And sometimes, obviously, the prosecution?

9 A Yes.

10 Q And in all of those cases, the service or value
11 that you offer the client is, obviously, the expertise
12 that you consult with him on, correct?

13 A Yes.

14 Q And, obviously, you provide visual aids, correct?

15 A Yes.

16 Q Obviously, you are used to testifying in court,
17 correct?

18 A Yes.

19 Q And I notice that whenever you give a response,
20 you look over to the jury, and that is part of the
21 experience that you have and part of what you are
22 offering, whoever your customer may be, right?

23 A Well, my responsibility is to the jury, not to my
24 client.

25 Q Exactly. Like I said, you are not -- you don't

GRANT FREDERICKS - CROSS-EXAMINATION

1 get tripped up easy on the stand, right?

2 A I'm as clear as I can be.

3 Q I understand. So you do this a lot, in other
4 words? Part of your value is that you testify in
5 courtrooms a lot?

6 A I understand my duty to the Court, yes.

7 Q Now, I want to go into -- let me ask you a
8 question. Prosecution spent a fair amount of time
9 asking you how you became involved in this case; do you
10 remember that?

11 A Yes.

12 Q Sometimes you reach out to the prosecution to be
13 able to offer your services at that point?

14 A No.

15 Q You've never reached out to the prosecutor to see
16 if they could utilize your services?

17 A Not that I recall.

18 Q How about on the Otto Zehm case?

19 A No, I never reached out to the prosecution in
20 that case.

21 Q You did?

22 A No, I didn't.

23 Q Was that a point of controversy as to whether or
24 not you did or didn't?

25 A No.

GRANT FREDERICKS - CROSS-EXAMINATION

1 Q Never was?

2 A No.

3 Q It was never raised?

4 A That I reached out to the prosecution?

5 Q Correct.

6 A No.

7 Q In the initial phase of being retained, you
8 didn't?

9 A No.

10 Q Okay. All right. Let me ask you this. In
11 regards to the expertise you have, have you ever been
12 -- or have you ever had issues with taking your field
13 of expertise, the forensic video analysis, and trying
14 to expand that into some type of area that you were not
15 qualified to do? What I'm asking is have you run into
16 criticism for doing that?

17 A You know, have I been personally criticized for
18 doing that? Not that I recall, but if you give me a
19 specific -- for instance, you asked about at Otto Zehm
20 case --

21 Q Correct.

22 A -- no, I did not reach out to the prosecution.
23 The FBI that was prosecuting -- the Department of
24 Justice was prosecuting, reached out to me and I said,
25 no. I was already working as a consultant for the

GRANT FREDERICKS - CROSS-EXAMINATION

1 police agency involved in that case, so I said no about
2 three times until I was then asked by my client, the
3 city that was doing the defense, if I would please work
4 for the prosecution. I know there was a point of
5 criticism of that, but the questions like yours were
6 inaccurate. So I'm not sure -- that is why I said no.
7 I never reached the prosecution, but I'm unsure what
8 you are asking here.

9 Q I'll go to another case. Do you recall an
10 investigation into the death of a man named Robert
11 Dziekanski?

12 A Yes.

13 Q And that involved the death of a man at the
14 Vancouver Airport, correct?

15 A Correct.

16 Q And there was an altercation between him and
17 airport officials, correct?

18 A Between him and the RCMP. It's the Royal
19 Canadian, not the police.

20 Q Okay. So the police officials.

21 And he ultimately died as a result of that
22 altercation; is that correct?

23 A Correct.

24 Q So an investigation was initiated by the Attorney
25 General of British Columbia into that death; is that

GRANT FREDERICKS - CROSS-EXAMINATION

1 right?

2 A Well, I'm not sure where the investigation
3 started. Ultimately, it resulted in a public inquiry.

4 Q So it is a public inquiry, but you provided
5 testimony in conjunction with that investigation,
6 correct?

7 A I provided testimony at the public inquiry, yes.

8 Q And your testimony dealt with the -- you were
9 looking at a video and ascertaining the number of steps
10 that Mr. Dziekanski had taken, correct?

11 A Correct.

12 Q And you testified to what, you know, utilizing
13 your techniques that you testified with today in that
14 case?

15 A No. I was asked if I could measure how far he
16 moved. I said, no, I couldn't. As photogrammetry, I
17 didn't know photogrammetric measurements. I couldn't
18 do it. I could just see that there was three motions
19 forward. Not steps, motions.

20 Q Okay. Three motions. You testified as to three
21 motions, correct?

22 A Correct.

23 Q And did you receive -- did you ever review the
24 commission report in that case?

25 A I did.

GRANT FREDERICKS - CROSS-EXAMINATION

1 Q And were they critical of your involvement in
2 that case?

3 A The -- the hearing commissioner asked me on the
4 stand to give a measurement. I didn't do a
5 measurement. As a result of that, he wouldn't accept
6 my observations that was motions forward, because there
7 was no measurement. Quite frankly, I agree with him.
8 I told him on the stand that I really can't help you,
9 so he said I wasn't helpful. I agree with that
10 decision.

11 Q They said your verification methodology was
12 flawed, correct?

13 A Well, I did not -- so he asked me if I did any,
14 and I said, no, so I can't help you. So as a result of
15 that, the observation that he criticized was the
16 movement, and I quite frankly agree with him. I
17 couldn't offer any of that movement.

18 Q Okay. You are saying you didn't offer anything?

19 A I didn't offer any measurement.

20 Q Because -- so if they were to say that your
21 verification methodology was flawed, is that a mistake
22 on their part?

23 A Yes. Yeah. I didn't do any verification. I
24 think that is what his criticism was, he made
25 observations there was motion, but you can't measure

GRANT FREDERICKS - CROSS-EXAMINATION

1 there, and I said, yes, I can't, so he rejected it,
2 which is fine. It is probably a good decision.

3 Q I want to talk about the organization LEVA you
4 mentioned earlier before. It's the Law Enforcement --
5 I'm sorry, what were the second two letters?

6 A And Emergency Services Video Association.

7 Q This is primarily -- I know it is not exclusively
8 a law enforcement organization. Most of the people
9 that received their certifications through that
10 organization are primarily law enforcement; is that
11 correct?

12 A I'm not sure now because I'm no longer doing the
13 certifications.

14 Q Was it at any point primarily law enforcement?

15 A Yes.

16 Q And, for example, a common scenario in that
17 situation, say, a police department runs into these
18 issues with video identification, they may send someone
19 to LEVA to become certified and work in-house in the
20 police department; is that common?

21 A Well, the goal is -- anyone working for a police
22 agency or law enforcement agency, or any private
23 individual who is examining video for these purposes,
24 should get training. So LEVA is the body that's
25 providing -- one of the bodies that is providing that

GRANT FREDERICKS - CROSS-EXAMINATION

1 level of training.

2 Q So, yes; safe to say?

3 A A little bit different characterization from what
4 you asked, because you asked about comparison. They
5 may or may not be doing comparison work. They may
6 simply be processing video, producing exhibits for
7 court, making copies.

8 Q But anything that would kind of fall into the
9 category of forensic video analysis?

10 A No.

11 Q No?

12 A No.

13 Q Okay.

14 A There are individuals who don't do any analysis,
15 they simply are technicians. So there is a
16 certification for a forensic video technician. Prior
17 to that there is just someone who is producing
18 exhibits. They may want to take one of the classes to
19 make sure that they are producing the exhibits
20 correctly. The analysis portion is a much more
21 involved program. It is more of a four- or five-year
22 almost a master's level program. You have to take I
23 think it is 280-some hours of training to become an
24 analyst, plus peer review, plus boarding.

25 Q That is what I'm referencing. The actual people

GRANT FREDERICKS - CROSS-EXAMINATION

1 that receive this LEVA designation as a certified
2 forensic video analysis, even most of those are
3 primarily law enforcement, correct? I know there is
4 different organizations, but I'm only talking about --

5 THE COURT: Mr. Bouchette, you are asking him
6 multiple questions. Allow him to answer a question
7 before you ask another question.

8 MR. BOUCHETTE: Absolutely.

9 A At this point, I cannot know because I'm not
10 involved in the management of that program anymore.

11 Q (MR. BOUCHETTE) Would that have been the case
12 when you were involved in the management of the
13 program?

14 A At the time when I was involved in the
15 certification management, most of them would be law
16 enforcement, yes.

17 Q And, again, LEVA is a private organization,
18 correct?

19 A Yes. Its board of directors are all law
20 enforcement. It's non-profit.

21 Q So in this -- like any private organization, you
22 can create different certifications, correct? I mean,
23 this is not an accredited -- or, excuse me, an
24 accredited program of any kind?

25 A It is accredited by the University of

GRANT FREDERICKS - CROSS-EXAMINATION

1 Indianapolis. When it was put together, it was put
2 together under the University of Indianapolis.

3 Q But that has only come in very recently, correct?

4 A No. No. That was at the very beginning of the
5 program. 2004 I believe. Between four and seven, in
6 that area.

7 Q Let me ask you this. What are the other
8 organizations you are a member of?

9 A International Association for Identification.

10 Q Now, we also talked about a common example with
11 the use of this technique is the convenience store. I
12 think Ms. Livesay mentioned to you identifying
13 individuals on a convenient store camera; do you recall
14 that?

15 A I recall the question about a convenient store,
16 an individual in a convenient store.

17 Q Let me take you back. So we have a video store
18 camera with an individual that is identified, that we
19 can see on the video camera. Utilizing the techniques,
20 you can, for example, pinpoint or try to measure, say,
21 how tall the individual is, correct?

22 A That might be possible. That is one of the
23 things that we are asked to do, and we may consider
24 doing it depending on the system.

25 Q All right. Sometimes you might can tell, like

GRANT FREDERICKS - CROSS-EXAMINATION

1 you said, different colors that may be present or the
2 characteristics of, let's say, a shirt or something you
3 would be doing?

4 A Correct.

5 Q And what you are utilizing with this headlight
6 spread pattern analysis is trying to take the same
7 measurements you utilize in that convenient store
8 example, to the application of vehicle headlights; is
9 that correct?

10 A No.

11 Q It's not?

12 A No. It's different.

13 Q But still a comparison discipline, correct?

14 A Yes.

15 Q So like I said, it is a comparison discipline
16 wherein you are utilizing different techniques to
17 analyze Image or Video No. 1, with Image or Video
18 No. 2, correct?

19 A In a broad sense, yes.

20 Q And I know that is broad. But like any
21 comparison discipline, it is critical to get any of the
22 factors or variables in the first image as close to
23 identical as you can in the second image in order to be
24 able to do your comparison, correct?

25 A The ideal circumstances to replicate the same

GRANT FREDERICKS - CROSS-EXAMINATION

1 recording conditions.

2 Q Right. Okay. Is there anybody else relating
3 to -- like I said, this discipline is maybe published,
4 say, in textbooks or things of that nature, regarding
5 this headlight spread pattern analysis?

6 A Yes.

7 Q Who would that be?

8 A U.S. Department of Transportation, National
9 Highway Traffic Safety Administration. They publish a
10 document called *Sensitivity Analysis of Headlight*
11 *Perimeters Affecting Visibility and Glare*, December
12 2008. They went through a whole series of explanations
13 and testing as to why headlight spread pattern was
14 different from vehicle to vehicle.

15 MR. BOUCHETTE: Okay. Let me --

16 A I have a whole list of publications.

17 THE COURT: If you are going to ask him a
18 question, you're going to let him answer. Don't
19 interrupt him, please.

20 A The *Forensic Imaging and Multimedia Glossary*
21 *Covering Computer Evidence Recovery, Forensic Audio*
22 *(FA), Forensic Photography (FP), and Forensic Video*
23 *(FV)*, Version Seven, published July 15, 2008, defines
24 headlight spread pattern analysis for the purpose of
25 photographing video comparison.

GRANT FREDERICKS - CROSS-EXAMINATION

1 The document -- the document that I --
2 publication by the National Highway Transportation
3 Authority was written by Yukio Akashi and J.D.
4 Bullough, and they are with the Transportation
5 Authority. They go into a number of observations,
6 including a description of high intensity discharge,
7 those are HID lights, and how they are different from
8 one another and the circumstances by which they would
9 be different. They go into details about composite
10 patterns on headlights as to why one headlight from
11 one vehicle of the same make and model would be
12 different from another, because of humidity inside the
13 lens, because of wear and tear on the roadway and
14 because of the canting of the light for traffic.

15 I have a document here done by the Dane County
16 Sheriff's Office by a Deputy Scott Kuntz who took
17 about 60 Crown Vics brand new off of -- before they
18 put the police paint on it, and they did a headlight
19 spread pattern analysis on brand new Crown Vics, all
20 of them had different headlight spread patterns even
21 off of the assembly line.

22 THE COURT: Does that satisfy your question?

23 MR. BOUCHETTE: Yes, sir.

24 Q So there was study through the Highway
25 Transportation Authority; you mentioned that?

GRANT FREDERICKS - CROSS-EXAMINATION

1 A Yes.

2 Q And I think you had one from the sheriff's
3 department you had?

4 A Yes. And more here if you would like me to go
5 on.

6 Q No, sir, not at this point.

7 Let me ask you this. What I'm trying to get to,
8 what about any -- when talking about publications, did
9 you know Dr. John Russ from the University of North
10 Carolina?

11 A I know Dr. John Russ very well. We're friends.
12 Yes.

13 Q Did you talk to him in 2015 regarding the
14 utilization of headlight spread pattern analysis; do
15 you recall doing that?

16 A I have talked to so many people about that over
17 the years I don't recall specifically.

18 Q Well, did you talk to him and say that you could
19 visualize and provide the make and model of a vehicle
20 from the headlight spread pattern?

21 A May I see what you are referring to, please?

22 Q Sure. Referencing this paragraph right here
23 (indicates).

24 A So this is his publication of *Forensic Uses of*
25 *Digital Imaging*, second edition. In here, he quotes

GRANT FREDERICKS - CROSS-EXAMINATION

1 me -- let me read it for a moment, because I've never
2 seen this.

3 Q Sure. Take your time.

4 A (Witness examines document.)

5 (A brief pause in the proceedings.)

6 THE COURT: While he's reading, let the record
7 reflect that Mr. Bouchette provided him with a copy,
8 with a book, and he's identified the book and he's
9 reading that book now. It is not marked as an
10 exhibit, and it will not necessarily be marked as an
11 exhibit, but he's reading from the publication itself.

12 Excuse me.

13 MR. BOUCHETTE: No, that's fine.

14 (A brief pause in the proceedings.)

15 A I'm reading his explanation of comparison of
16 light characteristics, and then he gets into an area
17 dealing with paint and how paint chips can be
18 identified by forensic analysis. He just makes a brief
19 mention about 3D seems -- so that is three dimensional
20 reconstruction usually using a scanner, and that is one
21 of the things we do, and then two dimensional images
22 that are captured from CCTV. And then he writes about
23 the pattern of light and flare off of a headlight,
24 which is accurate, captured to a surveillance camera at
25 night is used to do that, and then he doesn't -- he's

GRANT FREDERICKS - CROSS-EXAMINATION

1 not quoting me, he is just saying I'm one example of an
2 analyst that does that kind of work, but it is not a
3 direct quote.

4 Q (MR. BOUCHETTE) I know it is not a direct quote,
5 but he references that he spoke to you in 2014,
6 correct?

7 A 2015.

8 Q 2015.

9 A But it just says -- he just uses that as a
10 reference. He says, This is done in the industry.
11 Grant Fredericks is an example as someone that does
12 this, but he's not quoting me or saying he had a
13 conversation with me.

14 Q But by saying "he does this" he means identifies
15 the make and model of the vehicle; correct?

16 A I mean, it is his paraphrase. I don't recall
17 talking to him specifically about the methodology. He
18 just knows that the identification of a headlight
19 pattern is one of the things that are done -- that is
20 done to assist in the evaluation of whether comparison
21 can be done on a vehicle. So I just don't want to
22 overstate what he's written here. He's using -- he's
23 describing a well-known methodology, and he's just
24 saying Grant Fredericks does this as well.

25 Q He says Grant Fredericks does this as in identify

GRANT FREDERICKS - CROSS-EXAMINATION

1 make and models, correct?

2 A Well, you have to talk to Dr. Russ about what
3 specifically he was referring to. What I do is I look
4 at reflection of light, and if that leads to a
5 comparison of vehicles and an identification of make
6 and model, which seems reasonable given the testing
7 that we've done where we exclude all other models, then
8 I think he's accurate in that.

9 Q Let me ask you this. With regard to your example
10 in this particular -- this particular case, we've
11 mentioned a moment ago a lot of things can affect the
12 headlight spread pattern, and you mentioned the
13 humidity and the headlight casing, correct?

14 A Yes. If a headlight casing is breached. There's
15 supposed to be a vacuum there, and if it is breached
16 and there is humidity, it will cause oxidation of the
17 lens composite and it will begin to change colors, it
18 will begin to diffuse the light, and it will completely
19 change the headlight spread pattern. Tiny little bit
20 of oxidation will cause the pattern to completely
21 change.

22 Q But headlight spread patterns can be very
23 sensitive, correct, to any type of effect?

24 A Very sensitive, yes.

25 Q So even on the exterior of the headlight, if

GRANT FREDERICKS - CROSS-EXAMINATION

1 there is a certain degree of dirt, that could affect
2 it?

3 A It could, yes.

4 Q Or if there is some mud on the exterior of the
5 headlight casing, that could affect it, correct?

6 A It could.

7 Q And it is very difficult, if not impossible, to
8 ever account for any of those exterior factors that may
9 be there, it could affect the headlight spread pattern
10 if you don't conduct the analysis close in time to the
11 event?

12 A If -- if --

13 Q Yes or no and then I'll be happy to let you --

14 THE COURT: No. He can explain it. He doesn't
15 have to answer just yes or no. He can explain his
16 answer, Mr. Bouchette.

17 A If there were obstruction on the headlight of the
18 questioned vehicle, and that obstruction -- and it was
19 significant and was not present when the police did the
20 drive-by, the pattern would look different.

21 Q (MR. BOUCHETTE) Right. So in other words, if
22 we're looking at Image Number 1 and say that, for
23 whatever reason, there's a certain degree of mud on
24 the exterior of the casing, and then at some point
25 later on, that same degree of mud was not on the

GRANT FREDERICKS - CROSS-EXAMINATION

1 exterior, it could have an effect on the headlight
2 spread pattern, couldn't it?

3 A We have to be really careful when we talk about a
4 degree. What degree? If it is a hundred percent
5 blocked out, absolutely. If it is 1 percent, 2
6 percent, those are different degrees. So we would --
7 it would have to be a significant obstruction to --
8 enough to cause a difference.

9 Q But you can never rule it out, right?

10 A We can't ever say what level of obstruction.
11 What I can say is that they appeared to be identical,
12 therefore, I would say the same level of obstruction,
13 if there were, was there. If there was no level of
14 obstruction, then that would explain again why they are
15 the same.

16 Q And in this case you didn't -- by the time you
17 got involved, the vehicle had already been transferred
18 to another owner; is that correct?

19 A I'm unsure about that. I know that the
20 headlights had been changed out.

21 Q The headlights had been changed out?

22 A Yes.

23 Q Let me ask you this. By the time you did your
24 evaluation and conducted your review, how long -- let
25 me ask you this. When was that?

GRANT FREDERICKS - CROSS-EXAMINATION

1 A That would have been January, I believe, of 2015.

2 Q So this is about a year after the event of the
3 unknown vehicle?

4 A Correct. And that would have been why I wouldn't
5 have been confident about or even suggested doing the
6 headlight spread pattern analysis, that length of time.
7 And then coupled -- and, really, it became no question
8 once the headlights were removed. After the vehicle
9 was seized by the police, the headlights were removed
10 for some purpose and then placed back. That fact would
11 have changed the headlight pattern no matter what, so
12 that exercise could not have been done.

13 Fortunately, the investigators did their drive-by
14 with the vehicle pattern -- with the vehicle intact
15 with no change to the headlights, that then provided
16 me with what I would have done in any case.

17 Q Even that review that they did, and the drive-by
18 that they did, was done in January of 2014, right? Or
19 was it February of -- excuse me, I think it was
20 February.

21 A I think it was February 2014.

22 From what I could see, the conditions -- the
23 lighting conditions were very, very close or close
24 enough for my examination.

25 Q Okay. But it was several months from the event?

GRANT FREDERICKS - CROSS-EXAMINATION

1 A Two months.

2 Q Two months. So, I mean, really, in your report,
3 you can't say for sure or identify or be able to speak
4 to what the conditions were of the exterior of the
5 headlight casing at or near December 17 and December 18
6 of 2013?

7 A Correct.

8 Q But we know if there was any variation to those
9 effects on the exterior of the headlight casing between
10 the time of December 17 of -- December 17th or
11 December 18th and late February, that could have had
12 an effect on the headlight spread pattern analysis?

13 A And if it had an effect, it would have been
14 different and I would have excluded it.

15 Q Let me ask you this. We heard earlier testimony
16 this was about a -- this was a Walmart system, I think
17 about a hundred dollars she said. Is the imaging sort
18 of consistent with what you would expect with that type
19 of --

20 A Yes.

21 Q So it is not a professional or high-grade,
22 high-quality security camera; safe to say?

23 A No. There is not a lot of difference -- well,
24 yes.

25 Q Okay. That's fine. Another factor in trying to

GRANT FREDERICKS - CROSS-EXAMINATION

1 analyze the headlight spread patterns, one of the
2 factors is the degree of the resolution of the video?

3 A Yes.

4 Q Another factor is going to be the distance from
5 the camera to the whatever lighting source or whatever
6 object you are trying to analyze, correct?

7 A Yes.

8 Q And in this case, the road and the truck was
9 almost at the outer limits of the visual area, correct?

10 A Sorry, which video? Talking about 814?

11 Q Correct.

12 A No. By "outer limits" you mean as the vehicle
13 goes left to the right and then goes off camera view?

14 Q I just mean this video and right up close we see
15 some parked cars, and then at some point further in the
16 back is where we see the road.

17 A Oh, I see what you're saying. So you mean
18 distance from the camera?

19 Q Correct.

20 A I wouldn't say that is outer limits. There is
21 one part of the vehicle in the driveway, and beyond
22 that is the road, yes.

23 Q But it's safe to say the vehicle in the road is
24 not up close to the camera, correct?

25 A That's correct.

GRANT FREDERICKS - CROSS-EXAMINATION

1 Q Now, let me ask you this. You mentioned that you
2 utilized, I believe it was, 11 vehicles in this study?

3 A Yes.

4 Q And you were able to exclude different makes and
5 models such as Chevy Silverado, and I think there were
6 a couple of others?

7 A Yes. There were 11.

8 Q But how many of those were Ford F-150s?

9 A Three or four.

10 Q But there was no large-scale statistical modeling
11 of Ford-150s to be able to say that -- you know, apply
12 it to this particular case?

13 A Correct.

14 Q A F-150, obviously, is a common truck?

15 A Yes.

16 Q You found it to be common here in Horry County?

17 A Yes. Statistically, the audit I did of 15,000
18 vehicles, there was only one other one of the 15,000.
19 So only one that matched that description of the known.
20 So one was the "questioned" and then one was the
21 vehicle towing the boat.

22 Q Let me ask you that. Has that been published in
23 any peer review journal for review for others in the
24 industry?

25 A It is a statistical analysis of the movement on

GRANT FREDERICKS - CROSS-EXAMINATION

1 that roadway. So for that purpose -- it wasn't
2 produced for publication purposes.

3 Q And that dealt with all kinds of vehicles,
4 correct?

5 A Yes. It dealt with every vehicle that went back
6 and forth. So we weren't discerning. We got
7 everything.

8 Q That wasn't where you were seeking -- those
9 weren't 15,000 F-150s that you were comparing to see if
10 all F-150s had different --

11 A You asked me how common it was. I'm saying it
12 was only two F-150s in the entire week that went by
13 that road.

14 Q Okay, I got you.

15 Just a few basic questions. Obviously, from the
16 video, we can't tell who is in the car or in the
17 truck?

18 A No, we cannot.

19 Q And you also mentioned that part of the video you
20 were looking at is a video provided to you by the MAIT
21 Team, correct?

22 A Sorry?

23 Q The part of the video that was provided to you
24 was provided by the South Carolina MAIT Team?

25 A Yes.

GRANT FREDERICKS - REDIRECT EXAMINATION

1 Q And they were unable to ascertain any information
2 other than the class and characteristics of the
3 vehicle; is that true?

4 A I had no conversation with them about their
5 observations or opinions; I don't know.

6 Q Not one way or the other?

7 A No.

8 MR. BOUCHETTE: Just a moment.

9 THE COURT: Sure. Take your time.

10 (A brief pause in the proceedings.)

11 MR. BOUCHETTE: No, further questions.

12 THE COURT: Very well. Redirect.

13 MS. LIVESAY: Yes, sir, Your Honor.

14 REDIRECT-EXAMINATION

15 BY MS. LIVESAY:

16 Q Mr. Fredericks, Grant -- I mean Jarrett asked you
17 several questions about headlight spread pattern, down
18 that line of questioning; do you remember that?

19 A Yes.

20 Q Tell this jury, is that the only thing you
21 compared between the vehicle, the questioned one, at
22 the time that was unknown, going down 814 and Mill
23 Pond, was that the only thing you compared to the
24 defendant's truck?

25 A No.

GRANT FREDERICKS - REDIRECT EXAMINATION

1 Q Tell them all what you compared to ultimately
2 draw your conclusion.

3 A The goal is to eliminate, if possible. So the
4 first elimination would be make, model and year. The
5 make model and year references characteristics on the
6 vehicle, references the physical features, the length
7 of the vehicle and any reflections, like the door
8 handles, those kinds of things. So if I could
9 determine that the questioned vehicle did not have
10 those basic class characteristics, then I could
11 eliminate the vehicle and say it is not the same
12 vehicle. Then, going through to say does the
13 questioned vehicle have all of the same class
14 characteristics, make, model, year, color and type of
15 headlight -- not reflection, just type of headlight --
16 then we can say it does have all of the same,
17 therefore, it cannot be eliminated.

18 Now we look to uniqueness. What is unique about
19 it? At this point, it is the pattern of the
20 reflection on the roadway, so that is the secondary
21 process, so we still have to go --

22 Q So before you even looked at the headlight spread
23 pattern, you already knew that it was a black truck
24 that had four doors, it had a toolbox on it, so you
25 already knew all of that was identical to the

GRANT FREDERICKS - REDIRECT EXAMINATION

1 questioned truck?

2 A As far as class characteristics I knew they could
3 not be eliminated, that it might be the same. The
4 weight that is applied to the observations would be the
5 toolbox, and then separate -- I treat the Walmart video
6 separately from that video, but in that video, we also
7 have the cutting saw in the back of vehicle. That -- I
8 looked and could that cutting saw be visible in the
9 known vehicle? When we did that test from those camera
10 locations, it could not be visible, so I can't know
11 whether or not. But the toolbox is a limited class
12 characteristic. It is kind of how we define
13 characteristics, because there are a lot of vehicles
14 with toolboxes, but not all vehicles of that make,
15 model and year have toolboxes. So we say it is a
16 limited class characteristic. I wouldn't refer to it
17 as a unique characteristic it is all part of the
18 process of doing photographic video comparison with the
19 goal of eliminating first, and then going through the
20 hierarchical process to find the uniqueness.

21 Q Ultimately, did you conclude that the defendant's
22 truck was, indeed, the truck that went down 814 and
23 Mill Pond?

24 A Yes, I did.

25 Q And did you find out, or were you able to

PETER CESTARE - DIRECT EXAMINATION

1 conclude, other than the headlight spread pattern, was
2 that truck also identical to the one he was driving at
3 the Walmart the early morning hours of 12/18?

4 A Yes, it is.

5 MS. LIVESAY: No further questions.

6 THE COURT: Recross.

7 MR. BOUCHETTE: One moment, Your Honor.

8 THE COURT: Sure.

9 (A brief pause in the proceedings.)

10 MR. BOUCHETTE: Nothing further, Your Honor.

11 THE COURT: You may step down.

12 Do you wish this witness to be excused?

13 MS. LIVESAY: Please, Judge.

14 THE COURT: Any objection?

15 MR. BOUCHETTE: No, Your Honor.

16 THE COURT: You are also free to leave, sir.

17 MS. LIVESAY: The State calls Pete Cestare to the
18 stand.

19 (Whereupon, PETER CESTARE, having been duly
20 sworn, testified as follows:)

21 THE WITNESS: Pete Cestare, C-E-S-T-A-R-E.

22 (State's Exhibits 129 through 150 marked.)

23 DIRECT-EXAMINATION

24 BY MS. LIVESAY:

25 Q Lieutenant, where are you currently employed?

PETER CESTARE - DIRECT EXAMINATION

1 A I'm employed with the Horry County Police
2 Department.

3 Q What is your current position?

4 A I'm a lieutenant, the commanding officer, of the
5 Crime Scene Investigations Unit, Property and Evidence
6 Section, and the Regional Drug Testing Lab.

7 Q How long have you been at the Horry County Police
8 Department?

9 A 16 years. I'm coming into my 17th year now.

10 Q Where were you employed prior to Horry County?

11 A Retired from the New York Police Department where
12 I was the commanding officer of the Manhattan Major
13 Case Squad.

14 Q If you don't mind, tell this jury a little bit
15 about your training as you have been in the police
16 department, both New York, as well as here in Horry.

17 A I was originally certified as a police officer by
18 the New York City Police Department -- actually, by the
19 New York City Housing Police Department. I trained at
20 various times each year within that agency and had been
21 sent to several government agencies, FBI, Department of
22 Justice, Treasury for additional training in various
23 aspects of law enforcement. I retired from New York
24 City, moved down here to Myrtle Beach, South Carolina,
25 was employed -- gained employment with the Horry County

PETER CESTARE - DIRECT EXAMINATION

1 Police Department, and from there they sent me to a
2 number of forensic schools, including the New York City
3 Medical Examiner's Office, FBI Academy, Forensic
4 Institute and several other schools and agencies around
5 the country.

6 Q And what was your position in 2013, December of
7 2013?

8 A Exactly the same as it is now. Since my
9 employment, I have been in charge of those units.

10 Q For 15 -- 16 years?

11 A 17, yes, ma'am.

12 Q And did you help with the case we're here today
13 on?

14 A Yes, I did.

15 Q If you don't mind, start out telling us a little
16 bit about how you got involved.

17 A Okay. It jumps way back to December 20th of
18 2013. I had been asked by the captain of the Criminal
19 Investigations Division, that is who I report to, to
20 assist in a missing person's investigation involving a
21 young girl by the name of Heather Elvis. In doing
22 that, I had received information that she had gone
23 missing somewhere around December 18th. It is now
24 December 20th, and I was asked to go to her parents'
25 residence on Sly Fox Trail in the Myrtle Beach area to

PETER CESTARE - DIRECT EXAMINATION

1 take a look at a vehicle that belonged to the young
2 missing girl.

3 So I took one of my investigators, Investigator
4 Jill Domogauer, and responded to Sly Fox Trail.

5 Q Ms. Domogauer has already testified and showed
6 pictures of the victim's vehicle; is that what you were
7 doing, processing Heather's vehicle?

8 A Yes, ma'am. We went there to look at the
9 vehicle. Bear in mind, at this particular time, this
10 was a missing person's case. We're there to see if we
11 can lend any forensic assistance to the detectives, who
12 were also on the scene, to see if we could offer them
13 any help, as far as what may have happened to her or
14 how she may have come to be missing.

15 Q And, at that time, nobody knew whether or not a
16 crime had been committed?

17 A That's correct. We were simply there for a
18 missing person's case.

19 Q And after you left her vehicle, where did you go
20 next?

21 A After leaving her vehicle, we did some basic
22 processing through the vehicle, including some touch
23 DNA swabs, photographs and so forth. We did an overall
24 cursory review of the vehicle to try to determine
25 occupants that may have been in it or anything of that

PETER CESTARE - DIRECT EXAMINATION

1 nature. From there, the information that I was given
2 was that on the night of the 18th, the young girl had
3 gone missing, or the last place they believed her to
4 be, was at Peachtree Boat Landing, which is all the way
5 at the end of Peachtree Lane. It is not the one at the
6 big bridge. It basically dead-ends into the Waccamaw
7 River. I was told that is where the vehicle was found
8 on the 18th, and that at that time the vehicle had
9 been driven back to the house by the young girl's
10 father.

11 So the next course of action would be to go to
12 Peachtree Landing to try to determine if there is
13 anything there to help lend support to what may have
14 happened to this young girl, you know, that night at
15 the landing.

16 Q And when you went to the landing, did you see
17 anything of evidentiary value?

18 A No, there was nothing of evidentiary value. I
19 had gained some information from both the young girl's
20 dad and the patrol officer that had responded the night
21 that the car was found at the landing as to where the
22 car had been parked, specifically how it was
23 positioned. Those are all things that are important,
24 because when you pull into a boat landing or when you
25 pull into any area that has a parking lot, you need to

PETER CESTARE - DIRECT EXAMINATION

1 focus on something in particular. I mean, I can look
2 at the whole parking lot, but until I know specifically
3 where the car is, I'm going to waste a lot of possible
4 important time to look at other areas. We did,
5 however, look at the entire boat landing. Part of the
6 urgency of getting there right away is that we
7 requested divers to come. So the Horry County Fire
8 Department, Myrtle Beach Fire Department, DNR,
9 Department of Natural Resources, and several other
10 agencies were all sending boats and divers there.

11 So before the -- even though we're two days from
12 that time frame, before that parking lot gets further
13 potentially contaminated with vehicles and people
14 tracking through it, we wanted to get a look at it
15 before everyone got there. So it was kind of urgent
16 to get there right away and see that parking facility
17 and the landing and try to determine a direction to
18 start asking the divers to search it.

19 Q Did you find any blood or weapons or anything at
20 the landing that led you to believe that a crime had
21 been committed?

22 A No, ma'am, we did not.

23 Q Did you find your phone, pocketbook, anything
24 that belonged to her?

25 A No, we did not.

PETER CESTARE - DIRECT EXAMINATION

1 Q When you left the landing, where did you go next?

2 A I stayed at the landing for a period of time. I
3 directed my investigator, Jill Domogauer, along with
4 some detectives to respond to Ms. Elvis' apartment, the
5 apartment she had been staying in, which was off of
6 River Oaks Drive, also in the Myrtle Beach section. I
7 asked Jill to go along with the detectives to assist
8 them, and if they come across anything or to just take
9 some photographs for them.

10 I stayed at the landing for a period of time with
11 the divers and with the agencies that came in to
12 assist us. It was later on that same day that I
13 accompanied some of the detectives from my agency to
14 the Moorer's residence over on Highway 814.

15 Q And when you were at the residence, did you take
16 any pictures?

17 A Yes, ma'am, I did.

18 Q I'll show you 129 to 150.

19 A (Witness examines documents.) Yes, ma'am. These
20 are the prints of the visual images that I photographed
21 that day at the residence.

22 MS. LIVESAY: At this time, the State wishes to
23 place 129 to 150 into evidence and publish at the
24 appropriate time.

25 THE COURT: Any objection?

PETER CESTARE - DIRECT EXAMINATION

1 MR. BOUCHETTE: No, Your Honor.

2 THE COURT: Without objection, State's 129 to 150
3 are admitted, each being a photograph.

4 (State's Exhibits 129 through 150 admitted.)

5 Q (MS. LIVESAY) While we're getting that on the
6 screen, I want to ask you: Who all was present when
7 you showed up to the defendant's house?

8 A I was there. Lieutenant Chip Squires, who was
9 lieutenant over Investigations at the time, Detective
10 Cauble, I believe, if I may return and refer to my
11 notes, let me see what I've got. I believe Detective
12 Hardee also had responded.

13 Q Who was present from the defendant's family?

14 A Tammy Moorner was home at the time. I --
15 actually, we got there -- we're there, basically, to
16 try to gain information that would help lead us to what
17 happened to this young lady. We knocked on the
18 residence door for Tammy and Sidney Moorner. There was
19 no answer at the door. We went kind of adjacent to it.
20 There is another residence that sits on the same
21 property, that was Tammy's mom and dad. I believe the
22 last name was Caison. We went over and knocked on that
23 door. Mr. Caison answered the door, came out and spoke
24 to the detectives for a few moments. I was kind of
25 standing in the background. A short time later, Tammy

PETER CESTARE - DIRECT EXAMINATION

1 Moorer emerged from the Caison house, spoke with the
2 detectives for a short period of time. They asked if
3 the team of us that were there could go with her into
4 the house to talk and to take a look inside the house,
5 if there was anything there that could help us.

6 Q Okay. When you first walked up to the house, did
7 you notice anything?

8 A Yes, ma'am, I did.

9 Q What did you notice?

10 A On the face of the Moorer's house, the front of
11 the house, which faces out to a small extension of
12 roadway, it's actually a right-of-way that goes back to
13 a power area there, there were some cameras on the
14 front of her house of what appeared to be like a video
15 type of surveillance camera.

16 Q Did those cameras look operable to you?

17 A They were up a distance in the air, you know,
18 height on the house, one at each corner of the house,
19 and one at the center gable of the house, but they
20 appeared to be operable, from what I could tell.

21 Q Did you go inside the house with the other
22 detectives?

23 A I did. I specifically asked Tammy Moorer if it
24 was okay for me to come in with them and if she
25 wouldn't mind if I took photographs while I was inside

PETER CESTARE - DIRECT EXAMINATION

1 the house, to which she agreed and said that that
2 wouldn't be a problem.

3 Q Now, were there any cameras in the house?

4 A Yes, ma'am. I saw one camera in the house while
5 I was inside.

6 Q Now, did you document, in general, what you saw
7 in the house in these pictures of 129 to 150?

8 A I took photographs in the house. The problem I
9 had was seeing the cameras on the outside, and seeing
10 the one camera inside, at that particular time, it
11 became extremely important to me as to what may have
12 happened and could help us in this investigation. My
13 fear at that point, because we were there under
14 consent, you know, to come on in, feel free to look
15 around, to some degree. I mean, I wasn't allowed to
16 open cabinets, but I could look in the doorway of each
17 room or whatever. If I alerted anyone at that point
18 that I believe the cameras were operational in the
19 house, my fear is that we would lose whatever
20 information may be on them.

21 Q Let me ask you this. When you went in under
22 their consent, at that time were they suspects?

23 A No.

24 Q Was anyone detained in any form or fashion?

25 A No, ma'am.

PETER CESTARE - DIRECT EXAMINATION

1 Q Now, when you went in and snapped photographs,
2 were you in there going through closets or going
3 through drawers or going through anything?

4 A No. As I mentioned, we were permitted to come
5 into the house. I was permitted to take pictures with
6 limitations, like standing in the doorway of a room and
7 looking in. Several times I asked if I could go into
8 it, and she said, No, no, from here in the hallway is
9 fine. But I was pretty much lead through the entire
10 residence by Tammy Moorer. She was with me the entire
11 time. Tammy's mom and dad had also come into the
12 house, and they were in there as well with the
13 detectives and so forth.

14 Q Okay. I want to ask you to step down to show
15 this jury what you saw in the home in pictures 129
16 through 150.

17 What are we looking at now?

18 A Customarily, any time I take photographs of
19 anything, I try to put some type of reference marker in
20 that photograph. That is a picture of the mailboxes
21 outside of the house, and it just simply shows me the
22 addresses. There were two residences that sit on the
23 property.

24 Q Okay. And how about in the next one?

25 A This is the back of a vehicle. It's a black in

PETER CESTARE - DIRECT EXAMINATION

1 color Ford F-150 that was parked in the Moorers'
2 driveway. The driveway at that part of the house is
3 kind of split by a few palm trees, and as you can see,
4 on the lower corner, there is some stone and so forth.
5 There is basically like a two-lane driveway on the
6 Moorers' side, and then on the other side of those
7 trees is a two-lane driveway on the Caison side of the
8 property. That is just documenting the license tag
9 number on the back of the vehicle that was parked in
10 the driveway. That was the only vehicle in front of
11 the Moorers' house, passenger vehicle. There was a
12 camper there as well.

13 Q Let me ask you this. Can you show us where some
14 indication of where the truck was bought from?

15 A Yes, ma'am, it does. It shows a Beach Ford tag
16 on the back of it. Most dealerships, as you know,
17 probably looking at your own vehicle, have placed
18 something on the back of the vehicle, you know, as a
19 selling point for their own dealership, so that is
20 basically just showing Beach Ford.

21 Q What are we looking at here?

22 A This is standing almost at the street, and that
23 is the black Ford F-150 that I spoke of that you just
24 saw the tag on, and to the right, you are seeing their
25 travel trailer or camper that is also parked in that

PETER CESTARE - DIRECT EXAMINATION

1 driveway. There is a lot of other items in and around
2 the front of the camper.

3 Q If you don't mind, when you look close, tell the
4 jury -- what is this right here?

5 A That is a shotgun shell there. There is bags of
6 mortar or cement there.

7 Q What is that?

8 A Some cleaning solutions and so forth. It just
9 kind of struck me as odd. Who leaves things like that?
10 Obviously, you know, open mortar, or whatever, if it
11 rains, you are going to destroy it. Who leaves shotgun
12 shells in the driveway and so forth? It just struck me
13 as odd.

14 Q What was this?

15 A It looks like a tarp, I believe. And there was
16 some rags and stuff over in that area and trashcans and
17 a couple of buckets and so forth.

18 Q And these things down here, do you know what
19 those are?

20 A No, ma'am, I do not.

21 Q So the only thing you can decipher is the shotgun
22 shell, the Quikrete cement and the bleach?

23 A Yes, ma'am. That kind of piqued my interest, and
24 that was part of the reason why I took that photograph.

25 Q Did you take some now going further into the

PETER CESTARE - DIRECT EXAMINATION

1 home?

2 A I did, yes.

3 Q Is this a shot, right up front?

4 A It is. And as I mentioned to you, looking at the
5 face of the home, there appears to be three distinct
6 cameras on the front of the house. Unfortunately, I
7 couldn't just swing the camera up and focus, you know,
8 my camera at one of the video cameras. I would have
9 given the fact that I had seen them. So I'm trying to
10 shoot pictures from my hip as I'm walking along. In
11 perfect alignment is two palm trees that block where
12 the cameras are on the front of house.

13 Q Did you take pictures inside the house?

14 A I did, yes.

15 Q And what is this showing?

16 A This is the inside the home. This is just the
17 laundry area off of the kitchen of the residence.

18 Q So here you are just kind of generally
19 documenting --

20 A Yes.

21 Q -- rooms in the home. How about here?

22 A This is the kitchen area, and a door that leads
23 out into the back area of the house.

24 Q And, again, you are just generally documenting
25 general appearance?

PETER CESTARE - DIRECT EXAMINATION

1 A Yep. I was not, you know, given permission to
2 look through cabinets or closets or anything of that
3 nature. Just whatever doors were open, I could make a
4 photograph of the room from the doorway.

5 Q And how about here?

6 A This is the family room, which is immediately
7 adjacent to the kitchen. As you see on the left there,
8 the stool-style chairs, over that counter is the
9 kitchen area. So this is like the family room area of
10 that house.

11 Q And how about here?

12 A Coming back, I'm standing almost inside the front
13 door of the house, and when you look to your right, you
14 go through this den/office area, and that is the
15 kitchen behind it, and that family room. So if I just
16 walked in the front door of the house and looked to my
17 right, this is what I'm seeing.

18 Q What about here?

19 A This is almost straight ahead of the entry door
20 coming into the residence. This is Tammy and Sidney's
21 bedroom on the first floor of the house.

22 Q How about here?

23 A I'm looking immediately to my left of the front
24 door, and this is a staircase going up. This
25 photograph is somewhat significant, and you'll see

PETER CESTARE - DIRECT EXAMINATION

1 other coloring as we go along, but if I may?

2 Q Yes?

3 A Just up above here, the roof of the entryway of
4 the house doesn't allow me to see it, but there was a
5 camera at the top of the staircase in that green
6 painted area right at the -- where the crown molding or
7 ceiling molding would be in the house, looking down the
8 staircase towards the front door.

9 Q Did you go upstairs?

10 A This is from the upstairs now. I'm now up on
11 that landing, and the camera would be just behind where
12 you can see from here.

13 Q Okay. Let me ask you something. This is from
14 you all searching, or this is the way it was on the
15 20th?

16 A No, ma'am. We were not allowed to search
17 anything. I was just allowed to walk through with her.
18 It was Tammy and I at the time, and she walked me
19 through and said -- like I said, I asked her could I
20 take pictures, you know, inside the house, and she
21 said, yeah, I don't have a problem. I'll let you take
22 a picture from doorways and stuff, but I don't want you
23 going through anything.

24 Q How about here?

25 A Just a photograph from a doorway upstairs to one

PETER CESTARE - DIRECT EXAMINATION

1 of the bedrooms.

2 Q Okay. And here?

3 A Same photograph, one of the upstairs rooms
4 looking into one of the bedrooms.

5 Q And here?

6 A Same thing here, photograph of the doorway
7 looking into the bedroom.

8 Q So now this is the fourth bedroom we've seen?

9 A Yes.

10 This is a photo from the hallway looking into the
11 bathroom upstairs.

12 Q Okay.

13 A Photo, again, from the hallway looking into
14 another room upstairs that had a bunch of Legos and
15 stuff in it.

16 Q All right.

17 A This is coming back. This is where I tried to
18 get the camera -- Tammy was standing right next to me
19 at the time. I swung around to say something to her,
20 and I took a picture at the same time hoping I would
21 get the camera at the ceiling line, but right up here,
22 at the ceiling line, which I missed in not being able
23 to, you know, look up and focus without drawing
24 attention to it, was a small camera.

25 Q How about here?

PETER CESTARE - DIRECT EXAMINATION

1 A That is kind of what that camera would view
2 looking down. I took that shot as I was walking down
3 the stairs and Ms. Moorer was right behind me.

4 That is a picture from the inside just looking at
5 the two front doors from the residence. This is a
6 picture from that little den office area that leads
7 into the kitchen/family room looking back. You'll see
8 the front doors to the residence there on the left,
9 the staircase going up, and then the master bedroom
10 would be to the right.

11 This is off of the kitchen, a small area that had
12 a freezer, microwave in it.

13 Q What is up here?

14 A Just some bottles of alcohol, Baileys Irish
15 Cream, Jim Beam, few other bottles. Like a make-shift
16 pantry area, if you will.

17 Q And how about in here?

18 A There is -- inside that -- I'm in what would be
19 the kitchen area photographing over-the-counter towards
20 the family room area.

21 Q Okay. Is that the last picture?

22 All right. Mr. Cestare, if you don't mind, have
23 a seat.

24 (State's Exhibits 151 through 174 marked.)

25 Q Lieutenant, as part of Crime Scene, after you

PETER CESTARE - DIRECT EXAMINATION

1 went to the defendant's house, at some point did you
2 also process or document his truck, his Ford F-150?

3 A I did some documentation on it, yes. Some of my
4 staff was assigned to search it and so forth, and I
5 also did some photographs of it as well.

6 Q Let me ask you this. Did you go inside the Ford
7 F-150 the day you were there on 12/20?

8 A No. It was locked, and I was told there was no
9 keys available to that vehicle.

10 Q So you never went in on 12/20?

11 A No. I specifically asked Ms. Moorner if I could
12 take a look in the truck, and she said no.

13 Q Let me ask you this. Were you able to look into
14 the truck later in December and early January via a
15 search warrant?

16 A Yes, I was.

17 Q And did you at that time document how the truck
18 appeared?

19 A Yes, I did.

20 Q And were you able at that time to go through the
21 truck?

22 A Yes.

23 Q And the truck was where when you documented it?

24 A It was at the Horry County Police Department. It
25 was towed there based on a search warrant. One of the

PETER CESTARE - DIRECT EXAMINATION

1 initial problems we had was that toolbox in the bed of
2 the truck was locked, and although the search warrant
3 gave us the ability to break that toolbox open, I told
4 my investigators not to do it, that we would attempt to
5 gain a key from Mr. or Mrs. Moorer to be able to open
6 that toolbox. If we weren't able to obtain a key, then
7 we would, in fact, break the toolbox open. Mr. Moorer
8 did provide a key to me at one point, and I was able to
9 unlock the toolbox and photograph inside that box.

10 MR. BOUCHETTE: I have an objection to one of the
11 photos she's seeking to introduce.

12 THE COURT: Let's have a side-bar.

13 (Whereupon, a bench conference was had.)

14 THE COURT: State's 151 through 174, with the
15 exception of -- or State's 168 are admitted without
16 objection. The others are without objection,
17 Mr. Bouchette?

18 MR. BOUCHETTE: Without objection.

19 THE COURT: As to 168, the objection is made and
20 we'll place it on the record, but it is admitted
21 subject to that objection.

22 (State's Exhibits 151-167, 169-174 admitted.)

23 Q (MS. LIVESAY) Mr. Cestare, I want you to look at
24 151 through 174 and tell me if these are the pictures
25 you took of the defendant's truck at the police

PETER CESTARE - DIRECT EXAMINATION

1 department?

2 A (Witness examines document.)

3 (A brief pause in the proceedings.)

4 A Yes, ma'am, these are the copies of the digital
5 images I took that day.

6 MS. LIVESAY: Okay. Your Honor, at this time the
7 State wishes to admit 151 to 174 and publish.

8 THE COURT: I've already ruled on the
9 admissibility, so you can publish them.

10 Q (MS. LIVESAY) Mr. Cestare, if you don't mind
11 stepping down and we'll go through the pictures
12 together.

13 These pictures were taken after the 20th,
14 correct?

15 A Yes, ma'am. These pictures were taken
16 December 30th, if memory serves me correct. I can
17 look at the sheet, but I believe that is the date.

18 This is at the Horry County Police Department.
19 This is an open outdoor processing bay. It is covered
20 over with a roof where we would customarily tow a
21 vehicle in to process it, take photographs of it,
22 potentially search it, whatever needed to be done.

23 Q At that time, there was no emblem for Beach Ford
24 on the front?

25 A No, ma'am. That truck is just the way it was at

PETER CESTARE - DIRECT EXAMINATION

1 their house and brought to the police department.

2 Q And how about here?

3 A That is just a standard picture. Normally, in
4 documenting a vehicle, I go around all sides of it just
5 to document the condition of the vehicle and anything
6 that potentially may be unique about it. This is the
7 passenger's side of the vehicle.

8 Q Was there any damage?

9 A No.

10 Q Okay.

11 A This is the rear of the vehicle showing both the
12 toolbox up in the bed, as well as the license plate,
13 South Carolina tag. That is the same plate as what I
14 had photographed at the house back on the 20th, some
15 seven days before.

16 Q And that is just to reconfirm this is the
17 identical truck, the same truck?

18 A Yes, ma'am, that's the truck from the house.

19 That is just a close-up of the tag.

20 That is a picture of the driver's side of the
21 vehicle. Again, I'm kind of walking my way around the
22 vehicle.

23 Q Did you go inside the vehicle?

24 A I did, yes.

25 This is a picture up into the bed to show what

PETER CESTARE - DIRECT EXAMINATION

1 the contents were in the bed of the vehicle, and to
2 further document the toolbox on the back of the
3 vehicle.

4 Q Okay.

5 A This is now with the driver's door open taking a
6 look inside at the driver's seat and dashboard and
7 console area.

8 Q Was this truck super clean when you got it?

9 A It was. It was pretty remarkably clean. Just
10 pictures of the door pocket on the driver's door, and
11 the contents in it.

12 Q All right.

13 A This is a picture behind of the rear passenger
14 compartment of the vehicle, and what you see flipped up
15 is the back seat of the vehicle. That particular
16 vehicle, the seat is enabled to come up so that you
17 have storage room if you needed it, or it could come
18 down for passenger seating.

19 Q Let me ask you something, did you flip it up?

20 A No, it was up already.

21 Q So when you took it from the house, all the seats
22 were flipped up?

23 A I don't know if the seats were flipped up when it
24 came from the house. This is the way I found it that
25 day.

PETER CESTARE - DIRECT EXAMINATION

1 Q All right. Now, I want you to look again. Does
2 that look clean to you?

3 A I mean, for the most part, it is somewhat clean
4 inside that vehicle. There is items scattered around
5 in the back of it but for the most part, the exterior
6 of the vehicle and the surfaces inside were pretty
7 clean.

8 Again, just looking at one of the door panels,
9 the door pocket inside the vehicle. Again, looking at
10 the vehicle and the -- you know, the floorboard in the
11 back. As you can see, I mean, there is a considerable
12 amount of what looks like small debris and whatever on
13 the floor of the vehicle at that time.

14 Q Again, looking at the other door panel on the
15 passenger's side, the rear door?

16 A Looking inside the front passenger's compartment
17 of the vehicle, and, again, there is items scattered
18 about the floor, the seat and console area.

19 Q Okay.

20 A Looking at that passenger's door, side pocket.

21 That was a picture of a pass that was inside the
22 vehicle. I documented that just to show it was a
23 state park pass.

24 That is a handicap placard in the vehicle.

25 Again, I documented that for the placard number and to

PETER CESTARE - DIRECT EXAMINATION

1 see who the placard was assigned to through DMV.

2 Q Who is that a picture of?

3 A Tammy Moorer.

4 Another picture looking at the tailgate of the
5 truck from the bed area. The first picture you saw
6 was looking into the bed; this one is looking back
7 just to be able to see the tailgate of the truck.

8 This was in one of the pockets in the back, and
9 it was a box of ammo.

10 Q And is what you saw in front of the camper, was
11 that a 20 gauge?

12 A Um.....

13 Q If you don't know, that's okay.

14 A I don't know the gauge. I just saw it on the
15 ground.

16 Q And this was where in the truck?

17 A This was -- I believe it is in the back towards
18 where the seat is. There is some pocket areas back
19 there. I'm not completely sure without going back
20 through the inside pictures, but it was in plain view
21 within the truck.

22 Q Go back a few pictures. Right there. Look at --

23 A Yeah, there is a track right in here by the back
24 seat, and that is where the ammo is, right down in the
25 bottom of it. That track, if the seat were down, you

PETER CESTARE - DIRECT EXAMINATION

1 would not see that track area, but with the seat up,
2 you could see it.

3 Q I want to ask you something. What is this here?

4 A That is just a hairbrush, cups, some papers and
5 so forth.

6 Q Now, here is what? Like a candy wrapper?

7 A Yes.

8 Q And what is this stuff here?

9 A Looks like chips or parts of cookies or crackers
10 or something.

11 Q Does this truck look like it was just washed and
12 cleaned yesterday?

13 MR. BOUCHETTE: Objection.

14 A No.

15 THE COURT: I'll allow it. Overruled.

16 Q (MS. LIVESAY) Take us back where we were,
17 please. As we're going through, there is papers on
18 the floor, shotgun shells. Now, they are in a
19 compartment. If you put the seat down, you would not
20 see them; is that correct?

21 A That's correct. If the seat were down, it would
22 cover those and you wouldn't see them.

23 Q What is this?

24 A That was like a receipt book that you would use
25 if you had a business and you were giving someone a

PETER CESTARE - DIRECT EXAMINATION

1 receipt for work or something that you performed, that
2 shot is a little out of focus. There is another one.

3 Q Can you tell who that receipt is for?

4 A Yes.

5 Q Who?

6 A It says "Sticky Fingers Myrtle Beach."

7 Q Can you tell the date?

8 A Looks like 11/16 of 2013.

9 Q How about the next one?

10 A That one is 11/15/2013, also to Sticky Fingers.

11 11/18 of 2013, Longhorn Steakhouse.

12 These are, obviously, work tickets that
13 Mr. Moorer -- or I would assume Mr. Moorer was
14 providing.

15 Q Whose name is up here?

16 A Sidney Moorer, and it describes "loose stonework
17 on the north wall, secured all parking stops."

18 Q And whose name is down here on the ticket?

19 A Sidney Moorer.

20 Q Okay. And this is receipts for work he's done?

21 A Obviously, that is something that he's giving the
22 store to show what work he's completed.

23 Q Okay.

24 A This one is dated 12/21/13, Sticky Fingers, and,
25 again, it says "secured hood and stainless screws,

PETER CESTARE - DIRECT EXAMINATION

1 remove roof panels for a hood guide." So I'm assuming
2 that is some type of work inside the business.

3 Q Okay. Go back. Did you ever see a ticket for
4 12/17 or 12/18?

5 A No, ma'am. The tickets that -- the photographs
6 that you see were the tickets that had been filled out.

7 Q Okay. And did you photograph it just like you
8 were standing there going through the tickets?

9 A Yes, ma'am. I was flipping the pages and taking
10 a picture as I was doing that.

11 Okay. This is just the manufacturer's label that
12 is customarily on the inside of the driver's door or
13 the frame around the door that shows the production
14 date of the vehicle. What is important to me is the
15 Vehicle Identification Number, or what we call the VIN
16 number on a vehicle. Basically, we document that to
17 verify what vehicle we're physically in should the
18 plate not match the vehicle. In this case, the plate
19 matched.

20 Q If you don't mind, have a seat, Lieutenant. I
21 have a couple more questions.

22 Didn't you eventually get into the toolbox?

23 A Yes, I did.

24 MS. LIVESAY: Keep that in there, Tonya.

25 THE COURT: Let's let the jury take a break. You

PETER CESTARE - DIRECT EXAMINATION

1 can go to your jury room. Do not begin your
2 deliberations, don't discuss the case, please.

3 (The jury exits at 2:30 p.m., and the
4 following is heard out of the presence of the jury.)

5 THE COURT: Solicitor, I want you to get all the
6 exhibits you want for this witness marked. If there
7 is another witness coming and you have exhibits, I
8 want those marked, please, so we don't have to waste
9 the time to do that, please. Thank you.

10 We'll be at ease.

11 (A recess was taken and State's Exhibits 175
12 through 195 marked.)

13 THE COURT: Thank you very much. Are you ready?

14 MS. LIVESAY: Yes, sir.

15 THE COURT: State's ready. Defense ready?

16 MR. BOUCHETTE: Yes, Your Honor.

17 THE COURT: Let the record reflect Mr. Moorer is
18 present.

19 Invite the jury to return, please. Thank you.

20 (The jury enters at 2:43 p.m., and the
21 following is heard in the presence of the jury.)

22 THE COURT: Thank you, ladies and gentlemen.

23 You may resume your examination.

24 MS. LIVESAY: Thank you, Your Honor.

25 DIRECT EXAMINATION (CONT.)

PETER CESTARE - DIRECT EXAMINATION

1 BY MS. LIVESAY:

2 Q At this time I'll show you, Lieutenant, 175 to
3 191; what are these the pictures from, and are they
4 pictures you took?

5 A (Witness examines document.)

6 (A brief pause in the proceedings.)

7 A Yes, ma'am. These are reprints of the visual
8 images that I photographed of the toolbox on that truck
9 and the contents thereof.

10 MS. LIVESAY: Your Honor, at this time the State
11 wishes to put 175 through 191 in evidence and publish
12 it at the appropriate time.

13 THE COURT: Any objection?

14 MR. BOUCHETTE: No objection.

15 THE COURT: Without objection, 175 through 191
16 are admitted.

17 (State's Exhibits 175 through 191 admitted.)

