

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Newberry County

Honorable R. Scott Sprouse, Circuit Court Judge

KENNY OCTAVIOUS RUFF,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001998

APPENDIX

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1 MR. VERNER: I object to my prior request.

2 THE COURT: -- subject to the prior objections on the
3 record, I will allow 43 to come into evidence on behalf of
4 the State.

5 MR. STUMBO: Thank you.

6 (Whereupon, State's Exhibit number 43 was admitted
7 into evidence.)

8 MR. STUMBO: Thank you.

9 Q And if we could publish at this time Captain Goodman
10 reading the statement. I have to look, pull it up on the
11 screen, but you can read it from the actual exhibit that's
12 in your hand. Is that the second page, if you could, just
13 for the jury read the written part of the statement?

14 A It says, I went into the BP store earlier today on
15 8/26/2015 to purchase a pack of Newport short in the box
16 for my father, James Sanders, with a ten dollar bill and
17 got change in return for \$5.00. I then walked down Main
18 Street and decided to see how the store across was since a
19 lot of new stores were built and I haven't been in them.
20 I only said once upon entering and looking at the salon,
21 you have a nice store. And continued to see how the
22 designs were, and then left to go home, back up Main
23 Street and took Copeland Street across the field down and
24 jumped on Turner, the same way we walk our dogs. It's the
25 same way we walk our dogs.

1 Q Okay. And you didn't ask him to write anything, you
2 just said here's the paper, you write a statement on what
3 we talked about?

4 A Yes, sir.

5 Q Okay. And this is all he gave you?

6 A This is all he gave me.

7 Q All right. And while we have the State's 43, I want
8 to jump ahead on this. The next day or on the, I believe
9 on the 28th, were you asked to come over and talk to the
10 Defendant again?

11 A On the 28th --

12 MR. VERNER: Your Honor, subject to my same
13 objections.

14 THE COURT: So noted for the record, Mr. Verner.

15 A On the 28th, I was contacted by Sergeant Gurley, I
16 think that is how you pronounce his name, of the Newberry
17 County Detention Center. He said that I learned that
18 Kenny was requesting to speak to me. So when I had time,
19 I had Kenny transported to the Police Department to see
20 what he wanted to talk about.

21 Q Okay. And at that point, he indicated, did you go
22 and speak with him?

23 A Well, I had him transported to my office.

24 Q Okay. So he was brought back to your office?

25 A He was brought back to the Police Department; yes,

1 sir.

2 Q And you went, I believe, the last page of State's 43
3 is another waiver of rights form?

4 A That's right.

5 Q Okay. And Mr. Ruff did not sign this one, correct?

6 A No, sir; he didn't.

7 Q Okay. But he was advised again of his rights?

8 A He was advised of his rights. The only thing he said
9 was that he, it was so much more to the story than we knew
10 but he didn't want to talk. He didn't sign that. He
11 didn't initial that. He wanted me to call his sister,
12 Angela Ruff and provided me with a phone number. And so I
13 did that. He said that he had told her the story and she
14 would tell me.

15 Q Okay. And Angela is the one who testified yesterday
16 and there was a jail call before that at some point
17 between the Defendant?

18 A Right.

19 Q And the substance of that conversation, we heard a
20 jail call that talks about some of these other people that
21 he claims may have participated, Avelli?

22 A Machiavelli.

23 Q And a Dale, and those names were part of this
24 conversation that you had on the phone with Angela the
25 next day?

1 A That's right.

2 Q On the 28th?

3 A That's right.

4 Q This would have been two days after the incident?

5 A It would have been two days after the incident.

6 Q Now, based on your observations of the Kunkle Oil
7 surveillance video, during the time of the, well, believed
8 the time of this homicide, we talked about two people
9 going in and out, is that correct? Well, that's what was
10 on that video?

11 A Right.

12 Q Okay. You have an individual with a black skull cap
13 go in and come out a few minutes later, correct?

14 A That's right.

15 Q With a white bag in his hand?

16 A He came out with a white bag in his hand.

17 Q And then shortly right after that, you have a fellow
18 pull up on a bike and we've heard from Mr. Galvez this
19 week that that was him going in to get a haircut but
20 nobody came out so he left?

21 A That's right.

22 Q Is there anyone else that you could observe at this
23 time so, were there any multiple parties going into the
24 salon together at any time?

25 A After you see Mr. Galvez leave?

1 Q Right.

2 A No, sir.

3 Q Okay. And the next person that pulls up and goes in
4 is the niece?

5 A That's right.

6 Q And she's the one that finds Mr. Facio deceased,
7 correct?

8 A That's right.

9 Q So at that point, did you believe these other
10 individuals, Villie or Dale, that there was another person
11 that went in as a group that, to maybe do this crime?

12 A No, sir.

13 Q Okay. In other words, you already had physical
14 evidence that said I don't need to look for multiple
15 parties, that only one person went in?

16 A That's right.

17 Q That's a decision y'all made as a team?

18 A That's right.

19 Q Now, before you had received this information on the
20 28th, let's go back to what happened the morning of the
21 27th, which was right after the incident. You were in
22 Columbia at Columbia Mall, correct?

23 A That's right.

24 Q What were the other investigators doing back here in
25 Newberry?

1 A I learned that they were walking the path behind Pike
2 Circle behind the hair salon, that they were walking the
3 path and searching the wooded area over into Heritage
4 Square.

5 Q Okay. And we've already heard from your colleague,
6 Lieutenant Kennedy, who is a uniformed patrol and he was
7 part of that search?

8 A That's right.

9 Q And you've seen pictures of the, what they found in
10 that dumpster, correct?

11 A That's right.

12 Q And at that point in the investigation, you had a
13 person with a white bag putting this in the dumpster, you
14 had stuff out of the salon that was found in that white
15 bag, correct?

16 A That's right.

17 Q So the person that the investigation believed or was,
18 or the description of the person that y'all believed was
19 the perpetrator of this crime was the one in the videos
20 wearing the black shirt and the skull cap, correct?

21 A That's right.

22 Q Now, ultimately, you didn't collect the physical
23 pieces of evidence, the black shirt, and the iPad, and the
24 DVR. That was collected by the guys that were on the
25 scene?

1 A That's right.

2 Q Okay. And they logged this stuff into evidence at
3 that point, correct?

4 A Yes, sir.

5 Q Now, at that time, was there any thought to doing DNA
6 analysis of the clothing that was found, the black shirt
7 out of the bag?

8 A Was there any discussion you say?

9 Q Yes.

10 A I wasn't there at the time of the actual retrieving
11 of the shirt. So I, if there was I wasn't part of that
12 discussion. But, obviously, that would be something that
13 yes, we would obviously do to determine the person that
14 was wearing the shirt.

15 Q And, I believe, that the paperwork indicates that all
16 the swabs and stuff, along with the shirt, was submitted
17 to SLED sometime in September of '15, a few weeks after
18 the incident?

19 A I'd imagine, I guess that is right, yes sir.

20 Q All right. Now, at that time, if they would develop
21 a profile off of this, did they have anything to compare
22 it to off of the black shirt? Did they have another swab
23 or DNA profile to compare the shirt to?

24 A Other than my understanding was some oral swabs taken
25 from José Galvez or something and some of the other, not

1 from anybody that I turned in, no sir.

2 Q Okay. So at that point, there was a sample from Mr.
3 Galvez, correct?

4 A And that's the only one that I'm aware of.

5 Q And then there was an autopsy conducted on the
6 victim, Mr. Facio, and that standard was submitted?

7 A Yes, sir. All that was submitted and all that was
8 done through SLED.

9 Q At that point, in order for you to get a buckle swab
10 or sample from the suspect or Defendant in the case, you
11 got to go through a process and get a court order to do
12 it, correct?

13 A That's right.

14 Q Okay. At some point, and I believe it was more
15 recently during this past year, was a court order obtained
16 to get that sample?

17 A Yes, sir; it was.

18 Q Okay. And were you the one that collected the buckle
19 swab and seal it in a package to send to SLED?

20 A I was.

21 Q Okay. I'm going to hand you what's been marked for
22 ID as State's number 40. Do you recognize the contents of
23 that package?

24 A Yes, sir. This is in the box that contains the
25 buckle swabs that was taken on September the 15th, 2016.

1 Q Okay. And you seal those up with a red packing, with
2 some tape?

3 A Yes, sir.

4 Q Okay. To make sure they were not tampered with?

5 A That's right.

6 Q Okay. And, ultimately, y'all's evidence custodian
7 was who?

8 A Was Ms., at the time back then was a sergeant but she
9 is Lieutenant Moore now.

10 Q Okay. So Sergeant Allison Moore?

11 A That's right.

12 Q And now Lieutenant Moore?

13 A Right.

14 Q She transported this and you logged it in. She took
15 it to SLED for them to develop a DNA standard on the swab.

16 A Right.

17 Q Okay. Thank you. And that was done, what was the
18 date that was conducted on?

19 A September the 15th, 2016 at around 12:29 p.m.

20 Q Okay. So that was this past September when the court
21 order was obtained for you to get this buckle swab from
22 the Defendant?

23 A That's right.

24 Q Okay. And SLED did, ultimately, test the buckle swab
25 and test the shirt and sent back a report to you at the

1 Police Department?

2 A I didn't get that report. I had it come back to the
3 investigator, but it's my understanding that report has
4 come back.

5 Q Okay. So it would have come back to Sergeant Moore
6 who is the evidence custodian?

7 A Lieutenant Moore probably would have gotten that, yes
8 sir. She is the one that took it down and entered it.

9 MR. STUMBO: Beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 MR. STUMBO: No further questions at this time.

12 THE COURT: Okay.

13 MR. STUMBO: If you would please answer any questions
14 Mr. Verner might have.

15 THE COURT: All right. Mr. Verner,
16 cross-examination.

17 CROSS-EXAMINATION

18 By Mr. Verner:

19 Q Investigator, tell me a little bit about Dale Bailey.
20 Do you, are you familiar with Dale Bailey?

21 A I mean, I know of Dale Bailey. When you say tell you
22 a little bit about him, what do you mean, his physical
23 characteristics or what are you--

24 Q Well, we'll start from physical characteristics.
25 Describe, if I didn't know Dale Bailey and you were

1 telling me to go meet him in the parking lot, well, first
2 off, would that be a wise thing to do, for me to meet Dale
3 Bailey in a parking lot?

4 A I don't know that.

5 MR. STUMBO: Your Honor, I think that's asking
6 speculation from Captain Goodman, and an opinion. He's a
7 fact witness. He's asking for an opinion --

8 MR. VERNER: They brought up, they brought him up.

9 MR. STUMBO: -- of Dale Bailey.

10 THE COURT: I mean, I don't have a problem with you
11 questioning him about Dale Bailey, because his name has
12 been mentioned. But ask, the questions need to be more
13 fact-related, so far as, more speculation. We don't want
14 Officer Goodman to have to speculate.

15 MR. VERNER: I understand the Court's ruling.

16 Q How do you know Dale Bailey?

17 A Through law enforcement.

18 Q Through law enforcement, too?

19 A Through law enforcement and I can't remember what I
20 dealt with Dale on but through law enforcement.

21 Q Physically, if you were telling me to meet him,
22 describe Dale Bailey?

23 A Okay. Dale would be a brown-skinned, black male.
24 He's probably six foot four or five, I guess.

25 Q Is he thin or thick?

1 A He's slender-built.

2 Q Okay. Would that be similar to Kenny Ruff's, how you
3 would in general describe Kenny is a tall, thin, black
4 male?

5 A Yes, sir. But Dale is, Dale is taller than Kenny.

6 Q Okay. But they're both tall, thin, roughly the same
7 age?

8 A I don't know how old Dale is.

9 Q Okay.

10 A I don't even know how old Kenny is.

11 Q Okay. But Dale Bailey's not an old man?

12 A No, he's a young man.

13 Q Okay. And he's not a kid?

14 A No.

15 Q Okay. And just so I understand. When you say
16 brown-skinned, are you talking about the shade of his, is
17 he darker-skinned or what do you mean?

18 A He would, he'd be similar and as far as complexion to
19 Kenny.

20 Q Okay.

21 A He has I know some tattoos in his face.

22 Q Okay.

23 A He's very tatty.

24 Q Are you aware of Dale Bailey's reputation in the
25 community?

1 A I am.

2 Q What, about his reputation for violence?

3 A Yes, sir.

4 Q Is he believed to be a violent individual, by
5 reputation?

6 A In the street; yes, sir. He has never shown that to
7 me.

8 Q Okay. But in the street and the community that you
9 patrol, his reputation is as a violent individual?

10 A And that depends on who you talking to.

11 Q Okay.

12 A Some would say yes; some would say no. I guess it
13 depends on who you talking to and what neighborhood.

14 Q Okay. Well, do you know where Dale is currently
15 today?

16 A Today, no.

17 Q Okay.

18 A I don't know where he is, no.

19 Q The day after this murder or the killing, Mr. Ruff
20 suggested through his sister that y'all should be
21 investigating Dale Bailey, is that correct?

22 A That's right.

23 Q But at that time, you made the judgment call that you
24 felt you had enough evidence against Kenny Ruff to go on
25 that route?

1 A Going back to the video of what they tried, there is
2 only one person. There is not three guys --

3 Q Right.

4 A -- that went in that building. I did go back and
5 look at more video that I don't have, I just went in and
6 just say, okay, just whatever, for the sake of doing so
7 went back and looked all the way back to when Mr. Facio
8 first got to work and there is nobody that entered that,
9 there is no times that three guys entered that salon.

10 Q Well, I'm not asking about three guys. I'm asking
11 about just Dale Bailey.

12 A There is only one person.

13 Q You got a single black male, fairly thin-build and
14 tall entering the salon?

15 A That's right.

16 Q Okay. Which used to be a fish store in the past and
17 other things throughout the years?

18 A I remember it being a fish market, a call it a fish
19 market but a place that sold fresh fish. Yes.

20 Q And you remember the niece testifying that, well,
21 when you went in there, did it appear they had recently
22 done, been doing renovations of it or just from your
23 patrol? And I know you're not a patrol officer --

24 A Right.

25 Q -- but when you're still driving, you're on the

1 lookout.

2 A It's a nicely kept salon; yes, sir.

3 Q All right. But it had been in the, fairly recently
4 at that time being renovated?

5 A Everything in there looked, you know, very new, in
6 good shape.

7 Q And you were aware both from Mr. Ruff's statements
8 and from a receipt from Wal-Mart that Mr. Ruff had been in
9 Wal-Mart later that day?

10 A Yes, sir.

11 Q Okay.

12 A I did learn that; yes, sir.

13 Q And you're aware from reviewing the videos that he
14 had been in Brothers Fast Stop earlier in the day?

15 A Yes, sir.

16 Q Okay. It's clear that the outfits that you would see
17 Kenny Ruff in earlier in the day, you've had a chance
18 prior till today and I would assume fairly recently to
19 review the video taken from Leslie's Hair Salon?

20 A Video from Leslie's or video from Kunkle Oil?

21 Q Well, I'm talking about Leslie's, the actual video
22 that was in the Hispanic salon?

23 A Yes.

24 Q Okay. Describe for me what the killer was wearing?
25 Well, no. You cannot see the killing, actually, on the

1 Leslie's video, can you?

2 A Cannot see the actual killing, no.

3 Q Okay. But it's believed the man that you can see
4 walking in the store with a gun is the killer?

5 A That's right.

6 Q Can you tell me again what you remember him wearing?

7 A A black doo-rag, black shirt, jeans, and just off of
8 my recollection because I hadn't seen it but once. I
9 can't remember if you can tell if they are blue jeans or
10 not, but a pair of jeans, and he comes in and raises the
11 gun with his right hand to Mr. Facio.

12 Q Okay. Would you agree with me that it appears to be
13 a black handgun?

14 A It appears to be.

15 Q Okay. And, well, tell me about the shoes?

16 A In the video?

17 Q In the video at Leslie's.

18 A Sir, without seeing it again, Mr. Verner, I've only
19 see that video once. I could not, I don't even know, I
20 couldn't tell you because there was a glare. So, I mean,
21 I can't tell you that I honestly can sit here and testify
22 that I remember what his shoes looked like.

23 Q There are actually two videos from Leslie's, right,
24 one's pointed at the entrance door, and then one's in the
25 back room?

1 A I don't know if there's two videos. It, yes, there
2 is a video of him in the back room, yes.

3 Q Okay. And that's a separate camera angle from the
4 entrance?

5 A That's right. That's a separate camera angle.

6 Q And, but there does appear to be the glare from the
7 glass door where the sun's kind of the, when the man
8 enters, he's silhouetted?