18 Q (MS. LIVESAY) I'll show you 175. That is the
19 only one I will publish at this time. What is that a
20 picture of?

21 A It's a picture of a pack of Swisher Sweets, like
22 a small cigarette/cigar type thing.

23 (State's 175 published to the jury.)

24 A That photograph is inside the toolbox of the
25 truck.

PETER CESTARE - DIRECT EXAMINATION

1 Q Are you familiar, when you were looking through
2 the truck, with what the defendant bought from the
3 Walmart the morning of 12/18?

4 A I am not completely familiar, no, ma'am.

5 Q Okay. So you searched the inside of the toolbox,
6 and the inside of the truck, you documented the outside
7 of the truck, correct?

8 A That's correct, yes.

9 Q At that time, did you take any swabs from the
10 truck in an effort to find DNA?

11 A No, I did not.

12 Q This was what date -- around what date?

13 A This is -- hang on a second. I'll tell you
14 exactly what date it was. This was on December 30th,
15 2013.

16 Q At that time, you didn't take any swabs of any
17 kind?

18 A No, ma'am, and there is a reason why I didn't.

19 Q Okay. And were you able to get in the truck
20 December 20th?

21 A No, ma'am, I was not able to get in the truck on
22 that date. I was told that I couldn't search the
23 truck.

24 Q Okay. I'm going to --

25 A Or look in the truck.

PETER CESTARE - DIRECT EXAMINATION

1 Q I'll show you 192, 193 and 194; will you tell
2 Court if you are familiar with these items?

3 A Yes, I most certainly am.

4 Q Did you initial 192?

5 A I did.

6 Q Okay. And are these photographs and videos that
7 you found that were of evidentiary value?

8 A Yes, I did.

9 Q And are you familiar with the Moorers' residence?

10 A Yes, I am.

11 Q And are those still shots from the Moorers'
12 residence, 193 and 194?

13 A 193 and 194 depicts --

14 Q Just yes or no.

15 A Yes.

16 Q And 192, is that video from the Moorers'
17 residence?

18 A Yes, ma'am, it is.

19 Q And did you recognize the people in the video?

20 A Yes, ma'am, I did.

21 Q And did you document that portion because you
22 considered it of evidentiary value?

23 A Yes, ma'am, I did.

24 Q And does that contain the information as to why
25 you did not swab the truck on December 28 or 29th?

PETER CESTARE - DIRECT EXAMINATION

1 A Yes, it does.

2 MS. LIVESAY: At this time, Your Honor, the State
3 wants to admit -- actually, before I admit it.

4 Q I want to ask you, before I admit it, I have
5 asked you about swabbing, why didn't you swab, and if
6 that evidence shows why you did not swab?

7 A It does, in fact, show that.

8 Q What does it show?

9 A 192 is excerpts from the home surveillance system
10 that the Moorers had in their home, and it shows
11 cameras outside the residence --

12 MR. BOUCHETTE: Objection, Your Honor.

13 THE COURT: What is the basis? These are
14 published, which is what the exhibit is, you object
15 to?

16 MR. BOUCHETTE: I think these are new
17 photographs, correct, and they have not been admitted
18 into evidence?

19 THE COURT: I understand, that is why I'm asking.
20 You are objecting to him telling why he didn't --

21 MR. BOUCHETTE: At this point, she's going
22 into what the --

23 THE COURT: I understand that. Sustain the
24 objection. If he's going to disclose what is on the
25 video, you have to have it admitted.

PETER CESTARE - DIRECT EXAMINATION

1 MS. LIVESAY: Certainly. At this time the State
2 wishes to put 192, 193 and 194 into evidence.

3 MR. BOUCHETTE: Can I see them, Your Honor?

4 THE COURT: You all haven't seen these? That is
5 Rule No. 1.

6 (A brief pause in the proceedings.)

7 MR. BOUCHETTE: No objection.

8 THE COURT: Without objection, they are admitted,
9 192 through 194.

10 (State's Exhibits 192 through 194 admitted.)

11 Q (MS. LIVESAY) I want you to tell us what you saw
12 on the video as to why it was of evidentiary value to
13 you.

14 A This DVD is a copy of the video surveillance
15 system that was in the Moorers' house. This video
16 surveillance system captures images, both inside and
17 outside, the house. The cameras were placed on the
18 outside of the house, but at various times during the
19 entire video you see Mr. Moorer holding the cameras and
20 installing them in locations outside the house or
21 within the house to view the out -- excuse me -- to
22 view the outside.

23 Q What do you see?

24 A You see the outside surrounding area of the
25 house. The cameras all point in different directions

PETER CESTARE - DIRECT EXAMINATION

1 and there are several cameras that were of particular
2 interest to me. The date on the camera system for the
3 day that I viewed this, the date on the camera system
4 tells me it was December 23rd, not 2013.

5 Q That is what the date on the camera was?

6 A That is what the date on the system says. I went
7 through that system and documented several times, and
8 camera angles that were of particular interest to me.
9 In one of the camera angles that faces the front of the
10 residence, and on that particular day, on what the
11 camera system says, is 12/23. That black pickup truck,
12 the black Ford F-150 is parked in the driveway and it
13 is being cleaned extensively. The outside,
14 particularly of the front doors and rear passenger
15 doors, the interior crew compartment of that truck is
16 being cleaned extensively. When I say "extensively,"
17 it goes on for several hours of them cleaning the car.
18 What also is fairly unusual, to me, is the rags
19 that they are cleaning the car with are then burned in
20 a burn pile in the yard. That is another camera angle
21 that's there. So I'm looking at Sidney Moorner, Tammy
22 Moorner, Ashley and Ashley's boyfriend cleaning that
23 truck extensively, and then I'm looking at them taking
24 those rags that they are using to clean the truck with
25 and bringing them over to a burn pile and burning

PETER CESTARE - DIRECT EXAMINATION

1 them.

2 Q Now, let me ask you this. That was sometime
3 before you took the truck on the 28th?

4 A That's correct.

5 Q Would it have done you -- do you believe you
6 could have collected anything of evidentiary value as
7 far as swabs after that truck had been cleaned for
8 hours?

9 A That is why I did not swab the truck on
10 December 30th, because based on what I saw on that
11 video, that truck was cleaned better than I would clean
12 my own vehicles.

13 Q Now, did it look that clean when you took it into
14 evidence on the 28th?

15 A No, ma'am. No. At that point, what you saw on
16 those pictures a few moments ago -- the exterior of the
17 truck appeared to be clean. The inside had debris,
18 candy wrappers, cups, crackers and stuff strewn about,
19 so, you know....

20 Q So, clearly, it wasn't spotless on the 28th?

21 A No, ma'am, it was not.

22 Q And this clearly was not a vehicle that was kept
23 spotless all the time?

24 A Not to my knowledge, no, ma'am.

25 Q Now, I'm going to publish 192, but before I do,

PETER CESTARE - DIRECT EXAMINATION

1 what is 193 and 194?

2 A Also within that video surveillance system, they
3 had in their home, there were times, as I said before,
4 where Mr. Moorer is installing these cameras throughout
5 the house to see the perimeter of the house. On at
6 least one occasion, probably more than that, from his
7 movement throughout the house, he goes up that very
8 staircase that I told you was to the left of the front
9 door as you walked in. Remember, I said I had seen a
10 camera at the top of the staircase, but I wasn't able
11 to capture it? When Mr. Moorer is going up the
12 staircase with the video camera, the cameras were on.
13 So he was capturing images. Going slowly frame by
14 frame through that system, I found the indications on
15 the same spot of the wall, and it is unique because it
16 is painted that dark green color where you can see the
17 camera mount and a hole in the ceiling where a camera
18 had been prior to this new system that he's installing.
19 So that is what was important, and these two pictures
20 show that area.

21 Q I'll ask you to step down, Mr. Cestare.

22 This is 192 and 193.

23 (State's Exhibits 192 and 193 published to the
24 jury.)

25 A As you can see, this is a mount. And on the same

PETER CESTARE - DIRECT EXAMINATION

1 photo over there, it is a mount. There is a hole in
2 the center of the mount, and you can see the painted
3 mark on the molding around it where an object had sat
4 in that area of the ceiling. That's the exact place
5 that I had observed a camera in that stairwell on the
6 20th when I was in the residence the first time.

7 Q (MS. LIVESAY) And this shows him putting up a
8 new camera system?

9 A And during this date and time, that's on the
10 camera system here, is when Mr. Moorer is walking
11 through the house carrying these new video cameras and
12 installing them to be able to look at the perimeter of
13 the house. In doing that, he captures the area that I
14 have said the camera was in prior to that in an older
15 system.

16 Q And the new camera system would not have captured
17 whatever happened the morning of the 18th?

18 A No, ma'am, the new camera system wouldn't because
19 it was installed much later.

20 Q When you say "much later," do you mean a few
21 days?

22 A A few days, yes, ma'am.

23 Q But whatever system they had before may have
24 captured it?

25 A Yes, ma'am.

PETER CESTARE - DIRECT EXAMINATION

1 MS. LIVESAY: At this time, I'll publish 192. If
2 you don't mind, the Lieutenant already told us this
3 tape is several hours, so we're going to play it and
4 fast forward, if there no objection.

5 THE COURT: You can play what you want, and the
6 defendant can play what they want.

7 MS. LIVESAY: You can still tell what is going
8 on.

9 THE COURT: Ladies and gentlemen, what they are
10 asking to do is not uncommon. What matters is either
11 side can play whatever portion they want. The exhibit
12 is admitted in its entirety. When you go to your jury
13 room, if you want to watch the whole thing, that is up
14 to you, but they'll publish only certain portions of
15 it for their purposes right now, but that does not
16 exclude you from looking at the whole thing. Don't
17 read anything to it, that is just to expedite things,
18 that is the sole purpose of that.

19 (State's Exhibit 192 published to the jury.)

20 Q (MS. LIVESAY) Who are these individuals?

21 A Can I step down?

22 THE COURT: Yes, you may.

23 A What you are looking at here is a camera on the
24 face of the house looking out into the driveway. If
25 you notice right here is the camper I showed you in the

PETER CESTARE - DIRECT EXAMINATION

1 still shots earlier. This is a trailer that was in
2 front of the pickup truck in the still shots from
3 earlier, and behind it is the black Ford F-150 pickup
4 truck. In the foreground down here is Tammy and Sidney
5 Moorer, Tammy's sister, Ashley, and her boyfriend, and
6 I don't remember his name, I'm sorry.

7 Q Lieutenant Cestare, is this the truck coming back
8 to the residence?

9 A Yes, ma'am. When you saw the truck leave a
10 moment ago, it was about an hour-and-a-half, according
11 to the clock on there, from the time it left, until the
12 time it returned.

13 Q Okay. Now, is this when they will start cleaning
14 the truck?

15 A Yes, ma'am. The truck backs in now, roughly, in
16 about 15 minutes from the time they returned home.
17 They are bringing groceries and stuff, it looks like,
18 or some type of soft bag packages into the house, and
19 then immediately after that, they begin cleaning the
20 truck.

21 You will see them walk towards the door. It
22 appears that it's, like, shopping bags from a grocery
23 store, or something of that nature. There are the
24 grocery bags, and then right after that is when they
25 start cleaning the truck.

PETER CESTARE - DIRECT EXAMINATION

1 During this time frame, you can see movements by
2 the doors of the truck, and you can see a considerable
3 amount of time being spent to clean the doors, door
4 panels, inside of the vehicle and so forth, and about
5 30 minutes into them cleaning the truck, Sidney starts
6 a burn pile over in the side yard and starts burning
7 some of the rags they are cleaning with, and it
8 continues throughout the whole time they are there.

9 Q Is that someone cleaning the passenger door?

10 A Yes. Watching the videos several times, Tammy
11 Moorer is on the passenger's side of the vehicle pretty
12 much intently cleaning at the passenger doors. Sidney
13 is on the driver's side of the vehicle. You see them
14 kind of come back and forth at points, but for the most
15 part, Tammy Moorer is on the passenger's side of the
16 vehicle. The vehicle is backed in, as you can see, and
17 Sidney Moorer is on the driver's side of it.

18 Q And they are both cleaning?

19 A Yes, ma'am.

20 I looked at it several times, looking at the burn
21 pile, trying to determine if it looked like, you know,
22 paper towels or cloth towels. You'll see in the burn
23 pile where some of the items are thrown on top of fire
24 that is already burning, and it almost, like, smothers
25 it out where items had been to picked up to let the

PETER CESTARE - DIRECT EXAMINATION

1 fire pick up again, which leads me to believe it was
2 towels, like cloth towels, and not paper towels.

3 Q And who are we looking to start the fire?

4 A Sidney goes over and starts the fire about --
5 somewhere around 30 minutes into the start of the
6 cleaning of the truck.

7 Just before Sidney starts the fire, on the time
8 on the clock on there, it is somewhere around 16:30,
9 representing 4:30 in the afternoon. A few moments
10 before, he walks over to the passenger's side where
11 Tammy is, gets a bunch of rags from her, and that is
12 what he takes over and starts at the burn pile.

13 You just saw Sidney walk across the camera on the
14 left now. It should split to the other area of the
15 yard where the burn pile is. If you look in the upper
16 portion of that video frame, you'll see where the burn
17 pile was. That camera is facing what would be the
18 side yard of the house, to the side beyond where
19 camper was parked.

20 Right there, about the center of the screen, is
21 Mr. Moorer coming over with a handful of rags or
22 something to burn. The reason why you had to split
23 cameras is when he walked past in front of the camper,
24 in the other view he switches to another camera, so
25 that is why I brought it to this angle, so you would

PETER CESTARE - DIRECT EXAMINATION

1 see it from here. They are still over cleaning on the
2 truck, while he's over here starting a burn pit.

3 Now it just switches back to the driveway area.

4 Q Is that the defendant walking back over?

5 A Yes, ma'am, it is.

6 Q So you just followed him from over there, to over
7 here?

8 A Yes. I picked him up leaving from the side yard
9 area, and that is why we switched back into this camera
10 now.

11 As you can see, from the time that is showing on
12 here, there is a considerable amount of cleaning that
13 occurred in the passenger compartment of that truck.
14 That seems to be where their point of focus is on that
15 vehicle, cleaning in the -- inside the passenger
16 compartment, inside the four doors of that truck.

17 Now we'll get back to the other angle to the burn
18 pit, and you'll see them take other stuff over to the
19 burn pit and throw it on there.

20 Q Does that include the washing of the truck and
21 the burning?

22 A Yes, ma'am. You see there, just a moment ago,
23 Tammy Moorer walks off camera to the right. She goes
24 back over towards to the driveway side to the house.

25 Q And that ends all the washing and burning?

PETER CESTARE - DIRECT EXAMINATION

1 A Yes, ma'am. That I've got from there, yes.

2 Q Let me ask you something. Did you see the
3 defendant get out a shop vac?

4 A You see them at various points they are out there
5 with a pressure washer at the truck and at the street.
6 They are cleaning extensively throughout the inside of
7 the truck, and, to me, it looks like the truck is being
8 vacuumed out as well.

9 Q So would it have been possible for you to collect
10 touch DNA on a truck that had been vacuumed and cleaned
11 extensively?

12 A Not likely at all. I mean, based on what I have
13 seen on that camera system, it is obvious that so much
14 time was spent cleaning, any chance of touch DNA,
15 hairs, trace fibers, anything of that nature is not
16 going to be something that we'll find.

17 Q How long have you been doing crime screen?

18 A Probably 25, 30 years.

19 Q And would you expect to be able to collect any
20 evidence from a vehicle after it had been cleaned for
21 two hours?

22 A Not the way that vehicle was cleaned, no, I
23 wouldn't expect to find anything there.

24 Q Let me ask you something. Could you have been
25 able to potentially get DNA from the rag used to clean

PETER CESTARE - DIRECT EXAMINATION

1 the truck?

2 A Yes, ma'am.

3 Q Once the rags were burned, could you have gotten
4 any evidentiary value?

5 A No. They were destroyed in the burn pile. There
6 is nothing that would be of any value to us at that
7 point.

8 Q Okay. And, again, all of this was done before
9 you collected the truck 12/28?

10 A That's correct.

11 Q And you couldn't get in the truck 12/20?

12 A No. Ms. Moorer would not let me have access to
13 the truck on the 20th.

14 Q But by the time you got it, it had been cleaned?

15 A I'm sorry, I didn't hear what you said.

16 THE COURT: Solicitor, you already asked that
17 question. Move on.

18 Q (MS. LIVESAY) Let me ask you this, Lieutenant.
19 How about the camera system, would the camera system
20 that was up on 12/20, when you first went out there,
21 do you believe that would have been of evidentiary
22 value?

23 A Most certainly that would have been of value to
24 us, yes.

25 Q And did you view when they first started putting

PETER CESTARE - CROSS-EXAMINATION

1 up this camera system?

2 A Yes, I did.

3 Q And was that after 12/20?

4 A Yes. There was a point in time where detectives
5 from my agency went out to do a search warrant on the
6 house to get a camera system, and they were informed
7 that the camera system in the residence on that date
8 had just been purchased and had been installed. So
9 that camera system that they saw on that day, is the
10 system that you just witnessed, and that is not the
11 same system that would have been in the house on the
12 20th when I was there.

13 Q Would you have wanted the system there on the
14 20th?

15 A Yes, ma'am, most certainly.

16 Q Would you have wanted to swab the truck prior to
17 them washing it?

18 A Yes.

19 Q And the washing of the truck and the new system
20 came all after you showed up on the 20th?

21 A That's correct, it was after the 20th.

22 MS. LIVESAY: No further questions, Your Honor.

23 THE COURT: Cross-examination, please.

24 CROSS-EXAMINATION

25 BY MR. BOUCHETTE:

PETER CESTARE - CROSS-EXAMINATION

1 Q Lieutenant Cestare, you were at the Moorers
2 residence with consent of Mrs. Moorers on the 20th,
3 correct?

4 A With consent of Mrs. Moorers on the 20th, that's
5 correct.

6 Q In other words, you and Officer Squires, Cauble
7 and Hardee all showed up together, correct?

8 A In separate vehicles, but, yes, at the same time,
9 thereabouts.

10 Q You didn't announce you were coming, correct?

11 A No. We came from the boat landing at Peachtree
12 and went directly from Peachtree at Highway 814 to the
13 Moorers' residence.

14 Q And she was under no obligation to let you three
15 officers in her house at that point?

16 A No, sir. We were there purposely as a cursory
17 investigation into a missing young lady.

18 Q But I know you said they were not a suspect at
19 that point, but you were at least there searching
20 specifically for something related to Heather Elvis; is
21 that safe to say?

22 A We were trying to find something that would help
23 locate or determine what occurred with Ms. Elvis; that
24 is correct.

25 Q But -- so that was the purpose of your presence

PETER CESTARE - CROSS-EXAMINATION

1 there, specifically looking for anything that may
2 indicate a link between the Moorer residence and
3 Ms. Elvis; is that fair to say?

4 A Purposely looking for anything that would help us
5 find where Ms. Elvis was. I wasn't myself looking for
6 any link between anyone. I'm trying to find the young
7 lady who is missing.

8 Q So, again -- but the purpose that you are there,
9 in helping you find Ms. Elvis, you are looking for
10 something in that house that would help you find
11 specifically Ms. Elvis?

12 A It would be information, could be anything.
13 Anything that was said or offered to us, as far as any
14 information, that could have been helpful, sure; that
15 was the intent of being there.

16 Q And so you went there and took note to try to
17 document as many things as you could, correct?

18 A In the standpoint of photographs, yes, sir, I
19 photographed.

20 Q I mean, you were down to you took pictures of the
21 mailbox; you remember that?

22 A Yes.

23 Q You took pictures of various items around the
24 house?

25 A Yes.

PETER CESTARE - CROSS-EXAMINATION

1 Q Took items of various clothes and different
2 things inside the house?

3 A From what I could see from room doorways, yes,
4 sir.

5 Q And, again, going from the front of the house
6 unannounced, to the inside of the house taking
7 pictures, you noticed no items at that point that were
8 indicative to you of being connected to Ms. Elvis,
9 correct?

10 A Not connected, no.

11 Q You saw no items in the vicinity of the house
12 that contained blood on them, correct?

13 A No, sir.

14 Q Nothing that drew your attention -- let me
15 withdraw that question.

16 You mentioned that you saw a camera system on the
17 exterior, as well as the interior, of the Moorer
18 residence on the 20th, correct?

19 A That's correct, yes, sir.

20 Q And you are sure that the camera system was there
21 on the 20th?

22 A Yes, sir, that is the day I was there.

23 Q You are sure that one was installed prior to the
24 installation of the system on the 23rd?

25 A I don't know when it was installed, but on the

PETER CESTARE - CROSS-EXAMINATION

1 20th, when I was there, there were three cameras on
2 the front of the house that I could see, and one camera
3 inside the house that I could see.

4 Q Because that would seem to be important to know,
5 of evidentiary value; wouldn't you agree?

6 A Of course.

7 Q And you were -- none of those -- there is no
8 photographs containing any of these cameras on any of
9 these photos we just entered?

10 A That's correct. I took pictures of the house,
11 but I did not specifically focus on any of the video
12 cameras because I did not want to alert Ms. Moorer to
13 the fact that I realized they were there.

14 Q Well, you have three officers there, could not
15 one of you have not taken photographs outside the
16 presence of Ms. Moorer?

17 A No, sir, just I was. Ms. Moorer was with me
18 side-by-side the entire time I walked through the
19 house.

20 Q Okay. So when she let you in the house, if these
21 cameras were there on the 20th, then she would have
22 known that you would have seen them, right, because you
23 were there in her house?

24 A I don't know whether she knew I seen them or not.
25 I'm just telling you a factual statement, that I saw

PETER CESTARE - CROSS-EXAMINATION

1 four cameras on the house.

2 Q But according to you, these were not concealed
3 cameras, they were out in the open?

4 A That's correct, they were out in the open.

5 Q So anyone walking by would have known you would
6 have seen them, right?

7 A Perhaps. Depending -- the outside cameras were
8 difficult to see because of the foliage, the trees in
9 the way. The inside camera, there was no doubt. I
10 mean, when you walked up the staircase, it was staring
11 you in the face.

12 Q So there would have been no need or no effort to
13 try to conceal your attempt to try to take the
14 photograph of that camera because she would have known
15 that you were seeing it, right?

16 A That's not correct, no, sir. The purpose for
17 concealing the fact of taking a photograph was alerting
18 her. Had she known that I had seen those cameras, the
19 system would have disappeared; quite ironically, it
20 did.

21 Q Let's talk about that. You, as an officer, if
22 you would have found those to be that important, you
23 could have sought a search warrant at that time,
24 correct?

25 A Yes, sir. But at that particular moment, whether

PETER CESTARE - CROSS-EXAMINATION

1 or not we had the probable cause for a search warrant
2 was up to the detectives to determine. I simply
3 alerted them to the fact that I have seen four cameras
4 that I can account for, three on the face of the house,
5 one inside of the home.

6 Q Well, again, by this point you are there to
7 search for Ms. Elvis, correct, or search for evidence
8 related to Ms. Elvis?

9 A We are there to obtain any information that is
10 going to help us locate that young lady, yes.

11 Q And you notice -- you say you see these cameras,
12 that we don't see in the video, and they are of
13 evidentiary concern to you?

14 A Yes, sir.

15 Q And wouldn't be entirely possible, given that you
16 have three officers there, for one of you to stay at or
17 near the Moorer residence while another one searched or
18 obtained a search warrant?

19 A No, sir. At that time, I don't believe we could
20 have established enough probable cause. Bear in mind,
21 our first dealings of this young lady being missing is
22 on the 20th. We're looking at her vehicle. We're
23 searching a boat landing. We're searching an
24 apartment. We're searching a known friend or co-worker
25 of hers -- not searching, but visiting a known friend

PETER CESTARE - CROSS-EXAMINATION

1 or coworker of hers, Mr. Moorers' house. So did we
2 have enough for a search warrant? I'm not a judge, so
3 I can't determine that, but I don't think I personally
4 could have articulated at that point that it was that
5 imperative to lock everything down. Like I said, I let
6 the detectives know. I let the detectives, supervisor,
7 my counter part, the lieutenant of the detectives know
8 that I saw cameras on the house, and it may be of
9 interest to their investigation.

10 Q On the 20th, they did not serve a search
11 warrant at that point?

12 A Not to my knowledge, no, sir.

13 Q Again, by this point, because you are saying that
14 you searched her residence and you are here just sort
15 of doing a cursory review, were you ever asked to go do
16 any such cursory review on any other residences?

17 A Yes. Actually, during the course of this
18 investigation, I probably conducted well over a hundred
19 searches through consent and through other means of
20 looking at areas that could potentially be where this
21 young girl is located or tips that came in to the Horry
22 County Police tip line. Anything that indicated
23 anything having to do with where Ms. Elvis could be
24 located, I followed up on extensively.

25 Q But you had not done that as of the 20th?

PETER CESTARE - CROSS-EXAMINATION

1 A As of the 20th, no, sir. The first time I knew
2 anything about that young lady missing was the morning
3 of the 20th.

4 Q On the morning of the 20th, did you go search
5 the home of Steven Schiraldi?

6 A No, sir, I did not.

7 Q Now, again, this cleaning that we made a big deal
8 about, that occurred two days past the morning of the
9 18th, correct?

10 A I can only tell you what the time was on the
11 system that I looked at, and the time and date on the
12 system was December 23rd.

13 Q I'm sorry, the 23rd. So, actually, five days
14 past the disappearance of Ms. Elvis?

15 A That is correct, based on the 18th, yes, sir.

16 Q And about three days following the time that you
17 and Detective Squires and Detective Cauble and Hardee
18 went to the Moorer residence?

19 A That's correct. Again, that is based on the time
20 that I'm seeing on the camera system.

21 Q As opposed to a cleaning that might have occurred
22 immediately after you left or that night or the
23 following morning, it was three days later, correct?

24 A Don't know exactly when it was. I'm telling you
25 what the date was on the camera system. The date and

PETER CESTARE - CROSS-EXAMINATION

1 time of the camera system was December 23rd, 2013, you
2 know, in and around the 1600 hour, 4:00 in the
3 afternoon hour. Now, whether or not that date is
4 correct is not for me to say.

5 Q Okay. Again, that cleaning we've heard a lot
6 about, I mean, obviously, it is broad daylight,
7 correct?

8 A Yes, that's correct. Daylight, and it looks like
9 towards the end of it, it is starting to go to dusk
10 where the sun starts to go down.

11 Q And the cleaning occurs right in the front yard,
12 right?

13 A Yeah, you can say the front yard, but it is
14 behind the Caison house, so not visible to vehicle
15 trafficking coming down Highway 814. Their driveway is
16 somewhat secluded around the back of the Caison house.

17 Q And the cleaning is occurring right in the
18 presence of the security system they just installed?

19 A At somewhat of a distance, yes.

20 Q So is it safe to say, given the fact that it is
21 right there in front of the security cameras, broad
22 daylight, in the front yard, safe to say that the fact
23 that they were cleaning this vehicle is not something
24 they were trying to keep secret, correct?

25 A I wouldn't say that. You know what, I have a

PETER CESTARE - CROSS-EXAMINATION

1 camera system on my house, and I forget it is there
2 sometimes. You know, I'll be walking around the house
3 and reviewing the video footage from my house and, oh,
4 crap, there I am. So I can't say that they are aware
5 of it. I mean, I forget my own system is there.

6 Q According to you, this would have been just
7 installed a couple days before, right?

8 A Well, there was a camera system on the house on
9 the 20th, so I'm -- this system, yes, that you are
10 seeing. We were told it was installed after the
11 20th, but there had been a camera system on the
12 20th, so I'm quite sure they are used to a camera
13 system being on the house, and you forget the presence
14 of it.

15 Q So you think they just forgot it was there?

16 A I just don't think they paid it any attention. I
17 don't pay the ones on my home any attention.

18 Q Also, you made an issue out of this burn pile in
19 the backyard. Safe to say some people keep a burn pile
20 for burning trash, especially in the unincorporated
21 part of the county?

22 A Yes, sir, I believe they do.

23 Q So that is not an uncommon thing, to have a burn
24 pile in the backyard, particularly in the
25 unincorporated section of the county?

PETER CESTARE - CROSS-EXAMINATION

1 A It is not uncommon at all, but I don't burn the
2 rags I clean my car with. That is just me, but that
3 seemed unusual to me. When I -- these are all pieces
4 of what draw my attention to an object.

5 Q I understand.

6 A I'm looking at things for -- I look at things in
7 a different light than most people do. I'm looking at
8 trying to solve crimes or solve mysteries, and anything
9 that is going to help me get to that conclusion -- you
10 know, when I see someone washing a car, that doesn't
11 raise a red flag to me. When I see them spend that
12 much time on the interior of a car or a vehicle, that
13 raises a flag. When I see them taking the cleaning
14 rags that they are cleaning the vehicle with and burn
15 them, red light just lit up.

16 Q Even though they already -- even though burning
17 trash and items, things like that, is not uncommon?

18 A They are not burning trash, they are burning
19 towels.

20 Q In a burn pile in the backyard, correct?

21 A To the side yard of where they are standing, yes,
22 sir.

23 Q Safe to say that is their regular burn pile
24 household trash and other items, correct?

25 A I would think it could be, but there is also

PETER CESTARE - CROSS-EXAMINATION

1 garbage cans in the front of the house, as you saw in
2 the video. There is a trashcan at what would be the
3 back of the camper. There is also another, like,
4 recycle bin. So like most people, I have trashcans at
5 my house. I don't burn anything in my yard unless it's
6 something I don't ever really need.

7 Q Right. But you can't testify as to how often or
8 how they dispose of their trash in a burn pile?

9 A No, sir, I can't.

10 Q Now, you also interviewed -- whenever you arrived
11 there, the F-150, was that the only vehicle at the
12 Moorer residence?

13 A No, sir. The camper was there as well, and then
14 the trailer you see in that video was also there. That
15 is on the 20th now I'm speaking about, on the 20th.
16 The black F-150 was parked in the driveway. There was
17 a trailer in front of it, and the camper was to the
18 right of it, that pull-along Prowler camper, or
19 whatever model it is, I'm not too sure.

20 Q Other than the camper trailer we saw, and the tow
21 trailer we saw, there was no other automobiles in the
22 Moorer residence; is that correct?

23 A Not at the Moorer residence, and I can't
24 specifically say what was in the driveway next to it.
25 But on the 20th, as I mentioned, we were allowed to

PETER CESTARE - CROSS-EXAMINATION

1 go into the house and look around, took photos. Tammy
2 Moorer was even kind enough to open the camper up. She
3 unlocked the camper and allowed me to step into the
4 doorway of the camper and take a couple of pictures
5 inside. When I asked about the black truck, she said,
6 no, I don't have the keys, and you can't look at that.

7 Q And Sidney was not there, correct?

8 A To my knowledge, he was not, no, sir.

9 Q Do you know if he had the keys with him?

10 A I don't believe he did, because I believe he was
11 at the police department being questioned by the
12 detectives, and Mrs. Moorer drove that truck back to
13 the house while he was at the police department being
14 questioned.

15 Q Did you say or take note of the keys being there
16 at the Moorer residence?

17 A Sir?

18 Q You didn't see or observe the keys to the F-150,
19 correct?

20 A I didn't, but Tammy drove that vehicle back from
21 the police department to the house.

22 Q Later in the day?

23 A On the 20th. So she should have had the keys
24 for it when I asked about it, and she said it was
25 locked and didn't want me to look at it.

PETER CESTARE - CROSS-EXAMINATION

1 Q You were still able to observe the exterior of
2 the F-150, correct?

3 A Yes, sir.

4 Q And did you find anything of evidentiary value on
5 the exterior of the F-150?

6 A No, sir. Again, I was there under consent, so I
7 wasn't free to start taking swabs or lifting
8 fingerprints or anything of that nature from the
9 vehicle. At that time, I don't -- I didn't have a
10 reason to. I didn't have any knowledge that the
11 vehicle had anything of importance to me at that
12 particular moment. We were there, like I said, to try
13 to gain information that was going to help us.

14 Q Where was -- do you know where Ms. Elvis' vehicle
15 was at this time?

16 A Yes, sir. It was at Sly Fox Trail, at her
17 parents' house.

18 Q That was not brought into Horry County police
19 custody during this time period, correct?

20 A On the 20th, no, sir, it was not.

21 Q So just to be clear, by this point, between you
22 and Ms. Domogauer, Ms. Elvis' car has been inspected
23 and evaluated, correct?

24 A Basically. Bear in mind, we're unaware on the
25 20th of a crime being committed. It is not a crime

PETER CESTARE - CROSS-EXAMINATION

1 to go missing. We're there searching or trying to
2 locate a missing person. So our initial look at that
3 car on Sly Fox Trail, you know, my questions were how
4 did the vehicle get from the landing to Sly Fox Trail,
5 and that was explained to me. We then photographed the
6 car in the driveway and did some preliminary things to
7 the vehicle that I would do on any vehicle I was going
8 to deal with. We took DNA swabs from the door handles,
9 steering wheel, gear shift, things of that nature that
10 would help me identify who drove that vehicle or who
11 may have been behind the wheel of it. In looking at
12 the vehicle, obviously, you want to look at it for a
13 number of reasons to see if there's anything about that
14 vehicle that can indicate the size or number of people
15 that may have been in it.

16 Q And, eventually, you took possession and
17 evaluated Sidney's F-150, correct?

18 A Yes, sir. Eventually we took that, and
19 eventually we took Ms. Elvis' car also and brought it
20 in.

21 Q And you, obviously, searched the Moorer
22 residence, correct, multiple times?

23 A Yes, sir. I believe we searched it on one other
24 occasion, but that was with a search warrant at that
25 time.

PETER CESTARE - CROSS-EXAMINATION

1 Q And you, obviously, searched Peachtree Landing,
2 correct?

3 A Extensively, yes, sir.

4 Q So between -- let me go through this. You found
5 no evidence of Mr. Moorer in Ms. Elvis' car, correct?

6 A I'm sorry, I didn't understand that.

7 Q You found no physical evidence linking Mr. Moorer
8 in Ms. Elvis' car?

9 A No, sir, not that I'm aware of.

10 Q And in Sidney's F-150, there was no evidence
11 linking him to Ms. Elvis having been in that car?

12 A There may have been, but by the time I was able
13 to do anything with it, obviously from the video, there
14 was no point in trying to obtain any DNA or anything
15 from that vehicle; it had been cleaned out.

16 Q So that is a no? Ultimately, you did not find --

17 A No. No, sir.

18 Q And, again, you went through Sidney's house,
19 correct?

20 A On another -- well, on the 20th, yes. I'm
21 going to call it a brief walk-through of the house, and
22 then at a later date under a full search warrant, yes,
23 sir.

24 Q And, at some point, you utilized cadaver dogs
25 during subsequent searches of the Moorers' residence,

PETER CESTARE - CROSS-EXAMINATION

1 didn't you?

2 A Yes.

3 Q And those results indicated nothing of
4 evidentiary value?

5 A The cadaver dogs were used on the grounds outside
6 of the house. Now, you have to bear in mind this is
7 months later.

8 Q Sure.

9 A So any type of DNA or anything that is outside is
10 going to be degraded, and the chances of finding it,
11 obviously, have greatly decreased as opposed to being
12 able to do it at an earlier time.

13 Q So, again, that's a no?

14 A No. Yes, sir.

15 Q And there was -- you found no evidence of Sidney
16 Moorer at Peachtree Landing; in other words, nothing
17 connected to Sidney Moorer when you did that search?

18 A I found nothing of him at the landing, no, sir.

19 MR. BOUCHETTE: Court's indulgence.

20 THE COURT: Yes, sir.

21 (A brief pause in the proceedings.)

22 THE WITNESS: I'm going to drink this whole
23 pitcher here.

24 MR. BOUCHETTE: No further questions.

25 THE COURT: Redirect.

PETER CESTARE - REDIRECT EXAMINATION

1 MS. LIVESAY: Just a couple.

2 REDIRECT-EXAMINATION

3 BY MS. LIVESAY:

4 Q Lieutenant, did Mr. Bouchette ask you several
5 questions about the dates and times of what was done
6 when you went to the car, when you took pictures, when
7 you did this?

8 A Yes, ma'am.

9 Q If you don't mind, I'll show you a calendar.
10 (State's Exhibit 196 marked.)

11 Q This is a calendar. I'm showing you 196, a
12 calendar for November and December of 2013.

13 A Yes, ma'am. I'll assume that the days and dates
14 are correct, yes, ma'am.

15 MS. LIVESAY: Your Honor, at this time the State
16 wishes to put 196 in evidence so Mr. Cestare can point
17 out dates.

18 MR. BOUCHETTE: Objection, Your Honor. He's not
19 been able to establish, and I can't tell if that is
20 the --

21 THE COURT: I don't know what the purpose is.

22 MR. BOUCHETTE: I don't know what the relevance
23 is either, and it's beyond the scope of cross.

24 THE COURT: It is a record we have to keep. What
25 is the purpose of it? At this time -- let's have a

PETER CESTARE - REDIRECT EXAMINATION

1 side-bar.

2 (Whereupon, a bench conference was had.)

3 THE COURT: I sustain the objection, thank you,
4 as to the calendar.

5 Q (MS. LIVESAY) Lieutenant, there were several
6 important dates that you gave this jury about when you
7 were at the house; do you remember that?

8 A Yes, ma'am.

9 Q When did you go to the Moorer residence for the
10 very first time?

11 A Okay. As I stated earlier, my entire
12 investigation linked up with the detective division
13 from the county police all began on December 20th,
14 and I don't know what day of the week was or whatever.
15 But December 20th is when the investigative division
16 of the police department was notified that this young
17 lady was missing. She went missing on December 18th,
18 so two days before.

19 Q Did you go to the defendant's house?

20 A On the 20th, I was at the Elvis residence early
21 in the morning and looked at her car. I was at the
22 Peachtree Boat Landing for the first time on the
23 20th. After leaving the Elvis' residence, sent
24 someone to Heather Elvis' apartment from my division to
25 get a look at the department and -- bear in mind, we're

PETER CESTARE - REDIRECT EXAMINATION

1 trying to find this young lady. We're trying to do
2 everything we can to protect her. So we're at the
3 Elvis house. We're at the Peachtree Landing where she
4 was last reportedly to have been. We're at her
5 residence on River Oaks Drive, and later that afternoon
6 is the first time I go to Mr. and Mrs. Moorers'
7 residence, Sidney and Tammy Moorers, is again on the
8 20th, yes.

9 Q And when you go to the defendant's residence on
10 12/20, do you see cameras already installed on the
11 home?

12 A Yes, ma'am, you do. On the 20th, there is a
13 camera -- looking at the face of the house, there is a
14 camera on the right corner, left corner and on the
15 center gable on the top peak of the center of the house
16 in the front. All three of those cameras appeared to
17 be looking towards the front of the house or towards
18 the side yard where you would have seen in the second
19 set of videos that burn pile and so forth. Then, in
20 the second set of videos, you would have seen the truck
21 part and the camper part in the driveway. So that was
22 on the 20th.

23 Inside the house was a fourth camera that was in
24 the stairwell going up the stairs. It was right at
25 that green sectional wall where the wall was kind of

PETER CESTARE - REDIRECT EXAMINATION

1 like two-tone paint that they hadn't finished it --
2 pardon, it is green paint, a lighter color paint, and
3 the white crown molding at the ceiling. You can
4 clearly see -- I could clearly see that day on the
5 20th that there was a camera lens there.

6 Now, when I looked at the video from the system
7 -- the newer system that had been installed in the
8 house is when I see Mr. Moorer go up the staircase
9 with the new cameras, power it on and you get a feed
10 of someone -- like you get seasick. You are walking
11 through the room and he's carrying a video camera that
12 is showing live, and I'm looking at this thing, and
13 all of the sudden, I see the green wall. I stop the
14 recording and look, and I start going frame by frame
15 and that is when I see the pictures that you see there
16 in those two exhibits of a mounting bracket and the
17 hole in the ceiling, and that is the exact location
18 that I had seen the camera in. The paint is the same
19 on the day I was there on the 20th, and the location
20 where that mark is is exactly where I saw it on the
21 20th.

22 Q And, now, this is just a hole?

23 A Correct. And now this is a new camera system
24 that was purchased after the 20th and installed,
25 based on this date, somewhere before the 23rd. And I'm

PETER CESTARE - REDIRECT EXAMINATION

1 -- sorry, this one is 12/22. So it is purchased and
2 being installed on -- according to this date -- 12/22,
3 so two days after I saw the initial system.

4 Q So 12/22 is the date on the camera?

5 A That is what the cameras say. Now, I can't tell
6 you if that's the exact date and time. That's the date
7 and time that I'm observing on the system.

8 Q And this is when you see him first trying to --
9 or not trying to, but first installing the cameras?

10 A That's correct. That is when I see him
11 installing the cameras that I'm told is a new system.

12 Q You don't know, like a lot of home surveillance,
13 if this is the correct date or not, you just know this
14 is what is showing up on the camera?

15 A That is the date that is showing. I'll say this:
16 I have a camera system in my house, as I mentioned to
17 the defense a moment ago, and the date on the screen is
18 set by the administrator or the person who runs the
19 system. So when I installed my own camera system, I
20 don't even know what date it had until I corrected it
21 to the correct date and time based on, you know, what I
22 would take off of my cell phone, say.

23 Q So when you first put it up, it is just whatever
24 date and time?

25 A Yeah, it could be whatever. Particularly if you

PETER CESTARE - REDIRECT EXAMINATION

1 are tying it into a network or computer system --

2 MR. BOUCHETTE: Objection as to any testimony
3 about network systems or operations.

4 THE COURT: Sustained. He doesn't have any idea
5 under 602 what the date was. It doesn't matter what
6 other systems were.

7 Q (MS. LIVESAY) Let me ask you something. What is
8 the camera stamp when they are cleaning the truck?

9 A 12/23/2013.

10 Q Can you put "install" or something to indicate
11 what that date is for?

12 MR. BOUCHETTE: Your Honor, I'm going to object
13 under asked and answered. I think --

14 THE COURT: Sustained. The jury has heard all of
15 this, Solicitor, and they have a mind, too. They can
16 recall this stuff. Thank you.

17 MS. LIVESAY: Thank you, Judge.

18 THE COURT: You may write those things down for
19 your argument all you want to remind them.

20 Q (MS. LIVESAY) Just one last date so I'm clear
21 because we've talked about so many, and my co-counsel
22 was telling me earlier that I had the wrong date.

23 When did you photograph the truck?

24 A The date that I photographed the truck is
25 December 30th of 2013, so ten days after I first

JIMMY SCHROERING - DIRECT EXAMINATION

1 started into this investigation.

2 Q And --

3 A And seven days after the date of when that truck
4 was being cleaned, according to the timestamp on the
5 video surveillance system, in the residence.

6 MS. LIVESAY: No further questions, Your Honor.

7 THE COURT: Recross?

8 MR. BOUCHETTE: No further questions for this
9 witness, Your Honor.

10 THE COURT: Thank you, sir. You may step down.
11 Call your next witness, please.

12 MR. HELMS: Thank you, Your Honor. At this time
13 the State calls Jimmy Schroering. And, Your Honor, I
14 don't anticipate Mr. Schroering to be a lengthy
15 witness, I don't anticipate.

16 (JIMMY SCHROERING, having been duly sworn,
17 testified as follows:)

18 THE WITNESS: Jimmy Schroering,
19 S-C-H-R-O-E-R-I-N-G.

20 DIRECT-EXAMINATION

21 BY MR. HELMS:

22 Q Mr. Schroering -- and if I'm pronouncing that
23 wrong -- I will pronounce it wrong, so I'm sorry in
24 advance.

25 Where are you employed, sir?

JIMMY SCHROERING - DIRECT EXAMINATION

1 A I work for a company call DME Forensics.

2 Q What do you do for DME Forensics?

3 A I'm the founder and chief technology officer.

4 Q And what do your duties entail? What do you do
5 for DME?

6 A So we're a technology company, but we also
7 provide professional services, software products, help
8 recover video from surveillance systems. Then, in
9 cases where software isn't enough to answer the
10 question or recover the video, we provide professional
11 services to do that.

12 Q Tell me a little bit about your education. What
13 kind of education do you have, Mr. Schroering?

14 A I have a bachelor's degree in computer networking
15 as well as two associate degrees from Strayer
16 University.

17 Q And let's go into your experience for a little
18 bit. Tell me about your experience starting as far
19 back as you can remember.

20 A I got my start in forensics in 2003 working for
21 the North Carolina State Bureau of Investigation. I
22 was a computer forensic technician, and then eventually
23 a forensic video and forensic audio examiner. And then
24 after about 2009, I worked for Target Forensic
25 Services, Target Corporation, the same store you might

JIMMY SCHROERING - DIRECT EXAMINATION

1 shop at. They have a forensic lab that offers forensic
2 video services for not only Target cases, but pro bono
3 work for law enforcement. And after Target, I worked
4 for the Forensic Audio Video and Image Analysis Unit at
5 Quantico for the Federal Bureau of Investigation.

6 Q And then subsequent to that, you found DME?

7 A Correct, in 2013.

8 Q Have you ever worked for the North Carolina State
9 Bureau of Investigations?

10 A Yes.

11 Q What did you do for them, sir?

12 A I was a forensic video and audio examiner when I
13 left in 2009.

14 Q What about Intrex Internet Services?

15 A Yes. I was a network administrator.

16 Q Were you also a PC technician?

17 A Yes.

18 Q Tell me a little bit about any certifications you
19 hold.

20 A I'm a Certified Forensic Video Examiner from the
21 International Association for Identification, or the
22 IAI; as well as a Certified Forensic Video Analyst from
23 an organization called LEVA, which is the Law
24 Enforcement and Emergency Services Video Association.

25 Q And during the course of your career, have you

JIMMY SCHROERING - DIRECT EXAMINATION

1 ever testified?

2 A Yes. Approximately, 20 times.

3 Q How about being qualified as an expert witness?

4 A Yes.

5 Q And what were you qualified in?

6 A Depending on the case, either forensic audio
7 analysis, forensic video analysis, DVR analysis.

8 Q In fact, haven't you been qualified in this very
9 courtroom as an expert in forensic DVR analysis?

10 A Yes.

11 Q And during the course of your career -- and you
12 may or may not be able to answer this -- about how many
13 DVR devices have you analyzed?

14 A That is a difficult one. From a casework
15 perspective, probably around 50, but from a reverse
16 engineering standpoint, for the work we do in software,
17 hundreds, maybe getting close to a thousand.

18 MR. HELMS: Your Honor, at this time I offer Mr.
19 Schroering as an expert in the field of forensic DVR
20 analysis.

21 THE COURT: Do you care to examine as to
22 qualifications?

23 MR. GALMORE: No, sir. No objection.

24 THE COURT: He will be permitted to render
25 opinions in that area, Solicitor.

JIMMY SCHROERING - DIRECT EXAMINATION

1 MR. HELMS: Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 Q (MR. HELMS) Mr. Schroering, did you have an
4 opportunity to do any work on the case we're here for
5 today, State versus Sidney Moorer?

6 A I did.

7 Q And tell us a little bit about how you became
8 involved in this case.

9 A I was contacted by Ms. Livesay in May of 2016 and
10 asked by her if we could do some examinations on a DVR.

11 Q Did you do, in fact, that examination?

12 A Yes.

13 Q And tell us a little bit about that examination.
14 Specifically, what were you asked to do on that DVR?

15 A We were asked to examine the DVR and hard drive
16 and determine whether there was any video from
17 December 17th to December 20th, 2013 that was
18 available to be recovered, as well as identify if the
19 dates and times on the video that were present were
20 accurate; and if not, if we could establish what the
21 correct dates and times were.

22 Q Were you able to fulfill that request?

23 A The analysis of the date and time, yes. There
24 was no video from that time frame that was actually
25 able to be recovered.

JIMMY SCHROERING - DIRECT EXAMINATION

1 Q Were you able to review video on the DVR system,
2 however?

3 A Yes.

4 MR. HELMS: Your Honor, if I may?

5 THE COURT: Sure.

6 Q (MR. HELMS) I'm showing you what is entered into
7 evidence previously as State's 38; do you recognize
8 that?

9 A Yes, I do.

10 Q What is that?

11 A This is the additional recorder we examined in
12 2016.

13 Q Is that the video recorder you were able to view
14 footage from and find a correct time for, timestamp
15 for?

16 A Yes.

17 Q Tell us a little bit about that. I guess the
18 first question I would like to ask you about that is
19 what was the first thing you were able to see on the
20 footage that you were able to find?

21 A I think you can -- can you rephrase that?

22 Q Well, when you looked on the DVR, tell me what
23 you saw?

24 A So, in examining the DVR, we were able to
25 determine that there was -- the very first video that

JIMMY SCHROERING - DIRECT EXAMINATION

1 was present had camera movement that might be
2 consistent with a camera being set up, like a system
3 being installed. And then beyond that, there was I
4 believe several months' worth of footage of various
5 different dates and times on there.

6 Q What about deleted footage? Were you able to
7 find any deleted footage on the DVR system?

8 A No.

9 Q And what does that indicate to you?

10 A Based on the examination, we were able to
11 determine that it appeared that that system had been
12 turned on, started recording and then at a certain
13 point was finally removed from service, but there
14 wasn't any additional footage you would find as if,
15 say, something had been recorded and then deleted.
16 There was no remnants of any footage. It was as if it
17 had never overwritten any old footage from continuously
18 being recorded. There just wasn't anything there other
19 than what was recorded and accessible at the time it
20 was seized.

21 Q And in more layman's terms, the fact that there
22 was no overwritten data or deleted data consistent with
23 that being a newer system?

24 A Yes.

25 Q In 2013, was that an old antiquated DVR system?

JIMMY SCHROERING - DIRECT EXAMINATION

1 A No.

2 Q So that was an up-do-date state of the art
3 system?

4 A Yeah, it was fairly new.

5 Q What about time frames, were you able to say --
6 are you able to look in that DVR system and see if the
7 operator has actually changed the timestamps?

8 A Yes. We did numerous tests on the system of the
9 same exact type and we're able to establish how date
10 and time changes appeared within the system, and found
11 that there was two different occurrences where the date
12 and time was changed on this particular system.

13 Q How do you know there were only two? How do you
14 know there wasn't 20?

15 A We did further testing to prove that it was,
16 basically, impossible to remove log entries that would
17 indicate date and time changes. So the only two date
18 and time changes that were listed in the log for this
19 system were the only two there. In our test system, we
20 did date and time changes and attempted numerous
21 different ways of removing them and were never able to
22 actually remove them. So we're confident it was just
23 those two date and time changes.

24 Q So there were two date and time changes. Can you
25 tell us specifics about those date and time changes?

JIMMY SCHROERING - DIRECT EXAMINATION

1 A May I refer to my report?

2 Q Absolutely. You did complete a report?

3 A Yes.

4 Q I'll show you what we'll do. I'll show you now
5 what has been marked for identification purposes as
6 State's 195. Again, this is State's 195. Take a look
7 at this and tell me what that is, sir.

8 A (Witness examines document.)

9 (A brief pause in the proceedings.)

10 A It appears to be a copy of the report that I
11 issued in this case.

12 Q And is that, in fact, your report?

13 A Yes.

14 MR. HELMS: Your Honor, I would seek to introduce
15 State's 195 into evidence.

16 MR. GALMORE: No objection.

17 THE COURT: Without objection, it is admitted.

18 (State's Exhibit 195 admitted.)

19 Q (MR. HELMS) With your report in hand, can you
20 tell us the specifics of the time changes, just as
21 much as you can, because you understand it better than
22 I do.

23 A Sure. So there were two specific date and time
24 changes, the first date and time change is what we
25 refer to as a forward date and time change so the time

JIMMY SCHROERING - DIRECT EXAMINATION

1 was advanced, and that was of approximately 16 hours --
2 a little less than 16 hours pushed forward. Then, the
3 second date and time change later was a reverse date
4 and time change setting the clock back, and that was
5 almost exactly 24 hours, about 23 hours and 59 minutes
6 back in reverse.

7 Q So the first one is forward; second one is back?

8 A Correct.

9 Q I want to jump to this. Were you ever able to
10 make a determination as to a correct date and timestamp
11 of a certain event, for example?

12 A Yes.

13 Q What event did you use in the footage to make an
14 accurate determination as to a timestamp?

15 A We were asked to determine a specific event that
16 on the screen of the DVR and the timestamp of the DVR
17 said it was December 23, 2013 at approximately 16:00,
18 or 4:00 p.m.

19 Q What was that event, sir?

20 A It was multiple individuals that appeared to be
21 cleaning a dark truck.

22 MR. HELMS: Court's indulgence. If you can pull
23 up that event, 12/23 at 16:00 hours. Let's see what
24 we're looking at here.

25 Your Honor, at this time I'm referring to

JIMMY SCHROERING - DIRECT EXAMINATION

1 State's....

2 THE COURT: 192.

3 MR. HELMS: Thank you, sir.

4 THE COURT: You're welcome. We're not watching
5 it again, are we?

6 MR. HELMS: We're not watching it again, I assure
7 you.

8 Q (MR. HELMS) Mr. Schroering, if you wouldn't
9 mind, if the judge will let you step down here for
10 just one moment, please, with your report in hand.

11 THE COURT: Yes, sir.

12 A (Witness complied.)

13 Q (MR. HELMS) I'll ask you if this is the event
14 that you used as a reference to determine a correct
15 timestamp?

16 A Yes. It appears to be the same event that I
17 referenced in the report.

18 Q So we're right about at 12/23 on 2013, 16:00
19 hours. How did you make a determination as to a
20 correct timestamp?

21 A Maybe if I step back to the microphone to
22 explain.

23 Q Fair enough.

24 A The DVR we examined at the end of the recording,
25 the date and time, was approximately correct. Since we

JIMMY SCHROERING - DIRECT EXAMINATION

1 were able to establish that there were two and only two
2 dates and time changes, and we knew that those were the
3 only two, we could actually track back from the end
4 time all the way through all of the recordings and
5 establish any particular instance in time as to whether
6 or not that time was correct, and if not, the
7 appropriate adjustment to make for it.

8 Q So you were able to, basically, reverse engineer
9 the time, because you knew that the end time was
10 correct?

11 A And the fact that we had no additional date and
12 time changes. If there was a question on a different
13 type of system where dates and time changes might not
14 be able to definitely be determined to be the only
15 ones, then that would be more difficult, but in this
16 situation, this system, we knew it was only two date
17 and time changes, so, yes.

18 Q And you are confident there were only two date
19 and time changes, and you are confident in your
20 determination of a final timestamp?

21 A Yes.

22 Q And this is the event that you used to determine
23 a timestamp?

24 A This was the event that we were asked to
25 determine a real time, if you will, for this particular

JIMMY SCHROERING - DIRECT EXAMINATION

1 event as an example, but we could extrapolate any event
2 in the video and gotten a timestamp for that.

3 Q So what you are saying is -- yes or no -- the
4 timestamp for this event, 12/23/2013, 16:00 hours is
5 not correct?

6 A That's correct. Your statement is correct, the
7 time is not correct.

8 Q That is not the right time?

9 A Yes.

10 Q Tell the jury what time, on what day, this truck
11 is being washed, Mr. Schroering.

12 A Based on the analysis of the date and time
13 changes, that event appears to have actually occurred
14 December 22 at approximately 15:59, so almost exactly
15 24 hours in the past, off by a minute there.

16 Q So the camera was off 24 hours?

17 A Correct.

18 MR. HELMS: Do me a favor, Ms. Miller, mark a
19 line through that and change that to 21, because that
20 is off 24 hours. Thank you very much, ma'am.

21 Please answer any questions the defense may have,
22 sir.

23 THE COURT: You may cross-examine, Mr. Galmore.

24 CROSS-EXAMINATION

25

JIMMY SCHROERING - CROSS-EXAMINATION

1 BY MR. GALMORE:

2 Q Sir, I'm going to need you to pronounce your name
3 for me.

4 A Schroering.

5 Q Okay. I apologize if I mess it up.

6 A No worries.

7 Q Mr. Schroering, as I understand it, your role in
8 this investigation was, one, to view the footage on
9 that DVR; is that correct?

10 A Yes. In the context of the main request of
11 recovering the video and determining the dates and time
12 changes, we weren't ultimately responsible for watching
13 the entirety of the footage.

14 Q And your number two job here was to check the
15 timestamps?

16 A Correct.

17 Q The police department can't do that?

18 A Well, the police department can review the
19 footage that is on the DVR, but establishing an
20 accurate timestamp is something that takes a decent
21 amount of testing to be able to prove a hypothesis as
22 to how the dates and time changes affect the actual
23 timestamp on the video.

24 Q The SLED Internet Crimes Division can't give us a
25 timestamp off of this?

JIMMY SCHROERING - CROSS-EXAMINATION

1 A I'm not aware of the individual capabilities of
2 that particular unit. I know that there is not very
3 many people out there that go to quite the level we do
4 with the analysis in reverse engineering of these types
5 of systems, so it wouldn't surprise me if they didn't
6 have someone of that capability in-house.

7 Q And you previously worked for the FBI, right?

8 A Did you say SBI? Either way, the answer is, yes,
9 North Carolina State Bureau of Investigation, and
10 Federal Bureau of Investigation.

11 Q And the SBI is the North Carolina equivalent of
12 South Carolina's SLED?

13 A Correct.

14 Q Could the SBI give us the timestamp off of that
15 DVR?

16 A Of the personnel that I know that are currently
17 there in 2013, I don't think they would have had that
18 level of experience, but I'm not aware of their exact
19 personnel at any given time.

20 Q So, basically, is law enforcement capable of
21 doing things that you did regarding this DVR?

22 A I think it would depend on the individual
23 examiner or analyst that was asked to do it. Are there
24 people out there in law enforcement that could do this
25 work? Probably. But I would -- you would have to ask

JIMMY SCHROERING - CROSS-EXAMINATION

1 me about a specific individual.

2 Q I'm just wondering why they would have to bring
3 someone in to do it?

4 A I can say that there is -- especially in 2016,
5 digital forensics is a constantly evolving field in
6 technology that has to be kept up with, and even ten
7 years ago it was thought you couldn't recover deleted
8 footage from something like this. So it is always an
9 evolving technology and science that needs to be kept
10 up with, and sometimes that happens more in the private
11 sector, sometimes it happens more in government.

12 Q When were you brought on to this case?

13 A In June of 2016.

14 Q Do you know the date that Ms. Elvis disappeared?

15 A I do not.

16 Q You were not brought onto this case back on 2013?

17 A No.

18 Q Is this a new DVR or a refurbished DVR?

19 A I'm not aware.

20 Q Not aware, okay.

21 Now, you looked at the video footage on the DVR,
22 correct?

23 A Yes.

24 Q Were you able to find any deleted video?

25 A No.

JIMMY SCHROERING - CROSS-EXAMINATION

1 Q Was any of the video deleted off of that DVR?

2 A In my opinion, no.

3 Q Did you see Heather Elvis on that DVR?

4 A No -- well, I wouldn't know because I wasn't
5 reviewing the content. That wasn't a focus of my
6 evaluation, honestly. There is no reason for me to
7 know, based on my examination, what I was asked to do,
8 to pick out individuals or anything like that.

9 Q Is there any video on that DVR from December 17
10 of 2013?

11 A No, sir.

12 Q Is there any video on that DVR from
13 December 18th of 2013?

14 A No, sir.

15 Q Now, these time changes, you said that there were
16 two time changes on the DVR, correct?

17 A Yes, sir.

18 Q Did the time changes affect the footage that was
19 on the DVR?

20 A No, it did not.

21 Q So it's your testimony that there are no deleted
22 -- there's no deleted footage from that DVR?

23 A Correct.

24 MR. GALMORE: Thank you, sir. No further
25 questions.

JIMMY SCHROERING - RE-CROSS-EXAMINATION

1 THE COURT: Redirect.

2 MR. HELMS: Very, very briefly, Your Honor.

3 REDIRECT-EXAMINATION

4 BY MR. HELMS:

5 Q Mr. Galmore asked if there was any footage from
6 12/17 or 12/18; did you hear him say that?

7 A Yes.

8 Q Would the fact that that system being installed
9 on 12/21 make sense to you and explain why there is no
10 footage from 12/17 and 12/18?

11 A Yes, sir.

12 Q Let me ask you this other question. You say
13 there is no deleted footage on that DVR?

14 A That's correct.

15 Q Are you telling me you can recover deleted
16 footage from a DVR?

17 A Yes.

18 Q So if I wanted to hide whatever is on that DVR,
19 the only guaranteed way to do that is to get rid of the
20 DVR system itself, right?

21 A The only guaranteed way, assuming it was never
22 recovered from wherever you put it, yes.

23 MR. HELMS: Thank you. No further questions.

24 THE COURT: Recross.

25 RE-CROSS-EXAMINATION

JIMMY SCHROERING - RE-CROSS-EXAMINATION

1 BY MR. GALMORE:

2 Q Is that DVR hidden?

3 A No, sir.

4 MR. GALMORE: Thank you.

5 THE COURT: You may step down.

6 THE WITNESS: May I be released?

7 THE COURT: I'll check on that for you right now.

8 May he be excused?

9 MR. HELMS: Very much so, Your Honor.

10 MR. GALMORE: No objection.

11 THE COURT: Yes, sir, the answer to that is yes.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Solicitor.

14 MR. HELMS: I think that concludes the testimony
15 today. I would risk going over the 5 o'clock deadline
16 otherwise.

17 THE COURT: Thank you, Solicitor. And I promised
18 the jury we would not do that to them; we would finish
19 by 5:00 or before 5:00, so I'll honor that.

20 Ladies and gentlemen, thank you very much for a
21 good hard day's work. You all have been very
22 diligent, and I appreciate it. I hope you have a good
23 weekend. I ask you to be in your jury room by 9:30 on
24 Monday.

25 Please, it's very important now, and of course

JIMMY SCHROERING - RECROSS-EXAMINATION

1 you have two days in between now and temptation is
2 great, but I know that you all have already
3 demonstrated how sincere and committed you are to this
4 process, and I want to tell you it is a privilege to
5 serve with each one of you as a judge in this matter.
6 I appreciate the attention you have devoted to it.

7 I want to express, again, how important it is
8 with the work that we both -- everyone here has spent
9 this week, we don't want to have to do that again, so
10 the one way that can be jeopardized is if somebody
11 were to talk to you or try to talk to you and you
12 permitted that or had any conversation or you read
13 anything or did any research, it could jeopardize this
14 whole week's worth of work, so understand that. I
15 thank you for that, and I appreciate it. I will see
16 you on Monday at 9:30. Have a good weekend. Thank
17 you, folks.

18 (The jury exits at 4:38 p.m., and the
19 following is heard out of the presence of the jury.)

20 THE COURT: Anything from the State before we
21 recess.

22 MS. LIVESAY: No, sir.

23 THE COURT: Anything from the defendant?

24 MR. BOUCHETTE: No, Your Honor.

25 THE COURT: All right. We'll be at ease. Let's

JIMMY SCHROERING - RE-CROSS-EXAMINATION

1 chat in chambers about next week. Thank you.

2 (WHEREUPON, THE PROCEEDINGS OF SEPTEMBER 13, 2019
3 CONCLUDED. THE FOLLOWING WAS HAD ON SEPTEMBER 16,
4 2019 OUT OF THE PRESENCE OF THE JURY.)

5 THE COURT: I hope everyone had a good weekend and
6 is rested. Are there any matters from the State before
7 we bring in the jury?

8 MR. HELMS: No, Your Honor.

9 THE COURT: Anything from the defendant?

10 MR. BOUCHETTE: No, Your Honor.

11 (A brief pause in the proceedings.)

12 THE COURT: You made an objection to State's
13 Exhibit 168?

14 MR. BOUCHETTE: Yes, sir.

15 THE COURT: Can we have order, please. And the
16 side-bar was that you felt there was some prejudice.
17 That was the picture that showed the shotgun shells in
18 the vehicle, as I recall.

19 MR. BOUCHETTE: That is correct.

20 THE COURT: And you said the prejudice outweighed
21 the probative value, and I overruled that objection
22 because I really think it -- I understand your point,
23 that it shows that he had access to shotgun shells.
24 The location, I didn't know the location, but the
25 location even further confirms why I did it. It was

JIMMY SCHROERING - RE-CROSS-EXAMINATION

1 in the back, under the back seat. I know the back
2 seat was up, but there was also a shotgun shell on the
3 ground at the residence, so I think it cuts both ways.
4 It explains why there may have been a shotgun shell.
5 But for that reason, I felt that it had probative
6 value and it outweighed the prejudice without any real
7 significant prejudice either way. Thank you, sir.
8 Anything else you wish to add to that?

9 MR. BOUCHETTE: No, Your Honor.

10 THE COURT: Thank you.

11 Anything else you wish to add, Solicitor?

12 MR. HELMS: No, sir, Your Honor.

13 THE COURT: As soon as Mr. Moorer comes, we'll
14 call them in.

15 Chris, how many witnesses are you anticipating?
16 I'm not holding you to it.

17 MR. HELMS: Five.

18 MS. LIVESAY: About five.

19 THE COURT: Is that going to cover today, or is
20 that the State's case?

21 MR. HELMS: That will cover today.

22 THE COURT: Thank you. And, again, I'm not
23 holding you to that number.

24 MR. HELMS: Yes. Thank you, Judge.

25 THE COURT: One thing I do remember when I sat

JIMMY SCHROERING - RE-CROSS-EXAMINATION

1 down there is your plan on having a witness say
2 something, sometimes it doesn't come out and it
3 necessitates another witness.

4 MR. HELMS: That does tend to happen.

5 THE COURT: It does. It is the nature of the
6 beast.

7 Mr. Moorer is here, isn't he?

8 MR. BOUCHETTE: He should be, Your Honor.

9 MR. HELMS: The Sheriff's Department informs me
10 he is in the building.

11 THE COURT: He's in the building. Thank you.
12 It's Monday.

13 MR. HELMS: It's Monday.

14 (A brief pause in the proceedings while
15 Mr. Moorer enters.)

16 THE COURT: Let the record reflect that
17 Mr. Moorer is present. Let's bring in our jury
18 please. Thank you.

19 (A brief pause in the proceedings.)

20 (The jury enters at 9:33 a.m., and the
21 following is heard in the presence of the jury.)

22 THE COURT: Thank you very much, ladies and
23 gentlemen. I hope you had a restful weekend in mind
24 and spirit. Let me begin to thank you for your
25 conscientious approach to serve as a juror, and I

LINDSEY MCGRAW - DIRECT EXAMINATION

1 appreciate it very much.

2 I ask you now whether each of you during this
3 extended period away from court, that you each
4 observed fully the Court's instruction and not have
5 read anything, discussed this case with anyone or
6 allowed anyone to talk with you about it in your
7 presence, and not done any independent research; if
8 you have done that, please say "I have."

9 (The jury panel confirms with "I have.")

10 THE COURT: Any member of the jury panel unable
11 to make a commitment for any reason, please raise your
12 hand.

13 Thank you very much.

14 Now I ask you to give your attention to the next
15 witness.

16 Solicitor, good morning, you may call your next
17 witness.

18 MS. LIVESAY: Thank you, Judge. At this time the
19 State calls Lindsey McGraw.

20 (LINDSEY MCGRAW, having been duly sworn,
21 testified as follows:)

22 THE WITNESS: Lindsey McGraw, M-C-G-R-A-W.

23 DIRECT-EXAMINATION

24 BY MS. LIVESAY:

25 Q And, Mr. McGraw, if you don't mind, tell this

LINDSEY MCGRAW - DIRECT EXAMINATION

1 jury where you are currently employed.

2 A I am currently employed with QS1; it is a
3 division of Smith Technologies in Spartanburg, South
4 Carolina. I am a client services engineer.

5 Q If you don't mind, tell them where you were
6 employed prior?

7 A Immediately prior to that?

8 Q Yes.

9 A Immediately prior to that, I was a computer
10 forensic investigator for the South Carolina Attorney
11 General's Office.

12 Q And about how long had you been employed there?

13 A About a year-and-a-half.

14 Q And where were you employed prior to that?

15 A Prior to that, I was a computer -- well, there
16 was a break. I was employed by my son's HVAC
17 corporation. I was installing heating and air
18 conditioning units. I did that for about six months.
19 Prior to that, about 12 years or so, I was with the
20 Spartanburg County Sheriff's Office. I was a computer
21 forensics investigator there.

22 Q How long have you been doing computer forensics?

23 A About the last half of my law enforcement career,
24 so 26 years in law enforcement, 13 years computer
25 forensics.

LINDSEY MCGRAW - DIRECT EXAMINATION

1 Q And if you don't mind, tell this jury a little
2 bit about what you do in computer forensics.

3 A Basically, I seize and preserve information and
4 analyze information on any electronic media, that can
5 be computer hard drives, external drives, GPS units,
6 tablets, anything that contains data. I'll examine the
7 data for information that is -- necessary to prove or
8 disapprove an allegation, I'll make a report on that
9 and supply the report to the requestor.

10 Q So you, basically, extract information and then
11 analyze it by looking through it, like you say, to
12 either prove or disapprove a certain fact?

13 A That's correct. The information can be resident
14 on the media, or it can be deleted information. I have
15 the capability of looking at deleted information,
16 providing that that information has not been
17 overwritten.

18 I have a cold, excuse me. I hope my voice holds
19 out.

20 Q Okay. No. If you don't mind, tell this jury
21 whether or not you have been qualified as an expert in
22 computer forensics?

23 A I have.

24 Q And how many times?

25 A I've lost count. It's been more than four, less

LINDSEY MCGRAW - DIRECT EXAMINATION

1 than ten.

2 Q And have you been qualified in circuit court?

3 A Yes, ma'am.

4 MS. LIVESAY: Your Honor, at this time the State
5 wishes to qualify Mr. McGraw as an expert in computer
6 forensics.

7 MR. GALMORE: No objection.

8 THE COURT: Very well. He will be permitted to
9 render opinions in that area.

10 MS. LIVESAY: Thank you, Judge.

11 Q (MS. LIVESAY) Now, did you happen to assist our
12 office in computer forensics?

13 A I did.

14 Q If you don't mind, tell this jury how that came
15 about.

16 A Sure. I was contacted by the Horry County
17 Solicitor's Office because I had recently completed
18 training with Berla Corporation. They have a product
19 called "iVe," which is an automotive forensics tool.
20 The tool allows an individual to recover -- extract
21 data from a module, examine that data and make a
22 report.

23 In this case, this was on a 2013 Ford F-150. I
24 examined the Sync Gen 2 navigation unit for this
25 vehicle.

LINDSEY MCGRAW - DIRECT EXAMINATION

1 Q If you don't mind, tell them what kind of
2 information comes off the Sync Gen?

3 A The Sync Gen 2 system is a combination of
4 infotainment and telematics. Infotainment is a
5 combination term for "information" and "entertainment,"
6 that refers to the interaction of the driver with the
7 car, things like radio, air conditioning, climate
8 control, anything like that. "Telematics" refers to
9 the interaction of the vehicle to an outside source, so
10 that is external WiFi, GPS, that type of thing.

11 Q Let me ask you this. Does it also record when a
12 door opens and closes?

13 A Yes, ma'am. In this particular case, this
14 vehicle -- the Sync Gen 2 nav system will record things
15 like driver's door open, driver's door closed,
16 passenger door, lights on, lights off, odometer
17 readings periodically, GPS information, just a wide
18 variety of information.

19 Q Okay. And did you examine the -- all of that
20 information off the Ford F-150, off the defendant's
21 truck through that sync module?

22 A Yes, ma'am. That was February 18th, I believe
23 it was, in 2016. Yes, February 18th, 2016.

24 Q You talked about all the information you
25 collected, which includes opening the door, turning the

LINDSEY MCGRAW - DIRECT EXAMINATION

1 lights off and on, and GPS?

2 A Yes, ma'am.

3 Q I want to ask you right now specifically about
4 the GPS.

5 A Okay.

6 Q How does that sync module collect GPS data off
7 that truck?

8 A It has a GPS receiver. On the Ford Sync Gen 2
9 nav system, the Ford has an SD card, a map card, that
10 is inserted into an SD receptacle on the center console
11 on this particular vehicle. When that card is
12 inserted, then the navigation system is active
13 functioning, and the vehicle can record GPS location
14 information.

15 Q Okay. So as long as that SD card is in the
16 little space, in the -- what do you call it?

17 A SD card receptacle.

18 Q Okay. The Sync Gen module will collect GPS data,
19 which is the location of the truck?

20 A Correct. Current location, and you can then use
21 the GPS to plan routes, that kind of thing.

22 Q If that SD card is not pushed in, can the sync
23 module collect GPS data, which is the whereabouts of
24 the truck, can it then collect that information?

25 A No, ma'am.

LINDSEY MCGRAW - DIRECT EXAMINATION

1 Q Now, did you specifically look for that GPS data
2 on the sync module in this case?

3 A I did, yes, ma'am.

4 Q Tell this jury what you found.

5 A Well, I found a variety of GPS coordinates from
6 the subsequent owner when the truck was resold up in
7 the Charlotte, North Carolina area. Prior to the
8 vehicle being resold, I found -- the first location I
9 found -- excuse me -- was the day the vehicle was sold.
10 It was at Beach Ford, so it had geographical
11 information there. That was November 8th, I believe
12 it was. I found some GPS information for Alabama,
13 Oklahoma and Las Vegas, Nevada. That was an apparent
14 trip. That was in November. The next information I
15 found was GPS coordinates for Kissimmee, Florida.

16 Q Did you find any coordinates of the truck being
17 here in Horry County?

18 A I did, but the only GPS coordinates I found for
19 the truck being here was the one at Beach Ford, when
20 the vehicle was sold, and then after that the only GPS
21 coordinates I found was when the vehicle was returned
22 to Horry County in Conway.

23 Q And would you have expected to find GPS locations
24 here in Horry County?

25 A I would expect so. If the navigation system was

LINDSEY MCGRAW - DIRECT EXAMINATION

1 active here, I would expect to find some coordinates,
2 yes, ma'am.

3 Q Let me ask you something. Earlier, you weren't
4 in here; you just came in today?

5 A Yes, ma'am.

6 Q And we talked about the phone, and the phone --
7 Cellebrite, you do Cellebrite as well?

8 A I did, yes, ma'am.

9 Q And you can get when the phone turns on?

10 A Depending on the phone, yes, ma'am.

11 Q It is like a powering event?

12 A Correct, powering, yes.

13 Q Let me ask you something. From the sync module,
14 can you find whether or not that card had been popped
15 out, if that SD card was popped out?

16 A Yes, ma'am. The system forms a test of the card
17 to determine, first, if it is valid. It will check the
18 serial number, validate it and -- first, it checks to
19 see if it is there, and if it's not there, it obviously
20 can't do the validation. But it will do a validation
21 to make sure the card is valid and then start giving
22 you GPS coordinates.

23 If the card is not there, it will alert saying --
24 or the event log will show a card detached message in
25 the event log -- the message log, excuse me. Then, if

LINDSEY MCGRAW - DIRECT EXAMINATION

1 that GPS is not functioning, the driver will get an
2 indication on the Ford touch display -- it is a yellow
3 triangle with an exclamation point saying navigation
4 system is not working -- and you also will get a
5 compass in the upper, right-hand corner, as opposed
6 to, like, your current location.

7 Q Let me ask you this. Can the sync module give
8 you information as to if that card, that SD card that
9 is required for navigation, if it was popped out?

10 A It will show that it's been detached, yes.

11 Q It's been detached?

12 A Correct.

13 Q And once it is detached, it can no longer collect
14 GPS signals?

15 A Correct.

16 Q Tell this jury, did you ever find a date and time
17 between the 17th and 18th when that SD card was
18 detached from the truck?

19 A Yes, ma'am.

20 Q When was it?

21 A Actually, that was one of the focuses of the
22 investigation, was December 18th, 2013. I did find a
23 message log fragment. The message log fragment started
24 at 12:07 a.m. and -- excuse me, 12:06 a.m. 12:07 a.m.
25 it showed a log, an event, that the SD card, nav card,

LINDSEY MCGRAW - DIRECT EXAMINATION

1 had been detached.

2 Q Okay. So on 12/18/2013 at 12:07, it showed that
3 that nav card was detached?

4 A Correct.

5 Q If the card is detached, is there any way for
6 that car or truck, sync module, to collect information
7 as to the location of the truck?

8 A No, ma'am. The GPS unit is inactive at that
9 point.

10 Q So at 12:07 a.m., when it is detached, it is no
11 longer possible to get the location of the truck off
12 that sync module?

13 A Correct.

14 Q Let me ask you this. Tell this jury when that
15 card is detached, will the navigation work?

16 A No. You'll just have a display -- error display
17 on the dash saying that the navigation system is not
18 functioning.

19 Q Okay. And are the individuals in the vehicle
20 when it is detached alerted to the fact that it's been
21 detached?

22 A There is a prominent warning or caution, whatever
23 you want to call it, a message saying the navigation
24 system is not working.

25 Q And can the truck still run?

LINDSEY MCGRAW - DIRECT EXAMINATION

1 A Oh, yes. Absolutely.

2 Q Can the radio still go?

3 A Yes, ma'am.

4 Q So when that card is detached, the only thing
5 that changes is it is no longer collecting GPS
6 information?

7 A Correct.

8 Q I'm going to show you a couple of things. The
9 first thing I'm going to show you has already been put
10 in evidence. I thought you already had gotten it out.
11 Let's see.

12 (A brief pause in the proceedings. State's
13 Exhibits 197 through 199 marked.)

14 Q (MS. LIVESAY) Before I show you those
15 pictures -- give us a minute to find them. I just
16 pulled them out. I'm going to show you now what has
17 been marked as 197; do you recognize that?

18 A Yes, ma'am.

19 Q And are those your initials?

20 A Yes, ma'am.

21 Q And that is initialed that you saw it?

22 A Yes, ma'am.

23 Q And does this video show you what happens with
24 the SD card when it is detached?

25 A Yes, ma'am. It can explain it a lot better than

LINDSEY MCGRAW - DIRECT EXAMINATION

1 I can, because you'll see what happened -- what happens
2 when the map card is removed. It will show you the
3 display and also show what happens when the card is
4 reinserted and shows the navigation system starts
5 functioning again.

6 Q Would this assist you in your testimony today?

7 A Yes, ma'am.

8 MS. LIVESAY: Your Honor, at this time the State
9 wishes to put 197 into the evidence and publish to the
10 jury.

11 Q About how long is this?

12 A Just a couple of minutes.

13 THE COURT: Any objection, Mr. Galmore?

14 MR. GALMORE: No, sir.

15 THE COURT: 197 is admitted without objection.

16 (State's Exhibit 197 admitted.)

17 Q (MS. LIVESAY) She's setting it up. So we can be
18 as efficient with time as we can, can you step down,
19 Mr. McGraw. I'm going to have you take two pictures
20 that have already been put in evidence, 103 and 104.

21 MS. LIVESAY: Natalie, that's your mic?

22 COURT REPORTER: Yes. Yes.

23 Q (MS. LIVESAY) This has already been put in
24 evidence. They have already testified this is from
25 the defendant's truck. When you look at 103, do you

LINDSEY MCGRAW - DIRECT EXAMINATION

1 see the SD card that is necessary to collect GPS
2 information?

3 A Yes, ma'am. It's under the sunglasses and
4 toothpicks sitting on top of it.

5 Q Right there?

6 A Yes, ma'am.

7 (State's Exhibit 103 published to the jury.)

8 Q (MS. LIVESAY) And this is the card you have to
9 have in the truck to collect GPS navigation?

10 A Yes, ma'am.

11 Q Now, what are we looking at at 104?

12 A This is a center console of an Ford F-150 pickup.
13 It is what it appears to be. There's RCA jacks, two
14 USB ports. There is also an SD receptacle, which is
15 designed to receive the navigation card.

16 Q And is it empty?

17 A It appears to be, yes, ma'am.

18 Q And I'm showing the jury now 104.

19 (State's Exhibit 104 published to the jury.)

20 Q (MS. LIVESAY) This is just showing that that
21 navigational card has been detached from the truck,
22 correct?

23 A Yes, ma'am.

24 Q Now, if you don't mind, take us through and show
25 us kind of, briefly, what is on this video.

LINDSEY MCGRAW - DIRECT EXAMINATION

1 A Okay. This appears to be a navigation --

2 THE COURT: Excuse me, if you could position
3 yourself so -- maybe right over here. Thank you,
4 Mr. McGraw.

5 THE WITNESS: Yes, sir.

6 A This appears to be a navigation display on the My
7 Ford Touch, obviously a navigation map.

8 Q Okay.

9 (A brief pause in the proceedings.)

10 A And that is the center console. The SD card is
11 being removed, and this is the indication you'll get
12 when your navigation system is not functioning, so the
13 navigation SD fault.

14 (A brief pause in the proceedings.)

15 A And it gives you basically your options at this
16 point for not having a card inserted, and then the
17 information to insert the card, that is what the system
18 wants.

19 That is the display, the compass, on the upper,
20 right-hand corner. You don't have the location
21 information, just the compass.

22 The driver is now reinserting the SD card. The
23 system forms a validation, checks the serial number to
24 make sure it is a valid card, and at some point you
25 should get a proper display.

LINDSEY MCGRAW - DIRECT EXAMINATION

1 It is loading now. You should get your current
2 location, eventually. Okay, there is your current
3 location. This says "Casey Street." I can't see
4 that -- and now your map display is functioning again.

5 Q So as long as the card is in this truck, it is
6 going to be collecting GPS information?

7 A Yes, ma'am. There is an API module, Accessory
8 Protocol Interface module, and it is right behind the
9 display. That is basically the brains or the computer,
10 and that is what collects all of the information and
11 generates the message log, which is what I use to
12 determine whether or not the card was installed.

13 Q And this arrow is showing where the truck is?

14 A Yes, showing the direction of travel.

15 Q And that would be the information that the sync
16 module would be collecting if that card was attached
17 into the truck?

18 A Yes, ma'am. It will create like a breadcrumb
19 trail. GPS coordinates, it collects them and records
20 them with -- it will be latitude/longitude bearing, it
21 will have a date timestamp. So every GPS location will
22 have a date and timestamp that is referenced from
23 the -- which is a reference from January 1st, 1970,
24 the number of seconds that have elapsed since that day.
25 That is a universal standard which the time is derived,

LINDSEY MCGRAW - DIRECT EXAMINATION

1 but it will have that date and timestamp. You can
2 decode it and find out exactly what the time was when
3 it was at that particular location.

4 Q So it's not only collecting where this arrow is,
5 but it's actually collecting the date and time when
6 that arrow was there?

7 A That's correct, yes, ma'am.

8 And, again, we're going to the SD card. It has
9 been removed. That is the fault indication you'll get
10 on the display saying that your navigation system is
11 no longer functioning and it is no longer recording
12 GPS information in the message log.

13 Q Okay. So now that it's detached, we can see the
14 showing --

15 A You won't get a map. You won't get anything.

16 Q Do you see this here, this option "Where Am I
17 Now"; did you see that?

18 A Yes, ma'am.

19 Q And you can't get that information without the
20 navigation on?

21 A You can press the button, but it won't tell you
22 where you're at, because it needs that navigation
23 function to tell you where you're at.

24 Q Okay.

25 (A brief pause in the proceedings.)

LINDSEY MCGRAW - DIRECT EXAMINATION

1 A It shows that the card can be inserted and the
2 navigation system can be functioning. The card can be
3 removed while the vehicle is in operation. The display
4 is going to go away, the navigation system is going to
5 stop.

6 Q And removing the card doesn't impair anything
7 other than navigation?

8 A Just navigation. That is the purpose of the life
9 of that card, is the map data.

10 Q And as soon as you put it in, it just reboots and
11 starts right back up?

12 A It takes a minute. Like I said, it has to
13 validate the card and make sure it is active, to make
14 sure it is not a stolen card or something like that, or
15 a bootlegged card, but it will validate it, make sure
16 it is good.

17 Q Okay. And when was the card detached from the
18 defendant's truck?

19 A As I testified earlier, it was the 18th of
20 December, 2013 at 12:07 a.m.

21 Q Thank you, Mr. McGraw. If you don't mind, I have
22 a couple more questions.

23 Now, you do computer forensics, and you also do
24 Cellebrite and phone data as well, correct?

25 A Yes, ma'am.

LINDSEY MCGRAW - CROSS-EXAMINATION

1 Q And are you familiar with phone records at all
2 and tower data?

3 A Yes, ma'am.

4 Q So all of this kind of goes together?

5 A It does, yes. I didn't do any cell phone or
6 tower data investigation on this.

7 Q Okay. Let me ask you this. When we're talking
8 about GPS data, are we talking about an exact location?

9 A Yes, ma'am. It is exact within meters.

10 Q And when we're talking about tower data and
11 sectors, we're talking about a much more generalized
12 area?

13 A That's correct. Towers use vectors to kind of
14 triangulate where the position is, and it really
15 depends on the provider as to how accurate those
16 vectors are. It varies.

17 Q So the most specific data as to location is GPS?

18 A Certainly.

19 MS. LIVESAY: No further questions for this
20 witness, Your Honor.

21 THE COURT: You may cross-examine.

22 MR. GALMORE: Thank you.

23 (A brief pause in the proceedings.)

24 CROSS-EXAMINATION

25

LINDSEY MCGRAW - CROSS-EXAMINATION

1 BY MR. GALMORE:

2 Q Good morning, Mr. McGraw.

3 A Good morning.

4 Q When you were telling us about your background, I
5 think you said that you previously worked for the
6 Attorney General's Office in the Computer Crimes
7 Division?

8 A Yes, sir.

9 Q Can you explain to the jury who the Attorney
10 General is?

11 A Attorney General is the chief prosecutor in the
12 state.

13 Q That is the number one law enforcement officer in
14 the state?

15 A Yes, sir.

16 Q And what did you do in the Computer Crimes
17 Division?

18 A I was exclusively investigating child pornography
19 investigations for that year-and-a-half.

20 Q Does the Computer Crimes Division also download
21 devices such as computers, laptops, desktops, things of
22 that nature?

23 A Yes, sir.

24 Q What about cell phones, can the Computer Crimes
25 Unit download cell phones?

LINDSEY MCGRAW - CROSS-EXAMINATION

1 A Yes, sir.

2 Q So they do extractions on phones?

3 A Yes, sir.

4 Q And I understand you were dealing with the child
5 pornography portion, but that department, the Computer
6 Crimes Department, also downloads devices?

7 A Yes, sir.

8 Q Now, in this case, we're not talking about a
9 phone or a tablet, we're talking about the black box
10 that is in the car?

11 A I will accept that. That's fine, yes, sir.

12 Q Thank you. Yes, sir. When did you conduct an
13 extraction on this device?

14 A I did the extraction on the 18th of
15 February 2016.

16 Q Who was present for this extraction?

17 A Just myself.

18 Q How did you end up receiving the truck?

19 A I didn't receive the truck. The truck was at the
20 Conway Ford dealership. I was notified it was there.
21 I met investigators with the Horry County Police
22 Department, I guess it is, and the Solicitor's Office.
23 A Ford technician was engaged to remove the module from
24 the vehicle. There was a crime scene investigator from
25 Horry County there with me. I think her name was Jill

LINDSEY MCGRAW - CROSS-EXAMINATION

1 Domogauer.

2 Q Yes, sir, we've heard from her.

3 A She took possession of the API module, and then I
4 immediately took it from her and secured it.

5 Q Okay. So this was February 18th of 2016?

6 A Yes, sir.

7 Q Almost two years after Ms. Elvis' disappearance?

8 A Yes, sir.

9 Q And at this point you went to the Ford
10 dealership, and you said there were Horry County police
11 officers at the dealership, and you said there were
12 representatives from the Solicitor's Office at the
13 dealership, correct?

14 A Yes, sir.

15 Q There was a Ford technician, and there was
16 Ms. Domogauer from the police department?

17 A Yes, sir.

18 Q Who took the device out of the truck?

19 A The Ford technician took it out.

20 Q And he hands it to Ms. Domogauer?

21 A Yes, sir.

22 Q And she hands it to you?

23 A Yes, sir.

24 Q Now, from there, did you do your extraction at
25 Beach Ford?

LINDSEY MCGRAW - CROSS-EXAMINATION

1 A No, sir.

2 Q Where did you have to take it?

3 A I was housed at the Sleep Inn. I don't remember
4 the address. But I took the module back there with my
5 equipment. The extraction process took about four
6 hours, so I babysat it the whole time. And then when I
7 was done, I secured the unit. It was after hours. I
8 returned the unit and a copy of the data, which is on a
9 hard drive, and a DVD and returned it to the
10 Solicitor's Office the following morning.

11 Q Now, when you received the black box, was the SD
12 card in it?

13 A The SD card doesn't fit in the box. It's behind
14 the console.

15 Q Right. So the card and the box is separate?

16 A Yes, sir.

17 Q When you received the box, was the SD card in the
18 truck?

19 A I don't know.

20 Q Did you check?

21 A No. It is not part of my -- it is not part of
22 the examination to check the SD card.

23 Q So when you received the black box
24 February 16th, you can't tell the jury if the SD card
25 was attached?

LINDSEY MCGRAW - CROSS-EXAMINATION

1 A No, sir.

2 Q When you did the extraction on the black box, you
3 indicated that you saw where the SD card was removed?

4 A There is a log that is generated by the device,
5 that is an event recorder. It's basically for
6 diagnostics for technicians, but it did show that the
7 SD card was detached, yes, sir.

8 Q Well, let's talk about this event log. What
9 other things does this event log record?

10 A It can record things like odometer readings,
11 passenger door opening, passenger door closed, lights
12 on, lights off, gear shift position, whether it is in
13 park, drive, reverse, just various things.

14 Q Does this black box work independent of the SD
15 card; that is, if the card is removed, can we still get
16 odometer, door and gear shift information?

17 A Yes, sir.

18 Q You are sure about that?

19 A Yes, sir.

20 Q Okay. You indicated you found an event that
21 showed that the SD card was removed on
22 December 18th at 12:06 a.m.?

23 A 12:07.

24 Q 12:07 a.m.

25 A Yes, sir.

LINDSEY MCGRAW - CROSS-EXAMINATION

1 Q Did the black box show an event where the SD card
2 was reinserted?

3 A Not there. I had -- the log fragment I extracted
4 is about 20 seconds long.

5 Q So it is a fragment of information?

6 A Uh-huh.

7 Q So this extraction or -- excuse me -- when the SD
8 card was removed on December 18th, that is a fragment
9 of information that tells you the SD card was removed?

10 A Correct. It is a 20-second continuous fragment.

11 Q As far as the reinsertion, do you have an event
12 on the black box that shows when the SD card was
13 reinserted?

14 A No, sir, not for the 18th of December.

15 Q How often does this black box record? Like every
16 second, every 10 seconds, once a minute?

17 A Once a millisecond.

18 Q Once a millisecond?

19 A Yes, sir.

20 Q So there should be mounds and mounds of data in
21 this thing?

22 A It doesn't keep the information forever. The
23 message log is renewed or regenerated after it is no
24 longer needed. It is basically a running information
25 that starts off as Message Log 1. The log is limited

LINDSEY MCGRAW - CROSS-EXAMINATION

1 in size to four megabytes. Once it reaches that size,
2 on Message Log 1, it's placed on Message Log 2 and
3 starts recording data again. When that message log
4 reaches four megabytes, the first message log is
5 deleted and a new Message Log 1 is created. So you
6 have lots of deleted information available until it is
7 overwritten.

8 Q So the bottom line is you have a partial piece of
9 information that shows the card was removed, and no
10 information showing when the card was reinserted, even
11 though the navigation box collects information every
12 millisecond?

13 A Well, it is not the navigation box. It is the
14 API module, but, yes, sir, it doesn't collect
15 navigation information if the card is not inserted,
16 won't record GPS location.

17 Q When the SD card is removed, could your
18 navigation box tell us who removed it?

19 A No, sir.

20 Q Is a pin number required to remove the box?

21 A No, sir.

22 Q So there is nothing individual to a person that I
23 have to put in like my Social Security number in order
24 to remove the SD card?

25 A No, sir.

LINDSEY MCGRAW - CROSS-EXAMINATION

1 Q So it could be removed by anyone?

2 A Correct.

3 Q And in this case we have a fragment of
4 information showing when it was removed?

5 A Correct.

6 Q And we have no information showing when it was
7 reinserted?

8 A Correct.

9 Q However, even with the card removed, we can see
10 things such as odometer readings, opening and closing
11 of doors and gear shifts?

12 A Yes, sir.

13 Q So were you able to find any door openings or
14 door closings on the early morning hours of
15 December 18th, 2013?

16 A Give me a second to look. Bear in mind, this is
17 a 20-second fragment.

18 Q You didn't find any other fragments?

19 A I found a lot of fragments, yes, sir.

20 Q And did any of them talk about a door being open
21 on December 18th, 2013?

22 A Yes, sir. There is an event here for driver door
23 opened.

24 Q When was that?

25 A I have to do the math. It is within the

LINDSEY MCGRAW - CROSS-EXAMINATION

1 20-second time period from 12:06 to 12:26 a.m., yeah.

2 Q Okay. So without having to do the math, you are
3 able to extract off the box that the driver side door
4 was opened one time somewhere between 12:08 and 12:26?

5 A Not 12:26. It is 20 seconds, not 20 minutes, so
6 it is going to be some time at 12:06 -- I'll give you
7 an exact time here.

8 (A brief pause in the proceedings.)

9 A 12:06 and 59 seconds.

10 Q Driver's door is open?

11 A No. That is when -- this is my daytime stamp for
12 the log. At some point, within 20 seconds of that
13 message log being generated, the driver's door was
14 opened.

15 Q All right. Do you have a log that shows when
16 that driver's door was closed?

17 A There are lots of logs showing when it was
18 closed, but not continuous to this time.

19 Q Let's talk about that time, because that's the
20 time at issue. Do you have any logs that show that the
21 passenger door was opened during this time frame?

22 A No, sir, not within the 20-second log fragment.

23 Q Okay. And you also -- the navigation box would
24 also record like extreme braking events?

25 A I don't know that it logs that type of thing.

LINDSEY MCGRAW - CROSS-EXAMINATION

1 That is more of the event data recorder for like
2 accidents.

3 Q Okay. Well, it records gear shifts, right?

4 A Sure.

5 Q Do you have any indication in the data that you
6 extracted when the car was in gear, in and around
7 December 18 of 2013, 12 midnight or so?

8 A Again, not from this 20-second fragment, no, sir.

9 Q Out of all of the data that you have downloaded
10 from this black box for this F-150, are you able to
11 tell this jury whether or not that truck was at
12 Peachtree Boat Landing on December 18, 2013?

13 A No, sir, I can't tell from this log, no.

14 Q Are you able to tell this jury whether or not
15 that truck was at River Oaks on December 18th, 2013?

16 A I have no geographic information at all for
17 December of 2013.

18 Q And you can't tell us whether or not the
19 passenger door was opened on December 18th, can you?

20 A No, sir. The log ends before that may have been
21 recorded. Whether it was or not, I don't know.

22 Q And your log indicates that the door was opened
23 -- driver's door was opened one time?

24 A Correct.

25 Q What happened to the rest of the information that

LINDSEY MCGRAW - CROSS-EXAMINATION

1 was on this box?

2 A What do you mean?

3 Q I mean, you keep describing this one 20-second
4 fragment of information, and you told us that the box
5 records in milliseconds, so it seems to me there should
6 be more information from December 18, 2013.

7 A There would have been if it had not been
8 overwritten. This is two plus years since this --

9 Q You are right, sir, it has been two plus years.

10 A Right.

11 Q Now, is there any indication in your extractions
12 that these -- that the black box was overwritten by
13 Mr. Moorer?

14 A I don't understand your question.

15 Q You said you don't have information because it
16 was overwritten; do you have any testimony that any
17 individual intentionally over -- deleted anything out
18 of the box?

19 A The device itself does the overwriting. There is
20 no interface --

21 Q Right. Basically, it's two years old before they
22 got ahold of it, so everything that was on it had
23 already been overwritten?

24 A Essentially.

25 Q Except that 20-second fragment?

LINDSEY MCGRAW - CROSS-EXAMINATION

1 A Well, there was other message log fragments.

2 Q Because you had the trip out west, that was in
3 the box also?

4 A Sure.

5 Q So a substantial majority of the information that
6 was in the box has been overwritten at this point;
7 we're talking two years later?

8 A Sure. I'm recovering different fragments from
9 different times, but the fragments are going to be
10 small.

11 Q Is there any indication that any individual
12 person intentionally deleted anything out of that box?

13 A There wouldn't be an indication, because they
14 can't.

15 Q Okay. So the information is not there because
16 the truck was being used, driven, events were happening
17 that were overwriting previously recorded information?

18 A Correct.

19 Q Just like --

20 A Normal.

21 Q -- writing over a cassette tape, just record over
22 it?

23 A Not necessarily like that, but during normal
24 operation of the vehicle, data is going to be
25 overwritten.

LINDSEY MCGRAW - CROSS-EXAMINATION

1 Q Okay. And you did not get the vehicle until
2 approximately two years after Ms. Elvis disappeared?

3 A Correct. I didn't have access to the vehicle
4 until February 18, 2016.

5 Q Now, you said that you extracted the information,
6 and at that time the vehicle was at Beach Ford; do you
7 know where it was before then?

8 A I'm sorry?

9 Q Do you know if Mr. Moorer owned this truck from
10 2013 to 2016, or if he had sold it?

11 A I understand he sold it in 2014.

12 Q Okay. So information from 2014, 2015, 2016 would
13 be with a different owner?

14 A Yes, sir.

15 Q Now, does this navigation box record the SD card
16 removal event?

17 A It does.

18 Q Okay. And, in this case, you have that 20-second
19 fragment that shows the SD removal?

20 A Yes, sir.

21 Q And you don't have any information to show when
22 the SD card was reinserted?

23 A You mean the subsequent reinstallation right
24 after the removal?

25 Q Yes.

LINDSEY MCGRAW - CROSS-EXAMINATION

1 A No, sir.

2 Q And you don't have any information as to who
3 would have removed the card?

4 A No, sir, it doesn't record who.

5 Q Does it record any circumstances as to why the
6 card was removed?

7 A No, sir, it doesn't record intent. Regardless of
8 whether it is accidental or deliberate, the result is
9 the same. The display will say navigation system is
10 not functioning.

11 Q December 18th, 2013, 12:07 is when you said you
12 had that 20-second fragment?

13 A Yes, sir.

14 Q Do you have any data recorded before then?

15 A What type of data?

16 Q I mean any data off of that box from 12:05,
17 12:04, 12 midnight?

18 (A brief pause in the proceedings.)

19 A Not for that day, no. Not for the day prior.

20 Q (MR. GALMORE) Okay.

21 A Keep in mind that the focus of the investigation
22 was the 18th.

23 Q Now, the video that we looked at, was that you
24 driving the truck in that?

25 A No, sir.

LINDSEY MCGRAW - CROSS-EXAMINATION

1 Q Do you know who that was driving the truck?

2 A No, sir, I do not.

3 Q Do you know whose truck that was?

4 A No, sir.

5 Q Do you know if that was Sidney Moorer's truck in
6 the video?

7 A No, sir.

8 Q Was this a demonstration video from Ford or
9 something?

10 A I have no clue.

11 Q Okay. You don't know where the video came from?

12 A No, sir.

13 Q You said you didn't know whose truck it was, and
14 you said you didn't know who the driver was?

15 A No, sir.

16 Q I think you indicated that the card also had GPS;
17 is that correct?

18 A The car, you mean the truck?

19 Q The truck, I'm sorry.

20 A Yes, sir.

21 Q Were you able to extract any GPS data from
22 Mr. Moorer's F-150?

23 A Yes, sir.

24 Q And that was the one fragment you gave us?

25 A The GPS, you are talking about coordinates?

LINDSEY MCGRAW - CROSS-EXAMINATION

1 Q Yes.

2 A Yes, sir, I recovered, obviously, the coordinates
3 from when the vehicle was sold, the trip out west, the
4 information for Kissimmee, Florida, and then there is a
5 lot of GPS information recorded with the subsequent
6 owner.

7 Q Does the GPS information put the F-150 on
8 Peachtree Boat Landing on December 18th, 2013?

9 A No, sir. Again, I found no geographic
10 information for December 2013 at all.

11 Q Okay. Now, I think you testified you also worked
12 with Cellebrite?

13 A Yes, sir.

14 Q And explain for the jury what Cellebrite is.

15 A Cellebrite is a company that produces a device
16 called the UFED, Universal Forensic Extraction Device.
17 It's used to recover information from cell phones, but
18 also works on tablets and GPS units.

19 Q I think Cellebrite extracts information off of
20 telephones; does Cellebrite give us location data off
21 of telephones?

22 A If the phone reports it, it can be recovered from
23 there, yes, sir.

24 Q And what types of location data are there? What
25 are the sources of the data?

LINDSEY MCGRAW - CROSS-EXAMINATION

1 A GPS, Google Maps, any GPS sensor on the phone
2 that is enabled at the time for tracking that can be
3 recovered. Things like the Waze app, which is a
4 driving application that is available for different
5 phones can record geographical information.

6 Q So GPS is like cell phone location data?

7 A It refers to the location of the device, yes,
8 sir.

9 Q And how accurate is GPS?

10 A It is pretty accurate, within meters.

11 Q Within meters, okay. Now, I understand that WiFi
12 is another way to collect data; is that correct?

13 A WiFi is wireless connectivity. I don't know it
14 actually collects data.

15 Q Could you confirm a cell phone's location or
16 approximate location based on its WiFi connections?

17 A You could, it just depends where the data is
18 from.

19 Q So, like, if I were walking around this
20 courthouse and had my cell phone in my pocket, it would
21 be pinging off of every WiFi that's in the courthouse;
22 correct, or not?

23 A Depends where you have access to that wireless
24 access point, and whether you enable it or not.

25 Q Did you have an opportunity to review Heather

LINDSEY MCGRAW - CROSS-EXAMINATION

1 Elvis' cell phone records in this case?

2 A No, sir.

3 Q No. Okay. It is my understanding that cell
4 phones can be tracked based on cell tower location data
5 also; is that correct?

6 A That's correct.

7 Q How accurate is the cell tower location data?

8 A Depends on the provider. There are varying
9 degrees of accuracy, I guess depending on who is your
10 service provider.

11 Q And some providers issue disclaimers with that
12 data?

13 A I don't know what disclaimer you are talking
14 about.

15 Q Okay. Okay.

16 So you did not look at the cell phone records for
17 Heather Elvis in this case?

18 A No, sir. My involvement in this case was
19 exclusively with the navigation unit from the F-150
20 vehicle that was -- belonged to Sidney and Tammy
21 Moorer.

22 Q Can you put the -- anyone's cell phone in close
23 proximity to the F-150 truck based on your extractions?

24 A There can be -- if the cell phone is paired with
25 the vehicle, I can show an entry.

LINDSEY MCGRAW - CROSS-EXAMINATION

1 Q Like a bluetooth?

2 A Sure.

3 Q Were you able to find any pairings?

4 A I believe there were some entries.

5 Q Okay.

6 A But as far as GPS location, no.

7 Q Did Heather Elvis' phone ever pair or sync with
8 this F-150 truck?

9 A Give me a minute.

10 (A brief pause in the proceedings.)

11 A I don't have telephone number information. If
12 you give me her phone number I could look to see.

13 THE COURT: Just give it to him.

14 MR. GALMORE: I don't have my glasses. The
15 number for Ms. Elvis is [REDACTED] 8152; did that number
16 ever sync with Mr. Moorer's F-150.

17 A No, sir, not that I'm aware of.

18 (A brief pause in the proceedings while
19 Mr. Galmore and Mr. Bouchette confer.)

20 Q (MR. GALMORE) In reviewing the extractions from
21 the navigation device, were you able to find any
22 geographic data for Mr. Moorer's truck for the month
23 of December of 2013?

24 A No, sir.

25 Q So how do you explain the SD card removal? How

LINDSEY MCGRAW - REDIRECT EXAMINATION

1 was that recorded if nothing else was recorded for the
2 month of December?

3 A The system records insertion and removal of the
4 SD card; that's its function.

5 MR. GALMORE: No further questions. Thank you.

6 REDIRECT-EXAMINATION

7 BY MS. LIVESAY:

8 Q Mr. McGraw, do you remember James asking you
9 about the truck going to Peachtree Landing, whether it
10 had been to Peachtree Landing in Horry County?

11 A James?

12 Q Mr. Galmore, the defense attorney.

13 A I'm sorry, I didn't associate the name. Yes,
14 ma'am.

15 Q And if that card had been removed at 12:07 a.m.
16 on the 18th, and he went to Peachtree Landing after
17 that, would it have recorded on the device?

18 A No, ma'am.

19 Q Let me ask you something. Was the navigational
20 system working prior to 2013?

21 A Yes, ma'am.

22 Q And it was collecting data?

23 A Yes, ma'am.

24 Q And did it collect data of a trip outside of
25 Horry County?

LINDSEY MCGRAW - REDIRECT EXAMINATION

1 A Yes, ma'am.

2 Q All the way to Nevada?

3 A Yes, ma'am, the geographic points, yes.

4 Q After December 2013, was the navigational system
5 working?

6 A Yes, ma'am.

7 Q And did it collect information outside of Horry
8 County?

9 A Yes, ma'am, Kissimmee, Florida.

10 Q So the only time it didn't collect data is when
11 the truck was in Horry County?

12 A I have no geographic points for December 2013 at
13 all.

14 Q And we know at least one time the card was
15 removed December 18th, the early morning hours?

16 A Yes, ma'am.

17 Q And I showed you a picture that's already been
18 put in evidence that was taken at the end of December,
19 and the card was still removed, correct?

20 A Yes, ma'am. It was in the tray with toothpicks
21 on top of it, under the sunglasses, yes, ma'am.

22 Q And it can't collect no data sitting in that
23 tray, can it?

24 A No, ma'am.

25 Q He also asked you questions about Heather Elvis'

LINDSEY MCGRAW - REDIRECT EXAMINATION

1 phone connecting to bluetooth or anything like that in
2 the truck; is that correct?

3 A That's correct.

4 Q Now, if her phone is off, would it connect to
5 anything?

6 A You won't be given the opportunity to pair that
7 phone if the phone is off, that's correct.

8 Q And let me ask you something. Does every phone
9 automatically connect to WiFi or bluetooth?

10 A No, ma'am, you have to specifically authorize it.

11 Q You have told this jury, and Mr. Galmore asked
12 you, about the fact that it is a fragment?

13 A Yes, ma'am.

14 Q And the fact that the system is kind of
15 overwriting as the truck is in movement?

16 A Correct.

17 Q So tell me whether or not this is correct, and if
18 I'm not right, you correct me. So this sync module is
19 going to show you information that is current,
20 information that is about to be overwritten, and
21 information that has been deleted; is that right?

22 A Correct.

23 Q We already had someone come in and testify about
24 Cellebrite, and he's saying, look, these are the things
25 on the phone currently. These are the things that were

LINDSEY MCGRAW - REDIRECT EXAMINATION

1 deleted that we were able to recover; is that a lot how
2 forensics work with every computer, sometime we're able
3 to get the deleted information, sometimes we can't?

4 A Right. It depends on the system. In this case,
5 the Ford sync module is a solid state device. It is a
6 2 gigabyte, basically, hard drive, but it is not your
7 typical hard drive that you would find in a computer.
8 It is not the spinning disk. Data is written to cells
9 that are basically micro-transistors, they are either
10 on or off. The cells are arranged in a grid, and that
11 grid is called a page. That's the smallest unit of
12 information that the device can write to at a time. It
13 has to write a page at a time. In this case, the page
14 size is 4 kilobytes, I believe. But before information
15 can be written to an SSD, the cells have to be
16 prepared, so they basically have to be erased first.
17 That is not true on a spinning hard drive. So the
18 information is deleted at a block at a time. A block
19 is multiple pages. An SSD employs something called
20 wear leveling. It is an algorithm where it spreads out
21 the rights to the cells evenly across a device, because
22 the cells have a limited number of writes, I think it
23 is like a hundred thousand writes or something like
24 that, but once that number is exceeded, that cell can
25 fail. So it uses that algorithm -- it is kind of like

LINDSEY MCGRAW - REDIRECT EXAMINATION

1 if you are -- say you have a square on -- a piece of
2 paper with squares and they are all filled in with
3 pencil. Before you can write to that paper, you have
4 to erase one of the squares. So you would erase one of
5 the squares and write to it. You kept erasing and
6 writing to that same square, you'll scrub through the
7 paper. That is kind of an analogy about how that
8 works.

9 But since it deletes in blocks, it doesn't
10 prepare the same areas for deletion for overwriting at
11 the same time. It has to even it out. So you can
12 have small fragments of data available for recovery
13 that hasn't been overwritten yet. Because once data
14 is overwritten, you can't recover it. But the message
15 logs are four megabytes in size. The page size to
16 which the device writes to is 4 kilobytes, so it takes
17 a thousand pages to make a log. So there is a
18 thousand little parts of this message log scattered
19 throughout the device.

20 Q (MS. LIVESAY) So how the computer works,
21 sometimes we can get deleted information, and
22 sometimes we can't?

23 A Correct. As long as the information is there and
24 has not been overwritten, I can recover it. If it
25 already has been prepared for rewriting, in other

LINDSEY MCGRAW - REDIRECT EXAMINATION

1 words, those cells had been blanked out to accept new
2 data, once that happens, I can't access that data.

3 Q And let me ask you this. He asked you whether or
4 not it showed one of the doors and the truck moving or
5 opening and closing around the same time the SD card
6 was detached; do you remember that?

7 A Yes, ma'am. Yes, ma'am.

8 Q And you testified that, indeed, the driver's door
9 had it?

10 A Yes, ma'am. It recorded an event of the driver's
11 door opening, that's correct.

12 Q So, clearly, someone was in the truck moving
13 around and active at the time the card was removed?

14 A I can't tell if -- all I can say is the driver's
15 door was opened. Whether it was someone in, getting
16 out; or out, getting in. I don't know.

17 Q But, clearly, there was action on that door?

18 A Correct.

19 Q And, clearly, shortly before that, the card was
20 removed?

21 A Yes, ma'am. A recording event for the removal of
22 the card being detached, yes, ma'am.

23 Q Now, from your experience and in your expert
24 opinion, if the card was not detached, it was still in
25 that slot, would it have collected GPS data after 12/18

LINDSEY MCGRAW - RE-CROSS-EXAMINATION

1 at 12:07 a.m.?

2 A It should have, yes, ma'am.

3 MS. LIVESAY: No further questions.

4 THE COURT: Recross, Mr. Galmore?

5 RE-CROSS-EXAMINATION

6 BY MR. GALMORE:

7 Q December 18th, 2013, from midnight to, let's
8 say, 6:00 a.m., the information that you have extracted
9 and reviewed and prepared to testify before this jury
10 about, between midnight and 6:00 a.m., do you have any
11 passenger door opening events?

12 A No, sir -- well, not for the -- that I can relate
13 to that specific date.

14 Q December 18, 2013, between midnight and
15 6:00 a.m., can you put that F-150 truck at Peachtree
16 Boat Landing?

17 A No, sir. Again, I have no geographic information
18 for December, whatsoever.

19 Q December 18, 2013, between midnight and
20 6:00 a.m., can you put that F-150 in the River Oaks
21 area, Heather Elvis' apartment?

22 A Not without geographic information, no, sir.

23 Q Can Sidney Moorer delete the geographic
24 information in this truck?

25 A No, sir, he can't specifically go in and delete

LINDSEY MCGRAW - RE-CROSS-EXAMINATION

1 information.

2 Q Can anyone go in and delete information off of
3 the navigation system?

4 A I imagine somebody could, but you would --
5 someone way above my pay grade. You can do a master
6 reset on this device. Basically, that's done to clear
7 data if the truck was sold. If it was your truck and
8 you wanted to sell it, and your information was still
9 in the vehicle, then the technicians can do a master
10 reset. Actually, you could, too. It deletes the
11 information from the view of the user, not necessarily
12 off of the chip itself, because that would show up as
13 deleted information that I can recover.

14 Q But that may be recovered?

15 A Yes, sir.

16 Q Were you able to find any information about a
17 master reset being done on this truck?

18 A No, sir.

19 Q And if it was done, you would have been able to
20 recover it?

21 A Depends. Depends -- I mean, it depends how long
22 ago it was done and what information was written.

23 Q Now, was February 18, 2016 the only time you
24 examined the navigation box in Mr. Moorer's truck?

25 A 2018 is when I -- I did the extraction.

LINDSEY MCGRAW - RECROSS-EXAMINATION

1 Q 2016.

2 A 2016, sorry, is when I did the extraction. I got
3 the 2 gigabyte chunk of data, but I did subsequently do
4 an examination of the data using a different tool,
5 using End Case, that is where I got this information.
6 Basically, it is to validate -- you use one tool
7 against another to validate the information you would
8 receive.

9 Q But your part of this investigation began
10 February 18, 2016?

11 A Correct.

12 MR. GALMORE: Thank you. No further questions.

13 THE COURT: You may step down.

14 Do you wish the witness to be excused, Solicitor?

15 MS. LIVESAY: Yes, please, Your Honor.

16 THE COURT: Any objection, Mr. Galmore?

17 MR. GALMORE: No, sir, Your Honor.

18 THE COURT: Call your next witness.

19 MR. HELMS: At this time, we call Steve (sic)
20 Silver.

21 (JEFFERY SCOTT SILVER, having been duly sworn,
22 testified as follows:)

23 THE WITNESS: Jeffrey Scott Silver, S-I-L-V-E-R.

24 MR. HELMS: Scott Silver, I called you Steven.
25 I'm sorry, Scott.

JEFFERY SCOTT SILVER - DIRECT EXAMINATION

DIRECT EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. HELMS:

Q Where do you work?

A Sam's Club in Myrtle Beach.

Q What do you do for Sam's Club in Myrtle Beach?

A General manager.

Q And how long have you been employed by Sam's
Club?

A Eight years.

Q As general manager, what do your duties entail?

A Oversee all operations of the club, day to day.

Q So you are the guy in charge?

A Yes, sir.

Q What is Sam's Club?

A It's a membership-based business, parent company
of Walmart.

Q A membership-based grocery store, retail store?

A Wholesale chain.

Q And what do you sell at Sam's Club?

A Lots of stuff.

Q Probably easier to say what don't you sell.

A That's right.

Q I think everyone knows what Sam's Club is.

When you say a membership chain, what does that
mean?

JEFFERY SCOTT SILVER - DIRECT EXAMINATION

1 A You have to be an active member to purchase
2 anything at the club.

3 Q So I'm not a member of Sam's Club, can I come buy
4 items from your store?

5 A No, sir.

6 Q What do you have to do to be a member?

7 A Go to the membership desk and we'll get you
8 signed up, be happy to do that for you.

9 Q What do you have to do to sign up?

10 A Just show identification and fill out membership
11 information, and we issue a card, a membership card.

12 Q When I come in your store at a member, after I
13 sign up, do I have to have that card with me?

14 A Yes.

15 Q Was this the case back in 2013?

16 A Yes, it was.

17 Q So back in 2013 to buy something from Sam's Club,
18 I had to be a member?

19 A Correct.

20 Q And back in 2013 to be a member, I would have
21 gotten a card as well?

22 A Yes.

23 Q Would that card have my picture on it?

24 A At that particular time, it would have.

25 Q So you actually get a picture identification

JEFFERY SCOTT SILVER - DIRECT EXAMINATION

1 card?

2 A Not currently, but at that time frame, you did.

3 Q Do you keep records associated with memberships?

4 A Yes.

5 Q And are those maintained by Sam's Club?

6 A They are.

7 Q Are they maintained in the ordinary course of

8 business?

9 A Yes.

10 Q I'll show you what was marked for identification
11 purposes as State's Exhibits 198 and 199. Take a look
12 at those and tell me what those are, sir.

13 A (Witness examines document.) This was a purchase
14 made on --

15 Q Don't get to what is on it, just tell me
16 generally speaking what you are holding in your hand.

17 A I'm sorry. It is a receipt and transaction
18 record of this particular....

19 Q Are those Sam's Club records?

20 A Yes.

21 Q And are those records that were provided to my
22 office?

23 A Yes.

24 Q Are those records associated with any person in
25 particular?

JEFFERY SCOTT SILVER - DIRECT EXAMINATION

1 A Yes.

2 Q Tell this jury who those records are for.

3 A The member name on it is Sidney Moorer.

4 Q And have they been tampered with in any way?

5 A No, they have not.

6 MR. HELMS: Your Honor, at this time I tender
7 State's 198 and 199 into evidence.

8 THE COURT: Any objection.

9 MR. GALMORE: Just a moment.

10 (A brief pause in the proceedings.)

11 MR. GALMORE: No objection.

12 THE COURT: Without objection, 198 and 199 are
13 admitted.

14 (State's Exhibits 198 and 199 admitted.)

15 Q (MR. GALMORE) Mr. Silver, take 198 and 199, what
16 month and date and year are those records for?

17 A December 21st, 2013.

18 Q And I want you to take a look at those records
19 and tell this jury what Mr. Moorer bought in
20 December 21, 2013.

21 A On this particular receipt, he bought a
22 16-channel DVR surveillance system and Hitachi 24-inch
23 monitor.

24 Q How did he pay for those items, sir?

25 A With a Sam's Club credit card.

JEFFERY SCOTT SILVER - DIRECT EXAMINATION

1 Q When did he get that credit card?

2 A At the time of purchase.

3 Q So on December 21. Does it say what time?

4 A It does, 5:45 p.m.

5 Q So on December 21, at 5:45 in the afternoon, you
6 are telling this jury that Mr. Moorer applied for a
7 Sam's Club credit card?

8 A Yes.

9 Q And with that Sam's Club credit card, purchased a
10 surveillance system?

11 A Correct.

12 Q How much did he pay for that surveillance system?

13 A \$799.

14 Q \$799. And how many cameras came with that
15 system?

16 A 16-channel DVR.

17 Q So 16 cameras? What other than the surveillance
18 did he buy? Did he buy a monitor separate, or did that
19 come with it?