9 A For the most part; yes, sir.

10 Q Okay.

11 A Coming into the door. Not in the back room, it is a
12 little clearer.

13 Q Okay. And the video is in evidence.

14 MR. VERNER: May I approach, Your Honor.

15 THE COURT: You sure can.

16 Q What color did his shoes appear to be?

17 MR. STUMBO: Judge, I don't believe it's in evidence
18 yet. Now, we intend to play it today with one of our
19 witnesses.

20 MR. VERNER: Well, I'm sure it's coming in if it's
21 not in already, Judge.

22 THE COURT: Okay. Well, you know, if it's coming in.
23 I mean --

24 MR. STUMBO: I don't have a problem with playing now
25 if that's what Mr. Verner wants, and then he can ask--

1 MR. VERNER: Well, I'd let him ask him but let me try
2 my case, and then he can try his case.

3 THE COURT: Well, I don't know if he's wanting to
4 really try your case. If it is something that was
5 produced in discovery and furthermore the State intends at
6 some point in time to play the video that the, this
7 photograph was taken from, I don't have a problem with
8 going ahead and allowing Mr. Verner to examine him. And
9 you can certainly get back in redirect as necessary
10 concerning this particular area if you like.

11 MR. STUMBO: Just so it'll be clean, you know, we
12 have obviously no objection to the video and all that
13 coming in.

14 THE COURT: Right.

15 MR. STUMBO: It's here and it's going to be played
16 later.

17 THE COURT: Okay.

18 Q Okay. I'm just asking you to identify this
19 photograph you have.

20 A Right. This will be --

21 Q From Leslie's?

22 A -- a still-shot from Leslie's, yes sir, coming in the
23 door.

24 Q Okay. Can you tell me just from that photograph what
25 color shoes?

1 A Those shoes, looking at it from here would be, I
2 would say white or a light color.

3 Q Okay.

4 A Yes, sir.

5 Q And do they not appear to be Adidas, do you recall
6 them being, what's the Adidas logo like on the side of
7 their shoes?

8 A Oh, geez, I think it's three lines on the side of
9 their shoes.

10 Q Three stripes?

11 A Three stripes.

12 Q Okay. So when you see Adidas or white shoes with the
13 three stripes on it, that's generally you can recognize as
14 an Adidas brand shoe?

15 A It would be indicative of an Adidas brand shoe; yes,
16 sir.

17 Q Okay. Does that not appear to be consistent with
18 what the killer was wearing?

19 A That's consistent with Kunkle Oil video. That image
20 there is consistent with the Kunkle Oil video and later,
21 we had determined it to be Kenny Ruff, yes.

22 Q And you would agree with me that the Adidas brand
23 shoe would be distinctly different than Air Jordan's or
24 the Nike brand shoe?

25 A Oh, definitely. Yes, sir.

1 Q Okay. Just any guy and certainly any officer should
2 be able to look at shoes and almost instantaneously
3 recognize the difference between Nikes and Adidas if it's
4 a clear, relatively clear picture?

5 A You should but they do, Adidas does have a shoe that
6 they don't have the stripes on the side.

7 Q Okay.

8 A But you should be, if you are a sneaker person, there
9 should be a distinct difference.

10 Q Okay. And tell me, again, how you knew Kenny Ruff
11 had been to Wal-Mart?

12 A Well, he told me he went there and I sent an
13 investigator up that confirmed that he did, actually, come
14 into Wal-Mart.

15 Q Okay. And the City Police took custody of the
16 Wal-Mart surveillance videos?

17 A One of the investigator's, I believe.

18 Q And Wal-Mart is pretty good about having multiple
19 cameras and keeping recorded loss prevention type
20 surveillance footage?

21 A Yes, sir; they do do that.

22 Q Okay. Is this still shot, can you identify this
23 still shot?

24 A Can I identify the person in it?

25 Q Well, can you tell me where, tell me what that, what

1 you think that's a picture of.

2 MR. STUMBO: Your Honor, could I see the picture just
3 so I know what we're looking at?

4 THE COURT: Sure.

5 Q Are you able to identify what that appears to be a
6 picture of?

7 A If you gave me this picture and we don't have, we're
8 not having this conversation, Mr. Verner.

9 Q Right.

10 A It is a picture of three people and the first person
11 is holding the baby, a male holding a baby, coming into
12 what looks to be a store, coming through some sliding
13 doors. There's a truck parked in the background, so
14 apparently it's a parking lot. But if you just gave me
15 this picture without us having this conversation, I
16 wouldn't be able to tell you it's Wal-Mart.

17 Q Okay. But you've seen that picture before, haven't
18 you?

19 A No, sir. This is my first time laying eyes on this
20 picture.

21 Q All right. How about the video?

22 A I haven't seen the video.

23 Q Okay. Is that not the video from Wal-Mart that law
24 enforcement took possession of?

25 A I'm going to take notice that you're asking that, so

1 maybe it is, but I haven't seen this video or this still.

2 This is my first time seeing this.

3 Q Can you identify, there is a white couple or a
4 Hispanic couple kind of in the foreground?

5 A That's right.

6 Q And then there is an Africa-American or black man
7 walking in behind them?

8 A That's right.

9 Q Are you able to identify who that man is?

10 A I'm able to identify him; yes, sir.

11 Q Who is that?

12 A That's Kenny Ruff.

13 Q Okay. And it appears, are there timestamped markings
14 on the top of that page?

15 A Yes, sir. It says August, Wednesday, August 26th,
16 2015. I think that's 2:41 p.m.

17 Q Okay. Wal-Mart is in the city limits of Newberry?

18 A Yes, sir; it is.

19 Q Through shoplifting's and other similar charges, law
20 enforcement has a pretty regular dealings with Wal-Mart
21 and loss prevention at Wal-Mart?

22 A Yes, sir; we do.

23 Q Okay. Do you think their timestamps would be, they
24 would have a sophisticated video surveillance system?

25 A Yeah. It's a pretty nice video, surveillance system,

1 yes sir.

2 Q This isn't a mom-and-pop system where they've just
3 got a camera?

4 A No, sir.

5 Q Okay.

6 A It's pretty good.

7 Q So would you, and does it appear to be like a
8 computer-controlled video surveillance system?

9 A Yes, sir.

10 Q Okay.

11 A And I'm trying to remember the computer room, but
12 yes, sir.

13 Q But you would, but the timestamps would be probably
14 computer-controlled?

15 A I would guess. I'm not sure how it works.

16 MR. STUMBO: Your Honor --

17 A I'm not sure.

18 MR. STUMBO: Just again asking him to speculate.
19 Just as to the form of the question.

20 THE COURT: If you know, then you can tell him that
21 you know and respond to the question. If you don't know
22 and you're speculating, then don't.

23 A Well, actually, I'm speculating, because I don't know
24 how that time is kept. I don't know how that system
25 worked. I know it looks--

1 Q But are you familiar with the Wal-Mart video
2 surveillance system, in general, from investigating other
3 cases?

4 A When you say familiar, I know that we get video all
5 the time --

6 Q All the time.

7 A -- and I know that it's pretty good video. But to
8 tell you how that system works and how it's timestamped
9 and all that stuff, I don't know that.

10 Q But you would agree with me it's a sophisticated
11 video system?

12 A It looks to be, it is a lot of stuff back there, so
13 it looks to be pretty complicated to me.

14 Q Okay. And, I believe, you identified for me that
15 that is Kenny Ruff, in your opinion?

16 A In my opinion, it's Kenny Ruff.

17 Q What is he wearing?

18 A That looks like a light-colored shirt with some dark
19 stripes. I'm pretty sure these are blue jeans. And these
20 shoes here looked to be a light color and they, from that
21 design right there, Mr. Verner, it looks like it could
22 very well be a Nike shoe.

23 Q Okay. So you would agree with me he's wearing a
24 light-colored striped shirt, light blue jeans, and
25 probably Nike shoes?

1 A Yeah, that's what they look like to me, but without
2 looking at, you know, the video itself and him walking and
3 stuff.

4 Q And I'm not asking you to vouch for the credibility
5 of the video, but that appears to be timestamped on, at
6 2:00?

7 A Whatever it was, 2:41, maybe.

8 Q 2:41, August 26th?

9 A Yes, sir.

10 Q Okay.

11 MR. VERNER: Your Honor, I would offer as Defendant's
12 5.

13 MR. STUMBO: No objection.

14 THE COURT: Okay. Number 5 into evidence for the
15 Defendant.

16 (Whereupon, Defendant's Exhibit No. 5 was entered
17 into evidence.)

18 MR. VERNER: May I publish, Your Honor?

19 THE COURT: Sure.

20 (Whereupon, Defendant's Exhibit No. 5 was published
21 to the jury.)

22 Q And while we're on that point, Investigator, I
23 believe you told me that y'all had also found a receipt on
24 Kenny or in his possessions from Wal-Mart?

25 A Yes, sir. At some point and time, a receipt was

1 found; yes, sir.

2 Q Okay. And it was also, the transaction was
3 timestamped on the receipt?

4 A That's right. I would imagine, yes sir.

5 Q And, I believe, are you familiar with Adolphus Koon?

6 A Kenny was describing him to me that night, and I
7 believe I know him. If it is the person that I'm thinking
8 it is, I think that's the person that possibly passed away
9 here sometime recently.

10 Q All right. Now, I know you testified you're not
11 particularly familiar with the Wal-Mart video?

12 A That's right. When you say familiar, the system how
13 it works, I'm not familiar with it.

14 Q Well, I mean, in terms of what the actual video from
15 the picture I put in of watching that particular video?

16 A Right. Right.

17 Q Are you familiar with the Brothers Fast Stop?

18 A I am.

19 Q Okay. And those are videos that you would have--

20 A I've looked at, yes.

21 Q Okay. What's already been marked as Defendant's 1,
22 what is that?

23 A This is a picture of the inside of Brothers BP.

24 Q Can you identify the man in the photograph, the still
25 shot?

1 A That's Kenny Ruff, as well.

2 Q And what's Kenny wearing in that picture?

3 A Just a light, maybe a gray or something with white
4 striped t-shirt, I am looking at blue jeans. And, again,
5 it looks like possibly some Nike shoes. I don't know what
6 color that is, light and dark-colored shoes, tennis shoes.

7 Q The same thing. What's in the photograph?

8 A This is, again, the inside of the BP. And it looks
9 to be Kenny Ruff coming in. And with the reflection,
10 again, it looks like a light-colored shirt. You can't
11 hardly see it.

12 Q Okay. What time of day is that?

13 A This is timestamped 3:03 p.m.

14 Q Okay. So you'd agree with me that in fairness you
15 got pictures of Kenny Ruff both before and after the time
16 of the murder, on still-shots at least?

17 A What was the timestamp on, you talking about the
18 first picture you showed me? This right here is 11:51
19 a.m.

20 Q Okay. And that would be before even with the
21 problems with the clock timing, that would still be before
22 what you believe the time of the murder was?

23 A Yes, sir.

24 Q And then certainly 2:30 in the afternoon or 2:40 by
25 Wal-Mart times, and then 3:00 o'clock timestamped would be

1 considered after the time of death?

2 A Yes, sir. That's after.

3 Q So, in fairness, you got at least three different
4 location or photographs of Kenny Ruff in clothes that are
5 different than the killer?

6 A That's right.

7 Q Okay. And, in fact, that would also be different
8 than, have you seen the video of the man dumping the bag
9 in the dumpster?

10 A Briefly; yes, sir.

11 Q Okay.

12 A I've seen that.

13 Q And does that appear to be a still-shot from that
14 video?

15 A Yes, sir.

16 Q That would be a considerably different blue shirt
17 than the photographs?

18 A And from the looks of this one, this shirt has a big
19 white middle part in it.

20 Q Okay. And the shirt you saw Kenny in earlier would
21 have had striped, light striped shirt?

22 A That shirt that is in that picture has a stripe and
23 this right here, I don't know it's, it's hard to tell what
24 else is on it, but it looks like something big and white
25 in the middle there.

1 Q But in fairness, you wouldn't say that the person
2 wearing, that that shirt is the shirt that Kenny was
3 wearing earlier in the day or later in the day from the
4 other photographs?

5 A I'm saying that this shirt right here is not that
6 shirt there.

7 Q Okay.

8 A That you just showed me.

9 THE COURT: Is that picture marked as an exhibit.

10 MR. VERNER: I think the State has it in, but I can
11 mark this one as Defendant's --

12 MR. STUMBO: I think it's 45.

13 MR. VERNER: 45, Your Honor.

14 MR. STUMBO: It's a lot clearer, and I think that
15 one's kind of blurry before that. Do you want to pull up
16 45, Walter, on the screen?

17 THE COURT: If it is 45, then we don't, unless you
18 just want to, I don't see any need to have it marked as
19 Defendant's.

20 MR. VERNER: Well, let me look at 45, Judge.

21 THE COURT: Look on the screen.

22 MR. VERNER: Yeah, it would be a blow-up of 45,
23 Judge, so the larger image.

24 THE COURT: If you want it in, I'll put it in if
25 there's no objection.

1 MR. STUMBO: No objection. No, but I just, the
2 State's introduced already 45 that he was talking about
3 and that's a photograph of it.

4 THE COURT: Okay.

5 Q All right. And just not to belabor the point, but
6 you also took a receipt that was on, where do you recall
7 finding the Wal-Mart receipt?

8 A I did not find that receipt. Again, there were
9 several investigators doing several things. And I'm going
10 to assume that the investigator that got that video from
11 Wal-Mart would have gotten that receipt or if it was found
12 on him I don't know who would have taken it off of him, I
13 didn't.

14 Q Okay. So the receipt was actually, probably printed
15 at point-of-purchase from, at Wal-Mart?

16 A Yes.

17 Q Just does this appear to be a copy of the receipt in
18 the City Police file?

19 A This is in the City Police file and I take it to be--

20 Q I'm just interested in the time that the transaction
21 would have occurred?

22 A Okay. And the time would be on August the 26th, 2015
23 at 14:45, so that's 2:45.

24 Q In the afternoon?

25 A Yes, sir.

1 Q Okay. About an hour after, give or take after the
2 crime?

3 A Hour and fifteen or so, yes sir.

4 Q Okay. I am going to ask you again, Officer, about
5 the, well, let's talk about the clothing first. But you
6 would agree with me that there would only be, law
7 enforcement's theory would have to be that Kenny changed
8 clothes several times that day to appear differently
9 dressed?

10 A Yes, sir.

11 Q Okay. And that's the theory that the law enforcement
12 is going on in this case?

13 A That would explain the different clothing and the
14 times, yes sir.

15 Q The only other theory would be it, would have to be a
16 separate individual who went in to explain the different
17 clothing? It's either Kenny changed clothes that day
18 several times or that's a different individual?

19 A In all those pictures you showed me, those are Kenny
20 in different clothes.

21 Q Okay. But you would agree with me that the only
22 theories right now that would make any sense would be that
23 Kenny Ruff changed clothes several times that day or that
24 that's a separate individual dressed differently?

25 A He changed clothes several times that day; yes, sir.

1 Q Okay. But those are the only two theories that you
2 would agree would make sense given that, given what the
3 man in the video was wearing inside Leslie's?

4 MR. STUMBO: I think it's asked and answered for the
5 third time.

6 MR. VERNER: Well, he's refused really to answer the
7 question.

8 THE COURT: Okay. I think I understand his answer,
9 but go ahead and ask your question again. You've asked it
10 indicating two theories and see if he agrees with one, or
11 two, or none of those theories, okay?

12 MR. VERNER: Okay.

13 THE COURT: Listen very carefully, Officer Goodman,
14 to the question, okay?

15 OFFICER GOODMAN: Yes, sir.

16 Q Now, I think what you're telling us is that you
17 believe the theories that Kenny Ruff changed clothes
18 several times that day?

19 A Right.

20 Q But the only other theory that would make sense is
21 that there was a separate individual who went in, because
22 the man is clearly dressed differently than the pictures
23 you have of Kenny Ruff that we just talked about?

24 A Other theory that a separate man went in where?

25 Q It's somebody in different clothing going in from the

1 photographs we have of Kenny Ruff that you and I talked
2 about.

3 A There is no, if I'm understanding you correctly,
4 there is no second theory to that. The pictures that you
5 showed me are Kenny Ruff, in all those pictures that you
6 just showed me in different clothes.

7 Q Right.

8 A And that's nobody else. That's not a theory. Those
9 pictures that you showed me, that's Kenny Ruff. Now I
10 guess I'm understanding you correctly.

11 Q Okay.

12 THE COURT: Mr. Verner, let me ask you this and I'm
13 certainly not cutting you short to your cross-examination,
14 you take as long as you think is appropriate. If you feel
15 like you're going to go a little while longer on cross? I
16 was going to take a break, because I imagine there's going
17 to be some redirect on behalf of the State.