20 A It doesn't come with it, but it was purchased at
21 the same time.

22 Q How much did he pay for that monitor?

23 A \$148.

24 Q Based on what you know, is that monitor
25 compatible with that surveillance system?

JEFFERY SCOTT SILVER - DIRECT EXAMINATION

1 A Yes.

2 MR. HELMS: Please answer any questions defense
3 may have.

4 THE COURT: Cross-examine, Mr. Galmore.

5 CROSS-EXAMINATION

6 BY MR. GALMORE:

7 Q You indicated that Mr. Moorer is a member of the
8 Sam's Club?

9 A Yes, sir.

10 Q Do your records show when he joined Sam's Club
11 when he filled out his membership?

12 A I can look up that information. I don't have it
13 with me.

14 Q Is it difficult for you to look up?

15 A It's not.

16 Q I guess what I'm saying is can you do it now, or
17 do you need to go somewhere?

18 A Yeah, I would have to look it up at --

19 Q Okay. It's not that important. But he was a
20 member of Sam's Club?

21 A Yes.

22 Q And the application process, explain that to us.
23 What do you have to do?

24 A You just come in and visit the service desk and
25 show identification, fill out -- actually, the person

JEFFERY SCOTT SILVER - DIRECT EXAMINATION

1 at the desk fills out your information based on your
2 information you give them and set you up with a card.

3 Q Okay. So at a minimum, you have to fill out an
4 application and present some form of identification?

5 A Correct.

6 Q Then you get a membership to Sam's Club?

7 A Yes, sir.

8 Q Was that done in this case?

9 A Yes.

10 Q Regarding the purchase, was it a legal purchase?

11 A Yes.

12 Q Was it an attempted theft or anything like that?

13 A Not at all.

14 Q And the purchase was done on a Sam's Club credit
15 card, as I understand?

16 A Yes, sir.

17 Q What is the process of applying for a Sam's Club
18 credit card?

19 A In this particular case, he was offered the card
20 because we were running a six-month no payment on
21 interest at the time.

22 Q A promotion?

23 A Correct.

24 Q But I guess the physical process of filling out
25 an application, what does a person have to do in order

JEFFERY SCOTT SILVER - DIRECT EXAMINATION

1 to complete the application for Sam's Club credit card?

2 A You have to fill out like the pertinent

3 information for a credit application.

4 Q Do you have to present identification for that?

5 A Yes.

6 Q Do you have to provide your Social Security

7 number?

8 A Yes.

9 Q Do you have to provide your date of birth?

10 A Yes.

11 Q And as far as the date of birth, that would be
12 something that is on most people's identification also?

13 A Yes.

14 Q Did Mr. Moorer do these things?

15 A Yes.

16 Q And he did that on December 21 of 2013?

17 A Correct.

18 Q Is there anything in your records that shows that
19 Mr. Moorer attempted to conceal this purchase?

20 A No.

21 Q Just a regular purchase?

22 A Yes.

23 MR. GALMORE: Thank you, sir. No further
24 questions.

25 THE COURT: Redirect.

J. M. - DIRECT EXAMINATION

1 MR. HELMS: Nothing, Your Honor.

2 THE COURT: Do you wish him to be excused?

3 MR. HELMS: Please, sir.

4 THE COURT: Any objection, Mr. Galmore?

5 MR. GALMORE: No, sir.

6 THE COURT: You are also free to leave.

7 Call your next witness, please.

8 MS. LIVESAY: Thank you, Your Honor. At this
9 time the State calls J. M. ?

10 (J. M. , having been duly sworn,
11 testified as follows:)

12 THE WITNESS: J. M. , M-E-L-T-O-N.

13 DIRECT-EXAMINATION

14 BY MS. LIVESAY:

15 Q J. M. , if you don't mind, tell this jury a little
16 bit about how old you are.

17 A I'm 20 years old.

18 Q Are you currently working or in school?

19 A No, ma'am.

20 Q Were you working previously?

21 A Yes, I was.

22 Q Where were you working?

23 A Hill Construction doing trim work, crown molding,
24 putting in doors, so-and-so.

25 Q And where are you from?

J.M. - DIRECT EXAMINATION

1 A Conway, South Carolina.

2 Q And have you lived here your whole life?

3 A Yes, ma'am.

4 Q Do you know the defendant in this case?

5 A Yes, ma'am.

6 Q How do you know him?

7 A Through his children and been a long-time friend
8 since elementary school, third grade.

9 Q So you know him through his son?

10 A Yes, ma'am.

11 Q What is his son's name?

12 A **S.C.M.**.

13 Q And you and **S.C.M.** became friends when?

14 A Third grade.

15 Q That is a long time ago.

16 A Yeah.

17 Q Now, when you all became friends in third grade,
18 you would go over to his house?

19 A Yes, ma'am.

20 Q And when you went over to his house, was it the
21 one over by 814?

22 A Correct.

23 Q Is that the only one you know that they lived in?

24 A Correct.

25 Q And were you friends with him from third grade

J.M. [REDACTED] - DIRECT EXAMINATION

1 on, until 2013?

2 A Yes.

3 Q So for several years?

4 A Correct.

5 Q Now, let me ask you this. When you would go over
6 there, would you spend the night?

7 A Multiple occasions, yes.

8 Q And would you sometimes stay a week at a time?

9 A Yes.

10 Q So you guys were extremely close?

11 A Correct.

12 Q And it was nothing for you to go over there for a
13 week or two at the time?

14 A Correct.

15 Q And so you, in 2013, and prior to that, were
16 familiar with how the inside of the house and outside
17 looked?

18 A Correct.

19 Q Now, there was some testimony earlier about the
20 color of the defendant's truck. Were you friends and
21 had you been to the house when he had a white truck?

22 A Yes.

23 Q And were you all still friends and had you been
24 over to their house when he had that new black Ford
25 one?

J.M. [REDACTED] - DIRECT EXAMINATION

1 A Yes.

2 Q Now, if you don't mind, tell this jury when you
3 were over there, did these people have a surveillance
4 camera system?

5 A They had a small LED -- not LED -- small flat
6 screen TV, and it was split into four individual
7 screens with military date and time on the bottom of
8 it, right-hand corner.

9 Q Tell them what you would see on the screen that
10 the camera was showing.

11 A The camera was showing the playground, and if you
12 are standing in the house, the right corner of the
13 house, the back of the house and the driveway of the
14 house.

15 Q And they still had this surveillance system at
16 some time during the time he had that black Ford F-150?

17 A Correct.

18 Q Now, had you been over to the house close in time
19 after Christmas of 2013?

20 A Yes.

21 Q Now, during the time that you would spend over
22 there, you are saying that you saw the monitor for the
23 cameras?

24 A Correct.

25 Q Where was the monitor located in the house?

J.M. [REDACTED] - DIRECT EXAMINATION

1 A It was mounted on the wall to the right of the
2 bed in Sidney and Tammy's bedroom.

3 Q And if I showed you some pictures that were taken
4 and already in evidence by the police department, would
5 you be able to show us and go through the rooms of the
6 house and where the monitor was located?

7 A Absolutely.

8 Q If you don't mind, I'm going to show you pictures
9 that are in evidence, 129 through -- I'm not -- 150.
10 Mr. Melton, if you don't mind, step down and that way
11 we can go through them together.

12 A That's fine.

13 Q Is this the front of the Moorers' house?

14 A Correct.

15 Q Had you seen this truck?

16 A Correct.

17 Q And you had been over to the house when he had
18 this truck?

19 A Yes.

20 Q And this camper, you recognize it?

21 A Yes.

22 Q And this is the front of the house?

23 A Correct.

24 Q So do you remember where the cameras were on the
25 front of the house?

J. M. ██████████ - DIRECT EXAMINATION

1 A Vaguely, but, yes.

2 Q And show them where you remember the cameras
3 being.

4 A There was one camera at the corner of the house
5 right here, and there was another one right here in the
6 peak of the roof. You can't see it in this picture,
7 but if the camper was moved, there was one right here
8 at the top of the chimney, and then there was one in
9 the back of the house, but it was in the house in

10 C. M. ██████████ 's room.

11 Q And you would go over there often, on a regular
12 basis?

13 A Yes.

14 Q Now, in the front of this picture there is some
15 concrete, shotgun shell, some bleach; was this normally
16 how this area looked?

17 A Not the driveway.

18 Q So this was -- looked different than what you are
19 used to seeing?

20 A Correct.

21 Q And it looks different than the last time you had
22 been over there?

23 A Yes, ma'am.

24 Q Now, show me again where you remember --
25 actually, let's go to the next one. I don't want to

J.M. - DIRECT EXAMINATION

1 keep -- and this is how you remember the inside?

2 A Correct.

3 Q And this is how the kitchen looked?

4 A Yes.

5 Q And how many times, just in general, would you
6 say you had been in the house? Thousands?

7 A I would definitely say over 40 times.

8 Q And this is how the kitchen looked?

9 A Correct.

10 Q Do you remember these items being in the kitchen?

11 A Yeah.

12 Q How about here, what room is this in the house?

13 A Living room.

14 Q And you had been in this room?

15 A Multiple times.

16 Q Okay. Okay. Let me ask you something. There is
17 a lot going on in this room, stuff on the floor; when
18 you would come over to the house, is that normally how
19 it looked?

20 A Yes. It normally would be cluttered, a little
21 messy, but nothing over the top or too serious, but
22 occasional clutter.

23 Q Now, tell me, are you familiar with this room
24 here?

25 A Yes.

J.M. [REDACTED] - DIRECT EXAMINATION

1 Q And when you were over at the house, were there
2 always computers in this room?

3 A Yes.

4 Q And was there always a computer here?

5 A No.

6 Q I'm sorry?

7 A No.

8 Q So this computer here is something you had never
9 seen before?

10 A I had seen it, but not in that location.

11 Q Okay. How about this one?

12 A This is the bedroom of Sidney and Tammy's?

13 Q And had you been in this room before?

14 A Yes.

15 Q Multiple times?

16 A Yeah, more than 10, but not more than 40.

17 Q And you had been in this room back when he had
18 the black Ford 150?

19 A Correct.

20 Q Now, show this jury -- you testified earlier
21 there was a monitor in the room; do you remember that?

22 A Correct.

23 Q Show this jury where that monitor was when you
24 had been in the house.

25 A When I had been in the house, the monitor was

J.M. - DIRECT EXAMINATION

1 right here where this picture frame is, and this was
2 scooted over probably about 2 to 3 feet more to the
3 left.

4 Q So where the picture frame is now, is where the
5 monitor was?

6 A Correct.

7 Q Was it mounted, or sitting on furniture?

8 A It was mounted to the wall, probably about 40,
9 38-inch TV, little LED TV.

10 Q And is that mount one that just stays like a
11 picture frame, or comes out and swivels?

12 A It would swivel left to right. It wouldn't come
13 out, just pivot.

14 Q So you were definitely very familiar with this
15 room, the camera system, all of this?

16 A Yes.

17 Q And everything else looked pretty much the same?

18 A Yeah.

19 Q Now, how about this, is this what you remember in
20 the house?

21 A Yes, besides the paint on the wall, the green
22 paint.

23 Q So this is something new (indicates)?

24 A Yes. And all the green paint over there, in
25 addition.

J.M. ██████████ - DIRECT EXAMINATION

1 Q Let me ask you something -- go back one. Do you
2 remember if there were any cameras in the home?

3 A There was one.

4 Q And where were the cameras inside of the house?

5 A There was one that was inside the house, but it
6 was looking at the back of the house in the backyard,
7 but it was in C.M. ██████████ 's room, which is now S.C.M. ██████████ 's
8 room -- or was.

9 Q Was there any other cameras near the stairs?

10 A No.

11 Q And you are saying this room, this green, was all
12 recent after, apparently, the last time you had been
13 there?

14 A Correct.

15 Q Whose room is this?

16 A N.M. ██████████ 's.

17 Q So you know them well enough to know whose room
18 is whose and had been all over the house?

19 A Correct.

20 Q Is this how the room was normally kept?

21 A Yes.

22 Q How about this room?

23 A That is C.M. ██████████ 's room, which was S.C.M. ██████████ 's
24 room, but turned into C.M. ██████████ 's room.

25 Q So you had known him and been friends long enough

J.M. - DIRECT EXAMINATION

1 to see movement, one kid moves to another room, the
2 other kid --

3 A Correct.

4 Q And how about this one?

5 A That is definitely S.C.M.'s room. I can tell
6 by the Legos, and I've slept in there multiple times.

7 Q So you have been in this room a bunch and spent
8 the night in there?

9 A Correct.

10 Q Is this how normally the room is kept?

11 A Yeah.

12 Q Is this the bathroom upstairs?

13 A Yes, ma'am.

14 Q How about this area?

15 A This is the play area. Once you come up the
16 steps, before you enter a bedroom, you have to go
17 through there. N.M.'s bedroom was to the left, and
18 C.M. and S.C.M.'s is behind me to the right if I
19 was standing right here, and the bathroom is also
20 behind me.

21 Q And this is kind of how the room was normally
22 kept?

23 A Yes.

24 Q And, again, I'm going to ask you: This is the
25 top of the stairwell, correct?

J.M. [REDACTED] - DIRECT EXAMINATION

1 A Yes.

2 Q And this paint you had never noticed before?

3 A Never.

4 Q And you had been over there when he had the black
5 truck?

6 A Correct.

7 Q And this, again, everything else looks like the
8 way you always went over there?

9 A Yes.

10 Q If you don't mind, have a seat and I'll ask you a
11 few more questions.

12 Now, when we looked through those pictures, did
13 pretty much everything in the house always look like
14 it had always been when you went over there?

15 A The -- not exactly to a "T," but, yes.

16 Q Was there any other furniture moved around that
17 you noticed other than the monitor being removed off
18 the wall?

19 A There was a bookshelf, slash, case that was
20 moved. It's in the living loom -- it is moved from the
21 living room to the bedroom.

22 Q From whose bedroom?

23 A Tammy's.

24 Q So one piece of furniture had been moved from her
25 bedroom to the den?

J.M. [REDACTED] - DIRECT EXAMINATION

1 A Correct.

2 Q And the monitor had been moved?

3 A Correct.

4 Q Was there any other furniture in the house that
5 had been removed?

6 A No.

7 Q And you had been over there multiple times from
8 elementary until 2013, which would have been several
9 years?

10 A Correct.

11 Q And all through those years, the monitor had been
12 in their room?

13 A Yes.

14 Q So it wasn't until -- had you ever been in the
15 house?

16 A Yes.

17 Q Hold on.

18 A Sorry.

19 Q It's okay. Had you ever been in the house prior
20 to Heather Elvis going missing and the monitor had not
21 been there?

22 A Are you saying have I been there after the
23 incident, or before?

24 Q Before the incident.

25 A Yes.

J.M. - DIRECT EXAMINATION

1 Q Had you -- so when you were there in December of
2 2013, before the young lady went missing, was the
3 monitor on the wall?

4 A Yes.

5 Q Now, had you been with the Moorers in that -- in
6 their truck riding around before?

7 A Yes.

8 Q And you were over there on a regular basis?

9 A I was probably over there four times a month.
10 Sometimes I stayed there for a week; sometimes I stayed
11 there for two days.

12 Q Okay. Now, when you were over there, had you
13 ever seen Sidney and Tammy wash their truck?

14 A Never.

15 Q Now, there was a shotgun shell, did you see that
16 in front of the camper?

17 A The red one?

18 Q Yeah.

19 A Correct. Yes.

20 Q During our -- in your knowledge in talking with
21 S.C.M. and being over there, had they been hunting
22 or to a turkey shoot or anything like that in December
23 of 2013?

24 A No.

25 Q And there was also some concrete in front of the

J.M. [REDACTED] - DIRECT EXAMINATION

1 camper; do you remember that?

2 A No.

3 MS. LIVESAY: If you don't mind, put that one
4 picture up there in front of the camper.

5 Q (MS. LIVESAY) Before I put the picture up there,
6 had you seen Sidney during the month of -- December of
7 2013 working around the house with concrete?

8 A Not that I can remember, no.

9 Q Now, when you knew them, how many vehicles did
10 they normally have?

11 A One.

12 Q So they normally had just one truck?

13 A Correct.

14 Q Who normally drove the truck?

15 A Sidney.

16 Q And when you knew them, did Tammy ever work
17 outside of the home?

18 A No.

19 Q And Sidney, did he work outside of the home?

20 A Yes.

21 Q And what would you know him to do for a living?

22 A Maintenance on restaurants. He'll do pretty much
23 anything, handyman.

24 Q When you were around, he was the one always
25 driving the truck?

J.M. - DIRECT EXAMINATION

1 A Correct.

2 Q In this picture, there is Quikrete concrete; can
3 you see that, J.M.?

4 A Yes, ma'am.

5 Q And did you ever see him messing with concrete at
6 the house when you were over there in December of 2013?

7 A No.

8 Q When you saw Sidney in November and December of
9 2013, before then, did you know him to have any
10 tattoos?

11 A No.

12 Q And did you notice whether or not he had gotten a
13 tattoo during that time frame?

14 A Yes.

15 Q And tell this jury what you saw the tattoo said.
16 MR. BOUCHETTE: Objection, Your Honor, relevance.
17 THE COURT: I'll allow it. Overruled.

18 Q (MS. LIVESAY) What did the tattoo say?

19 A It said "Tammy" right there at your waist line
20 like where you would wear a belt at.

21 Q J.M., the last time you were at the Moorers'
22 residence in December of 2013, did they have a
23 surveillance camera system up and working?

24 A Yes.

25 MS. LIVESAY: No further questions, Your Honor.

J. M. [REDACTED] - CROSS-EXAMINATION

1 THE COURT: You may cross-examine.

2

3

4

CROSS-EXAMINATION

5 BY MR. BOUCHETTE:

6 Q Mr. Melton, good morning.

7 A Good morning.

8 Q Just a few questions for you. How old did you
9 say you were?

10 A 20 years old.

11 Q So you were 14 in the summer of 2013?

12 A Yes, sir.

13 Q Now, you and one of Mr. Moorers' sons were close
14 friends, as I understand?

15 A Correct.

16 Q And I understand you and him went down to
17 Florida, Disney World, with the Moorers family?

18 A Correct.

19 Q You also, I understand, went hunting with the
20 Moorers?

21 A Correct.

22 Q There was testimony about whether or not they
23 were hunting in December, but you knew the Moorers to
24 go hunting on occasion, right?

25 A Yes.

J. M. [REDACTED] - CROSS-EXAMINATION

1 Q So any presence of shotgun shells would not be
2 anything unusual to you?

3 A Correct.

4 Q Because they probably had shotguns in the house?

5 A They did.

6 Q Because they were hunters, right?

7 A Exactly.

8 Q I want to talk about the -- you said you didn't
9 notice any cameras in the staircase, correct?

10 A Uh-huh.

11 THE COURT: Is that a yes?

12 A Yes. Yes. Sorry.

13 Q (MR. BOUCHETTE) That's fine. Obviously, at this
14 point, you are 14 years old. You say you noticed
15 these cameras. Fair to say you probably didn't know
16 what was recording or what type of system or what
17 these cameras were?

18 A I knew that they were recording because I seen
19 the monitor, but I didn't know for what reason they
20 were recording.

21 Q Well, let me ask you this. They were facing the
22 playground, right?

23 A Yes, sir.

24 Q And some other ones were facing different
25 bedrooms?

J. M. [REDACTED] - CROSS-EXAMINATION

1 A There was one camera in C. M. [REDACTED]'s bedroom facing
2 out the window looking over the backyard where the
3 chickens and bunnies were.

4 Q Do you have any idea when they installed that
5 system?

6 A It had to be around November before --
7 November/October, because during the time we went dove
8 hunting, and I remember seeing the cameras and the
9 monitor before we went dove hunting, and in December.

10 Q Do you know what type of system that was?

11 A No. All I saw was the TV monitor with four
12 separate screens with military date and time.

13 Q Let me ask you this. Do you have knowledge
14 whenever Ms. Elvis went missing, do you know of any
15 threats or death threats that the Moorers received?

16 A Yes.

17 Q This was common knowledge?

18 A Yes.

19 Q He was receiving threats from different
20 individuals throughout the community?

21 A Correct.

22 Q And it is at this point he upgraded the security
23 system?

24 A Yes, sir.

25 Q Let me ask you this. Did you ever, anywhere in

J. M. [REDACTED] - CROSS-EXAMINATION

1 December of 2013, did you ever see any indication or
2 anything that after all this time that you saw was
3 connected to Heather Elvis at the Moorer residence?

4 A No.

5 Q And when did you first speak to investigators in
6 this case?

7 A I would like to say January, after 2013.

8 Q Okay. Did you give them a description as to what
9 you saw regarding the cameras --

10 A Yes.

11 Q At that time? Okay.

12 And how many interviews have you had since then?

13 A With investigators, or with the solicitor, too?

14 Q Both.

15 A Probably six or seven. Several times.

16 Q Let me ask you this. The death threats and
17 various things that came from the community, did that
18 happen almost immediately after Ms. Elvis went missing?

19 A Correct.

20 Q You know when she went missing, correct?

21 A Yes. Yes. I'm sorry.

22 Q And because of your close relationship with his
23 son, I imagine that was something you talked about
24 quite frequently?

25 A Yes.

J. M. [REDACTED] - CROSS-EXAMINATION

1 MR. BOUCHETTE: Court's indulgence, Your Honor.

2 Q (MR. BOUCHETTE) There was also a discussion
3 about various items of concrete we saw in the
4 photograph; do you remember that?

5 A Correct.

6 Q And Mr. Elvis -- excuse me, Mr. Moorer was a
7 contractor, correct?

8 A Correct.

9 Q He worked with concrete as part of his job?

10 A Correct.

11 Q And you've never seen Heather Elvis at the Moorer
12 residence?

13 A No.

14 Q You never saw Mr. Moorer with Ms. Elvis at any
15 point in time?

16 A No.

17 Q In all of your time at the Moorer residence?

18 A Correct.

19 MR. BOUCHETTE: No further questions, Your Honor.

20 THE COURT: Thank you. Redirect?

21 MS. LIVESAY: No, sir, Your Honor.

22 THE COURT: You may step down.

23 Do you wish him to be excused, Solicitor?

24 MS. LIVESAY: Please.

25 THE COURT: Any objection, Mr. Bouchette?

LAURA GARLITZ - DIRECT EXAMINATION

1 MR. BOUCHETTE: No, Your Honor.

2 THE COURT: You are free to leave.

3 How long is your next witness?

4 MR. HELMS: Very short, Your Honor.

5 THE COURT: Let's go ahead and call them.

6 MR. HELMS: Yes, sir. At this time the State
7 calls Laura Garlitz.

8 (LAURA GARLITZ, having been duly sworn,
9 testified as follows:)

10 THE WITNESS: Laura Garlitz, L-A-U-R-A,
11 G-A-R-L-I-T-Z.

12 DIRECT-EXAMINATION

13 BY MR. HELMS:

14 Q Good morning, Ms. Garlitz.

15 A Good morning.

16 Q Who is **J. M.** to you, the young man that just
17 testified?

18 A He's my youngest son.

19 Q Do you know the defendant, Sidney Moorer?

20 A Yes.

21 Q How do you know Mr. Moorer?

22 A He is the father of my son's friend, **S. C. M.** .

23 Q And what about his wife; do you know her?

24 A Yeah. She's Sidney's wife, yeah.

25 Q Are you personally familiar with her?

LAURA GARLITZ - DIRECT EXAMINATION

1 A Yes.

2 Q And how long have you known the Moorers, ma'am?

3 A Oh, my son was in elementary school. Maybe ten
4 years. He would go to their house. I wouldn't go. I
5 would drop him off, but I didn't hang out with Sidney
6 and Tammy.

7 Q You didn't?

8 A No.

9 Q What about in 2013, did you hang out with them
10 then?

11 A No. They stopped by the house.

12 Q They stopped by your house?

13 A Yes.

14 Q Do you remember when that was, ma'am?

15 A It was a Saturday night in December. I think it
16 was Saturday before Heather went missing.

17 Q Tell this jury about that interaction, please.

18 A They texted my son saying they would come by and
19 show their new truck. They came by and the kids were
20 outside. Tammy came in my door; Sidney behind her. I
21 could tell she was drinking. She was a little happy
22 and bubbly and bouncing around. She came in and wanted
23 to smoke pot.

24 Q And did you all smoke pot?

25 A Yes.

LAURA GARLITZ - DIRECT EXAMINATION

- 1 Q Both of you?
- 2 A Tammy and I; Sidney didn't.
- 3 Q Did she drink anything in your presence?
- 4 A No.
- 5 Q But -- how do you know she was drinking?
- 6 A I could tell the way she was acting. She was all
7 giggly and walking around like she usually didn't.
8 Sidney was right behind her like he was watching out
9 for her.
- 10 Q Did she admit to you she was drinking that night?
- 11 A No.
- 12 Q But you witnessed her use marijuana?
- 13 A Yes.
- 14 Q Did she do anything else?
- 15 A No.
- 16 Q How long did they stay for?
- 17 A It was brief, maybe 10, 15 minutes, and then they
18 just walked on back out.
- 19 Q Was that a common occurrence with you and Tammy?
- 20 A No.
- 21 Q Was that a one-time thing?
- 22 A Yes.
- 23 Q Had you ever done it before with her?
- 24 A No.
- 25 Q Had you ever done it since with her?

LAURA GARLITZ - CROSS-EXAMINATION

1 A No.

2 (A brief pause in the proceedings.)

3 Q (MR. HELMS) So this was your -- you are certain
4 this was prior to the disappearance of Heather Elvis?

5 A Yes.

6 Q Had you hung out with her since the disappearance
7 of Heather Elvis?

8 A No. I dropped J.M. off when they got out of
9 jail the first time. He was there for the day. I
10 think that is the last I saw of her.

11 Q So you haven't talked to her since?

12 A No.

13 Q The night she was drinking and smoking pot at
14 your house, did she ever admit to you that she was
15 trying to get pregnant?

16 A No.

17 MR. HELMS: Please answer any questions that the
18 defense may have.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. GALMORE:

22 Q Ms. Garlitz, your testimony is that your son
23 received a text about them wanting to come over and
24 show the new truck?

25 A Yes.

LAURA GARLITZ - CROSS-EXAMINATION

1 Q And then once they got to the house, you and
2 Tammy smoked marijuana together?

3 A Yes.

4 Q And Sidney did not participate?

5 A No.

6 Q Tammy didn't drink anything when she was with
7 you, any alcohol?

8 A Not with me, no.

9 Q Were you drinking that night?

10 A Yes.

11 Q Because it was a weekend?

12 A I was in my house on a Saturday night, yes.

13 Q Nothing wrong with that.

14 A No.

15 Q There has been a lot of talk about this case on
16 the Internet; have you made any comments on the
17 Internet about this case?

18 A Awhile back I did, but I try to stay off and not
19 say anything because of the trials.

20 Q So you were on the various Websites out there
21 commenting on this case?

22 A At the beginning there, yeah.

23 Q Have you ever been to the Moorer home?

24 A Yes, to drop my son off. I walked into the foyer
25 one time.

LAURA GARLITZ - CROSS-EXAMINATION

1 Q Have you ever seen Heather Elvis at the Moorer
2 home?

3 A No.

4 MR. GALMORE: Court's indulgence.

5 THE COURT: Certainly.

6 (A brief pause in the proceedings.)

7 MR. GALMORE: Nothing further.

8 THE COURT: Redirect.

9 MR. HELMS: Nothing.

10 THE COURT: You wish her to be excused?

11 MR. HELMS: Please.

12 THE COURT: Any objection, Mr. Galmore?

13 MR. GALMORE: No, sir.

14 THE COURT: You are free to leave.

15 Okay, ladies and gentlemen, at this point we'll
16 take a recess. Do not begin your deliberations, do
17 not discuss the case. We'll be with you in about 15
18 minutes, thank you.

19 (The jury exits at 11:10 a.m., and the
20 following is heard out of the presence of the jury.)

21 THE COURT: Anything from the State before we
22 recess?

23 MR. HELMS: No, Your Honor.

24 THE COURT: Anything from the defendant?

25 MR. GALMORE: No, sir.

DONALD DEMARINO - DIRECT EXAMINATION

1 THE COURT: We'll be at ease for about 15
2 minutes.

3 (A recess was taken.)

4 THE COURT: State ready?

5 MR. HELMS: We are.

6 THE COURT: Defense ready?

7 MR. BOUCHETTE: Yes.

8 THE COURT: Let the record reflect Mr. Moorer is
9 present. Let's bring in our jury, please. Thank you.

10 (The jury enters at 11:39 a.m., and the
11 following is heard in the presence of the jury.)

12 THE COURT: Thank you, ladies and gentlemen.

13 Solicitor, you may call your next witness.

14 MR. HELMS: We call Donald Demarino.

15 THE WITNESS: Donald Demarino, D-E-M-A-R-I-N-O.

16 (DONALD DEMARINO, having been duly sworn,
17 testified as follows:)

18 DIRECT-EXAMINATION

19 BY MR. HELMS:

20 Q Hey, Donald, how you doing?

21 A Good.

22 Q Do you know who I am?

23 A Yes, sir.

24 Q How do you know me?

25 A Talking to you.

DONALD DEMARINO - DIRECT EXAMINATION

1 Q We talked before, that's right. Now, look,
2 obviously you didn't come from a spring formal, so tell
3 this jury where you are living right now.

4 A I don't have an address.

5 Q J. Reuben?

6 A J. Reuben Long.

7 Q That is the Horry County Detention Center?

8 A Yes, sir.

9 Q So they aren't guessing, go ahead and tell them
10 why you are in there, Donald, what your charges are.

11 A I have a couple B&E autos, possession of a
12 firearm and possession of a stolen vehicle.

13 Q But you ain't convicted of none of that stuff?

14 A No.

15 Q You missed court; is that right?

16 A Yeah.

17 Q And that is why we picked you up -- we didn't but
18 someone did?

19 A Yes, sir.

20 Q Donald, do you know Sidney Moorner?

21 A Yes.

22 Q How do you know him?

23 A He's my family.

24 Q How are you related to him?

25 A Through marriage; my cousin, Tammy.

DONALD DEMARINO - DIRECT EXAMINATION

1 Q So Tammy is your cousin?

2 A Yes.

3 Q Okay. Did you used to hang out with him back in
4 the day?

5 A Yeah, a little bit.

6 Q Good. Did you go over to their house?

7 A Yeah.

8 Q In 2013?

9 A Yeah.

10 Q 2014?

11 A Yeah.

12 Q Do you remember the last time you were over
13 there?

14 A Yes, sir.

15 Q About but when was that? And you don't have to
16 be exact, I know it is a long time ago?

17 A 2014, 2015, around there.

18 Q That is fair enough. What were you doing over
19 there?

20 A I was there for a cookout.

21 Q Okay. Was it daytime or nighttime?

22 A Daytime, going on nighttime.

23 Q Fair enough. Tell me a little bit about what
24 happened there. Did you talk to Tammy?

25 A A little bit, yeah.

DONALD DEMARINO - DIRECT EXAMINATION

1 Q Did you talk to Sidney?

2 A A little bit, yeah.

3 Q And this was obviously after Heather Elvis went
4 missing?

5 A Yes.

6 Q Did you know about that whole disappearance?

7 A Yes.

8 Q Do you remember what you and Sidney talked about,
9 kind of?

10 A Sort of, yeah.

11 Q Did he show you anything?

12 A Yeah.

13 Q And how did that conversation start? What was
14 that about? Was it about the weather?

15 A No.

16 Q What was it about?

17 A Heather.

18 Q Do you remember what he said?

19 A Not word for word, no.

20 Q In vague terms.

21 A Basically, that he showed me a picture on a
22 phone.

23 Q He showed you his phone?

24 A A phone. I don't know if it was his phone.

25 Q But he had it in his possession?

DONALD DEMARINO - DIRECT EXAMINATION

1 A Yes, sir.

2 Q And who was -- do you know who that picture was
3 of?

4 A Pretty sure, yeah.

5 Q Tell this jury who the picture was of.

6 A Heather Elvis.

7 Q Had you ever -- you've seen pictures of her
8 since?

9 A Yes.

10 Q So has that confirmed it in your mind that the
11 picture he showed you was a picture of her?

12 A Yes.

13 Q Donald, I want you to answer me this question:
14 Did that picture upset you?

15 A Yeah.

16 Q Would it be fair to say -- and you can correct me
17 if I'm wrong -- that life kind of has taken a downward
18 spiral since you saw that photograph?

19 A Definitely.

20 Q Things are not as good now for you as they were
21 back then?

22 A Definitely.

23 Q Donald, I want you to answer me this question:
24 After seeing that picture of Heather -- did he tell you
25 when that picture was taken?

DONALD DEMARINO - CROSS-EXAMINATION

1 A No.

2 Q In that picture, did Heather look like she was
3 under her own free will?

4 A No.

5 Q Let me ask you this. After seeing that picture
6 of Heather back in 2014, did you expect this family to
7 ever hear from her again?

8 A No.

9 MR. HELMS: Answer any questions that the defense
10 may have.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. GALMORE:

14 Q Mr. Demarino, what charges are you at the
15 detention center for now?

16 A Couple counts of B&E autos, possession of stolen
17 firearm, possession of a stolen vehicle, credit card
18 fraud.

19 Q So B&E auto, possession of a stolen firearm,
20 possession of a stolen vehicle, and B&E auto -- did I
21 get -- oh, credit card fraud. Okay.

22 What about your prior record, what have you been
23 convicted of in the past, sir?

24 A I got a burglary charge and a couple drug
25 charges.

DONALD DEMARINO - CROSS-EXAMINATION

1 Q Burglary charge and drug charges? Got a problem
2 with drugs, Mr. Demarino?

3 A Yeah.

4 Q Addiction issue?

5 A Yeah.

6 Q What drug is it? Heroin?

7 A Yes, sir.

8 Q How long have you been dealing with that
9 addiction, sir?

10 A Probably about six years.

11 Q Solicitor's Office given you any help for that?

12 A No.

13 Q Let me be clear about this. Does your heroin
14 addiction have anything to do with Heather Elvis' case?

15 A No.

16 Q Because the Solicitor tried to suggest that maybe
17 you had a downward spiral after you looked at this
18 picture.

19 A Okay.

20 Q You were kind of dealing with drugs before that?

21 A A little bit. Not...

22 Q Mr. Demarino, who was at the house other than you
23 and Sidney at this time?

24 A A lot of people. A lot of family.

25 Q How many people? Give us a guess. More than

DONALD DEMARINO - CROSS-EXAMINATION

1 ten? More than 20?

2 A Maybe ten people, I don't....

3 Q So about ten people at the house. And you said
4 that Mr. Moorer showed you a picture on a phone?

5 A Yeah.

6 THE COURT: Is that a yes?

7 A Yes.

8 Q (MR. GALMORE) Did he show this picture to anyone
9 else?

10 A I don't know. I don't think so.

11 Q So while you were standing there looking at the
12 picture, was there anyone else standing there with you?

13 A No.

14 Q So to the best of your knowledge, no one else
15 ever has seen this picture?

16 A No.

17 Q Anywhere?

18 A I have no idea.

19 Q Now, when you and Sidney are standing there
20 looking at this picture, did you happen to take a
21 picture of the picture?

22 A No.

23 Q Have you seen this picture since?

24 A No.

25 Q Has the Solicitor's Office brought you a picture

DONALD DEMARINO - CROSS-EXAMINATION

1 and say, hey, is this the picture you saw?

2 A No.

3 Q So no one else saw the picture?

4 A I don't -- I guess not.

5 Q To the best of your knowledge, no one saw it?

6 A Yeah.

7 Q And you haven't seen that picture like today,
8 have you?

9 A No.

10 Q How many times have you talked to the solicitors
11 about this case?

12 A A handful of times, a couple.

13 Q Five maybe?

14 A Yeah.

15 Q And I know that is a guess, estimate, but in
16 those five times, have they ever given you a picture
17 and asked if that is the picture you are referring to?

18 A No.

19 Q Do you know what device this picture came off of?

20 A I don't.

21 Q Was it on a phone?

22 A Yeah.

23 Q Do you know whose phone this was?

24 A No.

25 Q Do you know if it was Sidney's phone?

DONALD DEMARINO - CROSS-EXAMINATION

1 A I take it.

2 Q Your --

3 A I'm taking it was, yeah.

4 Q You are assuming it was Sidney's phone?

5 A Yeah.

6 Q So if it was Sidney's phone -- well, you can't
7 answer that.

8 This was a conversation that went with this
9 picture; did anyone overhear this conversation?

10 A No.

11 Q So just you and Sidney talking?

12 A Yeah.

13 Q He just brought you aside and said let me talk to
14 you?

15 A Yes.

16 Q And when did this take place again?

17 A 2014, '15, I believe. After they were released.

18 Q Okay. Is that a tattoo on your chest?

19 A Yeah.

20 Q What is that a tattoo of?

21 A Two guns and roses.

22 Q As in the band, Guns N'Roses?

23 A No.

24 Q Just two guns?

25 A Two guns and roses.

DONALD DEMARINO - CROSS-EXAMINATION

1 Q Why would you have a tattoo of two guns on your
2 chest?

3 A Why not?

4 Q When you saw this picture back in 2014 or 2015,
5 whenever it was, did you tell the police?

6 A Soon after, yeah.

7 Q Soon after?

8 A Yeah, they came to visit me while I was in jail.

9 Q Did you tell the family members?

10 A No.

11 Q Did you tell any inmates at the jail?

12 A I talked to an inmate about it, yeah.

13 Q So you told inmates what you saw?

14 A I told one inmate what I saw.

15 Q One inmate. Did you tell that inmate that you
16 had the picture?

17 A No.

18 Q Because you didn't have a picture?

19 A No.

20 Q Did you take Mr. Moorers' phone or ask if you
21 could hold it?

22 A No.

23 Q Did you ask him to send you a copy of that
24 picture?

25 A No.

DONALD DEMARINO - CROSS-EXAMINATION

1 Q So the only thing we have to go on today is your
2 word that you saw a picture in 2014 or 2015?

3 A Yep.

4 Q Now, you've been in jail before? You've been in
5 J. Reuben Long before, right?

6 A Yes.

7 Q It's not your first rodeo?

8 A No.

9 Q When you are at the detention center, do they
10 allow you to make phone calls?

11 A Yeah.

12 Q And in order to make a phone call, you have to
13 make it collect?

14 A Yeah.

15 Q And they give you a pin number to go with the
16 calls?

17 A No.

18 Q Oh, you don't have a pin number at the jail?

19 A I got like an HC number, like my inmate number,
20 but no -- no pin number.

21 Q So you don't have a pin number to make telephone
22 calls?

23 A No.

24 Q Do you know if the phone calls at the jail are
25 recorded?

DONALD DEMARINO - REDIRECT EXAMINATION

1 A Yeah, they're recorded.

2 Q Do you remember making a phone call to your
3 mother from the jail in which you said you made the
4 story up?

5 A Yes, I do.

6 Q So you told your mother you made it up?

7 A Yeah.

8 MR. GALMORE: No further questions.

9 THE COURT: Redirect.

10 REDIRECT-EXAMINATION

11 BY MR. HELMS:

12 Q Why did you tell your mother you made the story
13 up?

14 A Because I've been in and out of trouble and I
15 wasn't trying to put anything else on my mom.

16 Q Did you make the story up?

17 A No.

18 Q As a matter of fact, how many times have you
19 talked to me, Ms. Livesay or an investigator over the
20 years, ballpark?

21 A A good bit.

22 Q Have you ever told any version of events other
23 than what you are saying here today?

24 A Never.

25 Q Have you ever lied to law enforcement about what

DONALD DEMARINO - REDIRECT EXAMINATION

1 you saw on that telephone?

2 A No.

3 Q Mr. Galmore made a big deal about the charges you
4 have now and are in J. Reuben Long for right now; have
5 I ever talked to you about those charges?

6 A No.

7 Q As a matter of fact, what do I tell you about
8 those?

9 A That we cannot talk about it.

10 Q So have I promised you anything for being here
11 today to tell this?

12 A No.

13 Q How about threatening you, any time you and I
14 have been alone, has anyone from my office or law
15 enforcement threatened and said if you don't testify,
16 something bad is going to happen, you are going to get
17 the book thrown at you, or anything like that?

18 A No. Never.

19 Q Have you ever had any beef with Tammy or Sidney,
20 Donald?

21 A No.

22 Q Were you all on the outs when you came forward
23 with this story?

24 A No.

25 Q Why did you come forward with this story, Donald?

DONALD DEMARINO - RECROSS-EXAMINATION

1 A Well, I had to get it off of me.

2 Q That's fair. Was it weighing on you?

3 A Yeah.

4 Q Do you expect to get any help from me for your
5 charges for testifying here today?

6 A No.

7 Q Do you have any reason, Donald, to lie to this
8 jury today?

9 A None.

10 Q Do you have any beef with Sidney Moorner?

11 A No.

12 Q Why are you testifying right now? If I haven't
13 promised you anything, Donald, and haven't threatened
14 you in any way -- did I make you come out here?

15 A No.

16 Q Why are you here?

17 A Because it's the right thing.

18 Q Because it's the right thing. Thank you, Donald.

19 MR. HELMS: Thank you very much.

20 THE COURT: Recross, Mr. Galmore.

21 RECROSS-EXAMINATION

22 BY MR. GALMORE:

23 Q Mr. Demarino, do you want help with your pending
24 criminal charges?

25 A No.

DONALD DEMARINO - RE-CROSS-EXAMINATION

1 Q You don't want any consideration from the
2 Solicitor's Office?

3 A No.

4 Q Do you want help for your drug addiction?

5 A That would be great, but, no.

6 Q That would be great?

7 A Yeah. But, no.

8 Q Now, you told the solicitors and you told this
9 jury you saw a picture?

10 A Uh-huh.

11 THE COURT: Is that a yes?

12 A Yes.

13 Q (MR. GALMORE) And you later told your mother
14 that you made that story up?

15 A Yep.

16 MR. GALMORE: Thank you, sir.

17 THE COURT: All right. You may step down, sir.
18 You may call your next witness.

19 MR. HELMS: At this time, the State calls Jessica
20 Adams.

21 (JESSICA ADAMS, having been duly sworn,
22 testified as follows:)

23 THE WITNESS: My name is Jessica Adams,
24 A-D-A-M-S.

25 DIRECT-EXAMINATION

JESSICA ADAMS - DIRECT EXAMINATION

1 BY MR. HELMS:

2 Q Hi, Ms. Adams.

3 A Hi.

4 Q Who do you work for?

5 A I work for the State Law Enforcement Division,
6 commonly referred to as SLED.

7 Q Who did you work for before them?

8 A Before then, I worked for the Second Judicial
9 Circuit in Aiken, South Carolina.

10 Q How long have you worked for SLED?

11 A Five-and-a-half years.

12 Q What do you do for the South Carolina Law
13 Enforcement Division?

14 A I'm a special agent assigned to the Fusion
15 Center. We assist law enforcement with missing persons
16 cases, fugitive investigations, things like that.

17 Q When you say assist law enforcement, what do you
18 do specifically mean?

19 A Primarily my job has been as the missing persons
20 information coordinator, also referred to as MPIC. So
21 as the MPIC, I assist law enforcement with primarily
22 analytical things, assisting them finding their missing
23 persons through state-wide databases, national
24 databases, things like that, for uses of Social
25 Security numbers, driver's licenses, credit checks,

JESSICA ADAMS - DIRECT EXAMINATION

1 things like that, to see if they appeared somewhere
2 else.

3 Q So, basically, and correct me if I'm wrong, when
4 you assist in a missing persons case, you look for
5 people's digital footprints?

6 A Exactly, yes, sir.

7 Q In doing that, you use all of those things, the
8 Social Security numbers, credit checks, driver's
9 license, anything I would use to put me on the radar?

10 A That's right, yes, sir.

11 Q So if I'm on the grid, you can find me?

12 A Certainly try really hard to do so, yes, sir.

13 Q Have you been successful using those devices'
14 venues to find missing person?

15 A Yes, sir.

16 Q Do you know how many? You can ballpark it.

17 A I would say in five-and-a-half years, well over a
18 hundred.

19 Q So that is a pretty effective method, then?

20 A It is, yes, sir.

21 Q So any time I use my Social Security card, or
22 credit check, you have access to all of that?

23 A Yes, sir.

24 Q If you were looking for me, hypothetically, you
25 would have access to all of that?

JESSICA ADAMS - DIRECT EXAMINATION

1 A That's right, yes, sir.

2 Q Have you had an opportunity to become involved in
3 this case in the disappearance of Heather Elvis?

4 A Yes, sir.

5 Q And tell us a little bit about that.

6 A So I was contacted to see if I could locate any
7 kind of new information, any new uses of Ms. Elvis'
8 identifiers, so her name in combination with date of
9 birth, Social Security number, to see if there was
10 anything that she has used that information for,
11 whether it was leasing an apartment, buying a vehicle,
12 updating her driver's license, anything like that,
13 driver's licenses in other states, and things such as
14 that, even social media.

15 Q And when was that that you were asked to become
16 involved in this case?

17 A In 2014.

18 Q And pursuant to that request, did you actually do
19 a search for Heather Elvis?

20 A Absolutely. Yes, sir, I did.

21 Q When was the last time you did a search for
22 Heather Elvis?

23 A Friday.

24 Q This Friday?

25 A That's right.

JESSICA ADAMS - CROSS-EXAMINATION

1 Q Tell the jury what you have found.

2 A There have been no new uses of any of her
3 identifiers, name, date of birth, Social Security
4 number in the United States.

5 Q So your search was not confined to the county of
6 Horry or the state of South Carolina?

7 A No, sir.

8 Q If Heather had used any of that identifying
9 information, anywhere in this country, would you have
10 been able to find her?

11 A Yes, sir.

12 Q If she bought a car, would you have been able to
13 find her?

14 A Yes, sir.

15 Q If she leased an apartment, would you be able to
16 find her, say in San Francisco?

17 A Yes, sir.

18 Q You have had absolutely no indication that she's
19 used anything since when?

20 A Since 2013.

21 MR. HELMS: Please answer any questions defense
22 may have.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION

25

JESSICA ADAMS - CROSS-EXAMINATION

1 BY MR. BOUCHETTE:

2 Q Very briefly. Ms. Adams, good morning.

3 A Good morning.

4 Q Briefly, I think you are the first person from
5 SLED we've heard from. SLED has a lot of resources at
6 its disposal, correct?

7 A Yes, sir.

8 Q Probably more so than a local county
9 investigative unit?

10 A Yes, sir.

11 Q You have forensic people, correct?

12 A That's right, yes, sir.

13 Q You have technology people?

14 A Yes, sir.

15 Q You have a whole staff up there in Columbia?

16 A Yes, sir.

17 Q A lot of resources can be brought from there?

18 A Yes, sir.

19 Q And was SLED brought into this investigation?

20 A I know that I was requested.

21 Q Were there any other SLED agents involved in this
22 case?

23 A Possibly, yes, sir. The Fusion Center is sort of
24 a separate entity. We're not even based out of
25 headquarters, so my role was very defined.

STATE RESTS - MOTIONS

1 Q But even in your capacity, you evaluated -- you
2 said you had her bank records?

3 A I didn't have her bank records. What I do is I
4 look for reports to the credit agencies, so I didn't
5 have those, no, sir.

6 MR. BOUCHETTE: One moment, Your Honor -- no
7 further questions.

8 THE COURT: Redirect.

9 MR. HELMS: Nothing. I ask her to be excused.

10 MR. BOUCHETTE: No objection.

11 THE COURT: Thank you. You are free to step
12 down.

13 Call your next witness.

14 MR. HELMS: At this time, the State rests.

15 THE COURT: Ladies and gentlemen, there is
16 matters of law to take up outside of your presence.
17 We've reached our lunch hour. While we are out, do
18 not begin deliberations. Do not discuss the case, and
19 of course don't allow anybody to talk about it in your
20 presence. I ask you to be back in your jury room
21 about 1:30. We'll resume at that time.

22 (The jury exits at 12:02 p.m., and the
23 following is heard out of the presence of the jury.)

24 THE COURT: Any motions from the State at this
25 point?

STATE RESTS - MOTIONS

1 MR. HELMS: No, Your Honor.

2 THE COURT: I'll be happy to hear from you,
3 Mr. Bouchette.

4 MR. BOUCHETTE: Thank you, Your Honor. Judge, at
5 this time we do have several motions. This has been
6 somewhat of an unusual case with a back story in all
7 of the things we have going on being a circumstantial
8 case, so I want to make sure that I touch on
9 everything, so I ask the Court to bear with us.

10 THE COURT: Sure. Take your time.

11 MR. BOUCHETTE: The first motion we move for is
12 we move for a mistrial on the basis that if you recall
13 the testimony or the interview with Detective Martin,
14 he came in -- allowed to come in over objection. It
15 was in that interview there was a discussion about
16 polygraph very briefly. I know we had a conversation
17 where we chose not to request a curative instruction
18 at that time --

19 THE COURT: Let me interrupt you. You also did
20 not move for a mistrial.

21 MR. BOUCHETTE: I understand, Your Honor.

22 THE COURT: I'm asking, because I want the record
23 to be clear, that that was based on our conversation
24 on the side, and I don't think we put it all on the
25 record at all. It was your -- I mentioned that to

STATE RESTS - MOTIONS

1 you. I offered to give a curative instruction that
2 the jury would disregard that, and even would explain
3 why they should disregard it, but there was no
4 contemporaneous motion for a mistrial; you agree with
5 that?

6 MR. BOUCHETTE: I do agree with that.

7 THE COURT: Thank you. I just wanted the record
8 to be clear on that.

9 MR. BOUCHETTE: We are. We're moving at this
10 time for a mistrial on that basis. It came in. We
11 did not request a curative instruction at that time
12 due to the fact that we didn't want to draw more
13 attention to it since it already came in, but
14 obviously it is in there. It is prejudicial. It is
15 very brief, but I feel we are compelled to make that
16 motion at this time.

17 THE COURT: Motion for mistrial is denied because
18 it is not timely made and I gave you an opportunity to
19 correct it, and you chose not to, and that is your
20 choice. Thank you. Motion is denied.

21 MR. BOUCHETTE: We also move, Your Honor, for a
22 directed verdict. What we have here is a situation
23 where -- obviously, I don't think it is in dispute
24 that it is a circumstantial case that we're looking
25 at, where the State is obligated to find that someone

STATE RESTS - MOTIONS

1 has seized, confined, inveigled, decoyed, kidnapped,
2 abduct or carried away any other person by any means,
3 whatsoever. Your Honor, in order to do that, in order
4 to satisfy any of those elements, you would have to
5 be -- at least have some evidence in the record
6 indicating at what point these two individuals crossed
7 paths. Every witness -- which is why we come back to
8 it consistently -- every witness has said nowhere in
9 the evidence that the State has produced, shows
10 Mr. Moorner in the same vicinity as Ms. Elvis during
11 the night she goes missing. There is a lot of
12 innuendos, a lot of implication, a lot of guesswork,
13 but, ultimately, what it comes down to, after all the
14 witnesses we've heard, and everything we've seen, we
15 never see Mr. Moorner at any point get to Ms. Elvis'
16 residence that night. There is never any evidence
17 that she's at the Moorner residence, and there is no
18 direct evidence that they have ever crossed paths at
19 Peachtree Landing.

20 So as to the kidnapping charge, it is not the
21 weight of the evidence, because there simply is no
22 evidence on that point. Typical question is when,
23 where and how? When did they come into contact? How
24 were any of these things achieved? I submit to the
25 Court that without showing at least some evidence as

STATE RESTS - MOTIONS

1 to being in the same proximity, I don't see how we can
2 allow it to go forward, because there is just not any
3 evidence to support the charges at this point.

4 THE COURT: All right. Solicitor, you wish to
5 respond?

6 MS. LIVESAY: Thank you, Your Honor. The
7 kidnapping statute addresses, like Mr. Bouchette said,
8 decoy and inveigle, or the other possibilities. The
9 State would argue, for purposes of directed verdict,
10 the payphone call was an act of decoy and inveigle.
11 Clearly, the evidence was that he called from a
12 payphone. After he called, she immediately starts
13 moving around. His phone is then left dead, and the
14 phone powers on at a later date.

15 The circumstantial evidence certainly would lead
16 one to believe that he is decoying, inveigling,
17 leading her away from the comfort of her home. We
18 believe that is circumstantial evidence.

19 We also believe the fact there is a second phone
20 call, she then leaves her apartment again, goes to
21 Peachtree Landing. We have evidence that it was,
22 indeed, the defendant's truck that goes to the
23 landing, Ms. Elvis' phone then dies, then you see his
24 truck leading back from the landing. We believe that
25 is circumstantial evidence that shows Mr. Moorer --

STATE RESTS - MOTIONS

1 not killed her, but certainly has led to the end of
2 her being able to make phone calls, receive phone
3 calls or have any contact with the outside world. We
4 believe that is circumstantial evidence, and we
5 believe that we have eliminated anybody but this
6 defendant inveigled her that night at the payphone and
7 then went down to the landing later on.

8 THE COURT: Do you wish to respond?

9 MR. BOUCHETTE: May I proceed with the motion on
10 the conspiracy charge or --

11 THE COURT: Well, do you wish to respond to that?
12 I'll be happy to rule on that.

13 MR. BOUCHETTE: Nothing further other than what
14 we've said.

15 THE COURT: All right. There's that evidence.
16 You also have what I consider to be substantial
17 circumstantial -- all of that is circumstantial
18 evidence. Probably the most compelling circumstantial
19 evidence, to me, is you are talking about someone who
20 has certainly been involved -- been involved with
21 multiple boyfriends, and there is nothing wrong with
22 that. She's not a novice, by any stretch of the
23 imagination. She has had relationships, and she's not
24 ashamed and she shouldn't be. But she's a person that
25 went to a place -- and I don't know whether she had

STATE RESTS - MOTIONS

1 ever been there before, but any adult or any person as
2 savvy as she was would know that that's not a place
3 you would customarily go. And, most importantly, you
4 wouldn't methodically get out of your car, take your
5 keys, take your cell phone and get in another vehicle
6 unless you knew the person, and the only persons that
7 could possibly fit the bill is established by the
8 evidence of multiple persons in the truck and the
9 timing of the truck. It's near their home. It goes
10 in and out about the same time. There is about an
11 hour between that and the telephone call with text
12 messages, I think it was 4:48 or somewhere along in
13 that point, where the parties -- at least the Moorers
14 are at home, or somewhere, claiming to be.

15 But then you couple with that other evidence that
16 shows -- the jury can reasonably conclude it shows
17 evidence of guilt of doing something, and that is
18 cleaning the truck. That is probably the most
19 incredible evidence that I've heard, that a brand new
20 truck, pressure wash it ten days after you get it?
21 That doesn't make any sense. Why would you do that?
22 Why would you spend an hour-and-a-half with rags
23 cleaning out a truck, washing down and then burning
24 the rags? That is another point that -- I just find a
25 reasonable conclusion is, well, obviously it may

STATE RESTS - MOTIONS

1 contain blood, DNA, anything.

2 All of those things juries can reasonably
3 conclude and put those things together.

4 Now you're coupled with another thing that would
5 have been most helpful to them, not that they have to
6 prove anything, but it certainly would have been
7 compelling evidence to show the vehicle in the
8 driveway, the cameras would have had a record of all
9 of that, but lo and behold, on the 21st that is
10 taken down and we get a new system.

11 Now, I understand the testimony, and I've heard
12 the testimony and was aware of that, about the
13 threats, and certainly that is a logical explanation
14 for changing that. But anybody that has been
15 threatened about that, if I have some evidence -- to
16 me, another deduction is if I have evidence that
17 exonerates me, I'm surely not going to destroy it, if
18 someone is threatening me. That is absolutely a
19 hundred percent sure. We're not talking about a
20 novice here on this side either, on the defendant's
21 side.

22 So that is just a few of the circumstances that I
23 think overwhelmingly -- not just substantially, but
24 overwhelming -- points to the guilt of Mr. Moorer. So
25 the motion for directed verdict is denied as to the

STATE RESTS - MOTIONS

1 kidnapping.

2 Next.

3 MR. BOUCHETTE: Your Honor, we move for a
4 directed verdict as to the conspiracy to commit
5 kidnapping charge. Again, this conspiracy statute is
6 a little bit different than the general conspiracy
7 statute where it is conspiracy to do anything
8 improper, and that allows the jury to, sort of, come
9 to different conclusions. This is specifically a
10 conspiracy to engage in a kidnapping. I would submit
11 that on top of the circumstantial evidence we have on
12 the underlying crime, we're now looking at what is the
13 evidence in the record indicating a coordinated effort
14 to conspire; if so, how were they communicating?
15 There was nothing in the records between Mr. Moorer
16 and, presumably, Mrs. Moorer. We have nothing in the
17 record as to who was in the vehicle. Was it more than
18 one person, or just one? We have nothing in the
19 record indicating who all was involved in the phone
20 call. We have no coordination between anyone and
21 Mr. Moorer, or Mr. Moorer and anyone else to indicate
22 that a conspiracy had occurred.

23 So, Your Honor ruled on the underlying crime, but
24 still to evaluate a conspiracy, particularly a
25 conspiracy to kidnap, I would submit there has to be

STATE RESTS - MOTIONS

1 some evidence of a pre-planned strategy at some point,
2 somewhere, to be able to get you there. I think at
3 this point there is nothing in the record to
4 substantiate the conspiracy charge.

5 THE COURT: Okay. I appreciate that. It just
6 follows -- everything I just said, I repeat. But I
7 would also add this: There is testimony in this
8 record that at that point in time Mr. Moorner was not
9 free to move without Mrs. Moorner being around him.
10 Didn't have a phone. Couldn't do anything.
11 Handcuffed to the bed. All of those things are there.

12 We have Ms. Moorner -- no question she's in the
13 vehicle when they go to the Walmart. No question
14 she's in the vehicle when they go to the phone. No
15 question that she's in the vehicle when the card is
16 removed, would have to have been. No question that
17 the fact is Ms. Moorner is clearly shown on the video
18 helping to clean out the vehicle, and I think that's
19 sufficient to show conspiracy to kidnap. Thank you.
20 Motion is denied.

21 MR. BOUCHETTE: One final motion.

22 THE COURT: Sure.

23 MR. BOUCHETTE: Judge, I've never had this come
24 up as I was preparing yesterday evening, but I don't
25 know what to do other than just to make the motion and

STATE RESTS - MOTIONS

1 let Your Honor hear it.

2 As Your Honor is aware, the conspiracy indictment
3 came in -- I believe it was -- in 2018, if I'm not
4 mistaken. Mr. Moorer was, at that time, in SCDC
5 custody. The best we can tell, going back and looking
6 at it, he was never served with the conspiracy
7 indictment.

8 THE COURT: Don't you raise that in the
9 beginning?

10 MS. LIVESAY: Yes, sir, Your Honor.

11 THE COURT: I mean, don't you raise that in the
12 beginning?

13 MR. BOUCHETTE: I don't know that we are
14 necessarily precluded from raising it at this point.

15 THE COURT: I think you are if you go to trial on
16 it; don't you think?

17 MR. BOUCHETTE: Well, at this point we're making
18 the motion now.

19 THE COURT: Your motion is denied. Thank you,
20 sir.

21 Anything else?

22 All right. We'll be at recess until 1:30. Thank
23 you.

24 (A lunch recess was taken.)

25 THE COURT: Thank you. Please be seated.

STATE RESTS - MOTIONS

1 Let the record reflect Mr. Moorer is present.

2 Before we bring in the jury, I have persons near
3 and dear to my heart, my wife and daughter, watching
4 this feed, and they were concerned that the rulings
5 were made on the record and the public was hearing it.
6 I said, well, that's precisely correct, they are
7 supposed to, this is a public proceeding, but what I
8 failed to state, as we all know who do this every day,
9 and, Mr. Bouchette, just to clarify, there is no such
10 thing as -- I don't think that I've ever heard of -- a
11 directed verdict for the State, because the State has
12 the burden of proof beyond a reasonable doubt. In
13 considering and ruling on motions for directed verdict
14 by the defendant, I'm required to consider the
15 evidence in the light most favorable to the State, as
16 you understand that. That is the basis upon which I
17 made all of those statements. For the benefit of
18 anyone else that is here on behalf of the defendant or
19 defendant's family, that doesn't mean that I have
20 concluded that the State has met its burden of proof,
21 because obviously everything depends on what the jury
22 believes, and if the jury believes the evidence, then
23 my ruling is that there is sufficient evidence to
24 support a verdict for the State. If the jury chooses
25 to disbelieve it, there is sufficient evidence to

STATE RESTS - MOTIONS

1 support a verdict for the defendant. So I want to
2 clarify that for the benefit of the viewing audience
3 and the public at large.

4 MR. BOUCHETTE: Was there ambiguity on my part?

5 THE COURT: No. No. Not on your part. Again,
6 it just points out that sometimes we do things that --
7 because we do it all the time, the public viewing it
8 don't understand that. They were concerned -- some
9 statements my daughter received was, well, I concluded
10 the truth. Well, I haven't concluded anything,
11 because that is the jury's decision. All I decided,
12 as a matter of law, is that there is sufficient
13 evidence for the State to go forward after its case,
14 so that is all that ruling was. That is just for the
15 purpose of clarifying the record, because I didn't
16 state -- I probably said it, but sometimes I don't --
17 considering the evidence in the light most favorable
18 to the State, which we know, those of us who do this,
19 that is what I'm required to do at this stage, but I
20 wanted to make that clear.

21 As I understand, you have two witnesses. Do you
22 think they'll go to 5 o'clock?

23 MR. BOUCHETTE: No, Your Honor.

24 THE COURT: Why don't we have enough to go until
25 5 o'clock?

BRUCE KOENIG - DIRECT EXAMINATION

1 THE COURT: Thank you very much, ladies and
2 gentlemen. We're ready to continue. I hope you had a
3 good lunch.

4 You recall when we started this, I mentioned to
5 you that the only party that had any burden was the
6 State to bring these charges, and that the defendant
7 had no burden, whatsoever, didn't have to prove
8 anything, didn't have to say anything, didn't have to
9 present any evidence. But as I told you, if he
10 chooses to, he wouldn't have that opportunity until
11 the State completed its case. Now we're at that
12 point.

13 Mr. Bouchette, does Mr. Moorner wish to present
14 any additional testimony for the jury's consideration?

15 MR. BOUCHETTE: Yes, Your Honor.

16 THE COURT: You may call your first witness.

17 MR. BOUCHETTE: Defense calls Bruce Koenig to the
18 stand.

19 (BRUCE KOENIG, having been duly sworn,
20 testified as follows:)

21 THE WITNESS: My name is Bruce Koenig,
22 K-O-E-N-I-G.

23 DIRECT-EXAMINATION

24 BY MR. BOUCHETTE:

25 Q Mr. Koenig, good afternoon.

BRUCE KOENIG - DIRECT EXAMINATION

1 A Good afternoon.

2 Q Tell us, where are you currently employed?

3 A Employed as a private forensic examiner involved
4 with audio, video and images, like from video or from a
5 still camera.

6 Q Where are you employed?

7 A Where? I'm presently in Palm Harbor, Florida.
8 The company originally started outside of Washington,
9 DC.

10 Q What is your position with the company?

11 A I'm the founder of the company, but presently an
12 associate. I gave my younger associate the company,
13 and he has to do all of the invoices now and all of
14 those kinds of things.

15 Q Tell me, how did you get into that line of work?

16 A I was hired by the FBI in 1970 under their
17 science program, and I came in as a special agent.
18 After being in Atlanta and Detroit as a field agent, I
19 was promoted to headquarters in Washington DC where I
20 was put into the engineering group involved with
21 forensic analysis of audio and video.

22 Q At some point, were you the head of the forensic
23 lab for audio and video for the FBI?

24 A Yes. I managed the entire group for about the
25 last eight or nine years of my career. It is a very

BRUCE KOENIG - DIRECT EXAMINATION

1 large group, by far the biggest group of its type.
2 When I was there, there was about 30 people in the
3 group that ranged from -- usually had three or four
4 Ph.Ds down to people that packaged the evidence to send
5 it back, and everybody in between, examiners, engineers
6 and all that were involved with research projects. The
7 FBI -- I not only worked for the FBI, our forensic
8 group did work for any and all law enforcement groups
9 in the United States and for many foreign countries.
10 So we were there supporting. The local police here
11 could use us to do their work, so it was not just the
12 FBI.

13 Q I imagine back when you got started, did you have
14 to do both audio and video?

15 A When I first got back there, there was almost no
16 video. I know we all live in a world with i-Phones now
17 and everyone has a video camera basically with them,
18 but back then, VHS was just starting to come about.
19 There was hardly any consumer recordings being made.
20 People used VHS to play movies at home. So we had very
21 little video work coming in, even though we got a huge
22 amount of cases, so virtually everybody in the staff
23 did audio, and then we had a few people that did video
24 at the beginning.

25 Q Okay. And over time, did the mix of audio and

BRUCE KOENIG - DIRECT EXAMINATION

1 video start to change?

2 A Right. We started getting a few more
3 surveillance systems and business surveillance systems
4 on VHS. Those were not usually very old, you know,
5 black cartridges that you could put stuff in and record
6 on. But it was probably not until the '90s, latter
7 part of the '90s, before we started seeing many digital
8 video, which is what we have now.

9 Q Give us an example of the type of an assignment
10 that your team at the FBI would be tasked with and
11 dealing with on a daily basis.

12 A Obviously, we got all kinds of things anyone can
13 video record. Common things is we would have a
14 recording of someone being shot. So we would have the
15 audio and the video, so our concerns would be was there
16 more than one shooter? Who actually fired the shot?
17 How many shots were fired? These were the things we
18 would do a daily basis. Back then, it was often stuff
19 from, like, bank robberies and stuff that was video
20 recorded.

21 Q Let's talk about maybe a couple more high-profile
22 assignments. I understand you were involved in
23 reviewing the video in the President Reagan attempted
24 assassination back in 1982?

25 A That's correct. We had the footage from the news

BRUCE KOENIG - DIRECT EXAMINATION

1 media that were recording him at the site, and even
2 though we now know that John Hinkley was the only one
3 shooting, at that point we didn't know that. So we had
4 to analyze, again, both the audio and video tracks to
5 determine if there was a possible second shooter. How
6 many times did he fire? Was he the one that fired? So
7 these were, you know, standard kind of cases for us,
8 except in this case it involved the President of the
9 United States, so obviously it took on a little more
10 serious nature, I guess.

11 Q Just a couple others. I understand you also were
12 involved in viewing the video footage from the Branch
13 Davidions Complex incident in Waco, Texas; is that
14 right?

15 A Yes. The Branch Davidion Complex, one of the
16 other agencies, not the FBI, tried to arrest the head
17 of that organization and it ended up being a fire fight
18 there. Ultimately, it was under siege. The FBI was
19 brought in to actually run the system afterwards, and
20 we had video using what we call "foreign infrared,"
21 systems and planes overhead. When the complex went up
22 in flames, the question was who started the fire? You
23 know, people accused the law enforcement people started
24 the fire. We were able to show before law enforcement
25 ever moved in at all that a fire started in multiple

BRUCE KOENIG - DIRECT EXAMINATION

1 places within the branch Davidion Complex showing that
2 it had been started by the people there inside.

3 Q And I understand you were involved in the Duke
4 lacrosse case?

5 A Yes, we were brought in on that. There was a
6 number of videos. We had to figure out what was going
7 on. There was a young lady that said bad things
8 happened to her. During a certain period of time, we
9 were able to show in the video that that did not
10 happen. We were also able to pull off a time off of a
11 wristwatch that was very hard to see, and that showed
12 that the people being accused couldn't even be there;
13 he was there at a different time.

14 So we did a number of different types of
15 analysis, mostly video, but few audio, showing what
16 really happened there on the site.

17 Q Now, prior to joining the FBI, tell us about your
18 formal education, where did you go to college? What
19 kind of degrees do you have?

20 A My undergraduate is from University of Maryland,
21 which used to be ACC, not anymore. I had double majors
22 of physics and mathematics. I then got a course
23 through DeVry Institute of Technology, which is now
24 called DeVry University, involved with television
25 production and video production.

BRUCE KOENIG - DIRECT EXAMINATION

1 My master's degree is in forensic science from
2 Georgia Washington University. I have taken
3 additional graduate courses in my various fields at
4 Massachusetts Institute of Technology, MIT, George
5 Mason University, University of Colorado in Denver and
6 University of Utah.

7 Q And any specialized courses specifically on
8 imaging or video?

9 A Yes, I have to look at my list, but I didn't
10 memorize the titles of all of these. This lists some
11 of my courses that I've taken. Let me see. I took a
12 course called Applications of Modern Image Processing
13 Systems, presented by the International Society for
14 Optical Engineering.

15 Q Let me ask you this. Since you left the FBI, are
16 you still doing the same type of work in the private
17 sector?

18 A I am.

19 Q Is your work strictly in the United States, or do
20 you work in other countries as well?

21 A We work in other countries. In fact, I testified
22 in August in Singapore. Last year, I testified in
23 Belfast, Ireland. We do a lot of work out of the U.K.,
24 London and Northern Ireland specifically, but also in
25 other countries.

BRUCE KOENIG - DIRECT EXAMINATION

1 Q How about any professional societies, are you in
2 this line of work involved in any professional
3 societies?

4 A Yes. I'm involved with the major societies of
5 both audio and video.

6 Q What are those?

7 A I'm in International Association for
8 Identification. I'm a distinguished member of that,
9 plus a reviewer for their journal. I'm in the
10 Institute of Electrical and Electronic Engineering,
11 life member there. They are -- this is the society
12 that all of the engineers, electrical and electronic
13 engineers, are a member of. It's a very large society.
14 They are much into the theory of a lot of the things I
15 do. They don't tend to like very practical research
16 papers, but they are the basis for a lot of the stuff
17 we do.

18 Specifically, in video, I'm a member of the
19 Society of Motion Picture and Television Engineers,
20 which describes what they do. So the people that are
21 putting all of this together for the networks and all
22 of that are members of the society.

23 Q Have you published peer review articles in this
24 particular field?

25 A I have. I have published over 40 articles,

BRUCE KOENIG - VOIR DIRE - MS. LIVESAY

1 total.

2 Q Have you ever testified in court regarding
3 forensic video analysis?

4 A Yes, a number of times.

5 Q And have you been received as an expert in
6 forensic video analysis?

7 A Yes.

8 Q How many times have you testified, generally?

9 A Total, over 400 times as an expert.

10 MR. BOUCHETTE: Your Honor, at this time we would
11 move to have this witness certified as an expert in
12 the field of forensic video analysis.

13 THE COURT: Very well. Do you care to examine
14 him as to qualifications?

15 MS. LIVESAY: Just a couple of questions as to
16 the qualifications.

17 VOIR DIRE EXAMINATION

18 BY MS. LIVESAY:

19 Q Mr. Koenig, I have a couple of questions. You
20 told this jury that when you were in the FBI, you were
21 the head of the audio/video section; do you remember
22 that?

23 A Yes.

24 Q Now, tell them, were you the head of both, or
25 just the audio section, and a guy named Nowell Harrell

BRUCE KOENIG - VOIR DIRE - MS. LIVESAY

1 was the head of the video?

2 A Okay. Good question. I managed the entire
3 group, all of the audio/video. Harrell was my senior
4 video guy.

5 Q So you are saying now that you were not the
6 senior in audio?

7 A I was the senior audio guy.

8 Q And the other guy was the senior video guy?

9 A Yes, but I managed the entire group. Nowell
10 Harrell worked for me.

11 Q But he did video, and you did audio?

12 A Again, we didn't have that much video, so he and
13 Dale Lindon were the two that did most of the video,
14 but they also did audio. I did video and was certified
15 by the Bureau for Video, because I read all of Nowell
16 Harrell's reports, so I had to read them technically.

17 Secondly, I did almost all of the gunshot work
18 during my time there, so much of that was on video, so
19 I had to interpret it. So, you know, everybody there
20 probably did more audio during that time period than
21 video, simply because of the caseload.

22 Q Let me ask you this. What year did you leave the
23 FBI?

24 A I retired at the end of 1995.

25 Q I was trying to think back where I was and what I

BRUCE KOENIG - VOIR DIRE - MS. LIVESAY

1 was doing in 1995, and it's been a long time ago. I
2 remember still being at home, of course, with my
3 parents. I still remember having a VHS. Man, I loved
4 that thing. Back in 1995, was the majority of the
5 video, wasn't it still VHS? I don't remember digital
6 back in 1995. I didn't even have a cell phone in 1995.

7 A It existed in the professional ranks, but not in
8 the consumer ranks.

9 Q So I didn't have digital. I couldn't buy a
10 surveillance system that had digital in 1995?

11 A That would probably be true, that's correct.

12 Q So back in 1995, the only thing available to
13 me -- and I still remember going to the video store --
14 was just the old VHS tapes?

15 A Yes.

16 Q So, back then, consumers didn't have digital yet?

17 A That's exactly right. If they had it, they had
18 what you had. They played movies. So no one was
19 getting an exorbitant amount of video. We got some
20 from banks, some from professional or news media. The
21 news media was moving over to digital beta, which is
22 what they still use today, in that time period.

23 So, yeah, the video system, when it went to
24 digital, it became that audio and video are very
25 close. Like there is an audio format that is, you

BRUCE KOENIG - VOIR DIRE - MS. LIVESAY

1 know, motion jpeg, which is a bunch of images that are
2 jpeg. At a digital level, an audio and video file
3 might look very much alike administratively. So all
4 of this started changing in the late '90s. I retired
5 the end of '95, but the Bureau brought me back for
6 eight or nine more years as a contractor. So I was
7 there at the start when we really started getting a
8 lot of digital work.

9 Q In 1995, I couldn't go out and buy a surveillance
10 system for my home?

11 A I don't want to swear there wasn't a system out
12 there, but it would be fairly rare.

13 Q So it certainly wasn't what it is now, correct?

14 A That's absolutely right.

15 Q And digital didn't become big until after you
16 left the FBI in 1995?

17 A Again, it was -- I came back as a contractor for
18 eight or nine more years, so I was there until 2003 or
19 '04. By then, we were starting to get digital in,
20 yeah.

21 Q When you left the FBI in 1995, what were you
22 doing then?

23 A I managed the group and still spent about 60 or
24 70 percent of my time doing casework.

25 Q But you weren't like a full-time employee after

BRUCE KOENIG - VOIR DIRE - MS. LIVESAY

1 1995?

2 A Oh, I was a contractor. They -- I was used 25
3 hours a week to 40 hours; depends on what was going on.

4 Q And so did you have your own company?

5 A Yes.

6 Q And is that the company you have now?

7 A I don't have it. Like I said, I gave it to my
8 associate in 2014, but I still work at the company. It
9 is just that I don't really like to do invoices and
10 all, and he's younger than me, so he'll be around
11 longer than me.12 Q So, currently -- you started the company, but
13 currently now someone else owns it and you just work
14 under him?

15 A That's correct.

16 Q So this company was started in 1996, correct?

17 A Correct.

18 Q And then you sold it in 2014?

19 A I didn't sell it; gave it to him.

20 Q Gave it to him in 2014?

21 THE COURT: Solicitor, just confine it to his
22 qualifications, please. You've gone much more than
23 needed to on that.

24 MS. LIVESAY: I understand.

25 Q (MS. LIVESAY) Once digital came about, what, if

BRUCE KOENIG - VOIR DIRE - MS. LIVESAY

1 any, classes or anything did you do to become familiar
2 with digital video?

3 A I was starting to list -- it's all on my CV, the
4 number of courses.

5 Q And that is from 1996 until current?

6 A Yeah. My CV, all the digital stuff will be well
7 after 2000, because the courses didn't come about until
8 then.

9 Q Okay. Have you done video comparison?

10 A We do it all the time.

11 Q Have you done reverse projection?

12 A We don't do reverse projection. Only a handful
13 of companies actually do that, and there is not that
14 big of a demand, except law enforcement. So we use
15 what is done by other people. Instead of us buying all
16 of the equipment that we wouldn't use that often.

17 Q So are you familiar with Mr. Fredericks' report?

18 A I read it, yes.

19 Q And did you see the attached images?

20 A Yes.

21 Q And did you see where he performed reverse
22 projection --

23 THE COURT: Solicitor, you have gone now into
24 cross-examination. This doesn't deal with
25 qualifications. Thank you. You will have an

BRUCE KOENIG - DIRECT EXAMINATION

1 opportunity to cross-examine fully about what he did.

2 MS. LIVESAY: Yes, sir, Your Honor. But I have
3 an objection to his qualifications.

4 THE COURT: You don't think he's qualified?

5 MS. LIVESAY: Your Honor, he just testified that
6 he doesn't do reverse projection.

7 THE COURT: That is fine. That is an issue for
8 the jury. Thank you. He's qualified to render an
9 opinion in forensic analysis -- thank you -- subject
10 to your objection.

11 DIRECT-EXAMINATION (CONT.)

12 BY MR. BOUCHETTE:

13 Q Tell us what you are doing whenever you do a
14 forensic analysis of video.

15 A It depends on what the client is interested in
16 knowing. We probably do a large amount of, say, what
17 kind of car is it, or truck, or is this an individual,
18 can you describe further? Those are probably the areas
19 we see a lot, which nowadays we see a lot of gunshot
20 cases, so it really depends on what specifically
21 they're interested in.

22 Q Let me ask it this way. Whenever you are dealing
23 with comparing two images or two sets of images, where
24 do you start in trying to do that analysis? What are
25 the things you are looking for initially?

BRUCE KOENIG - DIRECT EXAMINATION

1 A I think the first thing you always look for is,
2 Is the quality good enough? You know, we actually get
3 videos in and they say we want you to give us a better
4 picture of the person crossing that road, and we get
5 the video and we don't see anyone crossing the road,
6 and they say, well, we think he crossed it, but it is
7 just hard to see. We go back and look at it and say,
8 no, there is nothing on the video. So the quality can
9 be that good.

10 Sometimes we get some fairly high quality. Some
11 surveillance systems now use high definition cameras;
12 most don't, but some do. So we look for the quality,
13 and the quality is based on, you know, how good is the
14 camera. How many pixels, and that's the little
15 squares that make up the video, you know. It is all
16 made up of a bunch of pixels, gray or black and white,
17 gray scale. How far away are they from it? Is it
18 during the day when you see it, or at night? In other
19 words, we're looking for the quality. Plus, all
20 video, especially consumer, is compressed.
21 Compression always means you are throwing things away,
22 usually fine detail is the first thing they throw
23 away.

24 Q When you do that comparison, when you're looking
25 at the two different images or sets of images, are you

BRUCE KOENIG - DIRECT EXAMINATION

1 trying to find characteristics or similarities that you
2 can evaluate between the two?

3 A If that is what the client is interested in
4 doing, the answer is yes. You want to say what is
5 similar and dissimilar between these two images. Some
6 things may be very much alike, and other things may be
7 quite different. It just varies by the picture.
8 Sometimes they are virtually identical.

9 Q So you are, essentially, looking for the
10 different characteristics that are consistent from one
11 image to another image?

12 A That's correct.

13 Q So, as a hypothetical, if someone had a picture
14 from one of our days of court last week, and had a
15 picture in court today, and they wanted to know whether
16 or not the suit I'm wearing today is the same suit I
17 wore last week, you could analyze certain
18 characteristics; is that safe to say?

19 A That's correct.

20 Q Maybe you could determine about how long the
21 length is of the suit?

22 A If the quality was good enough.

23 Q You could probably tell some characteristics
24 about the lapel, right?

25 A Correct.

BRUCE KOENIG - DIRECT EXAMINATION

1 Q Or the number of buttons?

2 A We actually ask questions like that, you know. A
3 particular shirt someone robbed a bank with, and then
4 recovered a shirt at a person's house, do they match.

5 Q And that is different from saying that you can
6 tell that that is the exact same suit; is that right?

7 A Yeah. Often in those cases, even when it is a
8 good match, the word we use is "consistent." Yeah,
9 there can be a thousand of those shirts out there,
10 we're just saying this one is consistent with what we
11 see in the other picture.

12 Q Even within a set of characteristics of a given
13 object, are there things that affect your ability to be
14 able to even make those preliminary determinations?

15 A Again, it is back to the quality part, you know.
16 If I have a picture of you straight on right here, but
17 the picture I'm comparing to you are turned, or the
18 lighting is different, all of those things would have
19 an effect on our ability to make a comparison.

20 Q But even with that example, even if you had good
21 video, you had consistent images, you probably would
22 not be able to say -- even utilizing the different
23 comparison techniques -- this suit is the exact same
24 suit from the prior image, to the exclusion of all
25 others; I mean, you don't have the capability to do

BRUCE KOENIG - DIRECT EXAMINATION

1 that?

2 A I agree with that. The exception would be that
3 you have a mustard stain up here, and part of it is
4 ripped over here, you know, things that would make your
5 suit unique, and then we might be able to say they
6 matched.

7 Q Because, in essence, there is so many suits of
8 the same color, same size that they are just not
9 unique?

10 A That would be true, yes.

11 Q Is there example of some things that may be
12 unique enough that you could make those types of
13 conclusions?

14 A There are not a lot, to be honest, because --
15 let's say two have vehicles identical, they were both
16 red, 2019 high-end Mustangs. We had good pictures of
17 both. Well, we know there's a number of other ones out
18 there. Maybe, you know, hundreds of thousands out
19 there just like it. So you look for something unique;
20 in other words, does it have a specific dent in it, or
21 have they added some horrible decal and it's crooked on
22 the side of the door on there. We have to find
23 something that is truly unique about the vehicles to be
24 able to say this is the only vehicle it can be. So
25 it's very rare that that actually happens.

BRUCE KOENIG - DIRECT EXAMINATION

1 Q Are headlight spread patterns unique in that way?

2 A Not in the sense you could take a video picture
3 -- because video is poor quality compared to, like,
4 your camera or something that shoots a lot better
5 picture than the video. It doesn't have enough
6 quality, and these -- especially newer model cars -- if
7 anyone has bought one, you know how much they charge
8 you for these extra headlight systems. It is a
9 fortune. So they are producing very high quality, so
10 you don't get a lot of differential. It has to be a
11 car we're looking for that one headlight was going up
12 and one was going down or something, and even then we
13 wouldn't say it had to be that car, but we would say it
14 is consistent with the car.

15 Otherwise, unless there is a truly unique feature
16 that can be portrayed on the video, it has to be
17 really obvious, it can't be some subtle difference at
18 all, then you can't say for sure two images match
19 exactly.

20 Q During your time at the FBI, did you or anyone on
21 your team use the headlight spread patterns to identify
22 a specific vehicle?

23 A No.

24 Q To your knowledge, are there any peer reviewed
25 articles that indicate whether vehicle headlight spread

BRUCE KOENIG - DIRECT EXAMINATION

1 patterns are unique in that way?

2 A Not in the forensic world, no.

3 Q And give us an example as to peer review; why is
4 that significant in the scientific community?

5 A Peer reviews are the backbone of science. I'll
6 give you an example where it has changed in our world.
7 For instance, I remember for decades they said if you
8 are a male and over 40 or 50, you should be taking a
9 small aspirin every day. About three years ago they
10 came out with this long-term study that said unless you
11 had a heart problem, it was actually bad to take an
12 aspirin every day. It was not that doctors were bad;
13 they were practitioners. They just said this is what
14 we've seen, we'll try this, but the science showed they
15 were wrong. Same thing here.

16 So peer reviewed articles are such that -- like I
17 said, I have almost 50 of them -- you go through this
18 process of writing up what you think you would like to
19 present, okay. I use other authors, so it is not just
20 me. Once we're happy with it, we send it off to
21 people that we think are experts in the field that can
22 review it carefully. Once they get done, we send it
23 to a scientific journal. The journal uses their own
24 reviewers that can make or break in whether you get it
25 published. If that is approved, it is published in

BRUCE KOENIG - DIRECT EXAMINATION

1 the journal. After it is published in the journal,
2 anyone in that organization and anyone else in the
3 world can read that article, and if they have a
4 problem with it, they can come into the journal and
5 say, hey, we have problems with this. The editor will
6 then say write something saying what you want to do,
7 and do it. So if it is a legit position, that is then
8 published, and then we get the chance as authors to
9 apply to it, if we wish. So this process goes on
10 forever.

11 In other words, the day I die, my papers don't go
12 away. They are always there. They've been peer
13 reviewed, looked at -- my field is not huge, but many
14 hundreds of people that work in the field have looked
15 at these articles, and they are the ones that decide,
16 yes, this is legitimate.

17 Q Now, Mr. Koenig, have you had an opportunity to
18 review Mr. Fredericks' report in this case?

19 A I did.

20 Q Now, let's start off with is there anything you
21 agree with in the report?

22 A I believe he did an excellent job considering the
23 quality of the video, of running what tests could be
24 run and everything else. I think he's probably correct
25 saying that it is an F-150 Ford truck of that style.

BRUCE KOENIG - DIRECT EXAMINATION

1 Q Do you believe that it can be scientifically
2 proven that the truck on the video is, in fact, Sidney
3 Moorer's truck to an exclusion of all other F-150
4 trucks on the road?

5 A No. There is nothing unique in the picture. The
6 video is poor quality. Even if it was high quality,
7 you would have a problem because, you know, here we
8 don't even have the color of the vehicle. It is too
9 dark to tell for sure exactly what color of the truck.
10 So, therefore, unless you had some truly unique thing,
11 and headlight spreads -- and we'll talk about this I
12 think a little later -- but, you know, they are not
13 truly unique, especially under video conditions. It is
14 just not unique.

15 Q What about some other things that affect -- does
16 distance from the camera, in other words, the object's
17 distance from camera, does that affect your ability to
18 do these comparisons?

19 A Yes. I mean, if you look at these pixels I talk
20 about that make up the video, let's say it is a
21 thousand across horizontally and 600 this way. If the
22 car is right on top of you, you are using most of those
23 pixels to see it. But the farther it goes away, you
24 have less and less pixels taking the picture. In this
25 case, the vehicle was not close to the camera, so you

BRUCE KOENIG - DIRECT EXAMINATION

1 are using only a small number of pixels to be able to
2 see what is there. Where if you saw in the video stuff
3 up close to the camera, it had much more details.

4 Q What about other factors such as dirt and debris
5 on the exterior of the headlight casing, could that
6 have an effect on the different spread patterns?

7 A Yes. I think we all have seen that when we have
8 been out on a muddy road and we turn our headlights on
9 and they are not working as well as we would like them
10 to. It is not as bright. The pattern is not
11 consistent anymore, but that is just a moveable thing.
12 When the mud starts drying out, it's going to look
13 different. Someone cleans them off, it will go back to
14 something close to what it was before. And, you know,
15 the headlights, how long they have been on can affect
16 their pattern. I mean, all of these are variables
17 built into the system.

18 Q Now, in his report, Mr. Fredericks' mentioned he
19 tested 11 vehicles; in your opinion, is that enough to
20 establish his conclusions in this case?

21 A Well, I think when you test certain things
22 against it, you can say something about what you
23 tested. So if you tested it and say this truck doesn't
24 match, well, he can say that truck doesn't match. If
25 he's got everything else consistent, and it is obvious

BRUCE KOENIG - DIRECT EXAMINATION

1 that they don't, but you can't draw from that and say,
2 oh, okay, I tested this truck and, you know, there is
3 4 million out there so, therefore, it will pertain to
4 the other 4 million; you can't do that.

5 Q All right. Give me just a moment, Your Honor.

6 THE COURT: Certainly. Take your time.

7 Q (MR. BOUCHETTE) I'll have you step down. Your
8 Honor, do you mind?

9 THE COURT: No, just keep your voice elevated.
10 Thank you.

11 Q (MR. BOUCHETTE) You reviewed Mr. Fredericks'
12 report?

13 A Yes.

14 Q What I'm showing you, this was a section where he
15 compared --

16 THE COURT: Mr. Bouchette, switch sides.

17 MR. BOUCHETTE: Okay. Can you see? Do we need
18 an adjustment?

19 Q (MR. BOUCHETTE) This was the section of his
20 report that questioned the known vehicle to the --
21 excuse me, the questioned vehicle to the known vehicle
22 on Highway 814; do you remember viewing this?

23 A Yes, sir.

24 Q I want to go to -- this is -- this is -- this is
25 Slide 5, and this is --

BRUCE KOENIG - DIRECT EXAMINATION

1 THE COURT: Can you see okay? Sorry.

2 Q (MR. BOUCHETTE) So this is the comparison where
3 he gave the known vehicle on the 24th of
4 February 2014 and compared it to the questioned
5 vehicle on December 18th of 2013; do you see that?

6 A Yes, sir.

7 Q Now, just by looking at it, can you identify --
8 in other words, these two, according to Mr. Fredericks,
9 should have matched?

10 A I didn't see these slides.

11 Q The known vehicle and the questioned vehicle are
12 the ones that he ultimately concluded matched. What
13 I'm looking at here is can you tell any difference,
14 just at this early stage, between the questioned
15 vehicle and the known vehicle?

16 A Yes. So, my understanding from his report,
17 Mr. Fredericks went out of his way to duplicate the
18 conditions, et cetera.

19 Q Yes, sir.

20 A I believe that is what he did.

21 Q So these should be -- these two headlight areas
22 should be virtually to the same vehicle. They should
23 be virtually identical. Keep in mind, there is no
24 golden eyes, as we say in the field; in other words, I
25 can't look at the video and see it any better than you

BRUCE KOENIG - DIRECT EXAMINATION

1 can see it. I can measure it and do other things, but.

2 So, if you look at this, you are seeing
3 differences here. This is, first off, brighter. And
4 even the detail, look up here, you see this kind of
5 detail here, and that detail kind of goes here. You
6 know, you have an area coming down here. So, in other
7 words, visually, they don't match.

8 So you can measure this by looking at each pixel
9 separately and it matches up. There are programs that
10 allow you to pick two and overlay them and match them
11 as much as possible and give you a number. But
12 visually, like I said, since it is exactly the same
13 conditions, and I believe Mr. Fredericks absolutely
14 did that, he's very studious in doing things like
15 that, these should look absolutely identical if they
16 are the same.

17 Now, I'm back to the thing saying I don't believe
18 you can do that, so my opinion is that you can't make
19 a decision. But if you are going to make a decision
20 on this, they don't match.

21 Q Go to -- that was Slide No. 5. How about Slide
22 No. 6, can you tell a difference in that slide between
23 the two images?

24 A Yes. I mean, there are a little bit of
25 similarities. This looks a little different, but it is

BRUCE KOENIG - DIRECT EXAMINATION

1 kind of shady here. You can see the light goes further
2 back here, the lighted areas. Here, it really doesn't.
3 It fades off. Again, same conditions, should look
4 identical, should be something you look at and say, oh,
5 yeah, it looks exactly right.

6 Q This is now Slide 7; no difference there?

7 A Again, you are back to -- you are even seeing
8 some spacing here between the lights up here,
9 absolutely doesn't exist here at all. This area, if
10 you look up closely here, falls off quicker than this
11 area in the light, and they don't match.

12 Q One more. Look at this. This is Slide 8, can
13 you make out any distinguishing features in that slide?

14 A This one is quite a bit off. You know, like you
15 see almost in waves here of stuff, and back here, and
16 this goes out -- some of this is similar, but you start
17 to see differences out here, and this is here. You are
18 under conditions that are absolutely identical. So
19 even if it is the same vehicle, it is obviously the
20 spread light -- headlight spread is not consistent.
21 It's changed that much in this time period, and it
22 could very well be just a different vehicle.

23 Q And, again, we're saying that you wouldn't be
24 able to tell anyway, but based on the comparison of
25 these two tests, that it doesn't appear to match just

BRUCE KOENIG - DIRECT EXAMINATION

1 based on a visual?

2 A Visually, they don't match, no.

3 MS. LIVESAY: Can we identify this slide for the
4 record?

5 MR. BOUCHETTE: Slide 8.

6 You can grab a seat, Mr. Koenig.

7 Q Bottom line, can you see within any degree of
8 scientific certainty that the truck in the video from
9 the highway is, in fact, Mr. Moorer's truck to the
10 exclusion of all others?

11 A No. I don't believe anyone could ever say that.

12 Q Would there be -- in your expert opinion, is
13 there any scientific basis to form an opinion like
14 that?

15 A No. In fact, as I saw there, we're seeing more
16 differences than similarities.

17 MR. BOUCHETTE: Just a moment.

18 THE COURT: Certainly.

19 (A brief pause in the proceedings.)

20 MR. BOUCHETTE: No further questions of this
21 witness.

22 THE COURT: You may cross-examine.

23 MS. LIVESAY: Yes, sir. Do you mind if I call
24 you by your first name?

25 THE WITNESS: It's okay with me, yeah.

BRUCE KOENIG - CROSS-EXAMINATION

1 CROSS-EXAMINATION

2 BY MS. LIVESAY:

3 Q Now, I'm not a forensic video expert by any
4 means, I'm only going on what I can see with my two
5 eyes.

6 A I understand.

7 Q So tell this jury here, in this frame, which is
8 the recreation, the headlights are already in the
9 picture, correct?

10 A Yes.

11 Q And, in this frame, the headlights are not in the
12 picture?

13 A Yeah. I didn't include that in my comments.

14 Q But are the headlights in this picture here?

15 A It is not in the picture, so I do not know the
16 answer to that.

17 Q So is it possible that the recreation, at this
18 point in time, and the questioned vehicle are not yet
19 moving at the same speed?

20 A I don't think it has to do with speed; it is
21 positioning of where it is.

22 Q Positions, good. I'm glad you brought that up.
23 So the position of this truck, the headlights are
24 already in the frame, correct?

25 A Correct.

BRUCE KOENIG - CROSS-EXAMINATION

1 Q And the position of this truck, the headlights
2 are not in the frame, correct?

3 A Yeah. And I understood that when I did it, so I
4 did not try to say that that was different.

5 Q Okay. But you would agree if my vehicle is
6 several feet in front of your vehicle, the headlights
7 are going to look different, correct? They are not
8 lined up?

9 A Well, I would -- from the position of what your
10 witness said that he lined them up perfectly.

11 Q Then line them up. You want to line them up?

12 MS. LIVESAY: Are you okay with me using this,
13 Mr. Bouchette? And I'm going to hit "down" to go
14 through the next slide; is that okay?

15 Q Okay. Now, would you agree it appears that they
16 are lined up? It is not like one is off the screen,
17 and one is on the screen?

18 A Yeah, I agree with you completely.

19 Q So you would agree before, when you were looking
20 at those headlights, clearly one truck was further back
21 than the other one; they were not in the same position?

22 A Yes, I understand.

23 Q Okay. But now that they are in the same
24 position, would you agree that this comparison is
25 correct, these items are consistent with what

BRUCE KOENIG - CROSS-EXAMINATION

1 Mr. Fredericks pointed out with the red line?

2 A Again, they have to be perfectly consistent to be
3 able to match it up. So, you know, this area right
4 here is different. This area right here is different.
5 This line is not always consistent across here. This
6 area doesn't match very well at all. This area has
7 dropped out the light more than this one does. This
8 one has some jagged thing through here; this one does
9 not. This has this line that goes over here; that
10 doesn't even exist here.

11 Q Okay. Step back, Mr. Koenig. But you would
12 agree that the items that Mr. Fredericks pointed out
13 are certainly consistent?

14 A You are talking about the very beginning?

15 Q With the red line.

16 A But even there you can see this line goes out
17 farther. This area right here is not as pronounced at
18 all there.

19 So, in other words, you expect a virtually
20 identical match. Look up here, this is not as long as
21 this area (indicates).

22 THE COURT: You all need to remember the jury
23 needs to see what you are pointing to.

24 MS. LIVESAY: I understand, Judge. Thank you.

25 Q (MS. LIVESAY) What Mr. Fredericks pointed out

BRUCE KOENIG - CROSS-EXAMINATION

1 here, would you agree these two are consistent?

2 A This is still -- this area right here is longer
3 than this area. And, again, if we're looking, it
4 should be a perfect match, and it is not.

5 Q Would you agree here that Mr. Fredericks pointed
6 out that this is consistent with -- the questioned and
7 the known vehicle are consistent?

8 A Well, this area has a drop out right here; this
9 area does not. This has kind of an overlay area that
10 continues to the end; this one does. So they are
11 somewhat aligning, but they don't match perfectly at
12 all.

13 Q So you are saying right now, with all of these,
14 that this is not -- the questioned vehicle is not
15 consistent to the known vehicle?

16 A I'm saying that if you are saying you did exactly
17 the same thing and you are saying absolutely it is this
18 vehicle based on this information, to me, it is
19 probably more dissimilarities than similarities. I
20 would guess you could take any vehicles that would have
21 headlights, same vehicle, align them the same way and
22 they would have a lot of similarities. You would
23 expect similarities.

24 Q So now you're saying it is not a Ford 150?

25 A No. No. I think from what the work he did, and

BRUCE KOENIG - CROSS-EXAMINATION

1 everything else -- and everything else, I think it
2 probably is a Ford F-150.

3 Q Would you agree it is dark in color?

4 A Part of the problem -- the answer is I don't
5 think it is white or a light color. But sometimes at
6 night, because you don't have any light on it, medium
7 range colors of cars can appear darker than they are,
8 and sometimes lighter. So you can't make an absolute
9 decision.

10 Q But it is not white or silver?

11 A Yes, I believe it is not a real light color.
12 Yes.

13 Q Okay. And you would agree it is a Ford 150?

14 A I would agree that based on what he did, it
15 probably is a Ford F-150.

16 Q And you agree it is a four-door truck?

17 A Yes.

18 Q And you would agree it had a toolbox?

19 A I would say the fact that -- it could be. Just
20 because something lights on the back there, in that
21 area, it definitely could have a toolbox, and I'm not
22 arguing it couldn't be a toolbox, but it potentially
23 could be something else.

24 Q But you agree there is something silver that
25 reflects that would be in the back of the truck where

BRUCE KOENIG - CROSS-EXAMINATION

1 is the place where the toolbox is?

2 A I would agree on all of the statements, except I
3 can't take it is silver. It is something reflecting.
4 You can have something dark that reflects sometimes and
5 looks white in the picture.

6 Q Does this truck look white in the picture?

7 A Sure doesn't.

8 Q So you can -- so you are saying now -- you are
9 telling this jury now you can have something dark that
10 actually reflects light?

11 A Oh, yeah. Look at this surface here. This is a
12 white surface. If I shine a light on it, it is going
13 to show up and parts of it is white.

14 Q Do you see anything that showed up as white on
15 this truck?

16 A No. Again, I'm not arguing it could be a
17 toolbox, I'm just saying I can't tell you it is a
18 toolbox.

19 Q Okay. And these, again, are all the comparisons
20 Mr. Fredericks made?

21 A I understand that, but you are seeing differences
22 in every one of those areas.

23 Q And how about here, do you see what
24 Mr. Fredericks pointed out here?

25 A We are only talking about this area here.

BRUCE KOENIG - CROSS-EXAMINATION

1 Q Yep, just what he pointed to.

2 A Yeah. That area is relatively consistent, though
3 you see much more detail up here, and you are not
4 seeing -- there's none here. So, yeah, you are looking
5 for the little details because you expect the big areas
6 to kind of look alike truck to truck, so you are
7 looking for the details. These details are definitely
8 different right here.

9 Q So you are saying one of them is a Ford F-150?

10 A That is not what I'm saying at all. I think from
11 his other work on here that this is probably consistent
12 with a Ford F-150.

13 Q That had four doors?

14 A That had four doors.

15 Q And that was definitely not white or silver?

16 A I would agree with that statement, yes.

17 Q Okay. Okay. We've talked a lot about
18 Mr. Fredericks' work, correct? Tell this jury, do you
19 disagree with what he did to find the ultimate question
20 as to whether or not the known truck was the questioned
21 truck; do you have any issues with what he did?

22 A Your question is pretty general. Specifically,
23 what are you talking about?

24 Q Do you question the work that he did, the
25 comparing, the recreation, the reverse projection? Do

BRUCE KOENIG - CROSS-EXAMINATION

1 you take issue with any of the preparation he did to
2 come up with his ultimate opinion?

3 A Sorry, I wasn't sure of what your question was
4 exactly.

5 It looked like, to me, he was pretty methodical
6 on that, so I did not repeat it. You know, I can't
7 tell you that I went and did it and made sure. I
8 would think that the procedures -- you know, it is
9 really these indecisions that is more -- that I just
10 can't agree with it all.

11 Q Let me ask you something. The cameras that he
12 used to compare off Highway 814 and Mill Pond, there
13 were two surveillance cameras that lent to this, did
14 you actually look at those DVRs or raw data from those
15 DVRs?

16 A I looked at what was received by the defense in
17 the way of videos.

18 Q Okay. So you didn't actually look at the DVR?

19 A I did not, but it's digital so it should be an
20 identical copy.

21 Q Let me ask you something. One video DVR was
22 collected here on 814.

23 A Okay.

24 Q One was collected at Mill Pond.

25 MR. BOUCHETTE: Your Honor, I'm going to object.

BRUCE KOENIG - CROSS-EXAMINATION

1 I don't -- he said he doesn't --

2 THE COURT: It's cross-examination, I'll allow
3 it. You have redirect. You may continue.

4 Q (MS. LIVESAY) Did you go to either one of those
5 locations?

6 A No.

7 Q Did you go and examine the known truck in person?

8 A I didn't need to do any of those things, that is
9 why I didn't request these.

10 Q So you didn't go to the location or view the
11 video?

12 A No. I depended on his work that he did, that is
13 what I was asked to do.

14 Q And you didn't actually see the known truck in
15 person?

16 A No, I did not.

17 Q And you didn't actually examine the DVR that we
18 got this information off of?

19 A I was told I was given an exact copy of what was
20 on the DVR, so the answer is it should be an exact
21 copy.

22 Q Did you put your hands on the DVR from 814 on
23 Mill Pond?

24 A I did not.

25 Q Did you go back and perform any testing such as

BRUCE KOENIG - CROSS-EXAMINATION

1 reverse projection, which Mr. Fredericks did?

2 A Reverse projection matched where the truck was,
3 but that wasn't the images. That was not the question
4 for me. It was whether he could draw a conclusion that
5 this is the only vehicle in the whole world that could
6 possibly be there.

7 Q I think you misunderstood my question.

8 A Sorry.

9 Q Did you actually perform any comparison using
10 reverse projection, which Mr. Fredericks did in his
11 report?

12 A I didn't personally do it, but I used his.

13 Q But you didn't personally do it?

14 A That's correct.

15 Q You didn't personally make any comparisons at
16 all?

17 A Yes, I looked at what he did.

18 Q Okay. Have a see, Mr. Koenig.

19 Now, you are saying that when Mr. Fredericks did
20 the comparison and used the other trucks, you are
21 saying all of that work was sufficient to say that it
22 was a Ford 150, four-door truck, not white or silver?

23 A I believe that his analysis -- it's probable that
24 this is that. Since I didn't specifically look and say
25 are there other trucks that he should have tested that

BRUCE KOENIG - CROSS-EXAMINATION

1 he didn't, and things like that, but if he really did
2 test all of the trucks, then I would say it seems to be
3 consistent with an F-150.

4 Q And you just said if he really did test other
5 trucks, did you review the report to confirm that he
6 did test other trucks?

7 A I looked at his report, but I don't know every
8 truck made in the world, so I don't know that there
9 couldn't be another truck potentially. I'm not saying
10 there is, but there potentially could be other trucks.
11 I've even seen people take a standard cab truck and add
12 a section in the middle to make it into a king cab
13 truck. People have made trucks up like that, you know.
14 So we can't say --

15 Q And now it could be some truck that somebody
16 added to or created at home?

17 A Could have, yes. That is what I'm saying. That
18 is why I can't say absolutely it has to be a Ford F-150
19 of that type, because it could have been a modified
20 Ford F-150 or something. I don't know that.

21 Q It could be -- could it be a spaceship in the
22 shape of a Ford F-150, too?

23 THE COURT: Solicitor, that is -- that is
24 argumentive.

25 Q (MS. LIVESAY) Just so I'm clear, you didn't do

BRUCE KOENIG - RE-CROSS-EXAMINATION

1 anything other than look over what Grant Fredericks
2 did?

3 A Yes. I depended upon what he did at the site,
4 and I think he seems to have done a good job on the
5 preparation work.

6 MS. LIVESAY: No further questions.

7 THE COURT: Redirect.

8 MR. BOUCHETTE: Briefly.

9 REDIRECT-EXAMINATION

10 BY MR. BOUCHETTE:

11 Q Were you hired to do anything other than evaluate
12 Mr. Frederick's report and provide your thoughts and
13 opinion to myself and to the jury, if necessary?

14 A That's correct.

15 MR. BOUCHETTE: Your Honor, no further questions.

16 THE COURT: Recross, Solicitor.

17 (A brief pause in the proceedings.)

18 MS. LIVESAY: Just one, Your Honor.

19 RE-CROSS-EXAMINATION

20 BY MS. LIVESAY:

21 Q Jarrett just asked you what you were hired to do,
22 and it was just to review Grant Frederick's report,
23 correct?

24 A That's correct.

25 Q And who hired you to do that?

BRUCE KOENIG - RE-CROSS-EXAMINATION

1 A Originally?

2 Q Who brought you here today?

3 A A different group. I had a private attorney that
4 hired me at the beginning, and then we were hired
5 through a third party. We're actually hired through a
6 third party. We were not hired by the Public
7 Defender's Office. The Public Defender's Office is the
8 third party's client. I know it is confusing. In
9 other words, we had different clients.

10 Q Who originally hired you?

11 A I was hired...

12 (A brief pause in the proceedings.)

13 THE COURT: Hold on a second before you answer
14 that. Approach.

15 (Whereupon, a bench conference was had.)

16 Q (MS. LIVESAY) Bruce, just briefly, who brought
17 you here?

18 A Today?

19 Q Uh-huh.

20 A Who paid us to be here, or?

21 THE COURT: Who asked you to come, is the
22 question.

23 A Mr. Bouchette.

24 Q (MS. LIVESAY) And, certainly, wasn't us, was it?

25 A No, ma'am.

ASHLEY CAISON - DIRECT EXAMINATION

1 MS. LIVESAY: Okay. No further questions.

2 THE COURT: Thank you. You may -- do you wish
3 the witness to be excused?

4 MR. BOUCHETTE: I do, Your Honor.

5 THE COURT: Any objection?

6 MS. LIVESAY: No, sir, Judge.

7 THE COURT: Call your next witness.

8 MR. GALMORE: Defense would call Ashley Caison.

9 (ASHLEY CAISON, having been duly sworn,
10 testified as follows:)

11 THE WITNESS: Ashley Caison, C-A-I-S-O-N.

12 DIRECT-EXAMINATION

13 BY MR. GALMORE:

14 Q Ms. Caison, tell the jury a little bit about
15 yourself. How old are you? Where are you from, that
16 kind of thing?

17 A I'm 35. I was born and raised here in Myrtle
18 Beach.

19 Q What kind of work do you do?

20 A I'm a server for Brittain Resorts.

21 Q Ma'am, are you familiar with Sidney Moorner?

22 A Yes, he's my brother-in-law.

23 Q He's your brother-in-law, so that makes you Tammy
24 Moorner's sister?

25 A Sister, yes.

ASHLEY CAISON - DIRECT EXAMINATION

1 Q So we've called you to the witness stand to give
2 us some background information on this case. Did you
3 have an opportunity to see Sidney Moorer on the early
4 morning hours of December 18, 2013?

5 A Yes. I sent their children home around 3:15.

6 Q Tell us the circumstances. What you do mean you
7 sent the children home around 3:15?

8 A I was watching them earlier that night, probably
9 from -- I would say it was still light when they
10 brought them over the day before, up until 3:15.

11 Q Do you routinely watch the children?

12 A Yes.

13 Q So you being asked to watch the kids that night
14 was not something unusual or out of the ordinary?

15 A Not at all.

16 Q How do you know that you sent them home at 3:15?

17 A Well, I know for sure because of a text message I
18 got at 3:10 saying she was home, and what that
19 indicates to me is to get the children ready and send
20 them across our yard, because she lives directly behind
21 me.

22 Q Who did you receive this text message from at
23 3:10?

24 A My sister's phone.

25 Q That is Tammy's phone?

ASHLEY CAISON - DIRECT EXAMINATION

1 A Yes.

2 Q And you sent them across the yard, what do you
3 mean by that?

4 A Their house is literally on the same acre of land
5 as mine, so they literally walk across a little path of
6 stones and then they are on their porch.

7 Q Is it unusual for Sidney to pick up the kids
8 around 3:00 in the morning?

9 A No. They work late so a lot of times they come
10 home at those hours. But they always wanted the kids
11 home to do their homeschool.

12 Q Now, when you sent them home at approximately
13 3:15, did you interact with Sidney or Tammy Moorner?

14 A I did not speak with them other than seeing them
15 on their porch. I saw both of them, as well as their
16 truck in the driveway.

17 Q So at 3:15 you saw Sidney Moorner at his house?

18 A Standing at his front door, yes. They were
19 opening the front door.

20 Q And you also saw Tammy Moorner at the house?

21 A Yes.

22 Q And you saw the truck?

23 A Yes.

24 Q Did you have any other interactions with them at
25 that time at 3:15 in the morning?

ASHLEY CAISON - DIRECT EXAMINATION

1 A No. After they went inside, I went back in my
2 house and finished what I was working on.

3 Q Which was what?

4 A I was going couponing that day at Bi-Lo. They
5 were doing a triple coupon event, and it started at
6 midnight. I wanted to go then. I even asked my sister
7 if she would come home early and go with me, but they
8 weren't able to come home.

9 Q You are talking about Tammy, you wanted her to go
10 with you at midnight?

11 A Yeah. Well, any time she could get home. I
12 wanted her to go with me, but when they got home, they
13 went to bed, so.

14 Q For the period of time that you did see them
15 around 3:15, did they appear to be acting out of the
16 ordinary?

17 A No, they just went just like normal. They
18 wouldn't normally come over there, the kids would just
19 walk to them.

20 Q Did they appear to be dressed in a unique way or
21 torn clothing, bloody clothing, anything like that?

22 A No.

23 Q Now, when was the next time you had interaction
24 with Sidney and Tammy Moorer?

25 A The next -- well, later that morning, I woke up

ASHLEY CAISON - DIRECT EXAMINATION

1 probably -- thinking around 6:00, and I know I texted
2 her around 7:00, because I had to get my -- she had my
3 key card, which has all the little store -- key chain
4 that I literally put all of the store coupon
5 scannies -- I don't know what you call them.

6 Q Bonus cards, the little Kroger card?

7 A Yeah, like the little bonus cards. She used mine
8 as well, so she had them in her possession, so I had to
9 walk over to their house to get them.

10 Q And what time was that?

11 A Probably around 7:00.

12 Q When you walked to the house at 7:00 a.m., did
13 you lay eyes on Sidney or Tammy Moorer?

14 A Sidney and Tammy were both in the bedroom, and
15 **C. M.** was actually sleeping at the foot of their bed.

16 Q Did anything appear out of the ordinary when you
17 saw them at 7:00 a.m.?

18 A No. She was watching TV.

19 Q Did the house seem to be disheveled in any
20 unnatural way?

21 A No.

22 Q Did they appear to be nervous or breathing
23 heavily, sweating profusely?

24 A No. She was in her gown in her bed watching TV.

25 Q Would it be fair to say that they appeared kind

ASHLEY CAISON - DIRECT EXAMINATION

1 of normal?

2 A Yeah. Sidney was dressed, I will say that.

3 Q But you --

4 A But he also was relaxing in the bedroom.

5 Q Did you have a chance to talk to them at that
6 time?

7 A Yes.

8 Q So you talked to them around 7:00 a.m.?

9 A Yes.

10 Q And that was at the house?

11 A In their house, yes.

12 Q Do you recall if the truck was in the yard?

13 A Yes. My keychain was actually in the truck. She
14 had to go get it out -- they had to unlock the truck
15 and get it.

16 Q Okay. Did the truck appear to have anything that
17 would be unusual?

18 A No.

19 Q Anything like blood or hair or any bloody
20 clothing, anything like that in the vehicle that you
21 could see?

22 A I didn't go in the truck, but, no, from where I
23 can see, nothing looked abnormal.

24 Q Nothing stood out of the ordinary to you?

25 A Right.

ASHLEY CAISON - DIRECT EXAMINATION

1 Q Now, there's been some testimony about Sidney and
2 Tammy washing the truck; what can you tell us about
3 that?

4 A If it's the day I'm remembering in question, that
5 was a day that I had -- it was really warm outside, and
6 I bought Sidney a cleaning kit for Christmas, because I
7 think it was around, I want to say, the 21st, 22nd,
8 roughly. I'm not sure of the exact date, but it was a
9 really warm day for December, and I really wanted to
10 use this kit. I had him open his gift early, and we
11 all washed our cars.

12 Q So how many cars were getting washed at that
13 time?

14 A Three.

15 Q And who was doing the washing?

16 A I washed my Jeep, at the time, Jeep Grand
17 Cherokee, and I believe Tammy and Sidney were working
18 on the black F-150, and we had a silver Ford Focus at
19 the time that belonged to my boyfriend, and he was
20 working on that.

21 Q So there were several people cleaning several
22 cars?

23 A Yes.

24 Q Was there anything that struck you as unusual or
25 out of the ordinary in them cleaning that truck?

ASHLEY CAISON - DIRECT EXAMINATION

1 A Not really. I mean, I wasn't really paying
2 attention to her cleaning her truck. I mean, I was
3 cleaning my own. We were all sharing the supplies
4 going back and forth, because we were using the same
5 cleaners.

6 Q We heard testimony that there was a burn pile on
7 the Moorer property; what can you tell the jury about
8 that?

9 A We have several. They are still there -- well,
10 there is two still there. At the time, I believe
11 Sidney had two in the playground area, and one on the
12 side of our house.

13 Q And these burn piles, were they standard, or was
14 it like a new burn pile that was created that day?

15 A It was a daily used -- every day we used them.
16 We hardly ever took anything off to trash, including
17 cardboard, because it was easier to get rid of it at
18 home.

19 Q Do you live in the unincorporated part of the
20 county?

21 A We are allowed to have the fire in the yard, yes.

22 Q Because I think --

23 A Yeah, there is a lot of restrictions, but, I
24 mean, unless there is a burn ban, that is the only
25 reason why you wouldn't be allowed to.

ASHLEY CAISON - DIRECT EXAMINATION

1 Q Let me say it like this. Do you have weekly
2 trash pick-up service?

3 A I'm sure it is offered, but we don't subscribe to
4 that, no.

5 Q Would it be fair to say that a lot of people that
6 live out in the county have burn piles in their yard?

7 A Yeah, especially where we are at. I smell a fire
8 almost every day.

9 Q So was there anything unusual about the burn
10 piles that Sidney Moorer had at the house?

11 A No. Unusual would be if they weren't going.

12 Q Because they used them all the time?

13 A All the time.

14 Q Death threats, we heard testimony about death
15 threats. Can you give these jurors some information on
16 that?

17 A It's a very, very big topic. Do you have
18 something more particular I can speak on?

19 MS. LIVESAY: My question is where are we going
20 with this, and why is it relevant?

21 THE COURT: I don't know where we are going. You
22 object -- that is already -- testimony has been
23 brought in about that concerning the videos with the
24 security cameras, so I don't know where you are going
25 with this. Be cautious with what you are doing.

ASHLEY CAISON - DIRECT EXAMINATION

1 Q (MR. GALMORE) Tell us about your telephone, did
2 you have occasion to have any difficulties with your
3 phone?

4 A Not my phone, personally. Someone cloned my
5 phone number and pretended to be me and sent
6 information to -- I'm not sure if she's a detective,
7 her name was Carmen -- false information saying it was
8 from me.

9 Q So did you send any information to a detective
10 named Carmen?

11 A No.

12 Q And it's your testimony that someone cloned your
13 phone and did that?

14 A That is what I was told by her. She arrested the
15 person, and they are still currently charged with
16 obstruction.

17 Q So someone was arrested for that?

18 A Yes.

19 MS. LIVESAY: Your Honor, I'm going to object
20 because she's clearly getting into opening the door.

21 MR. GALMORE: Moving on, Your Honor.

22 THE COURT: Thank you.

23 Q (MR. GALMORE) I think you said that your house
24 and the Moorer house shared the same acre of land?

25 A Yes.

ASHLEY CAISON - DIRECT EXAMINATION

1 Q Were you over at the Moorer house on a regular
2 basis?

3 A Yes.

4 Q Did you observe cameras at the Moorer house?

5 A They installed, I think it was, a 12-camera set
6 probably around the 20th or 21st due to the
7 threats.

8 Q Okay. Yeah, we have testimony about that. Was
9 there a camera system before that one was installed?

10 A Not one that recorded. It was like a nanny cam,
11 but it only worked for six months when they got it in
12 2011.

13 Q How do you know that it didn't record?

14 A I was in the house all the time. I would have
15 known if they were recording anything.

16 Q So it's your testimony that there was a camera
17 system that did not record?

18 A Yes. Well, it wasn't even working in 2013 at
19 all. It wasn't even showing video. I believe it
20 stopped working six months into him bringing it home.

21 Q Were these cameras newly purchased cameras?

22 A No. They were used cameras that were brought
23 home from Margaritaville.

24 Q Brought home by whom?

25 A Sidney did maintenance for them. I started

ASHLEY CAISON - DIRECT EXAMINATION

1 working for them in 2011, and I know that they had an
2 off-site building they used to store all the retail
3 merchandise in, and from what I understand, those are
4 the cameras they used in that area, just to have --
5 just so people thought they were on camera. They
6 didn't even record at Margaritaville.

7 Q So it is your testimony that the cameras that the
8 Moorers had at the house were the same cameras that
9 were formally used at Margaritaville?

10 A Yes, in their storage area.

11 Q And these cameras did not record?

12 A Yes.

13 Q Now we've had testimony about Sidney having a
14 tattoo; what can you tell the jury about that?

15 A Sidney got the tattoo in January of 2012. It was
16 a gift for his birthday, from what I was told. I was
17 with him when he got it.