18 MR. VERNER: Your Honor, I'm down to maybe two or
19 three questions at most.

20 THE COURT: Okay. All right. That's fine.

21 MR. VERNER: So but we can take a break if the Court
22 wants to, but I'll assure the Court I'm at the closing
23 part.

24 THE COURT: I'm not trying to cut your cross short.
25 Again, you go as long as you feel you need to.

1 MR. VERNER: Thank you, Your Honor.

2 Q Tell me, this is Defendant's 4. What do you see in
3 that photograph?

4 A Clothing wise I see, this is Kenny Ruff and he has on
5 what appears to be a doo-rag, a long-sleeve shirt, blue
6 jeans, and multicolored shoes, tennis shoes.

7 Q Are those Adidas?

8 A It's hard for me to determine from this. It's kind
9 of blurred or obscured because, it even looks here, Mr.
10 Verner, that that is a dark, it looks like a red tint on
11 there, there's nothing on there. But I can't tell whether
12 that is an Adidas shoe or not.

13 MR. VERNER: Do you recall what State's Exhibit this
14 one is? He is saying 29, 30 or 31. Mr. Bentley is
15 dubious that that is correct.

16 MR. STUMBO: 29.

17 MR. VERNER: 29 is what the Solicitor is indicating.

18 THE COURT: If you need some time to look for it,
19 then let's go ahead and take a break.

20 MR. VERNER: I don't. No, I'm just going to use my
21 exhibit.

22 THE COURT: Okay.

23 MR. VERNER: It's already in evidence, Judge.

24 THE COURT: Okay. That's fine.

25 Q Okay. Would you characterize that as a wave cap or a

1 doo-rag?

2 A A doo-rag/wave cap; yes, sir.

3 Q Okay. Is it fair to say that doo-rags are typically
4 worn by people who have either wave-style hair or
5 cornrow-type hair to keep them in place?

6 A Yes, sir.

7 Q Okay. What color is that sweater?

8 A It appears to be an olive green.

9 Q Okay. And this appears to be a photograph taken from
10 one of the Brothers Fast Stop camera's?

11 A Yeah. It says Camera 12 here in the corner.

12 Q Those shoes appear to be at least black on top or
13 gray, dark gray or black?

14 A No, that looks red to me. The shoes?

15 Q Yeah.

16 A That looks red to me.

17 Q Well, what about the rest of the tops of the shoes?

18 A I wouldn't say, I couldn't say gray.

19 Q Okay.

20 A It's a light, it's a lighter color.

21 Q Do those appear to be the same shoes that the man in
22 Leslie's was wearing?

23 A Unless this is more black and white, that red tint
24 has thrown me off. So I wouldn't sit here and say that
25 those are the same shoes as the shoes in Leslie's.

1 Q Leslie's appear to be more white shoes?

2 A Well, it doesn't have that big, if you look at that
3 left foot there--

4 Q They appear to be different shoes is, I guess, is my
5 point?

6 A Can I look at those and compare them at the same
7 time?

8 MR. VERNER: Judge, just for the jury, I guess, when
9 they are through with exhibits, if they can just put them
10 on the railing and we'll put them up?

11 THE COURT: Sure, that'll be fine.

12 A Mr. Verner, with the salon being black and white and
13 this being in color, it's kind of hard to fairly compare
14 them. It could be the shoes in both. It could be, I
15 mean, again you are talking about, this is black and
16 white.

17 Q That's not black, you talking about the--

18 A -- black and white.

19 THE COURT: Try not to talk over each other, please.

20 Q The photograph is not black and white but it's, you
21 are saying it is just not--

22 A Right.

23 Q Okay.

24 MR. VERNER: Your Honor, I will publish Defendant's 4
25 again.

1 THE COURT: Okay.

2 (Whereupon, Defendant's Exhibit 4 was published to
3 the jury.)

4 Q All right. And then what is this photograph?

5 A This looks, camera 14 at Brothers BP. It look like
6 it'd be coming from the back side of the building facing
7 Wilson Road gas pumps.

8 MR. STUMBO: Judge, the ones before I know are ones
9 that were in discovery. I just don't recognize this from
10 this timeframe. It's from a different timeframe.

11 THE COURT: Well, let's do this and give y'all a
12 chance to maybe study that just a little bit more. Let's
13 go ahead and take a break, ladies and gentlemen of the
14 jury. And so if you'll go back to your jury room, we'll
15 take a 10 or 15 minute morning break. Again, remind you
16 no discussion among yourselves about this case. We'll get
17 you back out shortly.

18 (Whereupon, the jury was excused from open court for
19 a break.)

20 THE COURT: Give you a few minutes to do whatever you
21 need to do with that particular photograph. Also, Mr.
22 Verner had requested a copy of the search warrant.

23 MR. VERNER: Yes, sir.

24 THE COURT: Be marked as Court's Exhibit number 5, so
25 if we could do that during the break. And, Officer

1 Goodman, you know that you can't talk to anybody about
2 your testimony. You're certainly free to get off the
3 witness stand during this break if you like, but just make
4 sure you don't talk with anybody about your testimony,
5 okay?

6 (Whereupon, Court's Exhibit 5 was marked for
7 identification only.)

8 MR. GOODMAN: Yes, sir.

9 THE COURT: Thank you.

10 (Whereupon, a break was taken.)

11 THE COURT: Is that coming into evidence?

12 MR. VERNER: It is, Your Honor.

13 THE COURT: So that would be number 6 for the
14 defense?

15 MR. VERNER: Yes, sir.

16 (Whereupon, Defendant's Exhibit 6 was admitted into
17 evidence.)

18 THE COURT: And is the plan for you to finish your
19 cross and then Officer Goodman will step down so we can
20 call the next witness, Solicitor?

21 MR. STUMBO: Yes, sir.

22 THE COURT: Let's bring the jury out, Madam Bailiff.

23 (Whereupon, the jury came into open court at
24 approximately 11:19 a.m.)

25 THE COURT: Let the record reflect the jury is back

1 in. Ladies and gentlemen, just to kind of give you a
2 little heads-up. Once Mr. Verner finishes his
3 cross-examination of Officer Goodman, Officer Goodman is
4 going to step down so the State can call Dr. Ross to the
5 stand, so she can testify, and then she can leave the
6 courthouse. And then I think the State intends to then
7 put Officer Goodman back on the stand for any redirect
8 examination, and then certainly any re-cross that Mr.
9 Verner would have. So kind of take the witnesses out of
10 order. That's not uncommon at all just because of
11 scheduling purposes. So, Mr. Verner, you want to conclude
12 your cross-examination?

13 MR. VERNER: Thank you, Your Honor.

14 CONTINUE CROSS-EXAMINATION

15 Q Tell me what number 6 still shot depicts?

16 A This looks like camera 14 angle from Brothers BP. It
17 shows the gas pumps facing, facing towards Main Street.

18 Q Okay. And what's the timestamp on that?

19 A This is August 26th, 2015 at 12:46 p.m.

20 Q Okay. And is there an individual depicted in that
21 photograph?

22 A Yes, sir. It's the back of one individual.

23 Q Describe what he is wearing?

24 A In this picture it looks like a dark-colored doo-rag.
25 It looks like a black shirt, blue jeans, and possibly some

1 white tennis shoes.

2 Q Can you describe the black shirt we're talking about
3 in just a little bit more detail? Is it a long-sleeve or
4 short-sleeve shirt?

5 A The way it is blousing out here, it could be, it's
6 hard to tell at this angle because it's kind of obscured.

7 Q It's blousing out at the elbow?

8 A It is black, it could be a short-sleeve shirt.

9 Q It appears to be blousing out or getting wider at the
10 elbow?

11 A On this end, it's wider, then it kind of cuts in like
12 it could be a short-sleeve shirt; yes, sir.

13 Q And, typically, long-sleeve shirts are a little bit
14 closer to your arms than that?

15 A Well, you wouldn't see that, you see what I am
16 talking about, that little dip from there to there.

17 Q And you can see his left arm, too, can't you?

18 A It appears to be his left arm, you know, without it
19 being anything right there, I'd have to, and some things
20 are hard. Once you look at the video, you can kind of see
21 that stuff, still shots.

22 Q Does it appear be kind of a lighter colored doo-rag
23 than the shirt?

24 A Yes, sir; it does.

25 Q Okay. And, again, this is 12:45 according to

1 Brothers time?

2 A 12:46.

3 Q Okay. And you spoke to Shawarrior Simms, didn't you?

4 A I did.

5 Q And she indicated that she testified that she saw
6 Kenny Ruff at about 12:45 or a little bit before that
7 because she was going to the dentist?

8 A I think that's right, if I can find my notes.

9 Q And she told you he had a dark shirt, a black shirt?

10 A If I can refer to her statement.

11 Q What about what she did, what did she mention about
12 him wearing a doo-rag or a wave cap?

13 A Without looking at her statement. At some point, she
14 told me he had on a white striped shirt. She talked about
15 the 12:45 and I don't know what color shirt, I can't
16 remember exactly what color shirt she said he had on at
17 that point.

18 Q Were you in court when she testified earlier?

19 A I was, but I can't remember what she--

20 Q -- you don't recall her saying he was wearing a light
21 striped shirt when she picked up the fare?

22 A That could have been right.

23 MR. STUMBO: Judge, just a general question, Your
24 Honor, pitting the witness.

25 THE COURT: I sustain the objection. You can't pit

1 one witness against another.

2 MR. VERNER: But and the only exception is, Your
3 Honor, she gave a statement that he testified that he had
4 spoken to her prior to her testimony in court.

5 THE COURT: All right, sir. Are you asking him about
6 her prior statement and not her testimony?

7 MR. VERNER: Well, and maybe I was blurring the lines
8 between them.

9 Q But she gave a statement to you, Investigator, that
10 she had seen Kenny Ruff at about 12:45?

11 THE COURT: All right. Let me just stop you. Was
12 that statement brought out in her testimony.

13 MR. STUMBO: Well, no, because can't put a written
14 statement in, Your Honor. We put in her live testimony.
15 So, I would object.

16 THE COURT: Okay. I'm going to deny, I don't know if
17 there was necessarily a formal objection by the State.
18 But I will sustain that and not allow you to ask this
19 witness about a prior witness' statement made out of court
20 that was not put into evidence. Now, if you want to
21 proffer it, I will excuse the jury, but I'm not going to
22 allow you to get into that statement.

23 MR. VERNER: Okay. If I can ask the investigator to
24 step down.

25 THE COURT: Sure.

1 Q Investigator, you reviewed several of the, all of
2 these camera angles from Brothers Fast Stop?

3 A I looked at a bunch of them; yes, sir.

4 Q Hold on just a minute. Are those long-sleeve shirt
5 or short-sleeve shirt?

6 A That appears to be a short-sleeve shirt and carrying
7 something in his hand.

8 Q Okay. But do you know who that man is?

9 A I, no, I can't tell from this angle. The only way I
10 can identify anybody from that was to take another angle,
11 another camera shot at the same time.

12 Q Okay.

13 A With blue jeans, black shirt, color, different color,
14 a dark color cap and and white tennis shoes.

15 Q But it appears Brothers has at least 14 cameras in
16 operation?

17 A Apparently; yes, sir.

18 MR. VERNER: Okay. You can roll forward a little
19 bit, Mr. Bentley. All right. Thank you, sir. Your
20 Honor, at this point, I'd turn over my time to the State.

21 THE COURT: Okay. All right. Officer Goodman, if
22 you would just have a seat back at the Counsel table.

23 MR. STUMBO: Thank you, Your Honor. The State calls
24 Dr. Janice Ross.

25 THE COURT: Come around, Dr. Ross.

1 JANICE ROSS, being
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 By Mr. Stumbo:

5 Q Good morning, Dr. Ross.

6 A Good morning.

7 Q You are a pathologist here in Newberry?

8 A Yes.

9 Q And, currently, your office is kind of across Wilson
10 Road and the highway from the hospital, correct?

11 A That is correct.

12 Q And how long have you been a pathologist?

13 A Forty years.

14 Q Okay. And will you tell the jury briefly a summary
15 of your education, experience, certifications to be a
16 pathologist here in South Carolina?

17 A Yes. I had received my Bachelor's Degree from the
18 University of South Carolina, grew up in Columbia. And I
19 got my M.D., my Doctor of Medicine from Upstate Medical
20 Center in Syracuse, New York, where I did further training
21 in the field of pathology. Pathology as opposed to being
22 a surgeon or a pediatrician, a pathologist is trained to
23 identify cancers and different diseases and learn how to
24 diagnose those using a microscope and using the laboratory
25 in a hospital. A forensic pathologist is what I am. We

1 learn how to do autopsies. As a general pathologist, a
2 forensic pathologist does a more detailed autopsy in that
3 we are there to document injuries, identify injuries,
4 patterns of gunshot wounds or whatever to formulate a
5 cause of death and a manner of death. I am Board
6 Certified in three areas of pathology. The hospital
7 pathology and the forensic pathology. We do autopsies for
8 the coroners of the State. About a third of the State of
9 South Carolina and I do hospital pathology. Also, I've
10 done over 11,000 autopsies and have testified in court as
11 an expert witness in South Carolina over 200 times.

12 Q Okay. And you said over a third of the counties of
13 the State, those coroners ask you to do the autopsies?

14 A That's correct.

15 Q Okay. So Newberry is somewhat of a, just for the
16 jury, Newberry's kind of a hub where a lot of the counties
17 ask you to be their pathologist and conduct these
18 autopsies?

19 A Yes.

20 Q And you said you testified over 200 times in the
21 courts of this State as an expert?

22 A That is correct.

23 Q Okay. And that's an expert in the fields of
24 pathology, forensic pathology?

25 A Yes.

1 MR. STUMBO: Okay. Your Honor, at this time, we
2 would ask that Dr. Ross be qualified as an expert in the
3 field of pathology and forensic pathology.

4 THE COURT: Mr. Verner, any examination of Dr. Ross
5 as it relates to qualifications?

6 MR. VERNER: Just very briefly, Your Honor.

7 CROSS-EXAMINATION

8 By Mr. Verner:

9 Q The fact that coroners refer cases to you, most
10 coroners are not medical doctors, right?

11 A That is correct.

12 Q A coroner is an elected position?

13 A Yes.

14 Q Okay. So it's not doctors, other doctors referring
15 to you for your specialty, it's the elected, usually
16 non-medical people asking for their autopsy and the
17 medical opinions?

18 A That's correct.

19 Q Okay.

20 MR. VERNER: And she's qualified as an expert in both
21 areas, Your Honor.

22 THE COURT: Okay. I do find Dr. Ross to be qualified
23 in the areas of pathology and forensic pathology. Ladies
24 and gentlemen of jury, let me just explain to you just
25 very briefly and I'll do this again later on in the case.

1 But, oftentimes, when someone has, because of training,
2 education, experience in a particular area or field is
3 qualified as an expert in that field and therefore
4 entitled to offer certain opinions in the case, whereas
5 lay witnesses typically are not allowed to give opinions.
6 They can testify as to, you know, what they saw, what they
7 heard, what they did, but expert witnesses are given the
8 right to offer opinions in their particular field. So
9 since I have found Dr. Ross to be an expert in the area of
10 pathology and forensic pathology, then she's going to be
11 entitled to render certain opinions in this case, whatever
12 those opinions may be. Now, just because Dr. Ross has
13 been found by this Court to be an expert, it's totally up
14 to you as the fact-finders in this case to give whatever
15 weight or value that you believe Dr. Ross' testimony
16 deserves. That's totally up to you. Okay. All right.
17 Solicitor, you may proceed.

18 MR. STUMBO: Thank you, Your Honor.

19 Q Now, Dr. Ross, did you have occasion to perform a
20 forensic autopsy on a victim by the name of Roberto Facio
21 Ledesma on August 27th, 2015?

22 A Yes, I did.

23 Q Okay. And as part of an autopsy, you document those,
24 correct?

25 A Correct.

1 Q You take pictures of the work that you're doing --

2 MR. VERNER: Your Honor, I guess, respectfully and
3 because it's been ongoing and it's mildly leading, but
4 it's continuously leading witnesses and I object to that.

5 THE COURT: Okay.

6 Q Tell the jury, please, about how you conduct an
7 autopsy, Dr. Ross.

8 A Yes. The patient is brought to us in the morgue. In
9 this case it is from Newberry. It is placed in the morgue
10 at Newberry County Memorial Hospital. That's where we do
11 our autopsies. It's in a locked body bag. We take
12 photographs of the exterior of the body bag. We open it
13 and take photographs of the body as it arrives to us. In
14 this case, he was dressed so we identified and we wrote
15 down all of the clothing that was on him. Then we take
16 all the clothing off and take pictures externally to look
17 at, look for any kind of injuries. In this case we saw
18 evidence of a gunshot wound to the head. So we did x-rays
19 to identify if there was still a bullet in the head or a
20 piece of the metal that we could collect for documentation
21 and to assist the court of law.

22 Q Okay. And Mr. Facio, you did examine his body,
23 pulled it out of the body bag and examined it?

24 A Yes.

25 Q And did you find any fatal wounds of note?

1 A We found a gunshot wound to the head, yes.

2 Q Okay. And where was the wound to the head, entrance
3 wound?

4 A The wound on the head, the entrance wound was above
5 and behind the left ear. We measured it from the top of
6 the head. It was two inches from the top of the head and
7 four inches from the middle of the back of the head. By
8 x-ray, we could see that the bullet had fragmented, but
9 the path of the bullet was going from left to right, from
10 back to front and downward. So it was going from the left
11 back of the head down towards the middle of the base of
12 the skull.

13 Q Okay. And there was no exit wound for the bullet,
14 correct?

15 A Correct.

16 Q Were you able to find the projectiles inside of his
17 head?

18 A We just had collected fragments of the bullet and
19 sent those to SLED for examination.

20 Q All right. I'm going to show you State's 62 and 63.
21 Do you recognize those photographs?

22 A Yes. 62 is the photograph from the autopsy of the
23 entrance wound in the back of the head after we shaved the
24 hair around it. And number 63 is the photograph of the
25 x-ray that we took of the head.

1 Q Okay. If we could pull up 62 first, and then 63
2 next. And these are fair and accurate depictions of those
3 pictures?

4 A Yes.

5 MR. STUMBO: We could offer 62 and 63 into evidence.

6 THE COURT: Okay. Now, according to my notes, 63 has
7 already been put into evidence by agreement. So I've got
8 63 through 68 into evidence according to my notes.

9 MR. STUMBO: Okay. And 62 is not?

10 THE COURT: 62, I don't have 62 on my notes.

11 MR. STUMBO: Okay. We would offer that at this time.

12 MR. VERNER: Well, I guess the spirit of it is, Your
13 Honor, 62 and 63 shouldn't have been in prior to now but
14 they now are without objection regardless.

15 THE COURT: Okay. All right. Very good. 62 and 63
16 into evidence for the State.

17 MR. STUMBO: Thank you, Your Honor.

18 (Whereupon, State's Exhibits 62 and 63 are admitted
19 into evidence.)

20 MR. STUMBO: If we could pull those up and if you
21 could step down. Just keep your voice up, Dr. Ross.

22 Q Now, this is State's 62 which we're looking at. What
23 is this?

24 A This is the head on the patient. This is the
25 entrance wound. You can see where the left ear is and the

1 top of the head is right here.

2 Q Okay. And it appears, does it appear as if the skin
3 had kind of come back over it and maybe had covered it?

4 A It's hard to look and see the exact. The hole is
5 there and surrounded by abrasion which is, as the blood
6 goes through the skin, it pushes the skin in and it
7 abrades the surface of the skin. So it causes a darkening
8 of that area, plus there's some lead and white, what we
9 call lead white of the bullet that causes some black area.
10 I don't see any evidence of soot or powder. So I can't
11 say, but the entrance wound was covered by hair, so I
12 can't really say exactly the range of the wound.

13 Q You don't know exactly how close the gun was from his
14 head at the time of the shot, is that what you are saying?

15 A Correct. The range of the wound indicate, means how
16 far the gun muzzle was from the skin.

17 Q Okay. It would be consistent, though, with someone
18 standing kind of behind and to the left of the subject or
19 of the victim, correct?

20 A Yes. Bullets go straight, so all I can say is the
21 direction of the bullet.

22 Q And did it have an angle and could you tell if it was
23 a downward angle, an upward angle, anything like that?

24 A Yeah. If you're standing straight and your head, the
25 bullet is going from left to right, from top to bottom,

1 going downward and towards, and towards the front.

2 Q Okay. We're going to go to 63 now, Dr. Ross. This
3 is the, you said, x-ray photograph. Is there anything
4 significant here, as to the, maybe the angle of the bullet
5 trajectory?

6 A It's hard to see exactly, because the bullet
7 fragmented. But this would be the entrance, this is
8 actually from front to back. So this is the left side.
9 You can see the marker where, on the right side of the
10 head. This would be the entrance wound and you can see
11 little fragments of bullet going downward.

12 Q Okay. It'd be consistent with a downward angle?

13 A Yes.

14 Q And not yet in evidence, number 60, but it's marked
15 for ID at this point. Do you recognize this packet?

16 A Yes. These are the bullet fragments from the
17 autopsy. And we seal and sign and send it to SLED for
18 evidence.

19 Q Okay. And as they are, well, you say fragments,
20 smaller pieces of metal, is that what you're referring to?

21 A Correct.

22 Q Okay.

23 MR. STUMBO: All right. Your Honor, we would offer
24 State's 60 into evidence.

25 THE COURT: 60?

1 MR. STUMBO: Yes, sir.

2 MR. VERNER: Without objection, Your Honor.

3 THE COURT: All right. 60 into evidence for the
4 State.

5 (Whereupon, State's Exhibit 60 was admitted into
6 evidence.)

7 Q And, Dr. Ross, you were asked to do an autopsy.
8 Ultimately, you have to offer a cause and hope to have a
9 manner of death. Will you explain cause and manner to the
10 jury?

11 A Yes. The cause of the death is just what it says,
12 how the person died. The manner of death, there are five
13 of them. And the manner of death means how that cause of
14 death came about. So whether it is a natural death, like
15 a heart attack, an accidental death, homicide, suicide, or
16 undetermined.

17 Q Okay. And you did issue a report in this autopsy of
18 Mr. Facio?

19 A Yes.

20 Q Okay. And I hand you what's been marked for ID as
21 State's 5. Is that your report, Dr. Ross?

22 A Yes, it is.

23 Q Okay. And it's a fair and accurate copy of your
24 report that you issued in this case?

25 A Yes.

1 MR. STUMBO: Your Honor, we'd offer State's 5 into
2 evidence?

3 MR. VERNER: And may I see it? Your Honor, I would
4 object to the report. I think the coroner, I mean, the
5 medical examiner can testify about the contents of it.

6 MR. STUMBO: Judge, if it will expedite things I can
7 just move on with the questions.

8 THE COURT: All right. Are you withdrawing your
9 offer of the number 5, the autopsy report into evidence,
10 you withdraw that?

11 MR. STUMBO: Your Honor, she can testify to what's in
12 the report.

13 THE COURT: Okay. That's fine. That's fine.

14 Q Dr. Ross, do you have a cause of death in this case?

15 A Yes. It'd be laceration of the brain due to a
16 gunshot wound to the head.

17 Q Okay. Single gunshot wound to the head?

18 A Correct.

19 Q Okay. And manner of death?

20 A Would be homicide.

21 Q Okay. And no doubt in your mind that that bullet is
22 what killed Mr. Facio?

23 A Correct.

24 MR. SCOTT: That is all.

25 THE COURT: Mr. Verner, any cross-examination of Dr.

1 Ross?

2 CROSS-EXAMINATION

3 By Mr. Verner:

4 Q Doctor, what time did you perform, just one more time
5 to remind me, did you perform the autopsy of Mr. Facio?

6 A August 27th, 2015, we started at 9:00 a.m.

7 Q Okay. Were you able to come up with a time of death
8 for Mr. Facio?

9 A No.

10 Q Okay.

11 MR. VERNER: Thank you, Your Honor.

12 MR. STUMBO: Judge, I don't have any recross, but I
13 was just reminded. I don't think there was any objection,
14 I think she has testified to what's in this.

15 MR. VERNER: It's in evidence, Judge.

16 THE COURT: Okay. All right. That's based upon my
17 notes as well. So 5 will be into evidence. All right.
18 Any redirect?

19 MR. STUMBO: No redirect, Your Honor, and we would
20 ask that Dr. Ross be released to go to Lexington.

21 THE COURT: Okay. All right. Dr. Ross, thank you,
22 and you are free to leave the courthouse.

23 (Whereupon, State's Exhibit 5 was admitted into
24 evidence.)

25 THE COURT: Okay. We are back with Officer Goodman

1 and the State, do you have any redirect?

2 MR. STUMBO: I do, Your Honor.

3 THE COURT: Okay.

4 REDIRECT EXAMINATION

5 By Mr. Stumbo:

6 Q Captain Goodman, Mr. Verner asked a series of
7 questions about an individual named Dale Bailey. Dale
8 Bailey is fairly well-known in Newberry, right?

9 A Yes, sir; he is.

10 Q Is there any evidence in this case of identification
11 that you have from anyone when y'all were gathering
12 evidence that Dale Bailey was in and around Leslie's Hair
13 Salon that day?

14 A No, sir. Not anything. No video or anything that I
15 saw Dale be anywhere around.

16 Q Okay. No one identified Dale Bailey as being in the
17 area of Leslie's Hair Salon?

18 A No, sir.

19 Q Okay. But you did have other people identifying
20 Kenny Ruff being in the area?

21 A Yes.

22 Q Now, how about this, Velli, that the name that was
23 thrown out Velli, do y'all know who that was?

24 A I have no idea to this day who that is.

25 Q Okay.

1 MR. STUMBO: If we could go, Mr. Bentley, to State's
2 53, let's go with 53 first.

3 Q And I'm going to hand you State's 53, so you don't
4 have to step down. There was an individual shown, and
5 this is the Kunkle Oil video of the person, ultimately,
6 was videoed, walks into the salon, correct?

7 A Correct.

8 Q Now, the person in this video has a dark long-sleeved
9 shirt on, correct?

10 A That's correct.

11 Q Okay. And just for the video from Brothers BP, the
12 section earlier that Mr. Verner showed, 12:45 which is,
13 that's about a 45 minute difference from this picture or
14 of some amount of time? That individual appears to have
15 some kind of maybe short-sleeved black shirt that blouses
16 out, correct?

17 A That's correct.

18 Q Okay. But that individual from the Brothers BP
19 appears to have a different color shirt than the person
20 that's actually walking into Leslie's, right?

21 A Right.

22 Q Okay. I just wanted to clear that up. So if your
23 suspect in this case was an individual that had, you
24 believe, had a long-sleeved dark shirt on, correct?

25 A That's right.

1 Q I show you what's in as State's 37. And this was the
2 shirt taken out of the white bag in the dumpster, correct?

3 A That's right.

4 Q And it has the iPad that belonged to the victim,
5 correct?

6 A That's right.

7 Q And is this is a long-sleeve or a short-sleeve shirt?

8 A It is a long-sleeve black shirt.

9 Q Okay. Thank you.

10 A Okay.

11 Q So based on evidence that was found in this Kunkle
12 video showing the front of the store when the incident
13 occurred, you're looking for an individual with a
14 long-sleeve shirt?

15 A That's right.

16 Q So an individual with a short-sleeve black shirt from
17 earlier sometime at Brothers BP would not, in your mind,
18 be a suspect in this case?

19 A Immediately; no, sir.

20 Q Okay. Thank you.

21 MR. STUMBO: Beg the Court's indulgence, Your Honor.

22 THE COURT: Sure. Take your time.

23 MR. STUMBO: No further questions at this time.

24 THE COURT: Any recross.

25 RECROSS-EXAMINATION

1 By Mr. Verner:

2 Q So are you saying the man with the short-sleeve black
3 shirt is not connected to the murder; that's just someone
4 else coincidentally in the neighborhood around the time?

5 A I'm saying we were looking for someone at the store
6 in a long-sleeve shirt, dark-colored shirt, a black shirt.

7 Q And it would appear that the man that we saw walking
8 at the gas pumps at 12:45 is dressed similarly, but
9 inconsistently with the killer?

10 A He had on a short-sleeve shirt which was
11 inconsistent.

12 Q Would you, that being the biggest inconsistency?

13 A Right.

14 Q Okay. Thank you, Investigator.

15 THE COURT: Thank you, sir. You can step down.

16 MR. SCOTT: Your Honor, the State calls Jennifer
17 Nates.

18 JENNIFER NATES, being
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 By Mr. Scott:

22 Q Jennifer or Ms. Nates, rather, where are you
23 employed?

24 A I'm employed by the South Carolina Law Enforcement
25 Division in the Trace Evidence.

1 Q What does that mean; what is Trace Evidence?

2 A Trace Evidence is one of the departments in the
3 Forensic Laboratory in the Trace Evidence section. We
4 analyze several different types of evidence. We analyze
5 paint from hit-and-runs, explosives, fire debris, gunshot
6 residue, tape, bank dialysis and any other miscellaneous
7 cases that don't fit into a specific category.

8 Q Gunshot residue; could you further explain that?

9 A Gunshot residue is a term that's used in the
10 scientific community to describe the residue that is
11 produced when a firearm is discharged.

12 Q Okay. Have you, I don't know, I know it's probably a
13 lot, but how many times do you think you've had occasion
14 to test items for gunshot residue?

15 A In excess of a thousand cases.

16 Q Okay. Ever testified to gunshot residue results in
17 court?

18 A I have.

19 Q In courts of General Session?

20 A Yes, sir.

21 Q And approximately how many times?

22 A I have testified, this will be my 105th testimony,
23 and somewhere between 50 and 70 are in gunshot residue
24 analysis.

25 MR. SCOTT: Okay. Judge, I think at this moment, we

1 can go ahead and offer Ms. Nates as a expert in the
2 analysis of gunshot residue.

3 THE COURT: Okay. Mr. Verner, any questions
4 concerning qualifications or do you have any objections to
5 the State's request?

6 CROSS-EXAMINATION

7 By Mr. Verner:

8 Q Ms. Nates, if you did go into it, and tell me your
9 last name again?

10 A Nates, with an N as in Nancy, A-T-E-S.

11 Q Okay. I don't recall if the Solicitor ask you some
12 questions about where you went to school. Where did you
13 go to college?

14 A I graduated from the California University of
15 Pennsylvania.

16 Q Okay.

17 A It is a state school in Pennsylvania. With a
18 Bachelor of Science in Chemistry.

19 Q But it's called California?

20 A It's in a town called California, but it's California
21 University of Pennsylvania.

22 Q Okay. And what was your degree in?

23 A Chemistry.

24 Q Do you have any training or secondary school at
25 graduate level degrees?

1 A I do not, sir.

2 Q Okay. So and you're employed by whom?

3 A I'm employed by the South Carolina Law Enforcement
4 Division.

5 Q And is a test for gunshot residue a chemical test?

6 A It is a, it used to be a combination of a chemical
7 test and a microscopic test. At this point, it is a
8 microscopic test.

9 Q So it wouldn't involve chemistry per se?

10 A It involves chemistry for the operation of the
11 instrument and --

12 Q Well, that's not --

13 A Excuse me?

14 Q You can finish.

15 A For the operation of the instrument which is a
16 scanning electro microscope and with an EDX detector which
17 detects elements.

18 Q Okay.

19 A So it does involve chemistry in the detection of the
20 elements and what elements are present.

21 Q Okay. And then it might involve some instruments
22 that you use in chemistry?

23 A Yes.

24 Q And how long have you been trained or have been
25 testifying in the area of gunshot residue?

1 A I've been at SLED for 20 years, and I have been
2 working in Trace Evidence for 19.

3 MR. VERNER: Okay. Your Honor, I'm not going to
4 consent, but I'll just let the Court rule on it.

5 THE COURT: Okay. All right. I will find Agent
6 Nates as an expert in the area of the analysis of gunshot
7 residue.

8 DIRECT EXAMINATION

9 By Mr. Scott:

10 Q Ms. Nates, in this particular case of the State v.
11 Kenny Ruff, have you been provided a sample and been
12 requested to test it for gunshot residue?

13 A I was.

14 Q Okay. Do you know when that sample was received by
15 your office?

16 A It was received prior, and then came back into the
17 office. I received it on, I believe, it was January 6th
18 is when I received the evidence for analysis.

19 Q Okay. Of 2016?

20 A 2016.

21 Q And what is the description of the item that was sent
22 for analysis?

23 A The item that was sent for analysis were particle
24 lifts collected from one black, long-sleeve thermal shirt.

25 Q Okay. Okay. And then let me show you State's number

1 38. Do you recognize what that is?

2 A I do. This is the packaging, but a lot of our
3 evidence will be submitted to laboratory in either a box,
4 a manila envelope, or what we call adhesive pouch. It has
5 the lab number and container number. Each item of
6 evidence or each case is given a unique lab number. So
7 every item of evidence submitted in this case is submitted
8 under this lab number. It will also have a container
9 number so we can track where it's located. If we have
10 five boxes of evidence, we have to give each one a unique
11 identification. So this is the envelope that I received
12 and then resealed after my analysis containing item 47.1.