18 Q And this would have been, you said, 2012?

19 A Yes, January. It was right at his birthday.

20 Q So a year before Ms. Elvis' disappeared?

21 A Yeah.

22 Q So the tattoo was not obtained as a result of
23 this investigation or anything like that?

24 A No. It definitely was January of 2012.

25 Q Okay. Now, how often would you say you were at

ASHLEY CAISON - CROSS-EXAMINATION

1 the Moorer residence?

2 A If not every day, I mean, it would have been
3 every other day at least. Mostly every day, though.
4 Because, I mean, if I was just hanging out, I would
5 hang out with my sister or see the kids.

6 Q Did you ever see Heather Elvis at the Moorer
7 residence?

8 A No.

9 Q Did you ever see Heather Elvis in the F-150
10 truck?

11 A No.

12 MR. GALMORE: Court's indulgence.

13 THE COURT: Certainly.

14 (A brief pause in the proceedings.)

15 MR. GALMORE: No further questions. Please
16 answer any questions that the State has.

17 THE COURT: You may cross-examine.

18 MS. LIVESAY: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. LIVESAY:

21 Q Now, Ms. Caison, you told this jury that you were
22 so excited about that cleaning of the truck, that you
23 got him a new gift; do you remember that?

24 A Yep.

25 Q For Christmas?

ASHLEY CAISON - CROSS-EXAMINATION

1 A Yes.

2 Q And let me ask you this. The surveillance
3 footage, did you actually see it?

4 A I have not.

5 Q But you know that you cleaned his truck?

6 A I don't know exactly what I did. We cleaned
7 three cars that day. I know I detailed mine.

8 Q And right before that, you were looking for bugs,
9 right?

10 A Bugs?

11 Q Yeah, to see if the police left any -- I'm
12 assuming -- devices. You were looking through the
13 trees?

14 A No. That, I don't recall.

15 Q Okay. I can play this video and it can refresh
16 your memory; do you want me to refresh your memory?

17 A Sure. I don't recall doing that.

18 Q Okay. I'll refresh your memory.

19 (State's Exhibit 200 marked.)

20 THE COURT: Are you introducing it? You have to
21 have it introduced to play it.

22 MS. LIVESAY: No, sir, I'm just refreshing her
23 memory.

24 THE COURT: You have to have something to -- you
25 have to have it identified. She has to know it to

ASHLEY CAISON - CROSS-EXAMINATION

1 refresh her memory.

2 Q (MS. LIVESAY) You know you had surveillance?

3 A I know Sidney installed surveillance, yes.

4 Q And you know that you all -- whatever was going
5 on at the house was on surveillance, correct?

6 A I would assume.

7 Q And cleaning the truck and anything around that
8 time would have been on surveillance, correct?

9 A Yeah.

10 Q And you can certainly look at this first shot and
11 tell me if that is Tammy's house?

12 A If I can see it, yeah.

13 MS. LIVESAY: Yeah. I'll let her look at it,
14 Judge. Let me move it.

15 THE COURT: Any objection?

16 MR. GALMORE: No, sir.

17 THE COURT: All right.

18 Q (MS. LIVESAY) Do you recognize that?

19 A Yes. That's their fountain.

20 Q And that is what the video -- do you recognize
21 these people here?

22 A Yes, that is Tammy and Sidney.

23 Q And how about that guy?

24 A That is Josh.

25 Q Who?

ASHLEY CAISON - CROSS-EXAMINATION

1 A Josh.

2 Q Who is he to you?

3 A My boyfriend.

4 Q Is that you in the black?

5 A Yep.

6 MS. LIVESAY: At this time, the State wishes to
7 put 200 into evidence. I believe she's identified
8 that, indeed, this is from surveillance.

9 THE COURT: Any objection?

10 MR. GALMORE: No, sir.

11 THE COURT: Without objection, it is admitted
12 200.

13 (State's Exhibit 200 admitted.)

14 MS. LIVESAY: We're going to fast forward so
15 we're time efficient.

16 Q (MS. LIVESAY) I'll show you what appeared to
17 me -- right before the truck washing, it looked like
18 you and your sister were out looking through the
19 bushes and the trees for something maybe the police
20 left?

21 A Are you assuming that?

22 Q I'll let you look at that. You were there.

23 A Because I haven't looked for bugs. I didn't say
24 I wasn't outside. I didn't do what you are saying I
25 did, though.

ASHLEY CAISON - CROSS-EXAMINATION

1 Q Well, let's look at it.

2 (State's Exhibit 200 published to the jury.)

3 Q (MS. LIVESAY) Who is that looking through that
4 plant?

5 A I think that is Tammy.

6 (Published to the jury.)

7 Q (MS. LIVESAY) What is that in her hand? A
8 little mirror, looks like? You see the little mirror?
9 Or that's what it looks like to me.

10 A Are you sure she's not pulling weeds?

11 MR. GALMORE: Objective, argumentive.

12 A It looks to me like she's pulling weeds out of
13 her garden, which she did all the time.

14 Q (MS. LIVESAY) Keep looking. Keep looking.

15 (Published to the jury.)

16 Q (MS. LIVESAY) That's you, right?

17 A Uh-huh.

18 Q You have a camera on your shoulder?

19 A I do.

20 Q Is she pulling weeds now, you think?

21 A Not from a fountain. I'm not aware what she has
22 in her hand or what she's doing.

23 Q Does it look like a mirror?

24 A I can't tell, to be honest. It is either too far
25 away or the picture is not good enough.

ASHLEY CAISON - CROSS-EXAMINATION

1 Q How about now, can you tell what she has in her
2 hand now?

3 A I just see something dark. I can't even tell
4 what that is in her right hand right now.

5 Q That's you?

6 A Uh-huh.

7 Q Is that you, Ashley, out there with Tammy?

8 A Me standing on the sidewalk, yes.

9 Q Did you know this was right before the truck was
10 washed; do you remember that? Did that refresh your
11 memory?

12 A I remember washing my truck. I don't recall
13 washing her truck, or I never touched whatever she was
14 doing, so I'm not aware of what she's doing.

15 Q Clearly, you were out there with her?

16 A I'm with her a lot.

17 Q And you mean to tell me when she had a mirror
18 looking under that fountain, you weren't like what in
19 the hell are you doing?

20 A I mean, maybe at the time, but I don't even know
21 what she has in her hand. You're assuming it is a
22 mirror.

23 Q So nothing at all was odd about her looking
24 through the trees and looking --

25 A Honestly, I wouldn't have thought that was odd.

ASHLEY CAISON - CROSS-EXAMINATION

1 We were being threatened all the time.

2 Q Well, this was on the 22nd.

3 A Uh-huh.

4 Q You had been threatened all the time by the
5 22nd?

6 A Yes.

7 Q Now, let me ask you --

8 A As a matter of fact, the reason why we washed our
9 cars together is because all of the people that came
10 down the road.

11 Q I'm glad you mentioned that, because we've been
12 watching this video for awhile; have you seen one
13 vehicle ride back and forth?

14 A I haven't been paying attention to the road, I've
15 been looking at where you were asking me.

16 Q I've watched it many times, there wasn't. Did
17 you see anyone else but you and her walking all up
18 around here?

19 A No. They don't -- no one comes in that area.
20 They wouldn't do that.

21 Q And why did you have a camera?

22 A Why did I have a camera?

23 Q Yeah.

24 A Because we took pictures of the people that came
25 down the road.

ASHLEY CAISON - CROSS-EXAMINATION

1 Q Did you see anyone come down the road then?

2 A No, that is why I wasn't taking pictures, but
3 that was only few minutes of our life.

4 Q And this was right before you all washed the
5 truck, correct?

6 A What you are saying. I don't know. I can't tell
7 you that exactly.

8 Q But you would -- I'll tell you what I'll do, this
9 is at 12/23, 14:34.

10 MS. LIVESAY: I won't play the whole tape, Judge.
11 I just want to pop it in and show the time frame.

12 THE COURT: That's fine.

13 Q (MS. LIVESAY) I'm going to pop this in for the
14 time frame. 192.

15 THE COURT: 192, thank you.

16 Q (MS. LIVESAY) That is you and Tammy up there?

17 A I can't tell who is up there. I saw a red shirt.

18 MS. LIVESAY: Can you fast forward a bit so we
19 can check that time and date?

20 (State's Exhibit 192 published to the jury.)

21 Q (MS. LIVESAY) Did you see your boyfriend on the
22 camera flip the bird?

23 A Yep.

24 Q Who was that to?

25 A I believe they were testing the cameras.

ASHLEY CAISON - CROSS-EXAMINATION

1 Q Just flipping the bird at your own cameras?

2 A Yeah. They are aware that they are there. Goes
3 to show you we know they were filming.

4 Q Now Tammy has a camera?

5 A I guess. It could have been a purse, I don't
6 know.

7 Q Do you remember this?

8 A Bringing groceries in.

9 Q This is before everyone washed the truck?

10 A Am I in this? I don't recall this, but I mean.

11 Q That's you?

12 A Yeah. It looks like I just walked from my house.

13 Q Is that a shop vac in Sidney's hand?

14 A Maybe.

15 Q And the date on this is 12/23, 15:52, so shortly
16 after you were all out there in the yard with whatever
17 that is, with a mirror?

18 A Later on in the evening, it was in the 70s, and
19 we decided to wash the cars.

20 Q So what you are telling this jury today is that
21 you were all out there washing the car because you had
22 given him a kit, not because you were worried about the
23 police collecting evidence -- let me finish and then
24 you can answer.

25 A Got you.

ASHLEY CAISON - CROSS-EXAMINATION

1 Q I don't want you to answer too quickly and answer
2 the wrong question.

3 A Got you.

4 Q So what you want to tell this jury today is the
5 reason they were washing the truck was because you had
6 bought him some sort of Christmas present, not because
7 you were out there looking for devices that had been
8 planted in an effort to destroy or make sure the police
9 weren't able to collect any information?

10 A That is definitely why I was washing my vehicle.
11 Tammy, I gave it to her and told them, hey, if you guys
12 want to wash yours, so be it. But me and Josh wanted
13 to wash our cars, and selfishly we opened the present
14 early.

15 Q Okay. So now you are saying you didn't really
16 know anything about them washing the truck?

17 A I mean, they were right next to us washing the
18 truck. I didn't know if they were going to wash their
19 truck; they chose to, yes.

20 Q But I thought you said earlier the whole thing
21 about him washing the truck is you bought him a
22 Christmas present --

23 A I insinuated he should wash the truck so I could
24 use the gift, and they did.

25 Q But it was, clearly, before the 25th,

ASHLEY CAISON - CROSS-EXAMINATION

1 Christmas?

2 A Yes. It would have been early, that is why I did
3 it the way I did.

4 Q Now, you testified -- let me ask you this. Just
5 out of curiosity, did you find anything?

6 A I wasn't looking for anything.

7 Q Did Tammy find anything? You are over there
8 every day.

9 A Well, I don't recall her finding anything, no,
10 but I don't even know what she was looking for, to be
11 honest. I wasn't involved in that. I was outside, but
12 I wasn't looking for anything.

13 Q It's okay. Did you know that the sheriff's
14 office takes a mirror and goes up under all the chairs,
15 and that is how they look for devices in this courtroom
16 to make sure it is secured; did you know that?

17 A No, I've never been involved in that.

18 Q But she didn't find anything?

19 A I don't think that she was looking for anything,
20 so I can't answer that question. If she did, she
21 didn't tell me about it.

22 Q But you are over there every day?

23 A Usually, yeah.

24 Q And currently --

25 A I was standing right beside her, and I still

ASHLEY CAISON - CROSS-EXAMINATION

1 don't know what she was doing.

2 Q Okay. That's fine. Now, let me talk to you a
3 little bit about the night or the early morning of
4 12/18. You told Mr. Galmore you sent those kids home
5 at 3:15?

6 A Yes.

7 Q Now, you saw Tammy and Sidney?

8 A Yes, they were standing on their front porch.

9 Q Now, I want to be fair to you, and you and I
10 actually talked before -- I'll call it "talk"?

11 A If you mean sitting here.

12 Q Yes.

13 A That's it, yeah.

14 Q And I'm going to be fair to you, so I'll refresh
15 your memory that earlier when you talked to the police,
16 you told them that the kids went home and you went back
17 to sleep; do you remember that when the guy interviewed
18 you back closer in time to 2013?

19 A The kids went home, I went back in my room,
20 finished what I was doing and went to sleep around
21 4:00 a.m.

22 Q So you were not constantly -- let me show you
23 this. Just to be fair, and I'll mark it.

24 (State's Exhibit 201 marked.)

25 Q I'm showing you now what I've marked as State's

ASHLEY CAISON - CROSS-EXAMINATION

1 201. You told the police: I mean, I guess -- I don't
2 -- I didn't -- I was asleep -- when he was asking you,
3 He could have left, right? And you are saying, Look, I
4 don't know, I was asleep?

5 A Well, once I went back in my house, I didn't
6 bother looking at them anymore. Like I said, I sent
7 the kids at 3:15, and that was the last I saw them
8 until 7 o'clock that morning.

9 Q So you don't know where they were at or what they
10 were doing between the time frames of 3:15 and
11 7:00 a.m.?

12 A No, because I went back in my house and finished
13 what I was doing, slept about an hour-and-a-half and
14 then I went to the store later that evening -- or
15 morning, and then they were home at 7:00 a.m. for sure,
16 because I walked over there to get my keycard.

17 Q Now, I'm going to ask you another question. I
18 think we cleared that up. The camera system, your mom
19 is Polly, correct?

20 A That is not her legal name, but, yeah, she goes
21 by Polly.

22 Q She actually had a monitor in her home, did she
23 not, for that camera system?

24 A The one that they installed later?

25 Q Uh-huh.

ASHLEY CAISON - CROSS-EXAMINATION

1 A There was actually two systems. She had her own
2 system.

3 Q So did she have one back on 12/18 of 2013?

4 A No.

5 Q But she had a monitor, didn't she?

6 A No.

7 Q She's never had a monitor in her house?

8 A No. Up until they went to Sam's and bought the
9 DVRs, she's never had surveillance of any kind, not
10 even a nanny cam on her home.

11 Q Let me ask you this. You already told this jury
12 that you are over there every day; where are you living
13 now?

14 A I live in the same house.

15 Q And who lives with you?

16 A My mom.

17 Q And who else?

18 A **C.M.** is currently living with us, and Josh.

19 Q And tell this jury who **C.M.** is.

20 A **C.M.** is Tammy's son, Tammy and Sidney's son.

21 Q So, currently, his son is living with you?

22 A Yes.

23 Q So you all are an extremely close family?

24 A Yeah. Of course we wouldn't just not give him a
25 place to live; both of his parents are incarcerated.

ASHLEY CAISON - CROSS-EXAMINATION

1 Q Let me ask you this --

2 A He's 13.

3 Q -- has Tammy always lived right there behind you?

4 A Yes.

5 Q And when they got married, Sidney always lived
6 there behind you?

7 A Yes. They built a house there.

8 Q So as long as you can remember, they were living
9 on the same acre of land?

10 A Yes.

11 Q You always had a good relationship with Sidney?

12 A Pretty much, yeah.

13 Q And you all never had any falling out?

14 A I mean, nothing major. I'm not a big fan of him
15 at the moment.

16 Q But you came here to help him out, did you?

17 A Yes, because, I mean, I can only say what I know.

18 Q That's fine.

19 MS. LIVESAY: One second, Your Honor.

20 THE COURT: Sure. Take your time.

21 (A brief pause in the proceedings.)

22 MS. LIVESAY: No further questions.

23 THE COURT: Redirect, Mr. Galmore.

24 REDIRECT-EXAMINATION

25 BY MR. GALMORE:

ASHLEY CAISON - CROSS-EXAMINATION

1 Q We'll skip all of that and let me just ask you a
2 few questions. Do you know who suggested washing the
3 cars that day?

4 A I did.

5 Q How was it that you came to suggest washing cars
6 that day?

7 A I was selfishly taking advantage of the weather.
8 I knew I had it under the tree, and I asked them to
9 open it early.

10 Q Did Tammy come to you and say, Sis, we need to
11 wash this truck?

12 A No. She actually kind of was, like, wow, when I
13 pulled it out, because I don't know that she actually
14 wanted to wash her truck.

15 Q Did Sidney come to you and say, quick, I need to
16 wash this truck, pull it up here and you can wash
17 yours, and we'll act like we're washing three cars
18 together?

19 A No. I asked Tammy before I told Sidney about it,
20 because I didn't know if I should spoil his surprise.
21 I was like should I give him his gift early, and she's
22 like, I guess, go ahead.

23 Q Okay. Now, you testified that you saw Tammy and
24 Sidney at 3:15 on the early morning hours of November
25 -- excuse me, December 18, 2013?

ASHLEY CAISON - CROSS-EXAMINATION

1 A Yes.

2 Q And at that time they did not appear to be acting
3 unusual?

4 A No. Everything was normal.

5 Q And the next time you saw them was at 7:00 a.m.,
6 approximately four hours later, correct?

7 A Correct.

8 Q At that time, were they acting unusual?

9 A No.

10 MR. GALMORE: Thank you. No further questions.

11 THE COURT: Recross, Ms. Livesay.

12 MS. LIVESAY: Just one second, Judge.

13 (A brief pause in the proceedings.)

14 MS. LIVESAY: No questions, Your Honor.

15 THE COURT: You may come down, thank you.

16 Ladies and gentlemen, at this point we'll take
17 a recess. Do not begin your deliberations. We'll be
18 with you in about 10, 15 minutes. Thank you.

19 (The jury exits at 3:34 p.m., and the
20 following is heard out of the presence of the jury.)

21 THE COURT: Anything from the State before we
22 recess?

23 MR. HELMS: No, Your Honor.

24 THE COURT: From the defendant?

25 MR. GALMORE: No, sir.

SIDNEY MOORER - THE COURT

1 to testify?

2 A Yes, sir.

3 Q All right. And I'll accept that.

4 THE COURT: As I understand, there is a
5 possibility of two more witnesses, one being a
6 forensic expert and possibly Mr. Moorer?

7 MR. BOUCHETTE: That's correct. Possibility
8 that --

9 THE COURT: I understand. I won't hold you to
10 that.

11 MR. BOUCHETTE: Two, maybe three witnesses.

12 THE COURT: Solicitor, and I'm not holding you to
13 this, do you anticipate any reply testimony?

14 MR. HELMS: Yes, and it will be the shortest
15 witness we've called.

16 THE COURT: Okay. So my plan is to have probably
17 lunch brought in for the jury, because I think we can
18 probably get to argue and charging in the early
19 afternoon, and let the jury start its decision-making
20 process by Wednesday afternoon. Of course, that
21 depends on how the witnesses unfold, but I'll plan to
22 be back in Columbia by 10:30, and we'll have the jury
23 return at 10:30, and we'll start the trial at that
24 time.

25 MR. HELMS: We'll be ready.

SIDNEY MOORER - THE COURT

1 THE COURT: Thank you very much. Let's bring the
2 jury in.

3 (The jury enters at 3:44 p.m., and the
4 following is heard in the presence of the jury.)

5 THE COURT: Thank you very much, ladies and
6 gentlemen. I appreciate your patience. We've had
7 some discussion. At this point, we'll take a recess
8 for this afternoon. I know it is a quarter to 4:00,
9 and you are thinking why. From what we discussed,
10 barring anything unforeseen, and it is always subject
11 to change, I believe we can finish the evidentiary
12 portion of this trial by lunchtime on Wednesday and
13 have the last two phases early afternoon. You will
14 probably receive this case to begin your deliberations
15 by Wednesday afternoon. So we would have to come back
16 anyway, so we'll recess at this point and let you go
17 home. I'll ask that you be in the jury room by
18 10:30 on Wednesday, and we'll resume the trial at that
19 time. 10:30. So you have an hour more, and give me
20 an hour more to get from Columbia, but I'll be here by
21 then. We'll resume the testimony and plan for lunch
22 being brought in so you can eat your lunch and
23 deliberate simultaneously, if it happens to fall in
24 that time.

25 So thank you very much. Please remember, you are

THE COURT

1 still not at liberty to discuss this case with anyone.
2 Do not watch any news accounts. Do not read anything
3 about it, and don't conduct any independent research.
4 Have a great day and I'll see you Wednesday.

5 (The jury exits at 3:46 p.m., and the
6 following is heard out of the presence of the jury.)

7 THE COURT: Anything from the State before we
8 recess?

9 MR. HELMS: No, sir.

10 THE COURT: Anything from the defendant?

11 MR. BOUCHETTE: No, Your Honor.

12 THE COURT: Thank you. We'll be at ease until
13 10:30 Wednesday.

14 **(WHEREUPON, THE PROCEEDINGS OF SEPTEMBER 16, 2019**
15 **CONCLUDED. NO COURT WAS HELD ON SEPTEMBER 17, 2019**
16 **DUE TO A MANDATORY JUDGES CONFERENCE. THE FOLLOWING**
17 **WAS HAD ON SEPTEMBER 18, 2019 OUT OF THE PRESENCE OF**
18 **THE JURY.)**

19 (Defendant's Exhibits 9 and 10 marked.)

20 THE COURT: Good morning. Does the State have
21 any matters before we bring in the jury?

22 MS. LIVESAY: Yes, sir, we do.

23 THE COURT: Okay.

24 MS. LIVESAY: It is our understanding that the
25 defense has sent or served a subpoena on Will Lynch.

THE COURT

1 (The jury enters at 10:47 a.m., and the
2 following is heard in the presence of the jury.)

3 THE COURT: Good morning, ladies and gentlemen.
4 I hope you had a good day yesterday and it was
5 productive for you. I understand it interrupted the
6 continuity of this, but I appreciate your patience
7 with the Court in that respect.

8 As we have done, I need to ask if each of you
9 will be able to solemnly swear or affirm that you have
10 honored the Court's instruction throughout this day
11 off, so to speak, and have not -- in addition to that
12 general instruction -- have not specifically talked
13 with anyone or allowed anyone to talk with you about
14 it, or read any accounts or viewed any accounts of
15 this, and if you can make that commitment, say "I do."
16 Any member unable to make that commitment, please
17 raise your hand.

18 Thank you again for your conscientious approach
19 to this process, and I'll ask you to give your
20 attention now to the next witness.

21 MR. GALMORE: Defense would call Detective Will
22 Lynch.

23 (WILL LYNCH, having been duly sworn, testified as
24 follows:)

25 THE WITNESS: Will Lynch, L-Y-N-C-H.

WILL LYNCH - DIRECT EXAMINATION

1 DIRECT-EXAMINATION

2 BY MR. GALMORE:

3 Q Detective Lynch, you testified previously in this
4 case?

5 A I did.

6 Q And at that time you said you were a detective
7 with the North Myrtle Beach Police Department?

8 A Yes, sir.

9 Q That hasn't changed in the last few days, has it?

10 A It has not.

11 Q And I think you previously testified that you
12 were also assigned to the Drug Enforcement Unit?

13 A That is correct.

14 Q And you testified that you worked on this case,
15 this investigation, also?

16 A Yes, I did.

17 Q What was your role in working on this case?

18 A To do cell phone extractions on a couple of cell
19 phones.

20 Q And you testified previously about some of the
21 cell phone extractions?

22 A I did.

23 Q Did you have an occasion to do a cell phone
24 extraction on a phone belonging to a Jerry Stevens?

25 A I did.

WILL LYNCH - DIRECT EXAMINATION

1 Q Let me ask you about this phone. Did he
2 voluntarily turn it over, or did the police have a
3 search warrant?

4 A I'm not actually familiar with how the phone came
5 into the police department's custody.

6 Q Not your department?

7 A Correct, not my department.

8 Q But just to be clear, you did an extraction on a
9 phone belonging to Jerry Stevens?

10 A Yes.

11 Q When did you do this extraction, sir?

12 A I was given the information August of 2014, is
13 what I was told.

14 Q And you did this extraction at the request of the
15 Horry County Police Department?

16 A I would have, yes.

17 Q Did you get a report from Cellebrite based on
18 this extraction?

19 A I would have generated a report through
20 Cellebrite, that's correct.

21 Q Did you bring that report with you to court
22 today?

23 A Typically, when I do an extraction for another
24 agency, I don't generate a report for myself. I would
25 have given that report through some type of media

WILL LYNCH - DIRECT EXAMINATION

1 device, a thumb drive or external hard drive, to the
2 agency.

3 Q Yes, sir.

4 (A brief pause in the proceedings.)

5 MR. GALMORE: May I approach, Your Honor?

6 THE COURT: You may, sir.

7 Q (MR. GALMORE) Detective Lynch, let me hand you
8 what has been marked for identification purposes only
9 as Defense Exhibit No. 10 and ask you if that is the
10 Cellebrite report that you generated as a result of
11 downloading Jerry Stevens' phone?

12 A I have looked at this report briefly. When you
13 generate a report for Cellebrite, there is basically a
14 cover page or contents page and it will tell you --
15 give you some description of the cell phone, time, date
16 that the phone was extracted, and it also says who
17 extracted the cell phone. Now, I've briefly looked
18 through this, and I don't see that cover page on here,
19 but I was given information today that my name is on a
20 report for Jerry Stevens. So I can't say if this is
21 the same one, but I was given the information that I
22 did do an extraction on Jerry Stevens' cell phone.

23 Q Would you refute that that is the cell phone
24 extraction for Jerry Stevens?

25 A I cannot refute that.

WILL LYNCH - DIRECT EXAMINATION

1 Q Okay. Were you able to extract telephone call
2 data off Mr. Stevens' phone?

3 A Yes.

4 Q Now, were you able to extract text message data
5 off of Mr. Stevens' phone?

6 A Yes, that is correct.

7 Q Were you able to recover any deleted messages off
8 of Mr. Stevens' phone?

9 A Yes.

10 Q So when we talk about messages, there are two
11 types of messages, basically, ones that are on the
12 phone, correct?

13 A Correct.

14 Q And the ones that have been deleted but recovered
15 by Cellebrite software?

16 A Sure. Yes.

17 Q And you had both types of messages in this case?

18 A Yes. In this report, it does indicate there were
19 some messages that were deleted.

20 Q Okay. Now, were you able to find that
21 Mr. Stevens' phone was in contact with [REDACTED] 8152,
22 Ms. Elvis' phone?

23 A Yes, sir.

24 (A brief pause in the proceedings.)

25 Q (MR. GALMORE) Sir, let me hand you what has been

WILL LYNCH - DIRECT EXAMINATION

1 marked for identification purposes as Defense Exhibit
2 9, and I'll ask you is that a summary of certain pages
3 from the Cellebrite download report, Defense Exhibit
4 No. 10?

5 A Yes, it is.

6 Q That also would be the report that you downloaded
7 from Jerry Stevens' phone?

8 A Yes, that is correct.

9 MR. GALMORE: Your Honor, I would move Defense
10 Exhibits 9 and 10 into evidence.

11 THE COURT: Any objection, other than which we
12 previously have argued?

13 MS. LIVESAY: As long as the Court finds that the
14 proper foundation was laid.

15 THE COURT: He testified that he did it, so I'll
16 admit them, 9 and 10.

17 (Defendant's Exhibits 9 and 10 admitted.)

18 Q (MR. GALMORE) Sir, just for brevity's sake, I'll
19 take this one off your hands, but I'll ask you -- or
20 direct your attention to Page 19912.

21 THE COURT: That is Defendant's 9?

22 MR. GALMORE: Yes, Your Honor, I apologize.

23 THE COURT: That's no problem, I just wanted to
24 be sure.

25 A I'm there.

WILL LYNCH - DIRECT EXAMINATION

1 Q (MR. GALMORE) Did you find that there were texts
2 between Jeremy Stevens' phone and Heather Elvis' phone
3 on that exhibit?

4 A Yes.

5 Q Let's go with the first text. What is the first
6 text between those two telephones? What is the date
7 and time on that text?

8 A So, on this report, again, I discussed about
9 having to convert time, and on this report it says
10 12/16/2013 at 4:37 a.m., but at that point in time you
11 have to subtract five hours, so you would actually be
12 going back to the 15th, around 11:37 p.m. on the
13 15th.

14 Q So they have been in contact as of December 15,
15 11:00 p.m.?

16 A Yes.

17 Q Now, I'll direct your attention to 19913 of the
18 same exhibit, Line No. 17; is that a message between
19 those two telephones, Ms. Elvis' phone and Mr. Stevens'
20 phone?

21 A Yes, it is.

22 Q What is the date on that message?

23 A So the date on that message is December 16th.
24 It shows 9:11 a.m. Again, subtract five hours, so it
25 is 4:11 a.m. on the 16th of December.

WILL LYNCH - DIRECT EXAMINATION

1 Q Now, was that a phone message -- excuse me, a
2 phone call or --

3 A It was a text message from [REDACTED] 8152.

4 Q So this is an incoming message to Jerry Stevens'
5 phone?

6 A Correct.

7 Q On December 16 at 4:00 a.m.?

8 A 4:11 a.m., yes, that's correct.

9 Q If you don't mind, could you publish that message
10 to the jury and tell us what it says.

11 A The message says --

12 MS. LIVESAY: Your Honor, at this time the State
13 just objects to hearsay.

14 THE COURT: It's coming from a record he
15 produced, so overruled.

16 A The text message says: Boohoo. Go to sleep
17 then, but I'm having you tomorrow.

18 Q (MR. GALMORE) And, sir, I would like to direct
19 your attention back to Page 19912, Line 62. Do you
20 see Line No. 62, sir?

21 A I do.

22 Q And is that a text message between Jeremy
23 Stevens' phone and Heather Elvis' phone?

24 A It is.

25 Q What is the date on that message?

WILL LYNCH - DIRECT EXAMINATION

1 A Date on that message is -- shows 12/16/2013 at
2 4:53 a.m., so you would have to back it up to 12/15 at
3 11:53 p.m. So the message is actually from [REDACTED] 8152,
4 occurred at 11:53 p.m. on the 15th.

5 Q Is that a phone call or a text message?

6 A Text message.

7 Q Can you tell the jury the content of that?

8 A I can. The text message says: Well, tomorrow
9 night I'm showing up at your front door naked, so get
10 ready.

11 Q Are these the only two messages between those two
12 phone numbers?

13 A No, sir.

14 Q Would it be fair to say that there are several
15 messages between those two phone numbers?

16 A Yes.

17 Q As a result of this extraction, did you do any
18 further investigation into Jeremy Stevens?

19 A I would not have.

20 Q Your job was to do the extraction and pass on the
21 report?

22 A To the investigating agency, yes, that's correct.

23 MR. GALMORE: Hold on one second, Detective.

24 (A brief pause in the proceedings.)

25 Q (MR. GALMORE) Detective Lynch, when did you do

WILL LYNCH - CROSS-EXAMINATION

1 the cell phone extraction again, sir?

2 A I was advised that I did the extraction in August
3 of 2014. I've heard two stories of actually when I did
4 this extraction. I cannot honestly say when the
5 extraction was done.

6 Q And when did Ms. Elvis disappear?

7 A Early morning hours of December 18th, 2013.

8 MR. GALMORE: Thank you. Answer any questions
9 the State has for you.

10 THE COURT: You may cross-examine.

11 MS. LIVESAY: Yes, sir, Your Honor. A few
12 questions.

13 THE COURT: Sure.

14 CROSS-EXAMINATION

15 BY MS. LIVESAY:

16 Q Mr. Lynch, if you don't mind, I'm going to ask
17 you to step down with that report.

18 From that report, are you able to know what Jerry
19 Stevens' phone number was that was communicating with
20 Heather?

21 A Not from this report, no.

22 Q So there is no way to tell the phone number as to
23 "to" and "from" that it was going?

24 A No. It has a "to" and "from," but the number
25 that this person is communicating with, not the actual

WILL LYNCH - CROSS-EXAMINATION

1 phone it's coming from.

2 Q Okay. So there is no way for you to know from
3 that report what Mr. Stevens' phone number is?

4 A Correct.

5 Q Does the report that you normally generate have
6 that information?

7 A It would be on that cover page.

8 Q So is this not a complete copy of the report?

9 A No.

10 Q Okay. If I showed you a complete copy of the
11 report, would you then be able to recognize what the
12 phone number was?

13 A Sure. Yes.

14 Q And without the phone number, you can't really
15 tell us if he had contact with her on the 17th and
16 18th from any kind of phone records, correct?

17 A Correct.

18 MS. LIVESAY: Your Honor, we will need just a
19 minute to get Mr. Lynch the full report.

20 Q (MS. LIVESAY) What you are saying is what you
21 have here is not the full report?

22 A Correct, it is just an excerpt.

23 (A brief pause in the proceedings.)

24 Q (MS. LIVESAY) Go ahead and have a seat,
25 Mr. Lynch. She's going to work on getting you the

WILL LYNCH - CROSS-EXAMINATION

1 full report.

2 Now, from the portion of the report you are
3 looking at now, were there any text messages between
4 Heather Elvis and Jerry Stevens on 12/18/2013?

5 A The report I'm actually looking at, the last date
6 on it actually is on -- it shows the 17th, but when
7 you did the subtractions, it is only the late hours of
8 the 16th, based on what they have given me.

9 Q So you don't have the 17th or the 18th?

10 A I don't.

11 Q We can get you that as well, Mr. Lynch.

12 So the date you have there stops on the 16th?

13 A It stops at 11:11 p.m. on the 16th.

14 Q But you would agree with me that certainly that
15 is not the full report that you did?

16 A Correct. Yes.

17 Q And have you actually seen the full report you
18 did?

19 A No.

20 Q Have you seen portions of the full report?

21 A I have.

22 Q And tell this jury who showed you that?

23 A Well, I saw portions of it from you.

24 Q Okay. And when I showed it to you, did I show
25 you that front page to show you you were the examiner

WILL LYNCH - CROSS-EXAMINATION

1 and when it was -- when it was extracted?

2 A I believe you did.

3 Q But the copy you have in front of you doesn't
4 have that information?

5 A That's correct.

6 Q Now, do you know whether or not the police ever
7 spoke with Jerry Stevens?

8 A I don't know that.

9 Q And the only thing you did was just to dump his
10 cell phone?

11 A That's correct.

12 Q And that was done sometime in 2014?

13 A Yes.

14 MS. LIVESAY: One second, Your Honor, I thought
15 the full report was entered in.

16 THE COURT: He said it was only certain portions
17 of it when he introduced it. He didn't say it was the
18 full report.

19 (A brief pause in the proceedings.)

20 Q (MS. LIVESAY) I'll show you Defense Exhibit
21 No. 10 --

22 MS. LIVESAY: Did this come in, Natalie?

23 COURT REPORTER: Yes.

24 MS. LIVESAY: Okay. Good.

25 Q (MS. LIVESAY) Did this include the 17th and

WILL LYNCH - CROSS-EXAMINATION

1 18th?

2 A It does.

3 Q Now, can you look then at the full report and
4 tell me if there was any contact between Heather Elvis
5 and Jerry Stevens on the 18th?

6 A On the 18th?

7 Q Yes, sir.

8 A Okay. (Witness examines document.) I do not see
9 the [REDACTED] 8152 number at all.

10 Q So you don't see any contact between the victim
11 and Jerry Stevens' phone on December 18, 2013?

12 A No, ma'am.

13 Q How about December 17, 2013?

14 A (Witness examines document.) No, ma'am.

15 Q Can you look at that report -- since he didn't
16 reach out to her on the 17th or 18th -- and tell me
17 the last time Jerry Stevens reached out to our victim,
18 Heather Elvis?

19 A (Witness examines document.) The last time,
20 based on this report, would have been at 4:11 a.m. on
21 December 16th.

22 Q Is that the converted time?

23 A That is the converted time. It says 9:11 but you
24 would convert it --

25 Q So the last time he reached out to her was

WILL LYNCH - CROSS-EXAMINATION

1 December --

2 A Actually, he didn't reach out to her. That was
3 an incoming message from her to him.

4 Q Okay. When was the last time he reached out to
5 her?

6 A Again, it would have been the early morning hours
7 on the 16th at 4:06 a.m.

8 Q That was the last time him and her spoke, was on
9 the 16th?

10 A Early morning hours, yes.

11 Q Okay.

12 We're trying to get the last page for you. Can
13 you see the context between the text message between
14 the two of them?

15 A I can.

16 Q And do any of them indicate that they had been
17 deleted, between him and Heather?

18 A It doesn't appear there was any messages that
19 were deleted between the two of them.

20 Q So none of those messages were deleted?

21 A Correct.

22 Q And, from the report, the last time they had
23 contact was the 16th?

24 A Correct.

25 Q And who reached out to who last?

WILL LYNCH - CROSS-EXAMINATION

1 A Heather reached out to Jerry last.

2 Q And have you read all of those messages from the
3 16th?

4 A I have just briefly saw them. I haven't read
5 them, per se, word for word, but I briefly looked over
6 them.

7 Q And Mr. Galmore asked you about the message where
8 I think you read it, said I'm coming over tomorrow
9 night?

10 A I did read that.

11 Q And did Mr. Stevens ever respond to that? Was
12 there any meeting of the minds?

13 (State's Exhibits 202 and 203 marked.)

14 A There was a response to that particular text
15 message. It just said: Ha, ha, ha, ha.

16 Q (MS. LIVESAY) Okay. Let me show you now what is
17 marked State's 202; do you recognize what I'm showing
18 you now?

19 A This would be the cover sheet for a typical phone
20 extraction, which would show the date, time, type of
21 phone and who the examiner was.

22 Q Okay. And is that indicating that you were,
23 indeed, the examiner?

24 A It does indicate my name as the examiner.

25 Q Is that the first two pages off of that report?

WILL LYNCH - CROSS-EXAMINATION

1 A It is.

2 MS. LIVESAY: Your Honor, at this time the State
3 wishes to put 202 into evidence.

4 THE COURT: Any objection?

5 MR. GALMORE: Just a moment, Your Honor.

6 THE COURT: Sure.

7 (A brief pause in the proceedings.)

8 MR. GALMORE: No objection.

9 THE COURT: Without objection, State's 202 is
10 admitted.

11 (State's Exhibit 202 admitted.)

12 Q (MS. LIVESAY) From this report, can you now give
13 us what Jerry Stevens' phone number was?

14 A [REDACTED] --

15 Q Hold on one second.

16 A [REDACTED] 0749.

17 Q Now, Mr. Lynch, I want you to step down and look
18 at these phone records you've already seen, and these
19 are for the morning of the 18th?

20 THE COURT: What is that? Ms. Livesay, what is
21 that exhibit number?

22 MS. LIVESAY: I'm sorry, Judge. It is 5.

23 THE COURT: 5, thank you.

24 Q (MS. LIVESAY) I'm showing you 5. Do you see
25 Jerry Stevens' phone number anywhere on her records

WILL LYNCH - CROSS-EXAMINATION

1 the morning of December 18th?

2 A I just wanted to refresh my memory, that's all
3 right. I do not see it.

4 Q So there is -- his phone number is nowhere on her
5 records from December 18th?

6 A No, ma'am.

7 Q And his Cellebrite report indicates that he
8 didn't talk to her from the 17th or 18th?

9 A That's correct.

10 Q And none of the messages had been deleted between
11 the two of them, correct?

12 A Correct.

13 Q If you don't mind, have a seat, Mr. Lynch.

14 Now, do you know the last three messages from
15 Heather to Jerry Stevens on the 16th?

16 A I mean, I can look at the report here.

17 Q Thank you.

18 A I can see those.

19 Q And what do those messages say? What do they
20 say?

21 A The last three messages starts with: That's not
22 what I asked, but, okay, smart ass.

23 And then the next message is: I'm beat, yo.

24 And then the next message is: Boohoo. Go to
25 sleep then, but I'm having you tomorrow.

WILL LYNCH - REDIRECT EXAMINATION

1 Q Are there any messages after that?

2 A No.

3 Q Does he ever respond to that?

4 A No.

5 Q And he never talks to her on the 17th or
6 18th?

7 A No.

8 MS. LIVESAY: No further questions, Your Honor.

9 THE COURT: Redirect.

10 MR. GALMORE: Very briefly, Your Honor.

11 REDIRECT-EXAMINATION

12 BY MR. GALMORE:

13 Q Detective Lynch, now that you had a chance to
14 look at State's Exhibit 202, can you confirm that you,
15 indeed, did a cell phone download extraction of Jerry
16 Stevens' phone?

17 A I did, on August 1st of 2014.

18 Q And the content of the extractions, as you
19 previously testified to, was that content accurate?

20 A Yes.

21 MR. GALMORE: Thank you, sir. No further
22 questions.

23 THE COURT: Recross?

24 MS. LIVESAY: No, sir, Your Honor.

25 THE COURT: You may step down.

JERRY STEVENS - DIRECT EXAMINATION

1 Do you wish this witness to be excused?

2 MR. HELMS: Please, Your Honor -- oh, I'm sorry,
3 this is Mr. Galmore's.

4 MR. GALMORE: Yes, sir.

5 MR. HELMS: No objection, Judge. Force of habit,
6 Your Honor.

7 (Laughing)

8 THE COURT: I understand. It happens.

9 Additional witnesses from the defense?

10 MR. BOUCHETTE: At this time, the defense rests.

11 THE COURT: Are there any reply witnesses?

12 MS. LIVESAY: Yes, sir, Your Honor.

13 THE COURT: You may proceed. Call your first
14 witness.

15 MR. LIVESAY: Thank you, Your Honor. At this
16 time, the State calls Jerry Stevens.

17 (JERRY STEVENS, having been duly sworn,
18 testified as follows:)

19 THE WITNESS: Jerry Dean Stevens, S-T-E-V-E-N-S.

20 DIRECT-EXAMINATION

21 BY MS. LIVESAY:

22 Q Mr. Stevens, where are you currently employed?

23 A I work for a restaurant company in Myrtle Beach.

24 Q Do you have any children?

25 A Yes.

JERRY STEVENS - DIRECT EXAMINATION

1 Q How many?

2 A Two.

3 Q How old are they?

4 A 21 and 10.

5 Q And do you live here in Horry County?

6 A Yes, ma'am.

7 Q Have you always lived in Horry County?

8 A Since I was about four.

9 Q And do you know the defendant in this case,
10 Sidney Moorer?

11 A No. Other than what is on the news and stuff,
12 no.

13 Q And did you know the victim, Heather Elvis?

14 A Yes.

15 Q How did you know her?

16 A We were friends and worked together.

17 Q Okay. There has been some discussion before you
18 came in here about your contact with her in December of
19 2013. If you don't mind, first of all, confirm to this
20 jury what your phone number was at that time.

21 A [REDACTED] 0749.

22 Q And I'm going to show you State's 5. Tell me if
23 you see your phone number on this. This is Heather's
24 phone records from the early morning of
25 December 18th, 2013.

JERRY STEVENS - DIRECT EXAMINATION

1 A No.

2 Q Did you have any contact with her on
3 December 18th?

4 A Not that I'm -- I mean, it's possible. I can't
5 remember. It was a long time, so.

6 Q When was the last time you saw the victim, that
7 you remember?

8 A Probably a week or two before everything came up.

9 Q A week or two before?

10 A She went missing, yeah.

11 Q And how did you find out she went missing?

12 A News and hearing from friends and stuff like
13 that.

14 Q Had you had any intentions to see her on the
15 17th or 18th?

16 A No.

17 Q And at that time were you all friends?

18 A Yeah, we were friends.

19 Q Was there any animosity between the two of you?

20 A Absolutely not, no.

21 Q During the month of December 2013, did you ever
22 call the victim from a payphone?

23 A No.

24 Q Did you ever purchase a pregnancy test?

25 A No.

JERRY STEVENS - DIRECT EXAMINATION

1 Q Did you talk with her at all the morning of
2 December 2018 (sic)?

3 A Not that I'm aware of, no.

4 Q Now, at the time, what kind of vehicle did you
5 drive, Mr. Stevens?

6 A Honda Ridgeline truck.

7 Q What?

8 A Honda truck.

9 Q What kind of truck?

10 A Honda Ridgeline.

11 Q Did it have four doors on it?

12 A Yes.

13 Q And what color was it?

14 A Green.

15 Q And was your truck anywhere on Highway 814 or
16 Mill Pond on December 18th?

17 A No.

18 Q And were you ever around the area of Peachtree
19 Landing?

20 A No.

21 Q Do you know where Heather Elvis is?

22 A No.

23 Q Are you responsible in any way for why she's gone
24 missing since --

25 A Absolutely not. No.

JERRY STEVENS - DIRECT EXAMINATION

1 Q -- December 18th?

2 Do you know those two attorneys sitting over
3 there, Mr. Galmore and Mr. Bouchette?

4 A No.

5 Q Have they ever contacted you?

6 A No.

7 Q Have they ever gone over anything with you about
8 your phone report?

9 A No.

10 Q Have you talked to the police?

11 A Yes.

12 Q How many times?

13 A Twice.

14 Q And how did the police give you -- how did the
15 police get your phone?

16 A I gave it to them willingly.

17 Q So they never had to get a search warrant?

18 A No.

19 Q Did you talk with them every time they wanted to
20 talk to you?

21 A Uh-huh, both times.

22 Q Did you delete any messages off your phone
23 between you and Heather to keep them from the police?

24 A No.

25 MS. LIVESAY: No further questions for this

JERRY STEVENS - CROSS-EXAMINATION

1 witness, Your Honor.

2 THE COURT: You may cross-examine, Mr. Galmore.

3

4

5

CROSS-EXAMINATION

6 BY MR. GALMORE:

7 Q Mr. Stevens, you said that you had two occasions
8 to speak with the police; is that right?

9 A Correct.

10 Q When did these interviews take place?

11 A Once was at my workplace, and then they called me
12 and asked me to come into the police station for an
13 interview as well.

14 Q Would that have been, like, within a day or two
15 of each other?

16 A No. It was maybe within a week or two.

17 Q Do you know when these interviews took place?

18 A Not off the top of my head. It's been quite some
19 time.

20 Q Do you recall if it would have been in 2013, or
21 would it have been in 2014?

22 A I don't.

23 Q I think you testified the first interview took
24 place at your place of work?

25 A Correct.

JERRY STEVENS - CROSS-EXAMINATION

1 Q Which officer spoke with you, if you recall?

2 A It was a blond lady. I believe she was County.

3 Q And after that interview, they called and asked
4 you to come in for another interview?

5 A Correct.

6 Q And when did that interview take place?

7 A I guess the courthouse on Lane Street over there.

8 Q Do you think it might have been the police
9 headquarters, M.L. Brown building?

10 A The one by the post office?

11 Q Yes, by the post office.

12 A Yeah. Yeah.

13 Q Do you know if that interview was recorded?

14 A I don't know.

15 Q But you did do an interview at the M.L. Brown
16 building, at the request of the police department?

17 A Correct.

18 Q Do you recall how many detectives were in the
19 room talking with you?

20 A Two.

21 Q You don't happen to know their names, you just
22 know it was sometime ago?

23 A Yeah, I don't.

24 Q I'm not trying to hold you to it. And did you
25 provide the police with your telephone number?

JERRY STEVENS - CROSS-EXAMINATION

1 A I gave them my actual cell phone to download it.

2 Q So you gave them your phone and your phone
3 number?

4 A Uh-huh.

5 THE COURT: Is that a yes?

6 A Yes. Yes.

7 THE COURT: Thank you.

8 Q (MR. GALMORE) Do you know what they did with
9 your phone?

10 A No.

11 Q Did they give your phone back to you the same
12 day?

13 A Yes. It was sometime after the interview, but I
14 got the phone back the same day.

15 Q So, basically, while you were being interviewed,
16 the police had your phone and then they gave it back
17 after the interview was over?

18 A A little while after the interview was over, yes.

19 Q Now, this interview, you said you went into the
20 police department voluntarily, right?

21 A Uh-huh.

22 Q Did they have you sign a Miranda form?

23 A Not that I'm aware of. I can't remember.

24 Q Do you know what I'm talking about when I say
25 "Miranda form"?

JERRY STEVENS - CROSS-EXAMINATION

1 A Miranda rights?

2 Q Yes.

3 A Yeah.

4 Q So you don't know if they gave you your Miranda
5 rights in advance?

6 A No.

7 Q Do you recall if you had sexual contact with
8 Ms. Elvis in the week or two preceding her
9 disappearance?

10 A Not within a week or two.

11 Q When would that have been, sir?

12 A I couldn't give you a date. I don't know.

13 Q If you look at December 17, 2013 as the date she
14 disappeared, can you extrapolate backwards when was the
15 last time you had sexual contact with Ms. Elvis?

16 A Maybe two weeks. I'm not sure.

17 Q So two weeks -- around two weeks before
18 December 17th?

19 A Correct.

20 Q Did you give that information to the police?

21 A Yes.

22 Q You did?

23 A Yes.

24 Q Now, did the police request a DNA swab from you?

25 A No.

JERRY STEVENS - CROSS-EXAMINATION

1 Q No. So you sat down and interviewed with the
2 police officers, gave them your cell phone and you told
3 them that you had been in a sexual relationship with
4 her within the past two weeks?

5 A Yes.

6 Q But they did not ask you for a DNA swab?

7 A No.

8 Q I think you said you got your phone back?

9 A Yes.

10 Q If you had been asked for a DNA swab, would you
11 have provided it?

12 A Yeah.

13 Q After this interview, did the police come to your
14 house and inspect your home and property?

15 A No.

16 Q Did the police take any DNA, clothing or any
17 items from your home?

18 A No.

19 Q Had you ever been to Heather Elvis' house.

20 A No.

21 Q Did the police search your car?

22 A No.

23 Q Have you ever been in Ms. Elvis' car?

24 A No.

25 Q We've had testimony that there was text messages

JERRY STEVENS - CROSS-EXAMINATION

1 between Ms. Elvis and yourself -- or I guess mostly on
2 Ms. Elvis' part -- trying to arrange some kind of date?

3 A Meeting.

4 Q Would that be accurate?

5 A Yeah.

6 Q Would it be fair to say it was mostly on
7 Ms. Elvis' part?

8 A Correct.

9 Q Did you indicate at any time that -- I think you
10 told Ms. Livesay that your truck was not on Highway
11 814, and it was not on Mill Pond Road, correct?

12 A Correct.

13 Q During your interview with the police, did you
14 tell them on the 17th you were at a friend's house on
15 Highway 707?

16 A Yes.

17 Q And the 17th is the time period in which
18 Ms. Elvis went missing?

19 A Right.

20 MR. GALMORE: Thank you, sir. No further
21 questions.

22 THE COURT: Redirect?

23 MS. LIVESAY: Yes, sir, Your Honor.

24 REDIRECT-EXAMINATION

25

JERRY STEVENS - REDIRECT EXAMINATION

1 BY MS. LIVESAY:

2 Q Just a couple of questions, Mr. Stevens. When
3 you talked to the police, Mr. Galmore was asking you
4 about that, at the M.L. Brown; do you remember that?

5 A Yes.

6 Q Were you truthful with the police?

7 A Absolutely.

8 Q And did you tell them what you are telling this
9 jury today?

10 A Correct.

11 Q And Mr. Galmore asked you about being on 814 and
12 Mill Pond; do you remember that?

13 A I remember him asking me, yes.

14 Q Do you know what a Ford F-150 truck looks like?

15 A Yes.

16 Q Does that look anything like a Honda truck?

17 A No.

18 MS. LIVESAY: Nothing further.

19 THE COURT: Recross.

20 MR. GALMORE: Nothing further, Your Honor.

21 THE COURT: You may step down.

22 Do you wish for him to be excused?

23 MS. LIVESAY: Yes, Your Honor.

24 THE COURT: Any objection?

25 MR. GALMORE: No, sir.

MICHAEL KATHMAN - DIRECT EXAMINATION

1 THE COURT: You are also free to leave, sir.

2 You're excused.

3 Any additional witnesses?

4 MR. HELMS: Yes, sir. We call Michael Kathman to
5 the stand.

6 (MICHAEL KATHMAN, having been duly sworn,
7 testified as follows:)

8 THE WITNESS: Michael Kathman, K-A-T-H-M-A-N.

9 DIRECT-EXAMINATION

10 BY MR. HELMS:

11 Q Mr. Kathman, where are you employed?

12 A Horry County Police Department.

13 Q How long have you worked for them?

14 A About 15 years.

15 Q Did you work for them in 2013?

16 A Yes, sir.

17 Q And what do you do for them?

18 A Currently, a lieutenant in our Support Services
19 Division.

20 Q What does that mean exactly? What do your duties
21 entail?

22 A Currently, I'm a supervisor of our victim
23 services and regulatory units.

24 Q Do you have the capability and do you all
25 maintain records for in-service calls?

MICHAEL KATHMAN - DIRECT EXAMINATION

1 A Yes, sir.

2 Q Do you have the capability of searching those
3 records?

4 A Yes.

5 Q Were you asked to do any kind of search in
6 relation to this case?

7 A I was.

8 Q Tell this jury about what you were asked to do?

9 A I was asked to find any harassment reports that
10 had been filed by Sidney or Tammy Moorer in 2013 or
11 2014.

12 Q Who asked you to do that, sir?

13 A You did.

14 Q I'm sorry?

15 A You did, sir.

16 Q Okay. Did you, in fact, perform that search,
17 sir?

18 A I did.

19 Q And you did it for both 2013 and '14?

20 A I searched by their names, Sidney Moorer and
21 Tammy Moorer. So it did anything that -- if their name
22 came up in a report, so no matter how old it was, I
23 opened and looked. Anything that was not 2013 or 2014,
24 I didn't look at.

25 Q So you are able to actually search your system,

MICHAEL KATHMAN - DIRECT EXAMINATION

1 your database -- what is your database called, by the
2 way?

3 A P-1. It is a Motorola system.

4 Q So you are actually able to search your database
5 for any time that Sidney Moorer would have called
6 police for a harassment complaint?

7 A Any time a report would have been done, yes.

8 Q And it would list him as the complainant?

9 A Complainant, victim -- if I search by name, it
10 will pull up anything as victim, suspect, complainant,
11 witness.

12 Q And the same is true for Tammy Moorer, any time a
13 report would have been generated for any harassment
14 complaint she made?

15 A Yes, sir.

16 Q And you would have been able to find that in 2013
17 and 2014?

18 A Yes.

19 Q And there was testimony by the defense that they
20 installed a camera system because they were being
21 harassed on 12/21/2013. I want you to tell this jury
22 how many complaints Sidney or Tammy Moorer made prior
23 to 12/21/2013.

24 A In 2013, I didn't find any.

25 Q How many complaints for the whole year did Tammy

MICHAEL KATHMAN - DIRECT EXAMINATION

1 or Sidney Moorer make to police that they were being
2 harassed?

3 A In 2013?

4 Q Yes.

5 A I didn't find any.

6 Q None? So how about 2014?

7 A I found a good amount in 2014.

8 Q More than two?

9 A Yes.

10 Q More than three?

11 A Yes. I would say over ten.

12 Q Over ten complaints listing Tammy or Sidney as
13 complainants?

14 A There was a good amount, yes.

15 Q But those were all in 2014, right?

16 A Yes.

17 Q So, clearly, they are not afraid to call police
18 when they are being harassed?

19 A No. It appears there was a good amount of
20 contact with law enforcement, yes, sir.

21 Q And all of that was in 2014?

22 A Yes.

23 MR. HELMS: Please answer any questions the
24 defense may have.

25 THE COURT: Cross-examine.

MICHAEL KATHMAN - CROSS-EXAMINATION

1 MR. BOUCHETTE: Court's indulgence.

2 THE COURT: Sure. Take your time.

3 (A brief pause in the proceedings.)

4

5

6

CROSS-EXAMINATION

7

BY MR. BOUCHETTE:

8

Q Is it Kathman?

9

A Kathman, yes, sir.

10

Q Just very, very few questions. You said there
11 were a number of complaints regarding harassment in
12 2014?

13

A Yes, that is correct.

14

Q Now, your testimony is that there was none in
15 2013?

16

A I did not find any listings that said Sidney or
17 Tammy Moorer in 2013, no.

18

Q And, again, that would just indicate when a
19 formal report is filed, correct?

20

A Yes.

21

Q If the police responded and a report was not
22 filed, it would not show up in your system, correct?

23

A Correct -- well, let me expand on that. If the
24 police were called, it would show up as a call for
25 service, but it wouldn't show up as an incident report

MICHAEL KATHMAN - CROSS-EXAMINATION

1 being written, if one was not written.

2 Q So it would not be classified as a harassment
3 report if a formal report was not made?

4 A Correct.

5 Q And, again, Ms. Elvis went missing on the 17th,
6 so that would leave the end of the 17th through,
7 basically, another couple of weeks in December, between
8 the time Ms. Elvis went missing and the end of the
9 year?

10 A Yes.

11 Q And you are saying you had no formal calls at
12 that point?

13 A I didn't find any reports that they filed, no.

14 Q No formal reports, but you saw a multitude of
15 them leading into the year of 2014, correct?

16 A I believe the first one was around January 5th.

17 Q First part of the year?

18 A Yes, sir.

19 MR. BOUCHETTE: No more questions, Your Honor.

20 THE COURT: Redirect.

21 MR. HELMS: Nothing further, sir.

22 THE COURT: You wish this witness to be excused?

23 MR. HELMS: Please.

24 THE COURT: Any objection, Mr. Bouchette?

25 MR. BOUCHETTE: Just a second, Your Honor.

MICHAEL KATHMAN - CROSS-EXAMINATION

1 THE COURT: Sure.

2 MR. BOUCHETTE: No further questions.

3 THE COURT: You have no objection to him being
4 excused?

5 MR. BOUCHETTE: Absolutely not.

6 THE COURT: You are free to step down.

7 Any additional witnesses?

8 MR. HELMS: Your Honor, the State has nothing
9 further.

10 THE COURT: This concludes the evidentiary
11 portion of the process. You are still not at liberty
12 to begin your deliberations, discuss this case, and
13 really not at liberty to change that open mind that we
14 talked about that you brought with you when you came.
15 I urge you to keep that open mind, and I'm sure you
16 will do that.

17 Because we still have two very important portions
18 that remain, one is the closing remarks from the
19 attorneys, and then the charging of the law. In fact,
20 one of the oaths that you took means that your verdict
21 will be consistent with the evidence and the law, and
22 in order for it to be consistent with the law, you
23 can't start your deliberations until I tell you to
24 begin. So if you do, you have violated that oath, and
25 I know you won't do that.

MOTIONS

1 I'll ask you to go to your jury room. There is
2 some matters of law I need to take up. When you
3 return, we will commence the third portion, and then
4 following that, I'll give you the charge and the law.

5 Please retire to your jury room, and we'll be
6 with you as quickly as we can.

7 (The jury exits at 11:38 a.m., and the
8 following is heard out of the presence of the jury.)

9 THE COURT: Thank you very much. Any motions
10 from the State at this point?

11 MR. HELMS: We don't have anything.

12 THE COURT: Thank you, sir.

13 Mr. Bouchette, I'll be happy to hear from you.

14 MR. BOUCHETTE: We renew our motion for directed
15 verdict and renew all other motions made.

16 THE COURT: Thank you very much. I think I ruled
17 that certainly there was sufficient evidence
18 considering the light most favorable to the State, and
19 at the close of the State's case, that the case should
20 go forward to the jury. In considering the evidence
21 in the light most favorable to the defendant, the
22 additional evidence that would support a conviction,
23 and of course it all depends, as we know, what the
24 jury concludes to be the true facts of this dispute.
25 So, again, based on all of the testimony now, I think

MOTIONS

1 that it is a matter for the jury, and I'll
2 respectively deny your motion. Again, your motion
3 concerning the mistrial, I would reiterate those
4 remarks I made to that motion, and I will respectively
5 deny that motion as well.