13 Q Okay. And, again, the description of it is what, was
14 it a cutting or a swab from the black thermal shirt?

15 A It was neither. They were particle lifts that were
16 collected from the black thermal shirt.

17 Q Okay. Did you do the initial collection?

18 A I did not do the initial collection of the particles.

19 Q Okay. But then you analyzed the particles that were
20 retrieved from the shirt?

21 A I performed the analysis on each particle lift and
22 determine what particles were present on the samples that
23 were collected from the shirt.

24 Q Okay. Let me see how to ask this. Is there a, with
25 this piece of evidence, are you able to identify it

1 through the packaging?

2 A This is a paper bag, obviously, that had evidence
3 tape on it containing butcher paper with a shirt. On the
4 outside, the lab number is written with a date and the
5 initials of the original analyst who received this
6 evidence. And then also on each item of evidence, if
7 possible, we will try to identify that item of evidence
8 with our initials. In this case, they are not my initials
9 on the shirt, but you can vaguely see the lab number near
10 this tag with initials and that number.

11 Q Okay. Is that lab number, does it coincide with the
12 lab number of the GSR samples you collected?

13 A It does.

14 Q Okay. So when you describe the black long-sleeve
15 thermal shirt that you collected samples from and then
16 later tested for gunshot residue, we're talking about
17 this?

18 A That was the shirt that was labeled for that item
19 number for the collection of the particle lifts.

20 Q Okay. State's number 37 is what you tested. Okay.
21 Does it, I don't know if it's described where the lifts
22 came from, from State's number 37?

23 A It is. Whenever we collect particle lifts off of
24 clothing for gunshot residue, there are specific areas we
25 concentrate on.

1 Q Okay.

2 A In this case, the samples were collected from the
3 right front cuff.

4 Q Okay. And like I try to tell my boy, put the tag in
5 the back when you're putting the shirt on. So if the tag
6 is in the back, this would be the right --

7 A Yes.

8 Q -- sleeve?

9 A That would be.

10 Q Okay. And so you pulled the sample from where?

11 A From the right cuff area.

12 Q Okay. So down here?

13 A Yes. On the front. And the other sample would have
14 been collected from the back.

15 Q Okay.

16 A Of the same area.

17 Q And so front and back of the right cuff. I guess,
18 you're just assuming that it's a right-hand person or do
19 you do the left hand?

20 A We do it from both areas. But we take samples from
21 where, what we're collecting for is to see if the person
22 was in the vicinity to the discharge of a firearm or if
23 they fired a weapon. So we want to collect areas from the
24 clothing that would be the closest proximity to a weapon
25 when it's fired. Usually, people fire weapons with their

1 hands, so the sleeves would be the closest area to the
2 hands at the time the weapon would be discharged.

3 Q Okay. I get it. It wouldn't make sense to collect
4 from the upper back of the shirt, would it?

5 A Sometimes you can, if you have a situation where
6 someone shot over their shoulder or if you have some other
7 information that the common procedure is to collect from
8 the right front cuff, the back cuff, and the forearm area
9 on each sleeve.

10 Q Okay. All right. This was tested at one point by
11 another analyst, but then you have recently retested it,
12 is that accurate?

13 A That is accurate.

14 Q Okay. And were you able to gather some results?

15 A I was.

16 Q Let me show you State's number 4. What is that?

17 A This appears to be a copy of a report that I issued
18 upon completion of my examination.

19 Q Okay. Aside from that, that shirt, were there other
20 samples from other individuals that were collected
21 according to that report?

22 A There were. They were not resubmitted for analyses.

23 Q Okay. But what were the results on the other?

24 A There was a gunshot residue kit from Roberto Facio.

25 Q Is that, is he listed, Roberto Facio, as the victim

1 in this case? Do you even distinguish in your report who
2 that is?

3 A He is listed on the information that is provided to
4 us on the log-in sheets that come in. It list suspects,
5 victims, witnesses and their names, and he is listed as
6 the deceased victim.

7 Q Okay. So you were asked to get a gunshot residue on
8 the victim just in case, just to see if he had fired a gun
9 or was in the proximity to a firearm?

10 A Correct.

11 Q Okay. And okay, well, what were the results for the
12 victim, Mr. Facio?

13 A The result of the original analysis from the GSR kit
14 for Roberto Facio was that there was no primer gunshot
15 residue found.

16 Q Okay. And anyone else besides Mr. Facio that was
17 tested with negative results?

18 A There was a GSR kit submitted from a José Natali
19 Rodriguez.

20 Q Okay.

21 A He was listed as an elimination on the paperwork.

22 Q And what does that mean?

23 A Sometimes, during the investigation, officers will
24 collect GSR kits from a person that's in the area just to
25 eliminate them.

1 Q Okay. So a GSR kit was, we're calling him Rodriguez
2 Galvez, Mr. José Rodriguez Galvez, is, what were the
3 results for his GSR?

4 A The results were that, was no primer gunshot residue
5 found.

6 Q Okay. The victim has no GSR. Mr. José Galvez has no
7 gunshot residue. What were the results when you tested
8 the black thermal shirt?

9 A On the black thermal shirt, which is item 47.1,
10 particles of gunshot residue and particles associated with
11 gunshot residue were found.

12 Q Okay. So you did find gunshot residue on State's
13 number 37, the black thermal long-sleeve shirt?

14 A If that is item, State's 37.

15 Q Okay.

16 A It's my 47.1.

17 Q Okay.

18 MR. SCOTT: Okay. Now, the State offers State's
19 number 4 for admission into evidence.

20 THE COURT: Now, I think 4 is already into evidence.

21 MR. SCOTT: I apologize, Your Honor.

22 THE COURT: That's okay.

23 Q Okay. So your opinion, what opinion can you form
24 based on your results and based on that black shirt?

25 A With clothing, as opposed to samples collected from a

1 person's hands, with clothing, if you find gunshot residue
2 on the clothing, you can surmise that that object or that
3 piece of clothing was in the vicinity to the discharge of
4 a firearm or it came into contact with an item that had
5 gunshot residue on it.

6 Q Okay. Now, let me backtrack just a little bit. SLED
7 has some policies as far as when they, when there is an
8 intake of evidence from a local law enforcement agency.
9 SLED has formulated various policies on what they will
10 take and what they tend not to take as far as evidence to
11 be tested, is that fair to say?

12 A It is, correct.

13 Q Okay. Gunshot residue, just briefly, when you fire a
14 weapon or when you're in close proximity to a weapon, what
15 is it that gets on your hands that is later tested and
16 determined to be gunshot residue?

17 A Gunshot residue is the term we use to describe all of
18 the residue that is exiting the weapon when it's fired.
19 Specifically, what we are analyzing for is gun primer
20 residue, which is residue from the primer composition in
21 the bullet or in the cartridge before it's fired. This
22 includes elemental metallic residue that contains three
23 elements, barium, antimony and lead. We analyze for the
24 presence of these three elements which is characteristic
25 of gunshot residue.

1 Q Okay. Can you describe sort of, I guess, the
2 physical properties of this residue? And what I'm, I
3 guess, getting at is I take a pistol and fire it in the
4 air. You'd probably expect to see some on my hands, is
5 that fair to say?

6 A You would expect to find it for a certain timeframe
7 after the shooting.

8 Q Okay. And tell us about that timeframe? Why does
9 time have an effect on the presence or an absence of
10 gunshot residue?

11 A Gunshot residue is a physical property. They are
12 microscopic particles that are actually present on your
13 hands. Once they're deposited on your hands, they can be
14 removed. Anything you do can remove the particles. If
15 you wash your hands, they'll no longer be present. If you
16 sweat, rub your hands, hands in and out of your pockets,
17 anything you touch can remove that residue. So if a
18 person fires a weapon and they collect a gunshot residue
19 kit seven, eight, nine, ten hours later, we don't perform
20 an analysis on it because we cannot link anything we would
21 find to that incident. Someone potentially could fire a
22 weapon, wash their hands, and then eight hours later touch
23 a gun and have gunshot residue deposited. After six
24 hours, there is no reasonable expectation to find it. So
25 we do not perform the analysis because if we report on it,

1 it's giving misleading results as to when it was
2 deposited.

3 Q Okay. So if the information you were given by a law
4 enforcement agent is that six, six-and-a-half, seven hours
5 have passed, the suspect was running around in the August
6 heat in South Carolina. Yet, they wanted to submit a
7 sample obtained six-and-a-half, seven hours later. What
8 would your thoughts be as far as that requesting officer?

9 A We do receive them, they submit them because they
10 want a report. A lot of them collect them just to collect
11 it. And then we'll receive the evidence, open it,
12 determine it was collected beyond the timeframe. And we
13 send out a report that states no analysis performed due to
14 the sampling time between the incident and the collection.

15 Q Okay. Is it safe to say that even a stiff breeze
16 could probably blow off some of the dust from gunshot
17 residue?

18 A Any outside source that acts on your hands can remove
19 residue.

20 Q And wiping my hands on my clothes, changing my
21 clothes and doing all that, theoretically, could get rid
22 of the gunshot residue?

23 A Yes, sir.

24 Q You did find gunshot residue on State's number 37,
25 particles of gunshot residue?

1 A Yes, on item 47.1.

2 MR. SCOTT: Thank you, Agent Nates.

3 THE COURT: Mr. Verner, any cross-examination.

4 MR. VERNER: Briefly, Your Honor.

5 THE COURT: Wait a minute. Are you finished,
6 Solicitor Scott?

7 MR. SCOTT: Briefly, Your Honor. Your Honor, I
8 forgot to check, I am sorry. I've got it checked off.
9 There's so much evidence, I'm trying to keep track. Item
10 38, has that been formally admitted?

11 THE COURT: It has not.

12 MR. SCOTT: Okay. That was testified to. We would
13 ask for 38 to be admitted.

14 MR. VERNER: Can you tell us what 38 is? I don't
15 know off the top of my head.

16 MR. SCOTT: GSR swab from the kit that Agent Nates
17 was testifying to up here.

18 THE COURT: Right. 38 has not been offered into
19 evidence. Are you doing that now?

20 MR. SCOTT: Yes, sir.

21 THE COURT: Mr. Verner?

22 MR. VERNER: Without objection, Your Honor.

23 THE COURT: Without objection, 38 into evidence for
24 the State.

25 (Whereupon, State's Exhibit number 38 was admitted

1 into evidence.)

2 THE COURT: All right. Mr. Verner, any
3 cross-examination?

4 CROSS-EXAMINATION

5 By Mr. Verner:

6 Q Agent, I believe you testified for the Solicitor just
7 a second ago that you had the opportunity to test the
8 shirt in January of 2016, and I will give you the
9 opportunity to correct that if that's incorrect?

10 A I was not the one that tested the shirt originally.

11 Q Could you possibly have meant January of 2017?

12 A Oh, I'm sorry; yes, sir. I tested it in 2017.

13 Q So your testimony about testing it or receiving it in
14 2016 is incorrect?

15 A Yes, sir. I'm sorry.

16 Q Okay. Today's date is January 12th?

17 A Today's date is.

18 Q Of '17?

19 A Yes, sir.

20 Q Okay. And you tested it when?

21 A I tested it in January of 2017.

22 Q Okay. What day?

23 A I had processed the evidence on 1/6/2016.

24 Q Okay.

25 A So I actually put the wrong date on my worksheet.

1 Q And that would be approximately a year-and-a-half
2 after the crime?

3 A If it is 2017; yes, sir.

4 Q Okay. And your understanding that the gunshot
5 residue you would be testing for, the item has been in
6 evidence since August of 2015?

7 A Yes, it has been.

8 Q Okay. The gunshot residue was still present for over
9 a year-and-a-half on the shirt?

10 A Not on the shirt, sir. The samples are collected
11 from the shirt and preserved in a slide box, which you can
12 see here the particle lifts are in the sealed slide box.

13 Q And my understanding, your examination is the second
14 time that SLED has analyzed the shirt?

15 A The second time the particle lifts that were
16 collected from the shirt have been analyzed; yes, sir.

17 Q Okay. And your testimony and report supersedes the
18 prior evaluation?

19 A Yes, it does.

20 Q And I believe that was initiated at your request?

21 A Yes, sir.

22 Q And I believe you indicated that is for quality
23 review pursuant to a corrective action?

24 A That is correct.

25 Q By corrective action, are you talking about

1 corrective action on a prior examiner?

2 A It is a, our laboratory has a quality system, and
3 there are several methods in which to investigate
4 nonconformities that are found. And it is called a
5 corrective action when you have to open up an
6 investigation into a potential issue.

7 Q Because whether deliberately or accidentally, the
8 method of testing or some procedure was incorrectly done
9 originally?

10 A This case was asked to come back. During the, the
11 quality program that we have involves technical reviews.
12 A technical review is another qualified examiner will look
13 at the packet of evidence and the report that the examiner
14 is wanting to issue. They have to agree with all the
15 findings. So during a technical review process an
16 examiner came to me on another case and had an issue. We
17 discussed it, looked at it and determined that it was a
18 nonconformity that I needed to report to the quality
19 department. I reported this and that opened up a case
20 audit on cases that analyst had performed. This case fell
21 into audit. Normally, during the case audit and during
22 the quality program, you will interview that analyst, you
23 will question them, ask them what were you doing on this
24 day, how did you do this. And this case, it's a unique
25 case because the examiner is on extended medical leave.

1 She's unavailable for us to talk to to try to determine
2 the root cause. When I saw that this case fell under that
3 audit, in an overabundance of caution, I asked them to
4 bring it back in since we, at this point, do not have a
5 root cause. And I wanted to verify that the analysis was
6 done correctly.

7 Q And as a result, I believe you noted that your
8 examination is not consistent with the original analysis?

9 A It is not. The original analyst detected one
10 particle of gunshot residue. And I detected several more
11 particles of gunshot residue present on the samples.

12 Q Okay. And so your report supersedes the prior
13 analyst's report?

14 A Yes, sir.

15 Q And do you recall when the item was originally
16 analyzed by SLED?

17 A Can I review my paperwork?

18 Q Yes, ma'am.

19 A The original analyst processed the shirt on
20 7/26/2016.

21 Q Okay.

22 A And the samples were then analyzed in October of
23 2016.

24 Q So processed in July, and then analyzed in October?

25 A Right. That is normal for clothing. A lot of times

1 clothing will come into us and it'll have a request for
2 DNA and a request for trace. The DNA Department can't
3 complete theirs until we collect evidence from the shirt.

4 Q Okay.

5 A So we will collect the evidence, seal it, store it
6 for analysis, and then transfer the shirt to the other
7 department.

8 Q Are you roughly equivalent to the prior analyst or
9 would you consider yourself a supervisor or in a different
10 capacity entirely?

11 A I am a supervisor to that analyst and the specific
12 analyst that performed the original analysis has not been
13 at SLED as long as I have.

14 Q Okay. And, I believe, you testified just a few
15 minutes ago that there was a series of mistakes or
16 processes that were inconsistent with SLED policy that the
17 analyst had done?

18 A No, we are still evaluating it. We do not know.
19 It's still under corrective action.

20 Q But she would have had the evidence out working on
21 it, right?

22 A She would have.

23 Q Okay. And I'm not suggesting that necessarily, but
24 does that theoretically expose that evidence to the
25 possibility of tampering, the fact that it had gone

1 through other people's hands?

2 A No, sir. With gunshot residue evidence, we try to
3 handle it as little as possible. In this case, the
4 original analyst collected the samples, sealed them, and
5 then brought them back out for the analysis. She has
6 pictures in her case file of particles, microscopic
7 particles that she detected. I have pictures in my case
8 file from the same instrument, and you can determine they
9 are the same particle just from the very unique features
10 on them. So I found the same particles that were
11 originally present when she processed the evidence.

12 Q So your testimony is you do not believe the evidence
13 was tampered with?

14 A I do not believe so. The corrective action is not
15 dealing with tampering of evidence.

16 Q Okay.

17 A It's a different issue.

18 Q And my question, though, does that expose the
19 evidence to the possible tampering? I didn't ask you to
20 conclude on this particularly.

21 A Anytime we take out evidence, you can say that we can
22 tamper with it. We have to handle evidence on a daily
23 basis to analyze it. And we have procedures in place so
24 that it is not left unsecured, that it is only opened for
25 the analysis. It's not just left around the lab for

1 someone to tamper with.

2 Q Okay. And, and it may be a less confrontational term
3 like contamination or exposure to other --

4 A -- to gunshot residue?

5 Q Or to anything that examining or have in your
6 possession?

7 A You take precautions in the lab that are routinely
8 used. You wear gloves, you wear a lab coat. You handle
9 the evidence with the appropriate procedures and the rooms
10 that we use for gunshot residue are gun-free areas. So we
11 follow all procedures to prevent that.

12 Q Okay. Now, I'm assuming that bullets come out hot,
13 that there's an explosion that propels bullets and that
14 would probably be a very hot explosion, is that fair to
15 say?

16 A That is fair to say.

17 Q And that the gun powder and everything else, the
18 debris that comes out with the bullet comes out as part of
19 an explosion?

20 A It is the primer explosion. The primer is, the
21 purpose of it is to form a small explosion to ignite the
22 gun powder to propel the bullet.

23 Q And you would think that that could, when it touches
24 a subject whether skin or shirt, is that a hot temperature
25 and then cools down?

1 A The actual residue?

2 Q Right.

3 A The residue is at a hot temperature because as soon
4 as it hits the atmosphere it forms molten particles which
5 is what we look for when we analyze for gunshot residue.
6 We look for the morphology in addition to the composition.
7 I don't have knowledge of ever being shot to know if it
8 would burn me. I know the barrel of the gun is hot and if
9 you touch that, you could be burned. But I can't testify
10 that individual microscopic particles would leave a burn.

11 Q But they're expelled as a result of an explosion?

12 A Yes.

13 Q And everything else comes out hot. The bullet comes
14 out hot, the barrel gets hot?

15 A Yes, for that small amount of time that it is
16 discharged from the weapon.

17 Q Even though they're small, there is no reason to
18 believe that the detritus or the debris comes out cool,
19 would it?

20 A No. It's not going to come out cool.

21 Q In this case, when is your understanding of when Mr.
22 Facio was killed; do you know that from your case file?

23 A What we have in our case file is they will sometimes
24 put an incident report. We do not utilize those that
25 often. We will look at the collection sheet and they will

1 have an approximate time on them. That's just the time
2 that the person that collects the evidence believes was
3 the time of the shooting.

4 Q Okay. And I understand you're not bound by that, but
5 the, is there an approximate time of death given in your
6 report in this one?

7 A It is not a time of death that is listed on the
8 gunshot residue collection sheets. These are sheets that
9 the officer fills out during the collection of the kit.
10 On this one, this was done by a SLED agent who was called
11 to the scene later and the time was 2:00 o'clock p.m.

12 Q Okay.

13 A Another one listed it as, N/A because they did not
14 know.

15 Q Okay. And you understand we've got video in this
16 case, timestamped video of a lot of the scenes?

17 A Only what I've seen from the evidence.

18 Q Okay. So someone gave you an approximate time of
19 death at 2:00 o'clock?

20 A Yes.

21 Q And I understand you're not willing to say that, I
22 agree that that's necessarily the exact time of death, but
23 that's their approximation?

24 A I have no knowledge of whether or not that's when
25 they were called to the scene. That may be the time they

1 were called.

2 Q But whenever we get into this SLED policy of this
3 six-hour window to test for gunshot residue you're
4 obligated to take the estimated time of death by the
5 investigating agency, right?

6 A We do have to take the estimated time of death by the
7 investigating agency.

8 Q Okay. In this case, is there evidence that Mr. Ruff
9 surrendered or was arrested at 7:15 in the evening and the
10 cause of death would have been around 2:00 p.m. That is
11 within your six-hour window for testing, isn't it?

12 A If that is when they determine the time of the
13 shooting was. Usually, in these cases, we will get the
14 incident report on when they responded. And when they
15 respond and find a deceased individual, we don't know what
16 time that occurred.

17 Q Well, hypothetically, if we believe the cause of
18 death is around 2:00 p.m.

19 A If it was at 2:00 p.m.

20 Q Okay. And you have to go by what the investigating
21 agency gives you?

22 A That's correct.

23 Q And we know that Mr. Ruff was in custody by 7:15.

24 A That would fall within the six hours of the
25 collection.

1 Q And there is no reason SLED would not process gunshot
2 residue exam?

3 A Not if that was the information that I was provided.

4 Q Okay. And that's not an absolute bright line, the
5 six-hour, the 6:01 doesn't necessarily--

6 A -- we do cut it off at 6:01. We have to have a
7 cutoff.

8 Q Yeah.

9 A Normally, you don't see gunshot residue on a person's
10 hands four hours after shooting a weapon, but we give a
11 range of six hours to encompass the larger caliber
12 weapons.

13 Q But you could?

14 A We could what?

15 Q You could find gunshot residue as long as, I'll
16 assume that six-hour range--

17 A -- we have found it in in-housing testing. Usually,
18 at four hours we don't see any gunshot residue. But
19 larger caliber weapons, .45's, .40's, we have seen some
20 gunshot residue present at the six-hour mark.

21 Q Okay. And six hours is the bright line test that
22 SLED puts it in?

23 A That is where we cut it off.

24 Q Okay. If you had somebody who was a suspect in a
25 gunshot, gun-shooting case, and they were offering you to

1 take a gunshot residue, do you know how to do the actual
2 kit itself?

3 A I know how to do the kit, but I do not collect kits.

4 Q Right.

5 A I don't work in the field nor am I an investigator.

6 Q Right. But you understand the process of how it's
7 done?

8 A Yes.

9 Q And I think we've heard, it's a relatively easy
10 process, isn't it?

11 A It is if a suspect is --

12 Q Cooperative.

13 A -- willing to have it done.

14 Q Yeah. But, I mean, it's, it's really as using Q-tips
15 to swipe the guy's hands?

16 A It is not Q-tips. They are particle lifts.

17 Q Okay.

18 A It is a round carbon planchet with an adhesive on it,
19 something like a Band-Aide adhesive. You take the top off
20 and you dab it on each area of the hands.

21 Q But it's not a particularly complicated thing to do?

22 A No.

23 Q And it's not a particularly expensive thing to do?

24 A It is expensive when you get into the cost of the kit
25 and the cost of analysis.

1 Q Okay. Is that more on the analysis end?

2 A Both, the kits are pricey.

3 Q If you were going to perform that kind of test, you
4 would certainly think that a murder charge would be an
5 appropriate charge to do it in, wouldn't you?

6 A If I were going to perform that test, but, like I
7 said, I am not an investigator, that make decisions all
8 the time of whether to collect or whether to not collect
9 gunshot residue kits.

10 Q I'm just asking you as an expert in gunshot residue,
11 if you look at a cost-basis analysis to perform that test,
12 you would think that murder would probably be the most
13 significant case to perform it on, right?

14 A It would be.

15 Q Okay. Because you've got a dead person?

16 A Correct.

17 Q Okay.

18 MR. VERNER: The Court's indulgence, Your Honor.

19 THE COURT: Sure. Take your time.

20 MR. VERNER: Thank you, Agent. If the State may have
21 some follow-up.

22 THE COURT: Any redirect.

23 MR. SCOTT: Yes, sir; just briefly.

24 REDIRECT EXAMINATION

25 By Mr. Scott:

1 Q In this incident, there were hypothetical's being
2 proposed to you. What if I told you the murder happened
3 between 1:37 p.m. and 1:41 p.m. And that the individual
4 had been on the land until about 8:30 when he was brought
5 into the police station. Okay, seven hours, and he had
6 changed clothes; there's been evidence of that. The
7 caliber of the weapon was supposedly a .22 caliber
8 weapon--

9 MR. VERNER: -- Your Honor, now, we're getting into a
10 compound question on this.

11 THE COURT: Well, you got into it. I'm going to
12 allow the State to respond to that briefly.

13 Q All right. With that hypothetical, would you expect
14 to find gunshot residue on bare hands with a small
15 caliber?

16 A On hypothetical of over seven hours?

17 Q 1:37 to 8:30, so just shy of seven hours.

18 A I would not expect to find any if I were led to
19 believe it was a small caliber weapon and that timeframe
20 had passed from the incident.

21 Q Okay. I just wanted to be clear on that
22 hypothetical.

23 MR. VERNER: Your Honor, that's not a question. I
24 would object to it.

25 THE COURT: That's a statement by Solicitor Scott.

1 It'll be stricken from the record.

2 Q Was there any reason for you to believe the sample
3 you tested had been tampered with or compromised?

4 A There was not. It was still sealed when I received
5 it. It had the seal and the initials and the date from
6 the original analyst who had sealed it.

7 Q Okay. And, in fact, the original testing, how many
8 particles were identified to be gunshot residue?

9 A In the original testing, one particle was identified.

10 Q Okay. And then as a supervisor when you retested the
11 submission, how many particles did you determine to be
12 gunshot residue?

13 A Five.

14 Q So in many ways, your analysis was more conclusive?

15 A I wouldn't say more conclusive. I would just say I
16 know that I fully analyzed the samples that I was given.

17 Q And found five times as many gunshot residue
18 particles?

19 A Yes, sir.

20 MR. SCOTT: Your Honor, that is all.

21 THE COURT: Okay. Any recross, Mr. Verner.

22 MR. VERNER: No recross of the agent.

23 THE COURT: Thank you, ma'am. You can step down.

24 Let me see the lawyers for just a second.

25 (Whereupon, a bench conference was held in the

1 presence of the jury but out of the hearing of the
2 jury.)

3 THE COURT: All right. Ladies and gentlemen, what
4 we're going to do is we're going to go ahead and break for
5 lunch and I'm going to ask that you be back here at 2:15
6 and the State has indicated to me they have several more
7 witnesses to put up. Now, let me mention this to you.
8 It's extremely important. I've noticed that several
9 jurors have been nodding off. While I realize it is
10 difficult to sit and not get tired when you sit for
11 extended periods of time, I understand that's difficult.
12 However, I cannot have any member of this jury nodding off
13 which indicates that they are not being attentive to what
14 is going on. I'm sitting here as you are, even though I
15 can get up and move around, I typically don't while
16 witnesses testify, and I'm not having a problem nodding
17 off, okay? When I excuse you at the end of the day, I
18 always tell you that it's just routine for me to tell
19 juries this, get plenty of rest. So I take it very
20 seriously that if you are nodding off, then you're not
21 performing your duties as jurors. So I will not tolerate
22 any member of the panel or member of the jury nodding off,
23 not being attentive, not listening to what is going on.
24 Now, I'm not going to single you out now, okay, you know
25 who you are. If you need to take a short nap during lunch

1 break, then you better do that, okay? Give you plenty of
2 time for lunch. I'll remind you once again if you're out
3 in public in one of the restaurants, keep that juror badge
4 visible so if anybody connected with this case is at the
5 same place, they'll know you're on the jury. But I
6 imagine now probably most everybody would recognize being
7 on the jury. To be on the safe side, have that visible.
8 No discussion among yourselves about this case or anybody
9 that you come into contact with and we'll see you back
10 here at 2:15. Have a good lunch.

11 ((Whereupon, the jury was excused from open court for
12 a lunch break.))

13 THE COURT: Okay. We'll be in recess until 2:15 and
14 just everybody just give a chance for the jury to exit the
15 courthouse before you leave.

16 ((Whereupon, a lunch break was taken.))

17 THE COURT: Okay. We're back on the record. Is the
18 State ready to call it's next witness?

19 MR. STUMBO: We are, Your Honor.

20 THE COURT: Okay. All right. Madam Bailiff, bring
21 the jury out, please, ma'am.

22 ((Whereupon, the jury came into open court at
23 approximately 2:25 p.m.))

24 THE COURT: Let the record reflect the jury is back
25 in. Is the State ready to call it's next witness?

1 MR. STUMBO: We are, your Honor.

2 THE COURT: Okay. You may proceed.

3 MR. STUMBO: The State calls Stephanie Stanley.

4 STEPHANIE STANLEY, being

5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Stumbo:

8 Q Where do you work Stephanie?

9 A I'm employed by the South Carolina Law Enforcement
10 Division, which is more commonly referred to as SLED.

11 Q Okay. What is your role there at the State Law
12 Enforcement Division?

13 A I'm a forensic scientist assigned to the DNA Casework
14 Department.

15 Q So you do DNA analysis comparison and that sort of
16 thing?

17 A Correct. I accept evidence samples from law
18 enforcement agencies across the State of South Carolina.
19 And I would attempt to develop DNA profile from those
20 items and make a comparison with what we call a known
21 standard or known DNA from an individual to see if it
22 matches. I file a report based on my findings and testify
23 as necessary.

24 Q Would you give the jury a summary of your educational
25 background, training that qualifies you to do this kind of

1 work?

2 A I have a Bachelor's of Science degree in Biological
3 Sciences from Clemson University. I completed SLED's
4 in-house training program under the supervision of a
5 qualified analyst where I've learned evidence handling,
6 serology or the identification of body fluids, DNA
7 analysis, statistics as it relates to DNA analysis, chain
8 of custody and training of other analysts and serologists
9 in our department.

10 Q Okay. How many years have you been working in this
11 department at SLED?

12 A I've been employed with SLED in the DNA Casework
13 Department since February of 2005.

14 Q Okay. So almost 12 years?

15 A Correct.

16 Q During that 12 years, have you been able to do,
17 continue training and seminars, and certifications. Do
18 you keep, do you have to keep that up for your
19 certification?

20 A Yes, sir. I'm required at least eight hours of
21 continuing education every year. We attend scientific
22 meetings, training by our vendors or statistical training
23 depending on what we have going on in the laboratory. I'm
24 also a member of the American Academy of Forensic
25 Scientists.

1 Q And you have testified in court as to DNA testing
2 that you've done?

3 A Yes, I have.

4 Q How many times?

5 A Approximately, about 30 times.

6 Q Now, if you qualify, you were qualified in those
7 cases as an expert in DNA analysis?

8 A Yes, I was.

9 MR. STUMBO: Your Honor, at this time, the State
10 would offer Ms. Stephanie Stanley as an expert in the
11 field of DNA analysis.

12 THE COURT: Okay. Mr. Verner, do you have any
13 examination of this witness concerning qualifications and,
14 if not, your position as to the State's offer.

15 MR. VERNER: Just I would object or not consent just
16 for the lack of, but we'll leave it to the Court.

17 THE COURT: All right. I do find that Agent Stanley
18 is an expert in the area of DNA analysis. You may
19 proceed.

20 MR. STUMBO: Thank you, Your Honor.

21 Q Ms. Stanley, tell the jury what does DNA stand for,
22 first of all?

23 A DNA is an abbreviation for deoxyribonucleic acid.

24 Q Okay. And what, in kind of layman's terms, what is
25 this? What is the, your DNA?

1 A DNA is a chemical that's found in all of our cells
2 with the exception of your red blood cells. Most of our
3 DNA is the same among individuals. You get half of your
4 DNA from your father and half of your DNA comes from your
5 mother. And, like I said, most of it is the same, it
6 codes for your arms, your legs. But in forensics, we're
7 interested in a very small portion of our DNA that makes
8 us different. It allows us to tell individuals apart and
9 in our laboratory we look at 15 of those locations. And
10 the information from those locations combined gives us
11 what is known as a DNA profile. And no two people will
12 have the same DNA profile with the exception of identical
13 twins.

14 Q So of all the people on the planet Earth, the only
15 people who share the exact same DNA would be identical
16 twins?

17 A Yes.

18 Q Okay.

19 MR. STUMBO: If you could, Mr. Bentley, if we could
20 pull up number 3, State's number 3. I believe it's
21 already in evidence.

22 THE COURT: It is.

23 Q If you could, step down and just keep your voice up.
24 Ms. Stanley, is this the front page of a DNA analysis
25 report from SLED?

1 A It is.

2 Q Okay. And this is the first page of your report?

3 A Yes, it is.

4 MR. STUMBO: If you could go, scroll down, Walter to
5 number, I think, page four.

6 Q Okay. We're on page four of State's Exhibit number 3
7 here on the screen. You mentioned a second ago these 15
8 different places on the, I guess. Is the DNA strand kind
9 of like a circular helix thing. Isn't that what it is,
10 the locations, could you explain that to the jury?

11 A Yes, it is. The DNA is conformed of a double helix
12 and we are just looking at locations on the DNA that are
13 highly variable between individuals. So it's going to
14 allow us to tell the individuals apart from one another.

15 Q Okay. And these here on your report in this
16 particular case, but just for educating the jury here,
17 these rows which at the top say DDS1179 and so forth
18 across, that's 15 different places here and not this last
19 row but to there, those are the 15 places that you're
20 analyzing?

21 A Correct. This top row on this table is just the
22 identification of those locations. What is the name of it
23 and then this last one is a column, you can see AMEL, is
24 for amelogenin and it gives us the gender of a location.

25 Q Okay. And XY would indicate what sex?

1 A And X and a Y indicates a male individual.

2 Q Okay. And if it were to be XX that would be?

3 A Correct. If you see just X, it's an X and an X or a
4 female individual.

5 Q Okay. So of the first three here at the top that
6 we're looking at are listed, the first was Roberto Facio
7 Ledesma, which is, you were given that information, that's
8 the deceased, correct?