6 Any specific request of charge from the State?

7 MR. HELMS: No, Your Honor.

8 THE COURT: Conspiracy charge is generally -- the
9 only difference in reading the statute, the statute
10 requires some overt act by one of the parties, as I
11 read that statute. That is the only difference from
12 the general conspiracy. General conspiracy doesn't
13 require an overt act, so I'll add that distinction.
14 It doesn't have to be by both, it has to be by only
15 one, and only one of the acts.

16 MR. HELMS: State is in agreement.

17 THE COURT: Any specific request for charge?

18 MR. BOUCHETTE: Your Honor, in one of the prior
19 hearings already we indicated a charge on the specific
20 issue -- we would see as to the circumstantial
21 evidence charge.

22 THE COURT: Yeah. I'll charge -- what we
23 originally used to charge, and then they did away with
24 that consistency with every particular respect, and
25 then they reiterated it, and that is my charge now, it

MOTIONS

1 THE CLERK: Have it here at 1:30?

2 THE COURT: Uh-huh. If that works?

3 THE CLERK: Yes, sir.

4 THE COURT: Do you need a few moments?

5 MS. LIVESAY: I'm ready, Judge.

6 MR. BOUCHETTE: Just a couple moments.

7 THE COURT: We'll be -- let's take a stretch

8 break for everybody, because we'll be here for awhile.

9 Plan to be back at about five minutes to 12:00.

10 (A recess was taken.)

11 THE COURT: State's ready?

12 MS. LIVESAY: Yes, sir.

13 THE COURT: Defendant is ready?

14 MR. BOUCHETTE: Defendant is ready.

15 THE COURT: Let the record reflect that

16 Mr. Moorer is present. Let's invite the jurors to

17 return, please.

18 (The jury enters at 11:58 a.m., and the

19 following is heard in the presence of the jury.)

20 THE COURT: I came down here because we set up

21 for the closing remarks, and I like to make eye

22 contact when I speak to people. I appreciate your

23 patience with all -- we've been in and out and all of

24 the things you've done thus far. Again, I reiterate,

25 thank you for your conscious approach to your duty as

CLOSING ARGUMENT - MS. LIVESAY

1 jurors.

2 Now, we'll hear from the attorneys in closing
3 statements. It is proper for them to discuss the
4 evidence which you have heard and which you will see
5 and have to study in greater detail when you retire to
6 your jury room. I'm confident you will find their
7 remarks extremely helpful when you begin this process
8 of analyzing the evidence and deciding what you find
9 to be credible and believable, and once making that
10 decision, then taking the law as I give it to you and
11 applying that law fairly and impartially to those
12 facts. So, please, give them your attention. But I
13 also would emphasize and reiterate that the remarks
14 that you will hear now from the attorneys and from me
15 should never be considered evidence. You heard the
16 evidence through the testimony of the witnesses, and
17 that is what you will analyze when you begin your
18 deliberations. While it is not evidence, it is
19 extremely important and very helpful, so please give
20 the attorneys your attention.

21 Solicitor, you may proceed.

22 MS. LIVESAY: Thank you, Judge.

23 Good afternoon, ladies and gentlemen, I told my
24 co-counsel this morning, since we've been together for
25 a week-and-a-half, I figured I would let my hair down

CLOSING ARGUMENT - MS. LIVESAY

1 so we can talk a little bit. This will be -- I'll get
2 to reply back to what Mr. Galmore told you, but I'm
3 going to tell you up front, I won't give you a long,
4 closing statement. You see the media is here. The
5 media has covered some of my cases before, and I
6 remember I called home and I said, Pop, did you listen
7 to my closing statement, it was on TV today? He said,
8 No, you talked too long. After 25 minutes, I had to
9 turn it off. He told me then, Do you remember -- and
10 I'm from a little town in North Carolina -- he said,
11 Do you remember when you and your mama used to sit in
12 there and watch Billy Graham on TV? And we did, that
13 was a big thing in our house. And I said, Yeah, I
14 remember. He said, Well, how long would he talk? I
15 said, I don't know. He talked about 30 minutes. And
16 he said, Well, if Billy Graham can bring people to
17 Jesus Christ in 30 minutes, you ought to be able to
18 wrap up a closing in 30 minutes, and I thought that
19 was a legitimate point. I thought it was a legitimate
20 point. So now I do try to keep it shorter, but I
21 don't want you to think that the information is not
22 important, that is why I want to tell you that, but I
23 want to focus on what is important.

24 Now, this case is circumstantial evidence. Now,
25 sometimes circumstantial evidence is the best

CLOSING ARGUMENT - MS. LIVESAY

1 evidence. We've got phone records. We've got video.
2 Let me tell you something, if we had an eyewitness, he
3 wouldn't never have been close enough. He would have
4 needed glasses, and then all of that would have been
5 questioned. So we've got the best evidence in black
6 and white that we can give you.

7 Now, I want to talk, first of all, about how this
8 story begins. It really begins in November on the
9 breakup, because everything in Heather's life is okay.
10 And, quite frankly, at that time, everything in the
11 defendant's life was going okay. And then his wife
12 finds out, and that's when everything turns. That's
13 when he can't have his phone. That's when you no
14 longer see messages between him and his wife. An
15 affair itself is awful. You heard that one lady say,
16 Was it a secret? Well, it was to his wife. It's
17 awful. They had three kids together. They had been
18 together for a number of years. It was awful.

19 With an affair, you can have a break. You can
20 break off that affair and move on. In some cases, you
21 can't. In this case, the thing that makes it turn on
22 a different scale is this rumor that she was pregnant.
23 That's where this all really begins. You heard Dennis
24 Hart say when I called, on the other end of the line
25 they start talking about quit telling her that she's

CLOSING ARGUMENT - MS. LIVESAY

1 pregnant with Sidney's baby. You heard all of these
2 girls testify she's taking pregnancy tests, her
3 breasts are getting bigger, there is changes in her
4 appearance. There is no doubt the way she appeared in
5 the picture that we first showed you, and the picture
6 in that truck are different. Her face is clearly
7 swollen. Her breasts are clearly bigger. She needed
8 to buy new bras. She needed to buy a new uniform.

9 So, clearly, this rumor is going around, and
10 there is evidence to show she may be pregnant. So now
11 this idea that I'm going to break it off and move back
12 with my wife and everything is going to be okay, that
13 can't happen now. Now that she may be pregnant, now
14 there may be a hold on him. Quite honestly, for the
15 rest of his life. Once you have a child with someone,
16 that hold is consistent for a very long time.

17 So the two of them, there's no contact between
18 them. The content on the defendant's phone even
19 before she goes missing, all of these sex messages
20 between his wife and Caleb. All of these weird
21 messages on the phone, not between Sidney and Tammy,
22 but between the third party. There is no messages
23 between Sidney and Tammy. He is not allowed to have
24 his phone. He is chained to the bed. Clearly, this
25 event with Heather Elvis has changed Sidney Moorers'

CLOSING ARGUMENT - MS. LIVESAY

1 life, clearly, right up until December.

2 When you see his phone, you see the sex messages,
3 you see there is no contact between him and Tammy, and
4 he tells the police I've been chained to the bed. So
5 up to December 18th his life is complete hell. His
6 life clearly has taken a turn. He has not -- this
7 idea he told the police, Look, I moved on. Me and my
8 wife had moved on. We have gotten back. We have
9 rekindled the love that once was lost. When we see
10 the phone, we know that is a lie. All of these
11 messages between her and some guy named Caleb on his
12 phone, that is a tremendous F-you, I'm texting another
13 man, not on my phone, but on your phone. I want you
14 to eat it. So, clearly, their relationship at that
15 point was still just all to hell.

16 Now, he says I moved on, but at the time, Heather
17 Elvis, she wouldn't let him go. She was still riding
18 by my house. She was leaving notes. She couldn't
19 move on. It was creepy. Well, I'm glad they called
20 Jerry Stevens because, clearly, she had moved on.
21 Okay. She was on a date on the 17th with Stephen
22 Schiraldi, and she was talking to Jerry Stevens. So
23 she clearly moved on. She was already in the mix with
24 other men.

25 Now, this is a 19-year-old girl. 19-year-olds

CLOSING ARGUMENT - MS. LIVESAY

1 rebound a lot faster than 30-some-year-olds. So her
2 rebound time is pretty quick. But this idea that
3 she's still obsessed with him, can't move on, clearly
4 untrue, clearly. She's exchanging text with Jerry
5 Stevens. She was on a date on the 17th. This young
6 girl was on her way of moving on. The only people
7 that had not moved on, the only people that could not
8 let it go was Sidney Moorer and his wife.

9 Now, how do we know that? I want us to look at
10 the circumstances on the night of the 17th and the
11 early morning hours of the 18th. Everything I put
12 up here is a fact. We either have it on a phone
13 record, have it on surveillance or someone has
14 testified to it.

15 First of all, this pregnancy test, it was for
16 Heather Elvis that he was buying that night. He told
17 you it was for his wife. In that same conversation,
18 he tells you that his wife was drinking two different
19 liquors that night just hours before. I'm not telling
20 you that his wife is a bad person because she likes to
21 drink liquor, that doesn't bother me at all. What
22 bothers me is don't tell the police this pregnancy
23 test is for your wife, because it's clearly not true.
24 She is drinking that night, and two days before, she's
25 smoking marijuana. This is not a woman who thinks

CLOSING ARGUMENT - MS. LIVESAY

1 she's pregnant. So that is clear. She wouldn't have
2 been drinking that night and buying a pregnancy test
3 on the same night if she thought she was pregnant.

4 The reason we got into that is to show you that
5 the pregnancy test was not for Tammy, okay. She was
6 drinking and sexting some other man. So, clearly,
7 this idea that we are trying to bring this new love
8 into the world with a baby is not true.

9 Now, they rode by her house and her residence
10 that night. Mike Melson told you that and -- and
11 Sidney Moorer told you that. Me and my wife got a
12 couple of drinks -- or she did, and then we went to
13 Broadway at the Beach. There must have been a hundred
14 bars in Myrtle Beach, and the only one you can get to
15 is where this little girl works? She worked at the
16 Tilted Kilt at Broadway at the Beach. Here we are,
17 December 17th, and you are right up around where she
18 works. Cannot let it go.

19 Then, you are riding by her house. Ride by River
20 Oaks. Now, her car was home. She was out on a date,
21 so her car was home. So now you are trying to get an
22 eye where she was. You've been to where she works,
23 now you rode by her house. And what do you do? You
24 come right to Conway and remove the navigational card
25 out of your truck. This brand new truck with a

CLOSING ARGUMENT - MS. LIVESAY

1 navigational system, we showed you a video on how it
2 worked. Now, why in the world would you be removing
3 the card, other than you don't want that truck to know
4 where you are at?

5 This crowd in opening got up here and, Where are
6 the GPS coordinates? This truck is brand new, 2013.
7 Where is the information on where the truck is? We
8 can't collect it when the defendant pops the card out.
9 I would love to have that information. I think this
10 family over here would love to have that information,
11 but we don't, because he popped that card out. There
12 was no way to collect that information. And there was
13 no reason to do it other than you had plans to do
14 something later on that night, and you were up to no
15 good. There is no other reason at midnight to be
16 popping out an SD card, other than you have bad
17 intentions.

18 Let me tell you something, folks. If you look
19 around and you see a man putting on a mask, he's got
20 bad intentions. If you look around and you see
21 someone in the trunk wheeling around with some
22 burglary tools, he's got bad intentions. When you
23 have a man at midnight who is driving around and
24 punches out his SD card so no one will know where he
25 is, that's bad intentions.

CLOSING ARGUMENT - MS. LIVESAY

1 Now, right after -- what I love is right after he
2 pops that card out, he goes to Walmart to buy a
3 pregnancy test. I guess he didn't want that on his
4 navigational system that he had been to Walmart to buy
5 a pregnancy test. Now, who is the test for? He
6 leaves right out of the parking lot, right up out,
7 don't pass go, don't collect \$200, straight to the
8 payphone. Straight to the payphone. He literally
9 leaves out at 1:21, and he is on the phone at
10 1:33 calling her. He leaves right after buying that
11 test to call in the victim.

12 Now, he's already taken the nav card out, but he
13 goes to the Kangaroo to use the payphone. You know,
14 he's smart about that phone. Kudos to him on that.
15 And I'll be honest, I would have never thought of
16 that. I would -- you have clearly put some time and
17 thought into this to remove the card. But then you go
18 and use a payphone. And -- and this truck is very
19 key. Clearly, he takes the nav card out, and then he
20 parks the truck across the street. So now at
21 1:33 you've parked the truck across the street, and
22 you see him creeping through the parking lot to get to
23 the phone to call her. Clearly, you are up to no
24 good. If there was nothing to hide and everything was
25 on the up-and-up, there is a parking lot there. Drive

CLOSING ARGUMENT - MS. LIVESAY

1 the truck on up in there. Get out, use the phone.
2 Better yet, call her from your cell phone. Why do you
3 have to call her from a payphone, and why do you have
4 to park across the street if there is nothing to hide?

5 Now, what is important about this phone call is
6 right after he makes it, that victim, Heather Elvis,
7 leaves her house at like 2:00-something in the
8 morning, a.m., I mean in the dead of the night, and
9 takes off down the road and goes to an area near Long
10 Beard's. Let me tell you something about the phone
11 call, okay, because it was him and his wife together
12 all night; we know that. He says my wife was in the
13 truck, we were together. When you read the text
14 messages, I'm not going to deny to you, Tammy, those
15 messages were coming from -- they were very
16 threatening to that little girl. Grown women should
17 not talk to little kids like that, but we saw the
18 messages.

19 Why this phone call is important to me is when
20 you see him get out, he's clearly alone. Tammy is in
21 the truck. This is the time to abort the plan. He
22 had all of the means to call that young girl and say,
23 look, I'm telling you, don't be picking up this phone.
24 Don't leave the house. At one time we want to know if
25 you are pregnant, whatever it is, but, look, don't

CLOSING ARGUMENT - MS. LIVESAY

1 pick up the phone. Don't leave the house. Because it
2 is just him. He is the only one at the payphone. He
3 could have said then, look, I'm going to abort this
4 plan. I'm not into it. This girl is 19. Look,
5 little girl, stay home and don't pick up the phone.
6 Things got kind of squirrely, but do not pick this
7 phone up, and do not leave home. He could have done
8 that, and that would have been the end of it. It was
9 within Sidney's means to end it right there.
10 Everything would be fine. Everything would be fine.
11 Well, everything would be fine for Heather. But the
12 problem is this issue if she's pregnant, so everything
13 wouldn't have been fine for Sidney. That is all he
14 cares about.

15 So he could have right then ended it. We
16 wouldn't even be here today. All he had to say is
17 don't go out, don't pick the phone up. We would not
18 be here today. But he was standing there alone, and
19 he made the decision to say, look, come out and meet
20 me, or, I'm not with my wife. Clearly -- clearly that
21 is what he had to say. Bri told you, I told her don't
22 go meet him. Do not go meet him. She would have
23 never come out and left that house for Tammy Moorer.
24 She was terrified of Tammy Moorer. The roommate is
25 terrified of Tammy Moorer. The only person that she

CLOSING ARGUMENT - MS. LIVESAY

1 would have gone out to meet was Sidney. Why? Because
2 she, herself, had this question of whether or not I'm
3 pregnant, and this could be the father of my child,
4 and now he wants to be together with me.

5 I'm sure when she was sitting there, I'm going to
6 suggest to you, she's thinking this could be a happy
7 ending. This could be the ending I always wanted. So
8 she gets out and leaves home. Goes to the area of
9 Long Beard's. What is telling about that is you never
10 see his phone again. While she's moving around to
11 Long Beard's and moving back home, where is Sidney
12 Moorer? Where is Tammy Moorer? We do not know.
13 Their phones are dead. No more phone calls. No more
14 texts. No more data. Nothing.

15 Lo and behold, it powers back on at 3:03. So,
16 clearly, they are up to no good. Why are you using
17 payphones? Why are you removing the SD card? Why are
18 you powering your phone off in the middle of the
19 night? Now, she makes -- he makes this payphone call
20 and she goes to Long Beard's. We don't know where
21 they are. Then she goes back home, and the next time
22 we see his phone, he's home. Was there a meeting
23 between the two of them, is the question? Is there
24 any evidence that there is a meeting between the two
25 of them? I tell you, yes, because the pregnancy box

CLOSING ARGUMENT - MS. LIVESAY

1 was in her trashcan. Jill Domogauer told you, I found
2 the box for a pregnancy test in her trashcan. You
3 heard from Bri that the box was not there when I left.
4 It is not a coincidence that he bought a pregnancy
5 test that night, and later on the box is found in her
6 apartment. That is not happenstance.

7 Now, how else do we know? Because after she goes
8 home and that box gets in her trashcan -- she never
9 goes back home after that. Clearly, Jill Domogauer
10 told you the box was there, and Bri said it was not
11 there when she left. How do we know? How do we know
12 who that box involves? She calls the defendant. She
13 doesn't call Stephen Schiraldi. She doesn't call
14 Jerry Stevens. She doesn't call some guy named Jeremy
15 Flemming. She calls Sidney Moorner. So as soon as she
16 gets back to her apartment, she calls Sidney Moorner
17 and they talk again for five minutes. This is a
18 chance, too, for the defendant. He told you he talked
19 to that victim at 3:21. Again, a second time he talks
20 to her. Again, he has a chance to say, look, look,
21 look, look, don't worry tonight, get up with me
22 tomorrow during daylight hours. It is in the middle
23 of the night. I have three children, I would not want
24 them out at 3:00-something in the morning. Stay home.
25 I will call you tomorrow. That is not what he said.

CLOSING ARGUMENT - MS. LIVESAY

1 That was chance, too.

2 I think too much had been done now. He had taken
3 out the card, turned the phone off, bought the test.
4 He has got to know this issue of whether or not she's
5 pregnant, has got to be settled. So even though he
6 had a chance to stay home, Stay home, I'll talk to you
7 during daylight hours; he doesn't. He doesn't. And
8 how do we know that? How do we know that? Horry
9 County is one of the biggest land mass counties in
10 South Carolina. It is a tremendous county. It has
11 Loris, Little River, parts of Murrells Inlet,
12 Surfside, Myrtle Beach, Conway. It's huge. It's
13 huge. It is a tremendous county, okay. He gets off
14 the phone with her, and where does she go? Does she
15 go to Little River? No. Does she go to Myrtle Beach?
16 No. Does she go to Conway? No. She goes right up
17 the road from his house, that is where she goes. All
18 of these places in Horry County to go, Kangaroos, all
19 kinds of places stay open late, and somehow she ends
20 up down here at Peachtree Landing, one of the darkest
21 holes in Horry County. That's where she goes. This
22 is not happenstance. This is not somewhere you hang
23 out in the middle of the night.

24 Now, the defense made a big deal, well, his
25 phone, during this phone call, is using the tower that

CLOSING ARGUMENT - MS. LIVESAY

1 services his home. This phone call right here at
2 3:21, that's what Mike Melson told you. That is what
3 the defense made a big deal out of. He is using the
4 tower that services his phone, which means more than
5 likely he's at home. I absolutely agree with that. I
6 could not be in more agreement. That is why she ended
7 up here, because this is where he was. This is where
8 he had lived and been hundreds of times. That is what
9 he told the police. I lived here 15 years. How many
10 times have you been to the landing? Hundreds of
11 times. He was home. I agree with the defense
12 attorney. Absolutely he was home. That is how she
13 ended up right up the road. She didn't go to Myrtle
14 Beach or Conway, she went right up the road from where
15 he was.

16 Now, if his phone pinged somewhere in Myrtle
17 Beach or Little River, we wouldn't be having this
18 conversation, okay. But it didn't. It literally came
19 near his house where he had been a hundred times.
20 Where he was familiar with it; not where she was
21 familiar with it. This little girl had no business
22 being there, and he had no business leading her there,
23 but he did it. He did it.

24 Now, what happens when she gets down there?
25 Immediately who is she calling? Sidney Moorner. She

CLOSING ARGUMENT - MS. LIVESAY

1 ain't calling Jerry Stevens. She ain't calling
2 Stephen Schiraldi. She's not calling anyone else.
3 She's calling the person that she's there to meet.
4 And if you don't think so, he's heading there at the
5 time she's calling him. He's on his way. There is no
6 doubt there is a meeting of the minds. When she makes
7 this phone call at 3:38, 3:39, 3:40, he's already
8 passing D&S Siteworks on his way. He is only two
9 minutes out from her when she's making the phone
10 calls. Is he here when she's right here making the
11 phone calls. Clearly -- clearly there is a meeting of
12 the minds. It ain't like this truck passed by at 5
13 o'clock or 2 o'clock or 3 o'clock before the phone
14 call. This truck didn't move until after they talked.
15 She's down there, and he's on his way. Her phone dies
16 at 3:41. Dies. Never hits the tower again. Never
17 makes another phone call. Never receives another
18 phone call.

19 What happens -- let me point this out. He's at
20 home. I told you he's at home. That is why we caught
21 him on 814 at Mill Pond, because he was home. He was
22 leaving his house. He had to go down the road to get
23 to her. At 3:41, where is he heading? He's passing
24 right back by these cameras to head towards his house.
25 Not just anywhere. You didn't see that black truck

CLOSING ARGUMENT - MS. LIVESAY

1 just anywhere. We saw it on the way to Heather Elvis
2 at the same time she's calling him. Not at 3 o'clock
3 before the phone call. Not at 4 o'clock. No. Right
4 at the time she's down there. As soon as that truck
5 would have gotten down there, is the last time we ever
6 hear from Heather Elvis, and the truck comes back.

7 They want to talk a lot about circumstantial
8 evidence. That is all they have is some
9 circumstantial evidence. After that truck goes down
10 there at 3:41, it comes back by. Heather Elvis' phone
11 is dead. We never hear from her again or see her.
12 Now all of the sudden, these two phones -- Sidney and
13 Tammy have not texted for a month -- over a month, and
14 now all of a sudden around 4:20 she's asking to bring
15 some pot stickers, and he's saying, Yes, ma'am. The
16 report is in evidence. You can look at it. It is at
17 4:20 a.m.

18 Now, she's asking him to bring me some pot
19 stickers, and he's saying, Yes, ma'am. All of a
20 sudden, at 4:20 a.m., those two phones start talking.
21 Well, why not? Why not? The worry is over. Here is
22 your phone back. Uncuff the cuffs. Everything is
23 good again. And it ain't just that, it is even after
24 that. When you look at that phone report on
25 20th and 21st, now it is, hey, what does **S. C. M.**

CLOSING ARGUMENT - MS. LIVESAY

1 want for Christmas? Legos. I'm glad he told
2 somebody. So now we're back to a normal conversation
3 between husband and wife. But you don't see it in
4 November, and you don't see it in December, and you
5 don't see it not one minute before 3:41 when her phone
6 dies. Look at that report. You don't see those two
7 phones talk back and forth about their kids, their
8 family, Christmas, nothing until 4:20 a.m. Not one
9 minute. Not one second could there be freedom and
10 normalcy until Heather was gone, and then after
11 3:41 when we never hear again, everything is fine.

12 Now, this thing about bring me pot stickers and
13 he's saying, yes, ma'am, clearly they are trying to
14 look like we are in the house together. Because it
15 makes sense that you talk to your girlfriend at 3:21,
16 and I chain you to the bed, and now I'm going to give
17 you the phone to go into another room in a house. I
18 don't even give you your phone otherwise, I'm chaining
19 you to the bed. So something dramatic and drastic has
20 happened to have your phone and go into another room
21 in the house, and you just talked to your
22 ex-girlfriend at 3:21. Do you think he would have
23 gotten that phone back and there would have been any
24 conversations between the two of them as long as that
25 little girl was moving around? I'm telling you, the

CLOSING ARGUMENT - MS. LIVESAY

1 evidence says no. There could not be normalcy until
2 they had settled whether or not she was pregnant.

3 I'm going to tell you something: The box is in
4 the trashcan, and the stick is not. Why is that? I
5 suggest to you that the stick was with her along with
6 her phone and keys. I'll suggest to you that whatever
7 that stick read, was her demise. Whatever that answer
8 was, was one -- not that they could not accept, but it
9 was one that they would not accept. We never found
10 that stick. We never found her phone. We never found
11 her keys. So whatever is said was something they were
12 not going to tolerate.

13 Now, how do we know that this is a crime, that
14 there is premeditation? How do we know? We already
15 know the circumstances, but how do we know? These
16 two, in the course of these circumstances, deleting
17 text messages off their phone, the ones they wanted to
18 delete, which you can go back and look at that or not.
19 I've been working on this case a lot longer, so I know
20 the details, but those text messages she deleted or
21 Sidney deleted, it was like when she was saying or he
22 was saying, Call me. Call me. They deleted those,
23 because I'm telling you, they wanted it to look like
24 she was just calling them and wouldn't leave them
25 alone.

CLOSING ARGUMENT - MS. LIVESAY

1 Now, riding by the victim's house at work. Look
2 at this, removing the navigational card, pregnancy
3 test right before calling her, using a payphone,
4 powering the phone off, these are all things you don't
5 do unless you are ready or preparing to commit a
6 crime. You need to know the location of the victim.
7 You need to have a place to meet the victim, and you
8 have to be prepared.

9 Now, not only did they do that, but they also
10 covered up everything that was in their custody and
11 control. They tore out the surveillance system,
12 washing the truck and then burning the rags. I'm
13 telling you, it's awful to have to sit in that chair
14 and hear the defense in the opening come up and tell
15 you there's no DNA. There's no GPS coordinates. They
16 don't have nothing. Well, we don't have nothing
17 because you are out there washing the truck, and if we
18 could have gotten it off the rags, you burned those.
19 Then you remove the license plate off the front of
20 your car. Look, that was well thought out. It was on
21 at the Walmart. When we collected it, it was removed.
22 Why? Because it is a unique identifying
23 characteristic. If we could see that tag that says
24 "Beach Ford," that is information. So they removed
25 that tag. Then, he deleted his GPS coordinates. He

CLOSING ARGUMENT - MS. LIVESAY

1 deleted his Google on his phone so we couldn't get the
2 GPS coordinates. Defense came up in opening and made
3 this big deal when Mike Melson was testifying, Well,
4 how about GPS? This only tells us that they are in
5 this area, aren't there better coordinates? Yeah,
6 there are, but he deleted those, just like he took out
7 the card. I would love to have these coordinates.
8 These people would love to have the coordinates, but
9 we don't. Why would you delete them?

10 Go back and listen to the testimony of Mike
11 Melson, he deleted them around December 25th.
12 You've got three kids, it's Christmastime and all you
13 can get around here instead is making sure your Google
14 account is deleted so the police and no one else can
15 get any information? Lying to police. You done
16 deleted the coordinates, you done popped out the card,
17 and now the police comes to you looking for this
18 woman, really, in the middle of the night.

19 You see that first video, that first video -- and
20 you know what I like about it, I don't know if you all
21 caught this, but when he's talking to the police, he's
22 saying, look, I don't want nobody coming into this
23 house. I have three kids in this house, and if they
24 come in, they ain't leaving. You can listen to the
25 interview, that is what he says. In the same dang

CLOSING ARGUMENT - MS. LIVESAY

1 gone breath, he's talking about I'm going to protect
2 my kids, but you are lying to the police about this
3 man's kid in the same breath that you are over there,
4 oh, if someone comes in my house, they are not
5 leaving. In the same breath you are over there lying
6 to them when they are looking for this man's child.
7 Lying. The girl is 19. Why would you lie to police
8 about where someone's teenage daughter is, about the
9 contact that you've had with him? Why? Why would you
10 lie if you -- unless you had something to hide.
11 Because he did have something to hide, and he was a
12 betting man and he bet that we were not going to get
13 the SD information, which we didn't off the truck, but
14 he also thought that we would never figure out the
15 payphone.

16 Now, when you listen to his statement, he don't
17 ever admit it until we tell him we got you on video,
18 hey, there is video, you sure? Shit, yeah, I used
19 that phone. Before then, it is like, Oh, they still
20 got payphones? Again, you are in here lying to the
21 police about a teenage girl that they are looking for.
22 Why? Why? Because you are trying to cover up
23 something you did.

24 Can you turn that down, please?

25 This case turns on them, not just finding out --

CLOSING ARGUMENT - MS. LIVESAY

1 resolving that question as to whether or not she was
2 pregnant; that was part of it. Part B was doing
3 whatever they needed to do to take care of that. Now,
4 when I was in high school, I used to read Jane Austin
5 books. Some of you all may know of them. They were
6 like romance novels. What I liked about them was
7 there was always the good guy, and there was always
8 the villan. The woman in the book is trying to figure
9 out which one is the good guy, and which one is the
10 villan. It never failed, the villan was always the
11 one that was silver tongued, always had the right
12 thing to say, always smoothing everybody over. That
13 was the villan. At first glance -- you have to
14 scratch the surface to figure out. That was the book.
15 That is what it was all about, figuring out who is
16 who.

17 When I first listened to that interview from the
18 police when they went out and there and you see the
19 video, you hear Sidney talk. He doesn't sound like a
20 villan. It is not until you scratch the surface and
21 you see that he is lying. You see that in the middle
22 of the night that he's doing all of these things.
23 He's taking out an SD card, using a payphone, hiding
24 from the police, hiding. Once you scratch the surface
25 and you get into the details, you figure out, indeed,

CLOSING ARGUMENT - MS. LIVESAY

1 he is the villan. And that is kind of like this case.
2 When you first hear him talk to the police, you don't
3 know he's the villan. The police didn't know he was
4 the villan. I don't know if you remember, but they
5 talked to him, they are out there -- Casey Canterbury,
6 the uniform guys, they got in their car and left.
7 They didn't know he was the villan.

8 When he goes to the police department and the
9 police first start talking to him. When you listen to
10 him, you don't know he's the villan. It is not until
11 these things start unfolding and the lies start
12 unraveling that you figure out, just like in the book,
13 this is the villan.

14 Now, that was one book I liked. That was not my
15 favorite book. Even though I liked them because,
16 again, I like the idea of scratching the surface,
17 looking at the facts, looking at the phone records,
18 looking at every piece of evidence and finding out who
19 the villan is. That is a lot of what you all will be
20 doing, looking at the evidence, looking at everything
21 presented and trying to find out who is the villan.

22 Now, I'm going to suggest to you there's no doubt
23 who the villan is in this story, and it's Sidney
24 Moorer. It was premeditated. It was awful. And then
25 he tried to cover up everything he could. Now, my

CLOSING ARGUMENT - MS. LIVESAY

1 favorite book was not Jane Austin books, my favorite
2 book was called County of the Monte Cristo. Why?
3 Early on in that book the count was a victim, and
4 throughout the book, with patience and persistence, he
5 gets justice. And the reason I love that book is
6 because you can't change what happens. When the count
7 was a victim, you can't change that. I can't change
8 what happened December 18th. If I could, I would.
9 This family would, I guarantee you. But nobody can
10 change what happened December 18th, and that is what
11 that book taught me. What else it taught me is with
12 persistence and patience, you can find justice,
13 because that is all that is left. This story is not
14 over. It is not over. It is not over until the 12 of
15 you come back with a verdict; that is when this story
16 ends. I am here to ask you at the end of this story
17 to give justice to this family and this community.
18 These people have been patient and persistent, and I'm
19 asking you to give them the ending to this story that
20 Heather Elvis deserves. I'm asking you for justice.
21 Thank you.

22 THE COURT: Thank you, Solicitor.

23 Mr. Bouchette, do you plan on using any of those
24 exhibits?

25 MR. BOUCHETTE: No.

CLOSING ARGUMENT - MR. BOUCHETTE

1 MS. LIVESAY: I'll put it back, put it up there.

2 THE COURT: Thank you, Ms. Livesay.

3 MR. BOUCHETTE: Court's indulgence.

4 THE COURT: Sure. Take your time.

5 (A brief pause in the proceedings.)

6 THE COURT: Mr. Bouchette.

7 MR. BOUCHETTE: Your Honor, may it please the
8 Court?

9 THE COURT: Yes, sir.

10 MR. BOUCHETTE: Madam Court Reporter, Solicitors,
11 ladies and gentlemen of the jury, good afternoon.
12 When I spoke to you last week I talked to you about
13 being 3 percent just because of you being here and
14 giving your time, and now we're here almost two weeks
15 later. Very few cases go this far, so I don't know
16 what percentage that puts you in, but suffice it to
17 say, it's been a great sacrifice. On behalf of the
18 defense team, I want to thank you for being here, and
19 thank you for your time.

20 Sidney Moorer sits here today. You see his
21 family there behind him. You probably have noticed
22 they haven't been here a lot of times this week
23 because it is difficult to imagine being here fighting
24 for your freedom and having to look back at everything
25 you may be missing, and so to try to keep it together,

CLOSING ARGUMENT - MR. BOUCHETTE

1 to try to get through this process, he asked that they
2 stay home, but they are here supporting him today and
3 we want you to know that all of us thank you for your
4 time and for your commitment to do what you have to
5 do.

6 You are about to make a big decision, an
7 important decision. Your voice, each and every one of
8 you, you are about to retire to the jury room where
9 what you have seen, what you have heard needs to be
10 heard. I think sometimes that gets missed in jury
11 deliberations. We have 12 jurors for a reason. Not
12 one or two or three. When you get back there and
13 begin deliberating, each of you need to make it known
14 how you view this case, because you all come in with
15 different backgrounds, different experiences. You see
16 things differently, view the evidence. Once you have
17 heard, you have to respect the views of others and
18 take into consideration as you begin deliberating the
19 evidence in this case.

20 Each of you are going to have to answer that
21 question for yourself: Has the State proven and met
22 its burden of proof to actually explain to you what
23 happened to Heather Elvis to the exclusion of all
24 other possibilities? I submit to you as we review the
25 evidence that we will see, they have not met that

CLOSING ARGUMENT - MR. BOUCHETTE

1 burden. When you come back with this decision you
2 have to make, it is a final decision. I think that is
3 important to note. You know, if the Judge makes an
4 error of law, we can appeal that. But your decision
5 on the facts is final, and no one can appeal that.
6 That is a power that we only give a jury. We don't
7 give that authority to anyone else in our society, and
8 so as we start beginning to recount what we have
9 heard, I want you to think about what we've got, and
10 that is that the State is asking you to trust in their
11 theory of this case. They are asking you to trust in
12 a theory. Like we said over and over, this is a
13 circumstantial case. They ask that there are no other
14 explanations for what happened other than those that
15 implicates Sidney's guilt.

16 So how do we know whether or not we can trust
17 this theory or not? Well, we use the same ways to
18 evaluate trust in this case like we do in any other
19 case. I think probably the best example I heard was
20 when I first started practicing law, I was over in
21 Williamsburg County and preparing documents for an old
22 man that was a farmer and a logger. I knew him well
23 enough to know that he put a couple kids through
24 school, but I didn't know him well. He came by to
25 look at some documents that I had sent over to him and

CLOSING ARGUMENT - MR. BOUCHETTE

1 asked to read over those and if he had any questions.
2 But when he paused and looked back at me, I had seen
3 that look before. If you've seen it once, you will
4 notice it any other time. The old man couldn't read.
5 It was one of those deals where he looked at me and
6 looked back and we had that embarrassment feeling,
7 maybe I was looking down on him. I wasn't looking
8 down on him. I was in awe of this guy. I just slid
9 back and said how did you do it? How did you get
10 through the day? How do you get two kids through
11 college and not be able to read and write? One of the
12 things I asked was how do you know who you can trust?
13 How do you know what is going on? He told me that to
14 determine who to trust, what to trust, show me what
15 they value. Show me what they think is important. If
16 those values match my values, then I'll tell you if
17 that is someone I can trust.

18 So if we go back through the evidence, we will
19 look what the State decided to value, what they
20 decided to think is important, and what they haven't.
21 We'll determine whether or not we can trust the
22 State's theory of case.

23 Essentially, we start off with trusting the
24 State's belief that Ms. Elvis' was pregnant the night
25 she went missing. This is the foundation of the case,

CLOSING ARGUMENT - MR. BOUCHETTE

1 make no mistake about it, because that is the motive.
2 It is like a house, everything is built from this
3 fundamental principle of pregnancy. They ask you to
4 trust this is the case, but they don't value the fact
5 that no one has taken the stand with any firsthand
6 knowledge that that was the case. You've heard from
7 two witnesses, one was her roommate and another
8 supervisor at work, that couldn't confirm it. Had no
9 discussions about it. There was a pregnancy test in
10 mid-October, and by mid-December, by all accounts,
11 this is their words, she's back to normal. There was
12 no follow-up doctor's appointments. There is no
13 second tests. She had a period in December, but
14 everything is to the contrary that Ms. Elvis is
15 pregnant at this point. There is nothing showing
16 that, whatsoever; yet, they ask that we trust this is
17 the case. That is how this entire theory is build
18 upon.

19 They go even further. They say, well, you know,
20 there is this pregnancy test we don't have a picture
21 of, but we know it was there. We ask you to trust it
22 was there. The implication is that, well, at some
23 point that night she must have met up with Sidney and
24 got this test. The problem with that those cell phone
25 data never put them in the same place at any point

CLOSING ARGUMENT - MR. BOUCHETTE

1 that night. They have an excuse for that. That is a
2 common theme we'll see throughout the case, that when
3 the evidence doesn't either match up or they don't
4 have evidence, they make up excuses or shift the blame
5 to the defendant. But they have the burden of proof,
6 folks, not the defendant. I've never seen the case
7 where we spend more time, more witnesses talking about
8 why they don't have evidence than they do presenting
9 their own evidence. I can't recall any case where
10 we've had the number of witnesses to explain away the
11 lack of the State's evidence that outnumbers their own
12 witnesses.

13 We're asked to -- one of the things we told you
14 about in opening is we didn't have to prepare an
15 opening statement, but when we did, we came in and
16 told you we have some problems with this case. One of
17 our problems is that we think the police developed
18 sort of tunnel vision early on. There should have
19 been questions that needed to be asked, should have
20 been asked. We are now 2,030-some days later and
21 having all of this investigation, but books were
22 closed within two months following her disappearance.
23 That is how much time they spent investigating before
24 they closed the books and charged Sidney.

25 A perfect example of that is testimony of Stephen

CLOSING ARGUMENT - MR. BOUCHETTE

1 Schiraldi. Now, this was the last person known to see
2 Ms. Elvis in person. I want you to go back, and
3 Ms. Dahl can provide you with any testimony you want.
4 This is the last person that is known to see Ms. Elvis
5 in person. His mother gets on the stand and says, you
6 know what, I spoke to him, saw Ms. Elvis and said have
7 a good night, we'll see you later. I can only presume
8 that that was his alibi -- excuse me -- that the
9 police relied on. What did Stephen Schiraldi say?
10 When he took the stand -- and, again, she'll provide
11 you with a transcript -- he said, no, I didn't speak
12 to anyone. I didn't see my mom. We didn't
13 communicate. I think she was asleep.

14 Now, I don't know if Mr. Schiraldi had anything
15 to do with this, I would hope he didn't. I can tell
16 you this. The last person to see her alive, that we
17 know, without question, has no alibi for where he was
18 between midnight and 6:00 a.m. The police did not --
19 all of this location data, all of these cell phone
20 experts and pinging and towers and all of this, they
21 never utilized any of that for Stephen Schiraldi.
22 They didn't say, all right, I understand what you
23 said, Mr. Schiraldi, but we'll check out your story.
24 Let's see where your cell phone was, see if it matches
25 up. They never said, you know what, Mr. Schiraldi, we

CLOSING ARGUMENT - MR. BOUCHETTE

1 understand what you are saying, but I'll tell you
2 what, give us a fingerprint or hair strand and we'll
3 check if it showed up in the bedroom or somewhere
4 else, then we'll follow up. But they did none of
5 that. This is what the State is asking you to value:
6 Contradictory testimony one after the other.

7 So why didn't they do it? Well, what we've heard
8 is that within the first 24 hours the initial
9 investigator, he is immediately at the Moorers
10 residence with not one, not two, but with three
11 officers. Within 48 hours, Mr. Moorers is at the
12 police station, his vehicle is at their house and they
13 arrived already at his personal residence. They did
14 none of those for Stephen Schiraldi.

15 We heard about Jerry Stevens, that the text
16 communications was that she was going to go over the
17 following night. Well, maybe she did; maybe she
18 didn't. Was there any location data that provided his
19 whereabouts? We heard he says he was at a friend's
20 house off of 707. So wouldn't it be worth a little
21 bit of effort or energy to say, all right, we're going
22 to use the same resources, the same technology that
23 we've used to prepare a circumstantial case against
24 Sidney and see if maybe we can exclude some of these
25 other people. But they didn't do that. They didn't

CLOSING ARGUMENT - MR. BOUCHETTE

1 do any of that.

2 We're asked to believe the testimony of Dominic
3 Demarino. Folks, Dominic Demarino, he says that he
4 saw a picture from Sidney's cell phone. Look at all
5 of the evidence we have. We have all of the cell
6 phones in evidence. It's not there. This is one of
7 the few places they don't have an excuse why they
8 don't have that. But we don't see it. He didn't tell
9 anyone about it. He didn't find it unusual. Didn't
10 take any action. Only thing he did was later tell his
11 mom, you know what, I made it up. And, yet, still,
12 this guy that came out in handcuffs and shackles for
13 carjacking, fraud, that is what they valued in this
14 case. That is the type of testimony that they believe
15 to be important. Let me tell you this. We've heard
16 testimony that sometimes direct evidence may not be as
17 reliable, people see things and don't have good
18 vision. Folks, I'll be honest, that is a little
19 disingenuous, because I guarantee you, if they had
20 eyewitnesses to see something, they would have be
21 taking that stand because they would have Dominic
22 Demarino take the stand.

23 Mr. Helms wants you to believe that because he
24 put his hand on the Bible and swore he wasn't lying,
25 that we can take it as such. Folks, this is a man

CLOSING ARGUMENT - MR. BOUCHETTE

1 that breaks into your cars at night, steals from you
2 and lies. He's not concerned about this book. He
3 lives his whole life in complete opposition to this
4 book. That is the type of testimony we've been asked
5 to value and find important in this case and to trust
6 in this case.

7 We're asked to trust that Sidney Moorer went to
8 Peachtree Landing on the night of the 17th or early
9 18th. We're asked to trust in Grant Fredericks.
10 They don't value the testimony of Bruce Koenig, an
11 actual career scientist, head of the FBI lab, that
12 says you can't do what he's trying to do, and that is
13 consistent with what the MAIT Team did. They don't
14 value that. But we're asked to trust that this is the
15 case.

16 You know, we've heard from Mr. Koenig and he
17 talked about all of the famous cases he had and all of
18 these things he was involved with and said, you know
19 what, Mr. Fredericks is trying to do, you can't get
20 there. Just like the MAIT Team said. Just like all
21 of the evidence did until he was hired well after
22 Mr. Moorer's arrest, and you can look at the video
23 quality whenever you get back there if you want to, if
24 you want to go through the slides. Like he testified
25 to, this is a very poor quality video, but as you go

CLOSING ARGUMENT - MR. BOUCHETTE

1 through it, if there is any discrepancy or
2 inconsistency, then it is obviously not a match. You
3 don't need anything further. You.

4 Know, we've been asked to trust that he went to
5 Peachtree Boat Landing, yet, after all of the cell
6 phone data, days of cell phone, location data, nothing
7 puts him at the landing. We're asked to trust that he
8 went and presumably picked up Ms. Elvis, but there is
9 no DNA anywhere. Again, they have another excuse,
10 well, there is a reason for that, well, he cleaned the
11 car. Folks, you mean to tell me that the State of
12 South Carolina, Horry County government, SLED, all of
13 the labs we've heard about, all the experts engaged in
14 this case, all the money spent on this case, you are
15 telling me that the handyman with a vacuum cleaner can
16 eliminate all the hairs and fibers and everything else
17 that he presumably took someone against their will,
18 presumably held them, forced them in his car,
19 transported them in his car and, yet, in the afternoon
20 with a shop vac at his house, he eliminated any trace
21 of physical evidence, whatsoever? Because, remember,
22 we didn't hear anything about industrial cleaners. We
23 heard nothing about bleach or about anything else. We
24 just heard that he was standing there at his house
25 vacuuming his car, and that is their excuse for why

CLOSING ARGUMENT - MR. BOUCHETTE

1 there is no DNA in that truck. But, folks, the truck
2 didn't go to the landing. That is why there is no
3 DNA, because she wasn't in that truck.

4 They talk a lot about the navigation day. This
5 is another example spending time calling witnesses to
6 explain away why they don't have that evidence. They
7 will give a sampling, a piece of data, about this SD
8 card, but what did we also hear? Because they waited
9 two years to actually get the information out of the
10 box, we wouldn't have had it anyway.

11 Now, if it was important, if they would have done
12 it closer to the time the investigation, then maybe
13 they would have had something, maybe they would have
14 an argument, but they waited until we knew you
15 couldn't get any data anyway, and then hold it against
16 Sidney. He hasn't had possession of that car. After
17 February 21st, the State takes possession of the
18 car. We hear that eventually he loses it and it is at
19 another owner by the time it gets involved. It is
20 just another excuse for why they can't put the two
21 together, for why they can't answer the questions that
22 are necessary in order to find guilt in this case.

23 Folks, we've talked a lot about a lot of legal
24 standards. You've heard about probable cause, and
25 that is what they thought they had two months after

CLOSING ARGUMENT - MR. BOUCHETTE

1 the disappearance. Probable cause just means enough
2 to have an arrest. They had an arrest, and for the
3 next five years, six years they've been trying to
4 gather more evidence, trying to see what they can get.
5 They just have been dumbing down on the same problems
6 they've been having up until this point.

7 Some of you may have served on a civil jury, and
8 I do civil cases. You may have heard about the
9 preponderance, the scales of justice tilt ever so
10 slightly. There is a reason this is different than a
11 civil case. In a civil case, we're talking about
12 money. Here, we're talking about someone's life,
13 someone's freedom. In civil cases, you get to conduct
14 your own investigation. Ms. Livesay decides to sue
15 me, pays a hundred fee, and then I can conduct
16 depositions, depose other people, request records from
17 third parties. You don't do that in a criminal case.
18 It is illegal to conduct a parallel investigation.
19 You are forced to respond to what the State presents,
20 what the State has uncovered, and that is what we're
21 doing in this case.

22 After all of the evidence accumulation, after all
23 of the effort they've done, they come to you and asked
24 that you believe they met their burden to beyond a
25 reasonable doubt, the highest burden we have in the

CLOSING ARGUMENT - MR. BOUCHETTE

1 legal system. So they are saying they've excluded all
2 reasonable possibilities. Folks, they can't do when
3 their first couple of witnesses are contradicting each
4 other, when they have no reason why they didn't do
5 this, didn't do that. They can't explain that away.
6 The standard isn't what Sidney Moorer -- did he do
7 something suspicious or do we have questions about it;
8 that is not it.

9 When you go back and begin deliberations with the
10 11 other jurors and you've got a question, something
11 that has not been asked, and the State hasn't answered
12 that question, all of them, each and every one of
13 them, then they have not met that standard.

14 We're going to talk about what it means to
15 hesitate to act. The Judge will instruct you that
16 reasonable doubt means any time that you get that
17 feeling, that hesitancy to act. I think the best
18 explanation is what we saw during jury selection.
19 There were a number of people that stood up when asked
20 if they could be impartial, stood up and said, well,
21 Judge, I don't know. What did Judge Dennis do? Oh,
22 that tells me all I need to know right there. If you
23 have that feeling in the jury room that you are not
24 sure, that hesitancy to act, and if you do that, if
25 you have that feeling with your experiences, your

CLOSING ARGUMENT - MR. BOUCHETTE

1 voice, your obligation is to say not guilty.

2 One of things that we have in asking you to go
3 back and deliberate something like this is that so
4 often in our daily lives we choose one side or
5 another, choose categories. We're not often looking
6 at specific examples. You are left or you're right,
7 red or blue, but if you go back there in your
8 deliberations and you say, you know what, I think the
9 police maybe made some mistakes. I think they didn't
10 answer some questions, you are not anti-law
11 enforcement. We're all pro-law enforcement, but we
12 understand that people make mistakes. We understand
13 that people maybe rush things a little bit. We
14 understand that with the benefit of hindsight, maybe
15 there were things that weren't done. If you decide
16 the State hasn't met its burden of proof, you're not
17 anti-prosecution. You can tell them, Ms. Livesay and
18 Mr. Helms, thank you for the service you've done, but
19 we're not just not comfortable. We don't think there
20 is enough there.

21 If your decision at the end of the case is not
22 guilty, then your prayers for Heather Elvis and her
23 family are not any less valid. They are not any less
24 true and less genuine. Before we -- before I came to
25 the courthouse I heard on the radio some issue about

CLOSING ARGUMENT - MR. BOUCHETTE

1 headlines that caught my attention. It said we have
2 circumstantial evidence that Iran had instituted this
3 attack. I can tell you, as soon as I heard that,
4 guess what, it's not going to be a war, because we
5 don't go to war on circumstantial evidence. Folks, we
6 don't go to war on circumstantial evidence, and we
7 don't send people to prison on circumstantial
8 evidence, and that is what we have in this case.

9 I want to talk about one last thing and it is
10 difficult -- difficult to talk about. Folks,
11 throughout the course of this trial we've heard that,
12 you know, Ms. Elvis is gone, she's not coming back.
13 What is that? That's not a kidnapping charge, that is
14 something more serious. Folks, we talk about the
15 hesitancy to act. We're asked to trust in the State's
16 theory. The State is tasked with seeking justice,
17 pursuing charges, but then are holding back. They
18 have hesitated to act on this case. They've brought
19 this as a kidnapping case and a conspiracy to commit
20 kidnapping. Folks, the case has been a lot of excuses
21 for the fact that the evidence just doesn't fit, and
22 that Sidney Moorner has not been proven to have
23 anything to do with Ms. Elvis' death.

24 As you go back to your jury room, I ask you to
25 weigh those things that we talked about. If you need

CLOSING ARGUMENT - MS. LIVESAY

1 to hear something or see something, any of this that
2 comes in can go back with you in the jury room. I
3 just ask that each and every one of you to utilize
4 your own personal experiences, what you have heard and
5 what is important to you and make those voices heard
6 as you begin your deliberations. Thank you.

7 THE COURT: Thank you, Mr. Bouchette. Do you
8 need the screen for any reason?

9 MS. LIVESAY: No, sir.

10 THE COURT: You can put that up, thank you.

11 MS. LIVESAY: I'm going to be brief.

12 THE COURT: Solicitor, you may proceed.

13 MS. LIVESAY: Thank you, Judge.

14 Ladies and gentlemen, I get to come back and talk
15 to you a little bit about the defense in cases when
16 they put up some evidence. That attorney told you
17 something that I think is important, and I want to
18 talk to you about. We did not and have not brought
19 the charge of murder; he is absolutely right. We
20 don't have Ms. Elvis' whereabouts; we don't. We don't
21 have that yet, that is why I didn't bring that charge.
22 I'm the prosecutor in this case. I don't mind telling
23 you. I made the decision to bring kidnapping because
24 I don't have Ms. Elvis. But what I do have is I know
25 that after she talked to Sidney Moorner, and I know

CLOSING ARGUMENT - MS. LIVESAY

1 when she was at that landing, and I know he went down
2 there in his truck. Grant Fredericks told you the SD
3 card was removed. He washed it afterwards. That is
4 how we know it is the right truck. I know after he
5 went down there, we never heard from her again. I
6 know that.

7 Now, he keeps telling you I'm asking you to trust
8 me. If I gave you that impression, I'm sorry. I'm
9 not asking you to trust me. I'm asking you to look at
10 the same evidence I have looked at, that is what I'm
11 asking. I'm asking you when you look at it and you
12 scratch the surface, there is no other answer that
13 when he went down to that landing, she was there.
14 Whatever happened, there is no doubt her freedom was
15 cut off. She couldn't make any phone calls. She
16 couldn't receive any phone calls. That is what I can
17 tell you beyond a reasonable doubt. I didn't bring
18 you or ask you to convict this man of murder. I
19 didn't. I don't have enough evidence, I'm telling
20 you. I don't have Ms. Elvis, which I think -- I think
21 I need to come to you with that charge.

22 What I am asking you for is to decide that this
23 man, whatever happened at that landing, cut off her
24 freedom. She couldn't call out. She couldn't receive
25 phone calls. That is what the evidence shows. That's

CLOSING ARGUMENT - MS. LIVESAY

1 why I brought it, because that is what we have beyond
2 a reasonable doubt. She was down there waiting for
3 who she thought was the prince charming of her story.
4 I don't mind telling you, I can only imagine when she
5 figured out that this was not going to be a happy
6 ending. I'm sure that young girl was scared to death.
7 I can only imagine.

8 All of us, at some point, something has happened
9 in our lives, and we've been scared to death. But all
10 of us are still here. We get a chance to right
11 whatever wrongs, do whatever we feel we need to do.
12 So many people have something that changes their life.
13 This young lady, that opportunity has been taken from
14 her by Sidney Moorner.

15 Now, I'm not telling you to find this case beyond
16 any doubt; that is not what the burden is. This judge
17 is going to tell you the burden is not beyond any
18 doubt, the burden is beyond a reasonable doubt, firmly
19 convinced. Firmly convinced; that is the burden.

20 Now, he's come up to you and talked to you a
21 little bit about the police. I mean, I'm telling you,
22 man, you listen to him talk about the police and they
23 are about the sorriest crowd in Horry County, you
24 ought to be more worried about them than this guy
25 searching teenage girls. The police are not perfect;

CLOSING ARGUMENT - MS. LIVESAY

1 they are not. They are doing the best they can. I'm
2 doing the best I can. That man that sits at the table
3 is doing the best he can. The police made some
4 mistakes, and I'm sure we made some mistakes, but that
5 doesn't mean that Sidney Moorer didn't do it. That is
6 not what that means. I guess Jarrett wants you punish
7 this family for maybe a police officer, so let him go,
8 because we're not perfect, the police aren't perfect.
9 That is not how it goes, folks. That doesn't mean he
10 didn't do it, because he did do it, okay. Ain't
11 nobody else done it but him.

12 This thing about Stephen Schiraldi is the last
13 one to see her. What you didn't see is that defense
14 attorney ever touch any of this (indicates), because
15 the evidence is not in his favor. Because this
16 evidence shows the last person to talk to her when she
17 was alive was Sidney Moorer. Not Stephen Schiraldi.
18 Not Jerry Stevens. Not anyone else but Sidney Moorer.
19 He comes to you with this nonsense that they didn't
20 get so-and-so's records. They didn't get Jerry
21 Stevens' records. Then didn't get Stephen Schiraldi's
22 records. Guess what. They didn't get Chris Helms'
23 records either, or James Galmore's records. They
24 didn't get those records either. Why? They got the
25 records for the person that was lying to the police,

CLOSING ARGUMENT - MS. LIVESAY

1 lying to the police now. He's the only one lying to
2 the police. Jerry Stevens didn't lie to the police.
3 Stephen Schiraldi didn't lie and was the last one to
4 talk to her when she was alive. Yes, that's who they
5 focused on, and the more that they focused on that, it
6 excluded everybody else. There was nobody else going
7 down the landing except for Sidney Moorer.

8 He told you that I'm trying to minimize Bruce
9 Koenig's testimony, that is what he told you. I'm
10 here to tell you I am. You know why? Bruce didn't do
11 one thing but come in here -- he didn't go to the
12 scene. He didn't do anything other than look at
13 Grant's report, look at this log, look at this log.
14 Grant is the real deal. He is an expert. Bruce
15 Koenig is some guy that worked for the FBI when we had
16 VHS tapes. So, yes, I'm telling you, Bruce Koenig is
17 not a credible source for figuring out what truck that
18 was that went down there, and I'm telling you Grant
19 Fredericks is. He did the work; you saw it. I showed
20 it to you. There was nothing to hide. All Bruce came
21 in here and did -- he didn't do anything but nitpick
22 Grant's report. And even then, he had to tell you it
23 was a black Ford F-150 with a toolbox. Even then he
24 had to tell you that. He came here because he was
25 paid to come here to try to put some sort of doubt in

CLOSING ARGUMENT - MS. LIVESAY

1 your mind. Oh, but it could be another truck. In the
2 end he said something about someone could have added
3 something to the truck, built something to the truck,
4 done something else and it could have looked like that
5 truck. Not even credible. The only reason he came
6 here was to try to somehow make you doubt. That is
7 all Bruce was there to do, not to find the truth. If
8 he was here to find the truth, he would have done the
9 work. Grant was here finding the truth, doing the
10 work. Bruce had never been anywhere in Horry County
11 but right here. He came in here to do what he was
12 paid to do: Might be the truck, might not be the
13 truck. He ain't never been nowhere but here. So,
14 yes, I'm telling you, that is not credible evidence.

15 I'm also telling you that the other evidence that
16 they put up, Sidney's sister-in-law who was on the
17 tape looking for bugs, worrying to death that the
18 police would get evidence, out there with a mirror
19 under there. Even when I showed it to her, she
20 wouldn't tell the truth. Black and white on the
21 video. You know you are all out there looking to see
22 if the police planted an audio or video. You are out
23 there with that little mirror looking under the water
24 fountain. Even then, she wouldn't tell the truth.
25 This crowd doesn't have the truth in them, her or

CLOSING ARGUMENT - MS. LIVESAY

1 Sidney. Ain't either one of them can tell the truth.
2 Why? Because they have so much to hide.

3 The evidence we presented to you is the best
4 evidence we got. It is the black and white of what
5 happened from the 17th and the 18th. It is things
6 that cannot be disputed, phone records, surveillance,
7 his very statement, all of that cannot be disputed.
8 The defense wants you to say, oh, it could be anyone.
9 It could -- it could not be just anybody.

10 When you go back there and you look through the
11 evidence and evaluate it, I'm not asking you to trust
12 what I'm telling you. I'm asking you to trust the
13 evidence. The best they got is to put up some
14 transcript from Penny Schiraldi. Is that the best
15 they have? They want you to cut a guy loose who
16 kidnapped a teenage girl on that. That's the best
17 they got. Penny Schiraldi said -- it's been six
18 years, folks, and they want to nitpick two witnesses.
19 That's best they got. They want you to cut this man
20 loose who kidnapped a 19-year-old girl over a
21 transcript. That's the best they have that they put
22 on the screen.

23 I'm telling you, when you look at the evidence,
24 there is nobody else. It is a tremendous decision,
25 there is no doubt about it. It is a tremendous

1 decision, but I'm asking you when you get back there
2 and you evaluate the evidence and you use your
3 commonsense, you look at it for what it is, I'm
4 suggesting to you that there is only one answer, and
5 that is guilty. Sidney Moorer snatched this little
6 girl up, kidnapped her. Whatever happened at
7 3:41 a.m. between him and her, she's never made a
8 phone call since. Him and his wife were together.
9 There is no doubt that this was the plan, the two of
10 them together all night. So I'm asking you to find
11 him guilty of conspiracy to kidnap. That defense
12 attorney is right, I'm not asking you to find him
13 guilty of murder, I'm asking you to find him guilty of
14 what the evidence shows beyond a reasonable doubt.
15 Thank you.