9 A Yes, sir.

10 Q Then a José Rodriguez Galvez is the second individual
11 and this row would be his DNA profile, correct?

12 A Correct.

13 Q And then this one will be the profile, number 50, of
14 Kenny Octavius Ruff, correct?

15 A That's correct.

16 Q Okay. Now, in order to develop these numbers along
17 this horizontal row, what do you have to have to be able
18 to develop this kind of profile?

19 A DNA samples usually come into our laboratory in a
20 form of a swab from an individual or a cutting. It can be
21 a swab from say a table. It could be a swab of blood
22 sample. It could be a swab of a saliva sample and those
23 are what we'd classify as evidence samples. DNA from a
24 known standard is either a blood standard taken by medical
25 personnel or a buccal swab which are swabs that are

1 sterile rubbed on the inside of a person's cheek to
2 collect a known standard from that person. We would
3 attempt to remove the DNA from the swab or the cutting and
4 through do a process called extraction, try to remove that
5 DNA from that swab or cutting to get into a liquid form so
6 that we're able to carry for the downstream process to
7 develop a DNA profile.

8 Q Okay. So that gives you the standard which would be
9 the DNA profile for a particular individual, it would be a
10 blood or a buccal swab?

11 A Yes. And a standard, if you'll keep in mind, that's
12 what I'm using for comparison. I may compare that to an
13 evidence item to a person's known standard.

14 Q Okay. And so after the first three rows here, we
15 have things described. The first one is the fingernail
16 clippings from the right hand of Roberto Facio. This is
17 the, the next row is the profile you develop from that
18 piece of evidence --

19 A Correct.

20 Q -- is that correct? Okay. Then, you could compare
21 these numbers with that along each sector to see if there
22 is a match?

23 A Correct.

24 Q All right. Now, in this case, the State's 3, you
25 indicated that's your report that's in evidence as State's

1 Exhibit 3 at this point. What were some of the items, and
2 I can, if you can return to the stand. I'm going to hand
3 you State's 3 and that is your report?

4 A Yes, it is.

5 Q Okay. What items of evidence, well, first of all,
6 what standards were submitted to you in this particular
7 case would either be a swab or bodily fluid to develop on
8 a particular individual; how many of those did you have?

9 A I received three known standards for comparison.

10 Q Okay. The three names were again?

11 A Roberto Facio Ledesma, José Rodriguez Galvez, and
12 Kenny Ruff.

13 Q Okay. And were you, let's do this first just to get
14 this out of the way. I'm going to hand you first what's
15 been marked as State's, it's in evidence as, I don't know
16 if we have moved it in yet but I think it is State's 61.
17 I believe it is for ID.

18 THE COURT: It is.

19 MR. STUMBO: Okay.

20 Q Could you take a look at the box on the other side
21 and just inspect that? And take your time and refer back
22 to your notes, is this, what is this in State's 61?

23 A The entire item is a heat sealed pouch that we have
24 at the laboratory for, to preserve our evidence, the
25 integrity of the evidence. Inside is a box and I have

1 written our SLED laboratory number and that is how we
2 extract evidence. So it is L15-11621 and it is item 20.
3 And Item 20 corresponds with the buccal swab from José
4 Rodriguez Galvez.

5 Q Okay. And did you analyze this piece of evidence for
6 a profile?

7 A I did, and these are my initials on the outside of
8 this package.

9 Q Okay. And that's what you've recorded in the report
10 that's the, these numbers we see along the line for José
11 Rodriguez Galvez are what you got out of that physical
12 buccal swab?

13 A Yes, it is.

14 Q Okay.

15 MR. STUMBO: Judge, we'd offer 61 into evidence.

16 THE COURT: Okay. And what says the Defense?

17 MR. STUMBO: It's the buccal swab from Galvez, José.

18 MR. VERNER: No objection.

19 THE COURT: All right. Without objection, 61 into
20 evidence for the State.

21 (Whereupon, State's Exhibit No. 61 was admitted into
22 evidence.)

23 Q Okay. And let me ask this question first. This
24 piece of evidence came in from the Police Department.
25 Who's the investigator from the Police Department that you

1 returned your report to?

2 A My report was returned to Kevin Goodman.

3 Q Okay. That was the name of him. Now, let's look at
4 State's 40 and do you recognize this packet, State's 40?

5 A Yes, I do.

6 Q Okay. What is this, this State's 40?

7 A And the State's 40 is a heat sealed pouch containing
8 two swab boxes that I received and it is my item 50 and it
9 is buccal swabs from Kenny Ruff.

10 Q Okay. And that was the person who you've indicated
11 is the suspect or Defendant in the case --

12 A Correct.

13 Q -- from your notes? Okay. Were you able to develop
14 a DNA profile off of these buccal swabs?

15 A Yes, I was.

16 Q Okay. And that's what you've noted in your report,
17 the line, horizontal line that extends from Kenny Ruff on
18 page four of the report?

19 A Yes, it is.

20 MR. STUMBO: Okay. The State would offer State's 40
21 into evidence, Your Honor.

22 THE COURT: Okay. What says the Defense?

23 MR. VERNER: No objection, Your Honor.

24 THE COURT: Without objection, number 40 into
25 evidence for the State.

1 (Whereupon, State's Exhibit number 40 was admitted
2 into evidence.)

3 Q One more. It's in evidence here. And this is a
4 little yellow envelope inside of a bag and it's State's
5 39. What is State's 39?

6 A The State's 39 is another heat-sealed pouch
7 containing an envelope. That would be, that would have
8 been to store evidence collected. It corresponds with my
9 item 47.2 which are swabs from scrapping interior cuffs
10 and neck area of a shirt.

11 Q Okay. So it's interior cuffs and of what particular
12 SLED item; what was the shirt? Was there any description
13 on the shirt?

14 A If I can refer to the chain for the description that
15 came in.

16 Q Absolutely. Take your time.

17 A A shirt described as a long-sleeved black shirt that
18 suspect appears to be wearing in video.

19 Q Okay. And y'all have folks working in your
20 department that are trace evidence people, is that
21 correct?

22 A I'm not sure I understand.

23 Q Not in your department, the DNA department there at
24 SLED. If they get a piece of physical evidence in, are
25 you the one that actually makes the cuttings on pieces of

1 clothing or is there another individual that does that?

2 A I can make cuttings on pieces of clothing but
3 typically it's sent to our Serology Department where they
4 would attempt to identify body fluids or take touch DNA
5 type samples.

6 Q Okay. And then that person, after they make the
7 cutting, would seal it up and send it to you?

8 A Correct.

9 Q Okay. That was done in this case. Who at SLED did
10 the cutting on that shirt?

11 A Jacqueline McKay.

12 Q Okay. And you know Ms. McKay?

13 A I do.

14 Q And she works in the SLED lab?

15 A Yes. She is in our DNA Casework Department just in
16 our serology section.

17 Q Okay. And after she makes the cuttings, she passed
18 along the cuttings to you for the purposes of or the
19 cuttings or the swabs from the cuttings to make a DNA
20 comparison, correct?

21 A Correct.

22 Q Okay. So the State's 39 is the swab or the cutting
23 itself from the shirt?

24 A Yes. I believe it's the swabs that were collected.
25 Let me read the item description from her, Jacqueline.

1 It's the swabs from scrapping interior cuffs and neck area
2 of shirt.

3 Q Okay. Well, why would that, the inside of the neck
4 and the cuffs of the shirt be a place to take the swabs
5 from?

6 A When we're taking swabs from interior neck area or
7 cuff area or underarm area, it's typically for what we
8 call wearer DNA or who did the item belong to. Who has
9 worn the item and left DNA behind.

10 Q Okay. And because the cuffs are usually tighter or
11 the neck, that would make the most contact with the skin,
12 is that the idea?

13 A Correct. We're looking for that friction or those
14 skin cells that have been shed by that contact with the
15 item.

16 Q Okay. And the swabs that you received that were
17 taken off of the long black sleeved shirt, the black
18 long-sleeved shirt that was submitted, did you analyze
19 that which is in State's 39?

20 A Yes, I did.

21 Q Okay. And were you able to develop a DNA profile
22 from that swab?

23 A Yes, I was.

24 Q And that is documented in the report, that DNA --

25 A Yes, it is.

1 Q -- profile off of what's in State's 39?

2 MR. STUMBO: Okay. Your Honor, at this time, we'd
3 offer State's 39 into evidence.

4 THE COURT: Okay. And what says the Defense?

5 MR. VERNER: No objection, Your Honor.

6 THE COURT: All right. Without objection, 39 is in
7 evidence for the State.

8 (Whereupon, State's Exhibit number 39 was admitted
9 into evidence.)

10 Q Okay. If you could, I'll have to ask you to step
11 back down and keep your voice up for Ms. Holston, the
12 court reporter. We already talked about these three
13 profiles and from this point down in your report, we were
14 talking about evidence items that were submitted to
15 compare to these profiles, correct?

16 A Correct.

17 Q Okay.

18 MR. STUMBO: If we could go to page five, Walter?

19 Q Okay. It appears as if a lot of these, the edges of
20 a cash drawer and these all the way down to the last line,
21 back of the iPad which is 46, hard drive up here, we have
22 basically blank or dash marks. Would you attempt to
23 develop profiles on all that other evidence submitted?

24 A DNA was attempted on those items that you see this
25 dash, but no DNA profiles were developed from that item,

1 those items.

2 Q Okay.

3 MR. STUMBO: Let's go back to page four just for a
4 second, Walter.

5 Q And these fingernail clippings, obviously, have a
6 very strong DNA profile across, all the way across.
7 What's the significance of that? What did the fingernail
8 clippings from Roberto Facio match to, if anything?

9 A Well, item 2 are the fingernail clippings from the
10 right hand of Roberto Facio and the DNA profile from that
11 item. You may not have a result at every location and I
12 would compare this result up to his standard to make sure
13 that they match. And I'm going to do that all the way
14 across the entire profile. And I found that that DNA
15 profile is attributable to Roberto Facio.

16 Q And someone's fingernail clippings, it'd make sense
17 that they would be the major contributor to that DNA?

18 A You would expect to find my DNA under my fingernail
19 clippings or if it's my car, you might expect to find my
20 DNA in my car.

21 Q And one of the reasons that fingernail clippings are
22 examined because if there's contact --

23 MR. VERNER: Your Honor, I'd respectfully, it's
24 continuous leading--

25 THE COURT: Okay. Try to rephrase, Solicitor.

1 Q Why would you look at someone's fingernail clippings?

2 A Fingernail clippings or fingernail scrapings are
3 collected in attempts to identify foreign DNA; could there
4 be DNA there from the struggle? If there was or a
5 struggle occurred, could it, could you find somebody else
6 under somebody's fingernail clippings or scrapings.

7 Q Okay. And in this case, was there anything of
8 significance there?

9 A The DNA profile, if you would look for Item 3 which
10 are the fingernail clippings from the left hand of Roberto
11 Facio is a mixture of at least two individuals. If I
12 could explain a mixture. A DNA mixture is simply more
13 than one person's DNA on an item, more than one person has
14 contributed it. So in this instance, because it's
15 fingernail clippings or scrapings, I would expect to find
16 Roberto Facio's DNA. In this instance, I'm able to tell a
17 major contributor, which is somebody that has contributed
18 more DNA to a sample versus a minor contributor which is
19 somebody who's contributed less DNA to a sample. So if
20 you're, I don't know how clear it is, but the bolded
21 numbers are going to be a major contributor to an item.
22 So I would check to see that this major contributor
23 matches up with Roberto Facio, again, all the way across
24 the entire profile. And I found that to be true. The DNA
25 profile, the major contributor is attributable to Roberto

1 Facio.

2 Q Okay. And so these other numbers are possible minor
3 contributors, is that what you are saying?

4 A Yes, it's a, it's a possible minor contributor. If
5 somebody else is contributing that profile.

6 Q Okay. Did you identify anyone from those numbers or
7 additional numbers on that particular item, item 3?

8 A Based on the standards that I have for comparison,
9 because I have an evidence item that I check versus
10 standards that I have for comparison, the partial DNA
11 profile, the minor contributor is from an unidentified
12 individual. And I was able to exclude José Rodriguez
13 Galvez from Kenny Ruff.

14 Q All right. There is a few numbers here along the
15 profile. There is the interior push bar of the front
16 door, item 28. Was there any finding there of
17 significance, Ms. Stanley?

18 A If you'll, no, but I'd like to explain.

19 Q Sure.

20 A If you think about a DNA profile where I'm getting a
21 result at every location, in this instance, I'm not
22 getting a result at every location, so that's just a
23 lower-level DNA profile. Sometimes we're able to make an
24 interpretation based on them and sometimes we're not. And
25 in this case, this is item 28, interior push bar of the

1 front door, the partial DNA profile was not suitable for
2 interpretation because I wasn't able to calculate a
3 statistic.

4 Q Okay. And would that be just not enough samples?

5 A It's a lower-level sample and there's not enough
6 information.

7 Q All right. And, similarly, we only have one of the
8 boxes filled for the wires for the video system and that's
9 all you were able to develop off of that item?

10 A Correct. So even if you compare these two profiles,
11 you can see that this is less of a result. There is less
12 DNA there. I was not able to get quite as full a profile.
13 So I'm not able to make any determination based on this
14 item.

15 Q All right.

16 MR. STUMBO: If we could go, Walter, down to page
17 five.

18 Q All right. On this page, the last item on the page
19 is 47.2 which is the scrapings which is what we just saw
20 on State's 39, correct?

21 A Correct.

22 Q All right. If you could explain to the jury what
23 your findings are as to the scrapings of the shirt?

24 A Similarly to the fingernail scrapings or clippings
25 from earlier, this is a DNA mixture that was developed.

1 You can tell there is more than one person contributing to
2 this sample. The DNA profile of the major contributor,
3 somebody is contributing more to the sample indicating by
4 the bolding, matches the DNA profile of Kenny Ruff.

5 Q Okay. Were you able to attribute any probability to
6 the, that particular match, Ms. Stanley?

7 A Yes. The probability of randomly selecting an
8 unrelated individual having a DNA profile matching this
9 major contributor to this item is approximately 1 in 210
10 quadrillion.

11 Q Okay. What's the population of the Earth?

12 A It's about 7 billion.

13 Q So how many times the population of Earth is this
14 probability?

15 A You're looking at about 30 million times.

16 Q So can you say with confidence that the profile you
17 developed that has been identified as Kenny Ruff matches
18 this black shirt, the scrapings from this black shirt?

19 A The profile I developed from Kenny Ruff matched the
20 major contributor to this item.

21 Q Okay. Now, you said there was another minor
22 contributor. Could you explain that to the jury?

23 A So there are DNA types that are not associated with
24 the major contributor. I can tell this person is
25 contributing less DNA. The partial DNA profile of the

1 minor contributor is from an unidentified individual, and
2 I was able to exclude José Rodriguez Galvez and Roberto
3 Facio as minor contributors.

4 Q And of these minor contributors, can you attribute
5 any level of, you said earlier there's a strong profile
6 and a weak profile. What can you tell the jury about
7 whoever the minor contributor is?

8 A I know that it's at least two individuals. In
9 interpreting major contributors, there's more DNA there,
10 so we're able to make more definitive and minor
11 contributors. I know that there was at least one other
12 person here. There are areas that if I had a standard for
13 comparison, I would be able to do a statistic, but it is
14 at a lesser value than a major contributor.

15 Q Okay. So in other words, an item of clothing could
16 be worn by more than one person?

17 A Correct. Items of clothing very commonly give us DNA
18 mixtures. It's more than likely that it was some, more
19 than one person's DNA on that item.

20 Q Well, and could someone, if someone took a shirt that
21 is worn by someone else and grabbed it and just dropped it
22 and could they leave skin cells, something?

23 A It is possible. There's so many factors go into
24 whether or not a person is going to leave DNA behind, how
25 much contact, how long the contact, were they under any

1 kind of stress at the time. So there's a lot of factors
2 that go into it, but it is possible if you just grab
3 something and left it, you would leave DNA.

4 Q Okay. But the one you could identify very definitely
5 was the profile of Kenny Ruff?

6 A Yes, sir.

7 Q In the scrapings of the shirt. Okay. Thank you.

8 MR. SCOTT: Beg the Court's indulgence.

9 THE COURT: Sure. Take your time.

10 MR. STUMBO: No further questions at this time, Ms.
11 Stanley. Please answer any questions Mr. Verner may have.

12 THE COURT: Any cross-examination?

13 CROSS-EXAMINATION

14 By Mr. Verner:

15 Q Agent Stanley, can we go to, you can step down for
16 just one second.

17 MR. VERNER: Can we back up to page, I think, three,
18 Mr. Bentley? I am sorry, page four.

19 Q Again, what items were submitted to you for testing,
20 Agent?

21 A I received a number of different items. I received
22 three standards, fingernail clippings from the right hand
23 of Roberto Facio; fingernail clippings from the left hand
24 of Roberto Facio; swabs from the interior push bar of the
25 front door; swabs from wires from video system; swabs from

1 edges of cash clips; from item 30 is a cash drawer from
2 upper A; swabs from the bottom of a recorder; swabs from
3 the bottom of a recorder; swabs from the top of a
4 recorder; swabs from a hard drive; swabs from the back of
5 an iPad and swabs from the scraping interior cuffs of and
6 neck area of shirt.