16 THE COURT: Thank you, Solicitor. Thank you,
17 ladies and gentlemen. If I could have your attention.
18 It becomes my duty and responsibility under the
19 constitution of this state to give you the law which
20 you, of course, must accept and apply to the facts as
21 you will determine them, because it is yours, and
22 yours alone, the exclusive duty to determine the
23 effect, the weight, the value and the truth of the
24 evidence. Both the State and Mr. Moorer expect that
25 you will conscientiously consider and evaluate the

JURY CHARGE

1 evidence, and decide what you find to be credible and
2 believable. Once deciding those true facts, take the
3 law and apply it to those facts and report your
4 decision. I'm confident that each of you will perform
5 that task when you are instructed to do so.

6 During this instruction, from time to time, I may
7 use the term "defendant," and that is just a term of
8 art in our profession. It is really used to designate
9 the party against who some claim is made. As I
10 mentioned to you when we started in this proceeding,
11 he is accused by two documents, these pieces of paper,
12 and they are not evidence and will not accompany you
13 to the jury room, because all they do is contain the
14 accusations against Mr. Moorer. So he is the party
15 against who the claim is made. So sometimes I use the
16 term "defendant," but just know that it is synonymous
17 with Mr. Moorer, it means nothing more than that. I
18 tell you, the persons accused of committing offenses,
19 such as Mr. Moorer in this case, in this state and in
20 this country, are never required to come in and prove
21 or explain anything, because the law says that when a
22 person renders a plea of not guilty, as Mr. Moorer has
23 in this case, that places upon the State the sole
24 burden of proof, and the person accused of committing
25 a criminal offense doesn't have any burden to prove

JURY CHARGE

1 anything. The reason for that is that every person
2 accused of a crime is to be presumed innocent, and
3 those are not just words, that is an active
4 presumption that each one of you has to maintain. It
5 can only be set aside when through the deliberation
6 process you all are convinced that the State has met
7 its burden of proof, and that is to establish each
8 element of the crime charged beyond a reasonable
9 doubt, and then, and only then, may you set aside the
10 presumption of innocence. It is an active
11 presumption.

12 Obviously, ladies and gentlemen, because a person
13 does not have to prove or disapprove anything or
14 present any evidence, persons accused of committing
15 criminal offenses have the Constitutional right to
16 remain silent. The law says that you cannot, in any
17 case, when you are considering a person accused of a
18 crime, consider that fact at all. I will instruct you
19 that the fact that Mr. Moorer has not testified in
20 this case must not be considered by you. It can't
21 even be discussed. If it is discussed, you have
22 violated your oath, because he has the absolute right
23 to remain silent. Furthermore, because the primary
24 reason for that is the State, and the State alone, has
25 the burden of proof, to prove his guilt beyond a

JURY CHARGE

1 reasonable doubt.

2 What is a reasonable doubt? A reasonable doubt,
3 ladies and gentlemen, is that doubt which would make
4 an honest, sincere, conscientious juror who is
5 searching for the truth in a case to hesitate or act
6 or take some action. Proof beyond a reasonable doubt
7 is proof that leaves you firmly convinced of
8 Mr. Moorers's guilt. I will tell you that there very
9 few things in this life and in this world we know with
10 absolute certainty. In criminal disputes such as
11 this, the law does not require proof that overcomes
12 every possible doubt. If based on your consideration
13 of the evidence you're firmly convinced that
14 Mr. Moorers is guilty of one or more of these crimes,
15 then you must return a verdict of guilty. If, on the
16 other hand, you think there is a real possibility that
17 he's not guilty, then you must give him the benefit of
18 that doubt and find him not guilty on that particular
19 crime.

20 I will tell you that a reasonable doubt may arise
21 from the evidence which is in the case, or from the
22 lack or absence of the evidence in the case. It is up
23 to you to decide whether a reasonable doubt exists as
24 to his guilt. I charge you, ladies and gentlemen,
25 that he is entitled to every reasonable doubt arising

JURY CHARGE

1 in the whole case. What do I mean by that? Simply
2 this: If upon any issue of fact, which would be
3 essential for you returning a verdict of guilty, you
4 should have a reasonable doubt as to how that
5 particular issue should be resolved, it is your duty
6 to resolve that in his favor.

7 Now, the evidence which you are to consider
8 consists of testimony of the witnesses and exhibits
9 that have been introduced through their testimony.
10 Please remember something, during the trial -- we even
11 discussed this -- from time to time both sides have
12 made objections. I told you those were matters of law
13 for my consideration. Typically, many times, we had
14 side-bar conferences concerning those objections.
15 That was for my benefit to facilitate my ruling on
16 those particular matters of law. The fact they were
17 done without you hearing it is intentional, because it
18 doesn't have anything to do with your decision.

19 I would tell you my rulings should not be
20 considered by you at all, because that is my job.
21 Again, we have separate roles. You are the sole
22 judges of facts; me, the sole judge of the law. The
23 fact that an attorney made an objection, likewise,
24 should not be considered by you, because it is very
25 proper for them to raise those matters of law for my

JURY CHARGE

1 consideration.

2 Probably the greatest example I can give to you
3 of how we work together is discussing my ruling. If I
4 sustain an objection, I said as a matter of law that I
5 would not permit that. That is typically related to a
6 rule of evidence which I concluded would not
7 consider -- you to consider in your deliberations.
8 Again, if the -- if you were to engage in the thought
9 process and say, I wonder why? I wonder what that
10 witness would say? That is human, but if you did
11 that, you violated your oath because you stepped into
12 my area of responsibility. On the other hand, if I
13 overruled the objection, I said as a matter of law and
14 consistent with the rules of evidence, I would permit
15 the question to be answered -- or asked and answered,
16 and for you to consider that question.

17 Now, don't say, well, you know, the judge allowed
18 that, I guess I have to accept that, because if you
19 do, if you engage in that thought, you've also
20 violated your oath. Why? Because you let me step
21 over into your area of responsibility. Frankly, it is
22 that precise moment where we work together. I've said
23 as a matter of law, I'm going to permit the question
24 and answer. Now it shifts to you, you have to decide
25 whether you believe it or not and, if so, how strongly

JURY CHARGE

1 you believe it.

2 I will also remind you that, as I told you
3 throughout, the statements of the attorneys and my
4 remarks should not be considered evidence. If during
5 their opening statements or the closing arguments they
6 state to you what a witness said or didn't say, and
7 that differs from your recollections of what that
8 witness said or didn't say, you are instructed to
9 disregard that remark. Why? Because you are the sole
10 judges of the facts. Likewise, if there are any
11 statements of law different that differ from the law
12 that I tell you, you are also to disregard it because
13 it is my job to be the sole judge of the law. For the
14 purposes of this proceeding today, you must take the
15 law as I give to you, not what the attorneys have said
16 the law is or should be.

17 Ladies and gentlemen, how is a person charged
18 with the burden of proof to present a case? Well, we
19 typically deal with two types of evidence. Whether it
20 is civil or criminal, it makes no difference, they are
21 the same. One is direct evidence, and the other is
22 indirect evidence, or the more popular name for
23 indirect evidence is "circumstantial evidence."
24 Direct evidence, as the name implies, generally deals
25 with sensory perception, someone testifies to

JURY CHARGE

1 something I saw, heard, felt or the like. If you are
2 firmly convinced of the creditability of that
3 testimony, then that would establish that particular
4 fact or circumstance through direct evidence.

5 Circumstantial evidence is when a person
6 testifies to a number of facts and circumstances, and
7 you are firmly convinced as to each one of those, and
8 when you link them through deductive or inductive
9 reason, that leads you to a logical conclusion about
10 which you are firmly convinced. It would establish
11 that particular fact or circumstance by circumstantial
12 evidence.

13 Now, I will tell you the law makes absolutely no
14 distinction between the weight or the value to be
15 given to direct or circumstantial evidence, nor is any
16 greater degree of certainty required for
17 circumstantial evidence than direct evidence. You are
18 instructed to weigh all of the evidence in this case.
19 But the law says to the extent that the State is
20 relying on circumstantial evidence, it has to meet a
21 certain test. First, as I mentioned to you, as to
22 each of those facts or circumstances, or events, upon
23 which the State is relying, the State has to prove
24 each one of those beyond a reasonable doubt. That
25 means you are firmly convinced of that particular fact

JURY CHARGE

1 or circumstance as to the creditability and
2 believability of that evidence. Further, these facts
3 must point conclusively to the guilt of Mr. Moorner.
4 They must be wholly perfectly consistent with each
5 other in every particular respect.

6 I further instruct you in that regard that the
7 mere facts or circumstances brought out in a case are
8 strongly suspicious of guilt, or that the guilt -- the
9 circumstances of such is that the defendant's guilt is
10 probable, than that would not be enough, because it
11 has to be more than someone merely suspected of
12 committing a crime, or that they may have or probably
13 committed a crime. It has to be proof that convinces
14 you beyond a reasonable doubt.

15 Now, the rules of evidence, ladies and gentlemen,
16 generally does not permit a witness to render opinions
17 or conclusions except in very limited circumstances.
18 An exception to this rule is when a witness comes in,
19 and we designate these witnesses as expert witnesses,
20 and that witness is identified in that fashion because
21 of their education and experience, and through that,
22 they have become an expert in some art, science,
23 profession or calling, then those persons may be
24 allowed to render an opinion which is relevant to
25 these proceedings in the area of their expertise and

JURY CHARGE

1 give you the reasons for that opinion.

2 Now, I would instruct you that you must consider
3 any expert opinion rendered in this case the same as
4 you do any other evidence and give it the same weight
5 that you believe it deserves. If you decide that the
6 opinion of the expert witness is not based on
7 sufficient education and experience, or if you
8 conclude that the reasons given in support of the
9 opinion are not sound, or that the opinion is
10 outweighed by other evidence in the case, you may
11 disregard the opinion in its entirety.

12 An expert witness' testimony is to be given no
13 greater weight than any other witness because the
14 witness is called an expert or identified as an
15 expert. As I stated further, you are not required to
16 accept the expert's opinion even though it is not
17 contradicted. You are to consider all of the evidence
18 and decide what you find to be credible and
19 believable, and give the weight you deem appropriate.

20 I would also tell you that the statement alleged
21 to have been made by Mr. Moorer had been admitted into
22 this case. While the Court has made the determination
23 that the statement is admissible, I instruct you that
24 you must make the ultimate decision of whether or not
25 the defendant made the statement, and if he did make a

JURY CHARGE

1 statement, you must determine whether the statement
2 was made by the defendant voluntarily and of his own
3 free will. This means that the statement was not
4 caused by fear, force, threats, coercion or
5 intimidation, or by hope or promise or reward of
6 leniency or reward of any kind.

7 In determining whether the statement was
8 voluntary, you must and should consider both the
9 characteristics of the defendant, the details of the
10 questioning. Some of the factors you may also
11 consider are the age of the defendant, defendant's
12 education or lack of education, the defendant's mental
13 ability or capacity, the defendant's IQ or
14 intelligence, defendant's background and environment,
15 the place and length of the detention and the nature
16 of the question. You must carefully consider all of
17 the surrounding circumstances before you give any
18 weight to the alleged statement. The State has the
19 burden of proving beyond a reasonable doubt that the
20 statement was voluntary.

21 If you determine through your deliberative
22 process that it was, you may give the statement any
23 further consideration that you deem proper. You must
24 decide what weight, if any, should be given to the
25 alleged statement, and the value of that statement.

JURY CHARGE

1 If you determine the alleged statement was not freely
2 and voluntarily, then you should disregard the
3 statement and you may not consider it at all.

4 How do you decide the facts in this case? As I
5 mentioned to you, you brought -- when we started, you
6 brought everything you will need to do it, because
7 you've done it all your life. We all in our lives use
8 certain techniques, certain factors that we consider
9 in assisting us to make that type of decision. We
10 hear something, read something and we decide whether
11 we believe it or not. I will discuss some of the
12 factors that you may consider, but you certainly can
13 apply any facts or method you deploy and have found to
14 be reliable if I don't discuss something that you have
15 considered. But some of the factors would be the
16 appearance of the witness, how did they appear to you,
17 straightforward or hesitant in answering questions?
18 Was the testimony of a witness consistent, or was it
19 inconsistent? Was it strengthened or weakened by
20 other evidence in the case? How did that witness come
21 to know the facts that he or she testified to, or what
22 was the ability of the witness for knowing those facts
23 or circumstances? Was the witness' testimony
24 supported or not supported by other evidence in the
25 case? Was there a reason for a witness to give

JURY CHARGE

1 testimony which may be helpful or not helpful? In
2 other words, was the witness biased or prejudiced in
3 any fashion? There has been testimony even of prior
4 convictions of a witness, and I would tell you that
5 the only purpose for which that may be considered is
6 to determine the creditability and the believability
7 of that witness. The fact that the witness had
8 convictions does not necessarily render his testimony
9 credible or incredible. It is up to you to decide and
10 weigh that with all other factors and decide what you
11 find to be credible and believable.

12 In making these decisions, what you find to be
13 credible and believable, you have very broad
14 discretions. You have the right to believe one
15 witness against many; many witnesses against one. You
16 have the right to believe all of the witness'
17 testimony, parts of a witness' testimony or none of a
18 witness' testimony. Of course you don't make these
19 decisions arbitrarily, but if there is a reason in the
20 record, that is the evidence in this case, for taking
21 that position, you have that prerogative, because your
22 objective has been from the start -- and we've talked
23 about this when we started -- is to carefully,
24 methodically, consciously apply your commonsense,
25 logic and reason and analyze the evidence and decide

JURY CHARGE

1 what you find to be credible and believable,
2 regardless of the source of the evidence. Once you
3 decide that, then you take the law as I give it to you
4 and apply that fairly and impartially to those facts.

5 Now, we've talked about this when we qualified
6 you, and I'll reiterate it to you. While you have
7 very broad discretions, wide latitude, in deciding the
8 facts of the case, please remember you don't enjoy the
9 same with the law. I will agree with you, if you have
10 some disagreements with some law and principles of
11 law, we all think a law may need to be changed, maybe
12 there is a better way of presenting some law, and you
13 have the right to feel that way. But for the purposes
14 of this proceeding, you promised both the State and
15 Mr. Moorer and the Court that you will set those
16 aside.

17 Furthermore, if I define the law for you in this
18 case and it differs from what you thought it was or
19 what your recollection was, again, I appreciate you
20 have that, but, again, you promised to set that aside
21 and you must take this law and apply it fairly and
22 impartially with the facts that you will ultimately
23 determine.

24 Please remember, you are to consider the charge
25 as a whole. Don't put any greater weight or emphasis

JURY CHARGE

1 on any one aspect of the charge. The fact that I have
2 given you an instruction on a particular issue in this
3 case should not be considered by you in any way to be
4 a suggestion as to how you are to rule on any
5 particular fact or circumstance. Likewise, none of my
6 actions, nothing that I said during this trial, should
7 be considered by you as a suggestion or indication of
8 how you should rule on the facts, because that, ladies
9 and gentlemen, is your sole job and sole judgment.
10 You are expected to take the law and apply it as a
11 whole to those facts and then report your decision.

12 Now, let's talk about the two charges. First, I
13 want to deal with the charge with the indictment which
14 accuses the defendant of committing the crime of
15 kidnapping, which is set forth described in Section
16 19-3-1910 of our code of laws. In order to obtain a
17 conviction for the crime of kidnapping, the State must
18 prove beyond a reasonable doubt that the defendant in
19 this case knowingly and unlawfully seized, confined,
20 inveigled, decoyed, kidnapped, abducted or carried
21 away another person without the authority of the law.

22 To do a thing unlawfully is to do it willfully
23 against the law.

24 Knowingly means with knowledge, consciously, not
25 accidentally.

JURY CHARGE

1 Seize means to take hold suddenly or forcefully.

2 Confine means to limit, restrict or enclose
3 within bounds in prison or shut or keep in.

4 Inveigle means to lure, entice, lead astray by
5 false representations, promises or other deceitful
6 means.

7 Decoy means to lure by or as if by decoy.

8 Decoy is something to entice a person into a
9 trap.

10 Kidnap is to remove a person against his or her
11 will by unlawful force or by fraud.

12 Abduct means to carry off secretly or by force
13 for an illegal purpose.

14 Carry away means to remove.

15 Now, the State does not have to prove that the
16 defendant did all of these things. Instead, if you
17 find beyond a reasonable doubt that the defendant,
18 Mr. Moorer, did any of these things, you may find the
19 defendant guilty of kidnapping. Something done
20 without authority of law is something which the law
21 does not sanction, permit, allow, condone or provide
22 justification for.

23 Now, the kidnapping does not have to be for any
24 personal or monetary gain, or for any illegal purpose,
25 but may be for any reason, whatsoever. The gravamen

JURY CHARGE

1 of the offense of kidnapping is some form of
2 compulsion, but the law says that the requisite force
3 or compulsion need not consist of use of actual
4 physical force or violence or expressed threats of
5 violence or force. The offense of kidnapping is
6 commenced when one is wrongfully and unlawfully
7 deprived of his or her freedom, and continues until
8 that person's freedom is restored.

9 Let's look at the second charge: Conspiracy to
10 kidnap. That is set forth in Section 3-9-20 of our
11 code of laws. In order to obtain a conviction for
12 this offense, the State must prove beyond a reasonable
13 doubt that the defendant, combined with one or more
14 persons, for the purpose of violating the section
15 which sets forth the kidnapping charge. In this case,
16 the State must prove beyond a reasonable doubt that
17 there was a mutual understanding, agreement or common
18 intention and plan. If there is merely a passive
19 knowledge or merely consent to his criminal conduct of
20 another, that would not be enough to make a person a
21 conspirator. There must be guilty knowledge and
22 participation.

23 Similarly, the mere fact that the defendant may
24 have associated with another person or met with
25 another person and discussed common names and

JURY CHARGE

1 interests does not necessarily establish proof of the
2 existence of a conspiracy, or that the defendant was
3 involved in a conspiracy. On the other hand, however,
4 it is not necessary that the agreement be a formable
5 one, not necessary to be in writing, and it's not even
6 necessary that the person expressly stated the terms
7 of the common plan or that the agreement be stated in
8 words between them. The agreement of a criminal
9 conspiracy may come into being through an implied
10 mutual understanding. The willful intention and
11 knowing adoption of two or more persons of a common
12 plan is sufficient.

13 In addition to an agreement, which we talked
14 about, the statute also requires an overt act towards
15 the carrying out of this agreement, confederation of
16 conspiracy. There must be an overt act done by at
17 least one of the persons to establish the conspiracy.
18 But if the agreement and the overt act are established
19 beyond a reasonable doubt, then all persons involved
20 in the conspiracy would be guilty of violating this
21 section.

22 I would further instruct you that a conspiracy
23 may be shown by circumstantial evidence and the
24 conduct of the parties alleged to have been involved.
25 I will also instruct you that the criminal intent is a

JURY CHARGE

1 necessary element of each of these crimes and it, as
2 all of the other elements, must be established beyond
3 a reasonable doubt. Criminal intent is always a
4 matter that must be determined by you from the
5 circumstances surrounding the situation. So the law
6 states criminal intent may be inferred from the
7 circumstances which have been shown to have existed.

8 Criminal intent is a state of mind that operates
9 jointly with an act and commission of a crime. Intent
10 includes those consequences which a person -- which
11 represents the very purpose for which an act is done,
12 or known to be substantially certain to result
13 regardless of one's desire.

14 Criminal intent is a mental state, conscious
15 wrongdoing. It is up to you to determine whether or
16 not -- what the defendant intended to do, assuming, of
17 course, that the State has proven to you that the
18 defendant was present and participating in the -- and
19 you may consider all of the circumstances which the
20 evidence convinces you has been established and shown
21 to have existed. I further mention that that must be
22 -- you must reach the conclusion that the State has
23 met that burden beyond a reasonable doubt.

24 Ladies and gentlemen, we went through a lengthy
25 process to decide and handpick you to be a judge with

JURY CHARGE

1 me in this case, and that was intentional. The reason
2 for it is quite simply this -- and you saw me excuse
3 some persons, and that was because those persons, for
4 various reasons, said they couldn't be a fair and
5 impartial judge. But each one of you by responding to
6 that last question that I asked you, and I'll remind
7 you, I said was there anything about this case that
8 would give you any concern about making the commitment
9 that you made when we started, and none of you stood.
10 So you said there was nothing; nothing at all.

11 Then, we talked about something we have to do as
12 humans, and this is not something we do -- you don't
13 do, but I do it because that's my job -- but you don't
14 sit in judgment. That's not something that we like to
15 do. One thing about it, and I know I have to
16 acknowledge this, and I think you probably will agree
17 with me, one of the things we have to do is remember
18 that we don't have any friends to reward, nor do we
19 have any enemies to punish in this process. We're not
20 here to represent either side. We're here to be fair
21 and impartial judges, which requires us to do
22 something and, I confess, it is not always easy to do,
23 and that is to set aside all human emotion. In cases
24 such as this, it is very difficult, but you have to do
25 it, because if you don't, if your decision is

JURY CHARGE

1 motivated by any human emotion, then we both -- and
2 mine, too -- then we both have violated our commitment
3 the State, to Mr. Moorer and to the process. I'm
4 confident each one of you will honor that, and that
5 your decision will be something that when you retire
6 and begin your deliberations, you will set aside all
7 of those human emotions and methodically consider it
8 and decide what you find to be credible and
9 believable.

10 Once you decide that, you take the law as I have
11 given it to you, apply that law to those facts, and
12 that will be the result. I can promise you this, and
13 that was part of the instruction of one of the
14 sessions we had at the conference I attended
15 yesterday, it is fair to remind those of us who do it
16 every day, and I'm going to remind you that the result
17 will not be favorable to some. Some persons will not
18 agree with it -- no question -- in this case. But
19 that can never, ever be what motivates us in
20 performing our tasks. We have to do it consistently
21 with the law and the facts. I have given you the law,
22 you will determine the facts, combine them, and
23 whatever the result is, it is. If we have honored
24 that in every respect, then we can hold our heads up
25 high -- sorry we are disappointing to some -- but we

JURY CHARGE

1 have done what we are supposed to do under the law of
2 the state and this country. I thank you for your
3 willingness to participate and being in this process.

4 Madam Presiding Juror, to assist you in reporting
5 your decision, I have prepared two verdict forms,
6 which I'll discuss with you. They will accompany the
7 other exhibits that will be delivered to you. You
8 will see that they are captioned. Folks, that just
9 facilitates the filing. It means nothing. It just
10 helps the clerk know where to put these documents.
11 They both are identical, except for this fact: One
12 deals with kidnapping, and it is set forth; and one
13 deals with conspiracy to kidnap. I will explain one
14 of them. They are identical. You will see they have
15 two choices. The order which they appear means
16 absolutely nothing. I had to put them in some order.
17 This one happens to be kidnapping: We, the jury, by
18 unanimous consent, find the defendant -- unanimous
19 consent, what does that mean? Twelve to zero, that is
20 what that means. All of you have to agree. By
21 unanimous consent find the defendant, Sidney St. Clair
22 Moorer -- the defendant's name -- on the charge of
23 kidnapping: One, guilty, or, not guilty. Then there
24 is a place for you to sign it where it says "presiding
25 juror." There is a place for you to write in the

JURY CHARGE

1 date. Whatever your verdict -- if it is guilty, what
2 will you be saying? You will be saying that you and
3 the other 11 jurors have agreed that the State has met
4 its burden of proof and established those elements,
5 which I outlined for you, beyond a reasonable doubt
6 and, therefore, as you were instructed, you're
7 returning a verdict of guilty, which is consistent
8 with the law, that you've been convinced -- firmly
9 convinced of each element, and now that presumption of
10 innocence is removed, and you will check guilty.

11 Not guilty, what will you be saying? You are not
12 convinced of one or more. Because if the State fails
13 on one element, that you are not firmly convinced,
14 that presumption of innocence means you must put not
15 guilty. That is what the law says. That is what your
16 decision would be if it is twelve to zero. Whichever
17 it is, sign it and date it, and do the same on the
18 second charge once you finish the first one, or
19 whichever order you want to proceed. Then, you knock
20 on the door. We will return you to receive your
21 verdict.

22 I know you are anxious to get started, and we're
23 almost there. I need to talk about my charge with the
24 attorneys, and as we have done a number of times to
25 discuss matters of law, I need to excuse you. I'll

JURY CHARGE

1 let you go to your jury room for just a minute. You
2 may not commence your deliberations until you -- we
3 deliver you the exhibits. When you receive the
4 exhibits, then, and only then, may you commence.

5 The only restriction on the deliberations that I
6 place is this: If any juror has to leave the room for
7 any reason or leave the table for any reason, you must
8 stop deliberating until all 12 of you are together.
9 Other than that, you proceed as you deem fit and
10 proper.

11 I thank you for your attention. The last
12 question -- as I told my alternates, we are at that
13 point -- does any one of the first 12 of you feel you
14 are unable to continue; if so, raise your hand?

15 Thank you.

16 My alternates, when the jury retires, I'll ask
17 that you not return to the jury room with them. They
18 will take you to another room, and I'll be in very
19 shortly to discuss with you how much longer you need
20 to remain. If we have to bring the jury back and give
21 you further instructions, I'll return you and give
22 further instructions.

23 Ladies and gentlemen, what an honor and privilege
24 to serve with each one of you and in the manner you
25 handled yourselves and have conducted yourselves

JURY CHARGE

1 throughout this trial. I ask you to please retire to
2 the jury room and await the exhibits before commencing
3 deliberations. Thank you.

4 (The jury exits at 1:51 p.m., and the
5 following is heard out of the presence of the jury.)

6 THE COURT: Any exceptions or additions from the
7 State?

8 MR. HELMS: None, Your Honor.

9 THE COURT: Any from the defense?

10 MR. BOUCHETTE: No, Your Honor.

11 THE COURT: Thank you very much. We'll be at
12 ease. Check the exhibits methodically.

13 MR. HELMS: We do have one question. For those
14 exhibits that require a computer, we have a clean
15 computer.

16 THE COURT: I was going to ask you about that.
17 So do you have any objection with a computer going
18 back?

19 MR. BOUCHETTE: No, Your Honor.

20 THE COURT: Thank you. Some places don't. I was
21 going to ask you how you were going to do it.

22 MR. HELMS: We designate it just for juries.

23 THE COURT: That fine. That is a great help,
24 Chris. Thank you very much.

25 MS. LIVESAY: Thank you, Judge.

JURY CHARGE

1 MR. BOUCHETTE: Thank you very much.

2 (The attorneys and court reporter validate the
3 exhibits, and the jury starts deliberations at
4 2:13 p.m.)

5 (Court's Exhibit 1 marked.)

6 (The time is 3:24 p.m.)

7 THE COURT: We have Court's Exhibit 1.

8 Could we please have the written definition of
9 kidnapping only?

10 In my career, when I first started this, I would
11 gladly respond and attach it to it and say if you need
12 more, let me know and I'll be happy to provide you
13 with a written copy. I found out when I first went to
14 Reno, because the only place I practiced was the State
15 of South Carolina, that other states give the written
16 charge as a matter of court. I thought, Well, that
17 makes sense because some people are visual and it is
18 very helpful for people that are. So I started doing
19 that, and I think Judge Newman does it now in every
20 case, which is probably a good idea.

21 (Mr. Moorer enters courtroom.)

22 THE COURT: I think Judge Thomas actually said if
23 they want the charge, and then say whatever else you
24 need to give them, but you have to give them the whole
25 charge. So unless there is an agreement, and I will

JURY CHARGE

1 do that in a civil case, I don't expect any agreements
2 from you all, and that is fine. I have the charge and
3 I printed a copy, and I have it. It is not in caps so
4 I can read it, it is in small letters. I have a copy
5 for each one of you. I have four copies for them so
6 they all don't have to pass it around. I'll bring
7 them in and tell them -- I'll send the charge back. I
8 know what they want. The law requires me to give the
9 whole charge and I'll ask them to just keep it with
10 the exhibits. Any objection from the State?

11 MR. HELMS: No, sir.

12 THE COURT: Any objections from the defense?

13 MR. BOUCHETTE: No, Your Honor, no objection.

14 THE COURT: Very well. I'll give you a copy for
15 each one of those. I may have to elaborate on some,
16 but it didn't change anything. It was fully there of
17 what I charged.

18 MR. HELMS: Thank you, Judge.

19 MR. BOUCHETTE: Thank you.

20 THE COURT: You bet.

21 Invite the jury to return, please.

22 (The jury enters at 3:27 p.m., and the
23 following is heard in the presence of the jury.)

24 THE COURT: Thank you very much. I have Court's
25 Exhibit No. 1, and it said, Could we have the written

JURY CHARGE

1 definition of kidnapping only, signed and dated, and I
2 thank you, ma'am. I was just telling them I would
3 love to comply with that, but we are a state that,
4 until recently, we didn't -- if the jury asked for
5 written charges, when I practiced law, judges never
6 did. They just brought the jury back in and recharged
7 them, and that is fine. I mean, I don't find fault.
8 But one of the sessions we had at one of the seminars
9 is the types of learners, and if you are visual, you
10 can read to a visual person all day long and they
11 might not get it. So if they read it, they might get
12 it. So it makes perfect sense for what you are asking
13 for. Under our law, though, I have to send you the
14 entire charge. I only do it for this reason, I bolded
15 the charge portion dealing with the crime of
16 kidnapping and conspiracy to kidnap. So those
17 sections specifically will contain the elements of
18 each crime, but now the whole charge is important,
19 because following that, there is another element, and
20 as I told you, criminal intent is one, but the charge
21 sets forth all of that. But the specific definition
22 of kidnapping is in that section bold, and then the
23 next one is conspiracy to kidnap, okay.

24 I'll send it back. I have four copies that I ask
25 that you keep these when we return the exhibits, we

JURY CHARGE

1 return all four copies, okay. I'll send them back
2 with you. When you get those, if there is anything
3 else you need, just let us know. Thank you. You may
4 retire for your deliberations.

5 (The jury exits the courtroom at 3:30 p.m., and
6 the following is had out of the presence of the jury.)

7 THE COURT: Exceptions or additions from the
8 State?

9 MR. HELMS: None, whatsoever, sir.

10 THE COURT: Exceptions or additions from the
11 defendant?

12 MR. BOUCHETTE: No, Your Honor.

13 THE COURT: Thank you. We'll be at ease until we
14 hear otherwise.

15 (Court is at ease at 3:34 p.m., as the jury
16 continues to deliberate.)

17 THE COURT: Thank you. Please be seated. I'm
18 advised the jury reached a decision.

19 Again, I expressed my sincere sympathy -- it's
20 not the appropriate word, just my deep feelings for
21 you. I'm a father, grandfather and I've been doing
22 this and it's just a very difficult time for
23 everybody, and I appreciate very much your patience
24 with the Court, number one. Number two, the proper
25 decorum in the tough situation, that is extremely

VERDICT

1 difficult for both sides.

2 (Mr. Moorner walks into the courtroom.)

3 THE COURT: I understand human emotion being the
4 way it is, that there will a time of release, time of
5 deep feelings when we read this verdict, but I respect
6 this process, and I think you do, too. I'll ask you
7 to control your emotions. I don't want any reactions
8 to the jury verdict, either side. If you feel you
9 will be unable to do that, I ask you to leave now,
10 because if you don't, then that's going to violate my
11 specific instruction not to do that. So I thank you
12 for your understanding, at least to that. I
13 understand that that is -- we're human, but I'm asking
14 you to do something sort of superhuman right now.
15 Thank you.

16 Let the record reflect that Mr. Moorner is
17 present.

18 Is the State ready to receive the verdict?

19 MR. HELMS: Yes, Your Honor.

20 THE COURT: The defendant is ready to receive the
21 verdict?

22 MR. BOUCHETTE: Yes, sir, Your Honor.

23 THE COURT: Invite the jury to return.

24 (The jury enters at 3:44 p.m., and the
25 following is heard in the presence of the jury.)

VERDICT

1 THE COURT: Thank you very much, ladies and
2 gentlemen. Thank you. I understand the jury has
3 reached a verdict?

4 FOREPERSON: Yes, Your Honor.

5 THE COURT: If you will, pass the verdict to
6 Mr. Ropp, please.

7 (A brief pause in the proceedings.)

8 THE COURT: The verdict forms have been properly
9 completed. I ask Mr. Moorer to please stand.

10 You may publish the verdicts.

11 THE CLERK: Indictment 2014-GS-26-1125, State of
12 South Carolina, County of Horry, versus Sidney
13 St. Clair Moorer. We, the jury, by unanimous consent
14 find the defendant, Sidney St. Clair Moorer, on the
15 charge of kidnapping guilty.

16 Indictment 2018-GS-26-3067, State of South
17 Carolina, County of Horry, versus Sidney
18 St. Clair Moorer. We, the jury, by unanimous consent
19 find the defendant, Sidney St. Clair Moorer, on the
20 charge of conspiracy to kidnap guilty.

21 Dated September 18, 2019. Signed by foreperson,
22 Wanda Simms.

23 Ladies and gentlemen of the jury, if this is your
24 verdict, so signify by raising your right hand.

25 THE COURT: Thank you. Let the record reflect

VERDICT

1 that each juror raised his or her right hand in
2 response to the Court's question.

3 Mr. Moorer, Counsel, you may be seated if you
4 wish.

5 Anything further from the jury -- from the
6 defendant -- State, excuse me?

7 MS. LIVESAY: No, sir.

8 THE COURT: Anything further from the defendant?

9 MR. GALMORE: No, sir, Your Honor.

10 THE COURT: Ladies and gentlemen, I'll ask you to
11 go to your jury room just a few moments, and I'll be
12 with you in a few moments to discuss some things with
13 you. You may retire.

14 (The jury exits at 3:46 p.m., and the
15 following is heard out of the presence of the jury.)

16 THE COURT: Any motions or matters from the State
17 at this point?

18 MR. HELMS: We don't have anything.

19 THE COURT: Mr. Moorer.

20 MR. GALMORE: Respectively, we would file a
21 motion for a new trial, and we would file a motion for
22 an order in arrest of judgment. These motions are
23 based on the insufficiency of the indictment, and the
24 insufficiency of the evidence in this case.

25 Regarding the indictment, Your Honor, we

VERDICT

1 highlighted earlier in the proceedings about the
2 service issue. We also highlighted in the proceedings
3 about the inconsistent theories that the two
4 indictments put forth to the jury. Regarding the
5 insufficiency of the evidence, Your Honor, we have
6 argued that we felt that this evidence was
7 circumstantial and did not meet the standard of being
8 substantial circumstantial evidence. The Court has
9 understandably ruled on that, but we make those
10 motions for the Court's consideration.

11 THE COURT: Thank you, Mr. Galmore. And judging
12 from the content of your motion, you intend to
13 supplement this with written memorandum support?

14 MR. GALMORE: Yes, sir.

15 THE COURT: I mean, you don't have to, but --

16 MR. GALMORE: Yeah, it was our intention to file
17 post-trial motions.

18 THE COURT: I want to make it known that you are
19 filing your motion, and you will supplement that with
20 any written documentation you wish, which will be part
21 and parcel of this motion you are making today,
22 insofar as the timeliness of your motion.

23 MR. GALMORE: Thank you.

24 THE COURT: Any objection from the State on that?

25 MR. HELMS: To the filing of the memorandum, Your

VERDICT

1 Honor?

2 THE COURT: Yeah.

3 MR. HELMS: No, sir.

4 THE COURT: I mean, the basic motions for new
5 trial and what he stated, but it would only be
6 memorandum to support those respected positions. Of
7 course, if you wish, you don't have to, the State may
8 file any response in addition to that.

9 MR. HELMS: Understood, Your Honor.

10 THE COURT: I respectfully deny the motion. I
11 think there is an abundance of circumstantial
12 evidence. And I think, as I already articulated, and
13 I respect that that is the beauty of our profession,
14 that we have a right to see things differently, and
15 the reviewing court will have the opportunity to make
16 that decision.

17 Thank you, Mr. Galmore. I appreciate very much
18 the manner and professionalism in which you presented
19 that, sir.

20 MR. GALMORE: Yes, sir.

21 THE COURT: I assume we want to have sentencing
22 at some point today; is that correct?

23 MR. HELMS: We're prepared to go forward.

24 THE COURT: Let me take a moment to speak to the
25 jury, and then I'll be back out to finish that.

SENTENCING

1 MR. HELMS: Understood.

2 THE COURT: Thank you. We will be at ease.

3 (A recess was taken.)

4 THE COURT: Are you ready for sentencing? State
5 wish to have anything else? I'll be happy to hear
6 from you.

7 MR. HELMS: Yes, Your Honor. If the Court deems
8 it appropriate, I think the family of Heather would
9 address the Court.

10 THE COURT: I would be delighted to hear from
11 them, and it is certainly an appropriate time for them
12 to be heard.

13 MR. TERRY ELVIS: Terry Elvis, Your Honor.

14 THE COURT: Don't you worry. Take your time.

15 MR. TERRY ELVIS: (Witness crying) It's been a
16 long five years, almost six. Every day you wake up
17 and it is the same thing over and over. You can call
18 it kidnapping. It sounds like it's a one-and-done
19 thing, but it's not, it's every day. So the past
20 almost six years, it's a continuous assault. It
21 hasn't gone away. No one will tell us where our
22 daughter is at. At this point, you can give him a day
23 if he would just tell us where she's at.

24 THE COURT: I understand.

25 MR. TERRY ELVIS: But I don't think he'll do it,

SENTENCING

1 but we're willing to do that. I would agree to
2 anything at this point just to get to that part of our
3 life and get it closed. Short of that, I would ask
4 that you run these two sentences -- you run them
5 concurrent -- do it all. I know it is within your
6 power and within your judgment, and I know that it's
7 been a strange journey between all of us, but you've
8 always been honorable, and I defer to your judgment.

9 THE COURT: Thank you so much, Mr. Elvis. And
10 let me tell you, sir, as a father to a father. What
11 you have had to endure, no father should ever have to
12 endure, no mother, and certainly I can only speak from
13 being a father. I don't fault you for some of the
14 things that have been said or felt. In fact, I
15 understand them. You don't fault yourself, sir, for
16 that. My only wish for you and your family and all of
17 your loved ones, and I know -- if I thought for a
18 second that would satisfy what you are looking for, I
19 would do it in a heartbeat, I really would, because I
20 understand and I appreciate how magnanimous that
21 statement is, that you are not looking to punish, you
22 just want closure for a lot of things. I just hope
23 that somehow this will bring some peace to you, sir,
24 and that you can start -- you're right, it will never
25 come back to the way it was the day before she left,

SENTENCING

1 but I hope you can find some peace in your life and
2 enjoy what is left, and that is what you are entitled
3 to, sir. Thank you.

4 MR. TERRY ELVIS: Thank you.

5 MS. DEBBI ELVIS: I'm not going to appeal
6 emotionally to you. I know you can't make your
7 judgment and sentence based on that, so I want to
8 appeal to what we need and what you can justify
9 legally. We need hope. I just want to explain what I
10 mean by that. All of these years we've been hanging
11 onto the hope of what is hanging over his head and
12 what is hanging over his wife's head, the charges and
13 the trials and the sentencing of the community. They
14 waged war on the community because their only defense
15 was to attack everyone else, and they retaliated. If
16 he did that one right thing, just tell us where our
17 daughter was, everything would have ended. The
18 retaliation from the community would have ended. The
19 charges would have been over. The torment from his
20 family would be over. All of these things were
21 hanging over his head, but all of those things were
22 that hope that we were hanging onto. That one right
23 thing would have changed this up here. With this
24 verdict and this trial, once you sentence, it is all
25 over, but it's not over. Heather is still gone.

SENTENCING

1 There is nothing else holding over his head.

2 So I'm asking you to give us -- don't just give
3 him 30 years to run concurrent like his wife got.
4 There is not enough room to work with that. He's
5 receiving false hope from a civil attorney that he's
6 going to get rich and be exonerated in a civil case.
7 He has that hope, which I believe is why he didn't
8 plead in this one. If he has 60 years, we have
9 something to work with. We have something to go back
10 on. It's only a little window of time and a little
11 window of hope, and that is all we have. I'm just
12 asking you if you will just give us as much as you
13 possibly can to work with. He's not stopped his
14 crime. He kidnapped -- and you read the definition of
15 the law, unless he releases her, she's kidnapped. He
16 hasn't given her back. He's still holding her hostage
17 from us. So unless he stops his crime, he is still
18 committing it, and there is no remorse. I'm just
19 asking that you justify his sentence by the fact that
20 he won't stop, he won't admit what he's done, he won't
21 take responsibility and he's still committing it to
22 this day. Thank you.

23 THE COURT: Thank you, ma'am.

24 MS. **M. E.** : **M. E.** .

25 THE COURT: Yes, Ms. Elvis.

SENTENCING

1 MS. M. E. : Most people know that I never
2 am at a loss for words; in fact, I don't shut up.

3 THE COURT: That's okay. I have been accused of
4 that, too.

5 MS. M. E. : Yes. I know you heard them
6 talk about the ways you think that it's impacted them,
7 and this is meant to be a victim's impact statement,
8 but I would like to talk a little bit about what I've
9 witnessed being taken away. Because it didn't stop at
10 taking Heather away from our family, because every day
11 I watch my dad turn into someone that he's not, and I
12 watch my brother hide away from the world, and I watch
13 my mother turn into somebody that is just a shell of
14 the person that she used to be. I can't witness my
15 own transformation, but I'm positive it has been
16 drastic. I'm not nearly the woman I was five years
17 ago. And for better or worse, I don't know, but I can
18 tell you that our family is not the only victim. Our
19 community has suffered and changed in ways that are
20 unimaginable. I don't know if you noticed, but their
21 family got up and left, because they have been a
22 victim in this as well. He has children that he
23 disregarded and put them in the line of fire when he
24 made this action against our family. I think that is
25 something we should all remember, that it wasn't just

SENTENCING

1 our family that is affected here, but his own. He
2 couldn't even muster a thought for them. And I think
3 that my dad is right, even if we let him walk today,
4 that would be fine so long as we could have a funeral,
5 have a coming home, have an answer so you don't wake
6 up in the morning and have the world crash down around
7 you. It is not so much that it is not fair, it is
8 just what is right and what's wrong.

9 THE COURT: Thank you, Ms. Elvis.

10 MR. HELMS: Your Honor, there is nothing else
11 that we could say to give any more light to this. The
12 Court knows everything about this case that we know.
13 The community knows everything about this case that we
14 know. At this time, we just defer to the Court's
15 judgment.

16 THE COURT: Thank you. I appreciate it.

17 Mr. Galmore, Mr. Bouchette.

18 MR. GALMORE: Your Honor, there is not much we
19 can add. We understand that the Court has all of the
20 basic background information about Mr. Moorer. He's
21 married. He has children. You know what kind of work
22 he does and his educational background.

23 We were in this position at the end of the
24 obstruction of justice trial, and some things have
25 changed for Sidney since then. He has been sentenced

SENTENCING

1 to ten years. During that time, he's participated in
2 several programs in the Department of Corrections
3 trying to improve to better himself. He in a program
4 at Lee Correctional. He is in the Jump Start and the
5 Violence Prevention program. He works in maintenance
6 at the facility basically doing the same work he did
7 when he was on the street.

8 Your Honor, I have represented a lot of people in
9 this courtroom over the last 20 years, and I can say
10 for the vast majority of them, you can probably see an
11 outcome like this coming. You hate to say it, but you
12 know the background and the educational history, the
13 job history. People just aren't equipped -- some
14 people are just not equipped for making it in civil
15 society. Mr. Moorer is not that way. He doesn't have
16 a prior record, didn't have a record before any of
17 this. He is just an average Horry County citizen kind
18 of guy that you would deal with after work.

19 Your Honor, there's not much we can say as far as
20 family is concerned. It's true that both families
21 have suffered greatly from all of this. While all of
22 this begins with him, I would just point out to the
23 Court that he didn't go looking for this situation, he
24 just kind of ended up in it. He was not looking for
25 trouble at any time.

SENTENCING

1 Your Honor, we have received the jury verdict,
2 and respectfully disagree with it. He denies any
3 involvement; he will continue to do so. We understand
4 that the Court has a decision to make. We ask Your
5 Honor to simply take into consideration that he did
6 not have a prior record before all of it, take into
7 consideration the positive things he has done in the
8 time he's been at Lee Correctional and temper justice
9 with mercy in this case.

10 THE COURT: Thank you.

11 Mr. Moorner, anything you wish to say, sir? You
12 don't have to, but I'll afford you the opportunity.

13 MR. MOORER: (Witness crying) I do.

14 THE COURT: Okay.

15 (A brief pause in the proceedings.)

16 MR. MOORER: If I could finally give them
17 closure, I would. Anything I would tell would be a
18 lie. There is nothing I can tell them to give them
19 any closure. I understand; I have children of my own.
20 I get it. There is just nothing I can give them for
21 closure.

22 THE COURT: Thank you, sir.

23 MR. MOORER: And I know -- I know they've
24 suffered probably way more than my family has, and I
25 feel bad for them, I really do. There is nothing I

SENTENCING

1 can give them. I'm sorry that I can't.

2 THE COURT: I'm confident of that as well. Thank
3 you, sir.

4 Anything else?

5 MR. HELMS: No, Your Honor.

6 THE COURT: Well, the one thing that I've said
7 over and over, and I don't know that I appreciated it
8 as much when I was a lawyer as I do now as a judge,
9 because my heart goes out to the Elvis family and the
10 extended families. There is just no words to describe
11 that anything could be said to alleviate what you have
12 suffered and will suffer. And I mentioned this early
13 on, I saw my father with his father being tragically
14 murdered and how he had to deal with that his entire
15 life. And as I said before, he was a bitter man when
16 he took his last breath at 81. I know that there's a
17 reason now for having a court of common pleas and a
18 general sessions court. Common pleas deals with
19 everything you talk about, your loss, what you have
20 experienced. That is what I was privileged to do.
21 Some of my practice was representing persons that
22 suffered damages and trying to get compensation for
23 their damages. What I do in a sentence can never be
24 construed as a compensation for anything; it's not.
25 And it should never be considered that way, because

SENTENCING

1 that is left for another branch of our court.

2 In this case, I understand your wish and if I
3 were standing there, I would be saying the same thing,
4 I really would. But in this case, Ms. Moorer was
5 convicted and a concurrent sentence was imposed, and
6 what I've heard in this case as evidence, and I don't
7 have to conclude this, this is just a fact, that I
8 think there was a conspiracy, no question. There was
9 a conspiracy. The dominant figure we can all have
10 opinions about that, but I think my opinion is that
11 she was a dominant figure in this action, just from
12 everything -- and probably the most compelling one was
13 the testimony of the gentleman who worked at Ford, to
14 me. For that reason -- I'm going to do this, though,
15 I'll let the Department of Corrections figure out what
16 time he's entitled to.

17 MR. GALMORE: Yes, sir.

18 THE COURT: I'm not going to make that call,
19 because he was punished for that one, and he's serving
20 the time, the punishment of obstruction. If the
21 department chooses to give him credit, so be it. I
22 don't choose to do that in my sentence, but I'll
23 sentence him to 30 years on each one and run them
24 concurrent. I hope you will continue to do something
25 that he's doing. It doesn't surprise me -- I know it

SENTENCING

1 was mentioned early on that I knew his mother and
2 father, and I do. I was privileged to know them. The
3 one thing I have come to know, the Bible speaks of
4 this, I think it is Luke, much is given, much is
5 expected, and I'm paraphrasing that, but I don't find
6 fault with that. I know what he was given. I know
7 the people, and that also is another reason for what
8 I'm doing.

9 Good luck to you, sir. Thank you.

10 Thank you, ladies and gentlemen.

11 (The members of the jury that were in attendance
12 for the sentencing exit the courtroom.)

13 THE COURT: Anything else?

14 MR. HELMS: That concludes the State's business
15 with the Court.

16 THE COURT: Thank you very much. Thank you,
17 Ms. Livesay.

18 (The proceedings of the trial of the State of
19 South Carolina versus Sidney St. Clair Moorner
20 concluded.)

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 State of South Carolina)

3 County of Horry)

4
5 I, Natalie Dahl, Official Court Reporter for the
6 State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete Transcript
8 of Record of the proceedings had and evidence
9 introduced in the trial of the captioned case,
10 relative to appeal, in the Court of General Sessions
11 for Horry County, South Carolina, on the 9th through
12 18th days of September, 2019.

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

15
16 March 1, 2020

17 
18 _____

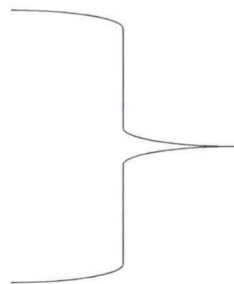
19 Natalie Dahl, RPR

20 Court Reporter
21
22
23
24
25

Heather Elvis – [REDACTED] 8152

[REDACTED] 3175

[REDACTED] 2462



Last two phone numbers Heather Elvis made contact with.



██████████ 3175

July 17, 2013 – July 31, 2013

Total Entries – 862

- Entries to ██████████ 3175– 198
- Entries from ██████████ 3175– **213**
- Total of 411 out of 862

██████████ 3175

August 2013

Total Entries – 1540

- Entries to ██████████ 3175 - 213
- Entries from ██████████ 3175– **351**
- Total of 564 out of 1540

██████████ 3175

September 2013

Total Entries- 1426

- Entries to ██████████ 3175 - 208
- Entries from ██████████ 3175 - **350**
- Total of 558 out of 1426

██████████ 3175

October 2013

Total Entries- 1037

- Entries to ██████████ 3175 - 199
- Entries from ██████████ 3175 - **318**
- Total of 517 out of 1037

██████████ 3175

November 2013

- **Total MMS messages from S. Moorer to Elvis- 2**

- Total Entries- 701

- Entries to ██████████ 3175 - 24
- Entries From ██████████ 3175 - **40**

- Total of 64 out of 701

██████████ 3175

December 2013

- Total Entries 1000
- Entries to ██████████ 3175 - 6
- Entries from ██████████ 3175 - 0
- Total of 6 out of 1000

██████████ 2462

July - November 2013

- Entries to ██████████ 2462 - 0
- Entries from ██████████ 2462 - 0

██████████ 2462

December 2013

- Entries to ██████████ 2462 - 10
- Entries from ██████████ 2462 - 1

A	B	C	D	E	F
MSISDN	Event Type	Start Time	Direction	Connected To	Duration (Minutes)
[REDACTED] 8152	Voice	12/18/2013 01:35:16 AM	Incoming	[REDACTED] 2462	4.83
[REDACTED] 8152	Voice	12/18/2013 01:44:39 AM	Outgoing	[REDACTED] 3938	2.20
[REDACTED] 8152	Voice	12/18/2013 02:29:48 AM	Outgoing	[REDACTED] 2462	0.20
[REDACTED] 8152	Voice	12/18/2013 02:30:15 AM	Outgoing	[REDACTED] 2462	0.08
[REDACTED] 8152	Voice	12/18/2013 02:32:57 AM	Outgoing	[REDACTED] 2462	0.23
[REDACTED] 8152	Voice	12/18/2013 02:43:02 AM	Outgoing	[REDACTED] 2462	0.12
[REDACTED] 8152	Voice	12/18/2013 02:43:36 AM	Outgoing	[REDACTED] 2462	0.13
[REDACTED] 8152	Voice	12/18/2013 02:45:09 AM	Outgoing	[REDACTED] 2462	0.07
[REDACTED] 8152	Voice	12/18/2013 02:51:20 AM	Outgoing	[REDACTED] 2462	0.08
[REDACTED] 8152	Voice	12/18/2013 03:04:36 AM	Outgoing	[REDACTED] 2462	0.03
[REDACTED] 8152	Voice	12/18/2013 03:05:55 AM	Outgoing	[REDACTED] 2462	0.15
[REDACTED] 8152	Voice	12/18/2013 03:16:35 AM	Outgoing	[REDACTED] 3175	0.13
[REDACTED] 8152	Voice	12/18/2013 03:17:35 AM	Outgoing	[REDACTED] 3175	4.15
[REDACTED] 8152	Voice	12/18/2013 03:38:14 AM	Outgoing	[REDACTED] 3175	0.03
[REDACTED] 8152	Voice	12/18/2013 03:39:00 AM	Outgoing	[REDACTED] 3175	0.03
[REDACTED] 8152	Voice	12/18/2013 03:39:46 AM	Outgoing	[REDACTED] 3175	0.03
[REDACTED] 8152	Voice	12/18/2013 03:41:05 AM	Outgoing	[REDACTED] 3175	0.03

Text Messages = Pacific Time

3 hours difference

Example: 11:00 PM Pacific Time would be 2:00 AM EST

Phone Calls = Eastern Standard Time

MSISDN	EVENT TYPE	START TIME (T-Mobile Record)	PER RECORDS PACIFIC TIME SMS Converted to EST	DIRECTION	CONNECTED TO	DURATION (Minutes)
[REDACTED] 8152	Voice	12/18/2013 01:35 AM	EST	Incoming	[REDACTED] 2462	4.83
[REDACTED] 8152	Voice	12/18/2013 01:44 AM	EST	Outgoing	[REDACTED] 3938	2.2
[REDACTED] 8152	SMS	12/17/2013 11:21 PM	(12/18/13) 2:21:25 AM	Outgoing	[REDACTED] 2462	0
[REDACTED] 8152	SMS	12/17/2013 11:24 PM	(12/18/13) 2:24:17 AM	Incoming	[REDACTED] 6288	0
[REDACTED] 8152	SMS	12/17/2013 11:27 PM	(12/18/13) 2:27:09 AM	Outgoing	[REDACTED] 6288	0
[REDACTED] 8152	SMS	12/17/2013 11:27 PM	(12/18/13) 2:27:25 AM	Incoming	[REDACTED] 6288	0
[REDACTED] 8152	SMS	12/17/2013 11:28 PM	(12/18/13) 2:28:28 AM	Outgoing	[REDACTED] 6288	0
[REDACTED] 8152	SMS	12/17/2013 11:28 PM	(12/18/13) 2:28:49 AM	Incoming	[REDACTED] 6288	0
[REDACTED] 8152	Voice	12/18/2013 02:29 AM	EST	Outgoing	[REDACTED] 2462	0.2
[REDACTED] 8152	Voice	12/18/2013 02:30 AM	EST	Outgoing	[REDACTED] 2462	0.08
[REDACTED] 8152	Voice	12/18/2013 02:32 AM	EST	Outgoing	[REDACTED] 2462	0.23
[REDACTED] 8152	SMS	12/17/2013 11:34 PM	(12/18/13) 2:34:23 AM	Outgoing	[REDACTED] 6288	0
[REDACTED] 8152	SMS	12/17/2013 11:35 PM	(12/18/13) 2:35:58 AM	Incoming	[REDACTED] 6288	0
[REDACTED] 8152	SMS	12/17/2013 11:40 PM	(12/18/13) 2:40:36 AM	Outgoing	[REDACTED] 6288	0
[REDACTED] 8152	SMS	12/17/2013 11:42 PM	(12/18/13) 2:42:03 AM	Incoming	[REDACTED] 6288	0
[REDACTED] 8152	Voice	12/18/2013 02:43 AM	EST	Outgoing	[REDACTED] 2462	0.12
[REDACTED] 8152	Voice	12/18/2013 02:43 AM	EST	Outgoing	[REDACTED] 2462	0.13
[REDACTED] 8152	Voice	12/18/2013 02:45 AM	EST	Outgoing	[REDACTED] 2462	0.07
[REDACTED] 8152	Voice	12/18/2013 02:51 AM	EST	Outgoing	[REDACTED] 2462	0.08
[REDACTED] 8152	Voice	12/18/2013 03:04 AM	EST	Outgoing	[REDACTED] 2462	0.03
[REDACTED] 8152	Voice	12/18/2013 03:05 AM	EST	Outgoing	[REDACTED] 2462	0.15
[REDACTED] 8152	Voice	12/18/2013 03:16 AM	EST	Outgoing	[REDACTED] 3175	0.13
[REDACTED] 8152	Voice	12/18/2013 03:17 AM	EST	Outgoing	[REDACTED] 3175	4.15
[REDACTED] 8152	Voice	12/18/2013 03:38 AM	EST	Outgoing	[REDACTED] 3175	0.03
[REDACTED] 8152	Voice	12/18/2013 03:39 AM	EST	Outgoing	[REDACTED] 3175	0.03
[REDACTED] 8152	Voice	12/18/2013 03:39 AM	EST	Outgoing	[REDACTED] 3175	0.03
[REDACTED] 8152	Voice	12/18/2013 03:41 AM	EST	Outgoing	[REDACTED] 3175	0.03

• TAMMY MOORER [REDACTED] 3174

INCOMING CALLS FROM TAMMY 0

OUTGOING CALLS TO TAMMY 0

*no calls shown on T-mobile records

COUNTY OF Horry)
STATE VS.)
Sidney Stclair Moorero)
AKA: _____)
Race: _____ Sex: M Age: 41)
DOB: _____ SS#: _____)
Address: _____ Highway 814)
City, State, Zip: Myrtle Beach, SC 29588-9106)
DL#: _____ SID#: _____)

INDICTMENT/CASE#: 2017GS2601320
A/W#: 2017GS2601320
Date of Offense: 12/20/2013
S.C. Code § : 17-25-0030 / Common Law
CDR Code #: 0118

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Obstruction of Justice (0-10 YEARS) (2nd/3rd FINE IN COURT'S DISCRETION)

in violation of § 17-25-0030 / Common Law of the S.C. Code of Laws, bearing CDR Code # 0118
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: _____ SCB75159 _____
Livesay, Nancy SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 345 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ <u>37.50</u>

TOTAL \$ 128.75
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 09/30/2017
\$ _____ paid to Public Defender Fund
Other: _____
 Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Renée N. Elvin
Court Reporter: Natalie Wain
SCCA/217 (07/2016)
Presiding Judge [Signature]
Judge Code: 2060
Sentence Date: 8/30/17

2017 JUDGE 12 PM 3:08
CERTIFIED COPY
CANCELED
CLERK OF COURT
HORRY COUNTY, SC

RENEE N. ELVIN
CLERK OF COURT
HORRY COUNTY, SC

2017 SEP - 1 PM 3:17
CERTIFIED COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

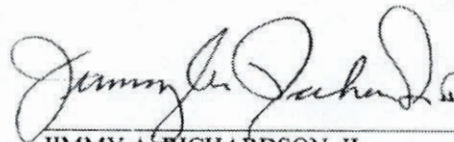
At a Court of General Sessions, convened on March 20, 2014, the Grand Jurors of Horry County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Sidney Stclair Moorer did in Horry County on or about December 18, 2013, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Heather Elvis, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

JAN 10 2014

1964

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Mar 22 2021

SC Court of Appeals

s/Taylor D. Gilliam

Taylor D. Gilliam

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 22nd day of March, 2021.