7 Q Okay. You can, actually sit down. What's the reason
8 underneath somebody's fingernail, we're not talking about
9 fingernail clippings, we're talking about the officer is
10 taking fingernail scrapings from underneath Mr. Facio's
11 fingernails, correct?

12 A No, sir. In this case, it was fingernail clippings.

13 Q Oh, they were? Okay. What's the purpose of, but why
14 that particular part of the body would be searched by
15 SLED?

16 A That part of the evidence is usually collected at an
17 autopsy and it's submitted for DNA that would have come in
18 contact with another person, possibly at the time of the
19 struggle, they may have tried to fight back and a person
20 or perpetrator and possibly left DNA behind.

21 Q Okay. But that's just a common or one of the better
22 places to catch foreign DNA is under the fingernails of
23 somebody involved in a struggle?

24 A It can be, but it is also, in my experience, I do see
25 a lot of DNA that could be found on contact, if two people

1 live together, that kind of thing.

2 Q Okay. Now, my understanding is under Mr. Facio's
3 left fingernails, you find his DNA, but you also find at
4 least one other person's DNA?

5 A Correct. I'm developing a mixture is of at least two
6 individuals.

7 Q Okay. And but the second individual would not be
8 Kenny Ruff or Kenny Ruff?

9 A Correct.

10 Q And nor Mr. Galvez or any of the other samples that
11 were submitted to you for testing?

12 A Those were the only two standards that I was able to
13 exclude.

14 Q Okay.

15 A I only had three for comparison and one already
16 matched Roberto Facio.

17 Q When you get the swab sent in for examination, the
18 police identify who they feel to be excluded and who they
19 feel the suspect and the victim are, correct?

20 A The victim is usually identified and we call the
21 subjects of investigations, if there are any, and then
22 possibly eliminations. So could it be somebody or not is
23 another standard.

24 Q But you know that going into the test who it is that
25 the police believe is a suspect?

1 A Sometimes. Sometimes the subject is identified later
2 and through investigation and we do get a standard at a
3 later date.

4 Q Right. And let's go into that for just a second.
5 What is CODIS?

6 A CODIS is a database. It's the Combined DNA Index
7 System, and it's a database of profiles from forensic
8 investigations culled by other sources that we can use for
9 comparison.

10 Q Okay. And, typically, when people are incarcerated
11 or if they're on probation, they submit their DNA to the
12 statewide database?

13 A As long as it is a qualifying offense; yes, sir.

14 Q Okay. And then kind of fingerprints, like there's a
15 computer that keeps everybody's in that category's DNA on
16 file?

17 A Correct.

18 Q Okay. And when there is unknown DNA in a case, the
19 computer examines the same 15 markers, I presume that you
20 look at, and then goes through the database to match up
21 similar hits, is that correct?

22 A It can be. Not all samples are entered into CODIS.
23 They have to qualify based on rules set by the FBI --

24 Q Okay.

25 A -- and typically mixture samples are ones that are

1 harder to get in, minor contributor mixture samples, I
2 guess.

3 Q Okay.

4 A But, yes sir. And if I'm able to put a sample into
5 CODIS, then it's going to look against DNA profiles like
6 the known standards and it's going to look for
7 comparisons.

8 Q And that would be a blind way or an independent way
9 to match up a suspect with a DNA sample?

10 A Usually, those cases are no suspect cases. Where a
11 suspect is not identified to us and it's a way of solving
12 cases.

13 Q But the DNA match is still as conclusive as knowing
14 the suspect beforehand, isn't it?

15 A I'm not sure I understand.

16 Q Well, if the, if you're found on CODIS to be the
17 person who contributed the DNA, that still is conclusive.
18 It will produce as strong a conclusion that that is the
19 person than your independent examination would?

20 A If I could clarify a little bit about CODIS. Yes, it
21 is a strong indication that it is going to be that person,
22 but those samples are not submitted with a
23 chain-of-custody. And so if we get what is known as a
24 CODIS hit or an indication that two samples match, we
25 would request or our CODIS Department would request a

1 standard be submitted from that individual for the
2 purposes of my testing. So I would still make that.

3 Q Okay. But there is no reason to presume it would be
4 any stronger or weaker than your independent exam, but you
5 would still double-check it?

6 A Right. We're double-checking for the
7 chain-of-custody purposes.

8 Q Now, I just, I'm unclear. At times I've heard
9 scrapings and at times I've heard cuttings. Do you know
10 which part of the shirt you examined?

11 A The shirt was examined by Jacqueline McKay.

12 Q Okay. Then what was your role in terms of, you
13 didn't have anything to do physically with the shirt?

14 A Correct. I received, Jacqueline would take a larger
15 item of evidence, a shirt, a pair of pants, a bedsheet,
16 something like that, and their job is to make it small
17 enough for me to do DNA analysis on it. So target areas
18 that would be appropriate for DNA analysis and submit
19 those items for me.

20 Q Okay. Now, so local law enforcement or the
21 investigators would send in the whole item of clothing?

22 A Yes. They can or they could take swabs or cuttings
23 but, typically, the whole item is submitted.

24 Q Is that what happened in this case?

25 A Yes, sir.

1 Q Okay. And then one of your agent's analysis or
2 analysts would cut a smaller piece from the clothing?

3 A They would take swabs or cuttings, depending on what
4 their examination request is for.

5 Q Well, did you examine a cutting or a swab?

6 A Swabs.

7 Q Okay. Do you know which area of the shirt that you
8 were examining?

9 A Yes, sir. It was the interior cuffs and neck area of
10 the shirt.

11 Q All right. Well, those are two different areas of
12 the, were both areas under the same swab?

13 A Correct. Because it is an ownership or a wearer DNA
14 request, we would combine the areas to attempt to get more
15 DNA.

16 Q Okay.

17 A And because the shirt would have been folded upon
18 itself, for DNA standpoint, it's appropriate to just take
19 a collection from the entire shirt.

20 Q But as far as where that DNA was, you're not sure
21 whether it was in the cuff or in the neck area or both?

22 A My sample was a combination of both.

23 Q Do you know what kind of DNA, what the source of the
24 DNA was? Was it blood, sweat, tears?

25 A There was no serology or body fluid identification

1 testing to determine whether this sample was strictly
2 blood or that kind of thing, but the request came in for
3 ownership, I believe.

4 Q Okay. Is it possible to determine what was the
5 source of the DNA in terms of blood, tears, sweat?

6 A No, sir.

7 Q It's not possible to even do that test?

8 A It is possible for us to identify body fluids such as
9 blood, semen and saliva are typically the ones that we
10 identify, and then perform DNA testing on those. In this
11 instance, it was a separate collection. There wasn't a
12 body fluid test to associate with that type item.

13 Q Okay. And when did you do the test?

14 A I would need to refer to my case log to get the exact
15 date, but I believe it was in September 2016.

16 Q So about a year-and-a-half or a little over a year
17 after the, so the shirt had been sitting in storage for
18 about a year or in an evidence bin?

19 A I would need, that's when my analysis, I would need
20 to check Jacqueline's notes to determine when she took the
21 cutting or took, I'm sorry, the swabs.

22 Q Doesn't your report indicate you did the DNA analysis
23 on October 28th?

24 A That's when the report was finalized.

25 Q Okay. Have you seen any of the other evidence in

1 this case?

2 A I'm not sure I understand.

3 Q And do you have any other role in this case other
4 than as the DNA analyst?

5 A I got the evidence that I received and performed DNA
6 testing. That's the extent of my role.

7 Q The other items in the bag would have had to be put
8 in by someone, so they would be, why wouldn't they, if
9 you've got a shirt with DNA on it and it's been in a
10 sealed plastic bag for over a year on top of a DVR
11 machine, on top of telephones, on top of iPads, why in
12 over a year would they not have been on other items in
13 that bag, too?

14 A I don't have, I don't know if those items that you're
15 referring to are some of the recorder items that I had or
16 not because I'm not clear with your description of them.
17 I'm sorry.

18 Q Were there other items in the bag with the shirt?

19 A I never saw a bag.

20 Q Okay. And I think your testimony about the 1 in 210
21 quadrillion?

22 A Yes.

23 Q But those could be unrelated people, right?

24 A Correct.

25 Q But, typically, the closer people live together and

1 the longer they live together, those odds go down
2 substantially, right? You would suspect that people who
3 are next-door neighbors possibly have a closer degree of
4 relationship?

5 A I'm talking about biological relationships. I'm
6 looking for people that would be related or unrelated in a
7 family.

8 Q But is it more or less likely that someone who lives
9 in the community with him would be related by blood by
10 biology than someone who's in Asia or Australia?

11 A I'm not sure. Because like my husband and I live in
12 Columbia. We don't have any other family in the area, you
13 know, I could have family in Asia. But if you're saying
14 like would my profiles be the same or would it be more
15 likely to have a profile that would be similar?

16 Q The 210 quadrillion is unrelated people?

17 A Yes, sir.

18 Q Okay. If you were just looking at sources of DNA
19 from Newberry County, it wouldn't be that number would it,
20 because the chances of people being related is much
21 greater the closer they live to them?

22 A The statistics that I generate is based on unrelated
23 individuals. Related individuals could share DNA but it's
24 unlikely they're going to share as much DNA across an
25 entire profile.

1 Q That's my question. Depending on how closely are
2 they related, you start seeing more and more of those 15
3 areas being similar in DNA?

4 A Correct. I could see similarities between two
5 brothers let's say, but I would not see an entire profile
6 be related.

7 Q My identical brother would pretty much be the exact
8 DNA profile?

9 A Your identical brother, yes.

10 Q My fraternal brother would be closer in DNA profile
11 than a non-relative?

12 A It is possible. Now, I have had brothers and sisters
13 that shared DNA at a couple of locations --

14 THE COURT: Okay. Hold for a second. We don't, this
15 gentleman right here, I mean just, it's distracting him
16 back there talking and I noticed that, well, I'd looked
17 over that way and half the jury did too. So let's try to
18 keep it down and I don't want anybody in and out.

19 Everybody stays in the courtroom. No discussion, please.
20 Sorry, Mr. Verner.

21 MR. VERNER: Thank you, Your Honor.

22 Q Would people of a same race be more likely to have
23 similar DNA markings than, for example, an Asian and a
24 white man or a black man and a white man?

25 A It is possible that there are going to be similar

1 alleles or DNA types between races, yes.

2 Q All right. Even in the same 15 discreet locations
3 that we've been talking about?

4 A They're going to be similar types, but they're not
5 going to be the exact same profile, no.

6 Q Were you asked to test or to compare the DNA of an
7 individual, last name Bailey?

8 A No, sir.

9 Q Are you aware of whether the, when did you get the,
10 when does your report indicate that Newberry County or the
11 City Police sent you the, by you I mean SLED, the
12 materials for analysis?

13 A I'm not sure that they all came in at the same time.
14 Is there a particular item you would like me to check?

15 Q Well, let's do it this way. Was it more than one or
16 two days after August 26th of 2015?

17 A Yes.

18 Q Okay. So if someone had also been identified as a
19 possible suspect at that time, there would have been time
20 to include other people's DNA?

21 A There would have been time, but it's not uncommon for
22 us to not get it at the time --

23 Q Okay.

24 A -- of submission.

25 Q All right. And to get someone's DNA, I'm not asking

1 you the legal hoops that you have to go through --

2 A Yes, sir.

3 Q -- but it's really as simple as, and I call it cotton
4 swab, but it's really as simple as taking a Q-tip into
5 somebody's mouth?

6 A Yes, sir.

7 Q Okay. So it's not a particularly hard or invasive
8 procedure nowadays to get DNA?

9 A The procedure that you're describing is a buccal swab
10 or an oral swab and no, that procedure is pretty easy.

11 Q Okay. And the buccal swab is what you identify or
12 what you based your testimony in this case?

13 A For two of the known standards, yes.

14 Q Okay. Now, on the shirt itself that you examined
15 where you found what you're testifying is an indication of
16 Kenny Ruff's DNA, you found other sources of DNA, too?

17 A The DNA profile developed from that item was a
18 mixture; yes, sir.

19 Q Okay. Does that mean that you can narrow it down to
20 two people or could it be possibly three?

21 A It is at least two individuals. I know that there is
22 at least two, it could be three. Sometimes, when DNA
23 mixtures like you were discussing family members, there
24 could be shared DNA. So it's hard for me to give a
25 definitive answer that it's two or three.

1 Q Okay. But we know it wasn't the victim's DNA, Mr.
2 Facio's DNA?

3 A Correct.

4 Q And we know it wasn't Mr. Galvez' DNA?

5 A Correct.

6 Q And we know it wasn't the other family members or any
7 of the other people that were sent to you for exclusion?

8 A Those were the only two standards that I had.

9 Q That you excluded specifically?

10 A Correct.

11 Q Okay. But it's clear you have unidentified DNA from
12 other, can you tell whether it's a man or a woman or just
13 all you know is it's somebody else's and that's as far as
14 you can narrow it down to?

15 A Because it is that minor contributor, so that person
16 is contributing less, there's not a whole lot I can say on
17 that.

18 Q Okay.

19 MR. VERNER: Your Honor, the Court's patience just
20 one second.

21 THE COURT: Sure, take your time.

22 Q Okay. And just out of curiosity, when you get these
23 numbers that come up which are the discreet or they call
24 it alleles?

25 A Yes, sir.

1 Q They are?

2 A Allele.

3 Q Okay. But these numbered pairs are called alleles?

4 A Each individual one is an allele.

5 Q Okay. Does the computer, do you just kind of put it
6 into a computer reading or do you have to use a microscope
7 to look at the source of the DNA itself?

8 A If you will remember, I would take DNA from swabs or
9 cuttings and I try to make it a liquid format. I put it
10 through several laboratory techniques and we have
11 instrumentation that will look at the DNA and actually
12 take a picture. Computer algorithms are applied to it and
13 we use a software system to actually interpret what we
14 call DNA peaks or what the DNA looks like and it assigns
15 alleles to it.

16 Q So it won't be like you're looking at a sample under
17 a slide like a blood sample or where you can see the blood
18 cells or anything like that?

19 A No, sir.

20 Q Okay. So there's no way for you to know what was the
21 source of the DNA in terms of saliva, sweat, blood, semen?

22 A On item 47.2, from the shirt?

23 Q From your exam, yes ma'am.

24 A That item, I don't know what the source of DNA. I
25 just know what the collection was for.

1 Q Okay.

2 MR. VERNER: Agent, the prosecutor may have more
3 questions for you.

4 THE COURT: Any redirect?

5 MR. STUMBO: A couple, Your Honor.

6 THE COURT: Sure.

7 REDIRECT EXAMINATION

8 By Mr. Stumbo:

9 Q You said, I think you were starting to say this
10 earlier, but siblings could have very different DNA's, you
11 know, brother and sister, in your experience, you've seen
12 could have completely different profiles?

13 A Yes. So siblings could share the locations on the
14 DNA or they could be very different, and they could be
15 full siblings. It just depends. My brother and I, for
16 example, share just a few locations and that's just by
17 random chance. We have the same parents. It's just
18 that's how our DNA profiles are developed.

19 Q So unless you're identical twins, there's no way
20 scientifically to really make comparisons?

21 A Correct. I would need individuals standards from
22 everybody.

23 Q Okay. CODIS, we talked about that and is a database
24 with DNA profiles in it, correct?

25 A Yes, sir.

1 Q And that is, where do you get the CODIS profiles
2 from?

3 A CODIS profiles can, they come from a variety of
4 sources. They can be forensic samples that I develop from
5 evidence items that I've entered into our computer system.
6 They can come in after a person is admitted to SCDC or the
7 Department of Corrections, Probation and Parole, DJJ.
8 There's other sources if a person is missing, there's
9 missing family members, unidentified human remains.
10 There's several different aspects of CODIS, but the two
11 most common are the evidentiary profiles and the offender
12 profiles.

13 Q Okay. And CODIS, you mentioned earlier that a
14 mixture, a mixed DNA, the protocols, the FBI protocols
15 wouldn't compare a mixed profile to a CODIS profile?

16 A There are certain mixed profiles that I can enter,
17 but there's different rules that I need to follow to, not
18 all profiles are eligible.

19 Q Okay. And a mixture of such as the one in State's 39
20 with these clippings, the minor contributor that you have
21 here and we can go to page five of the report. You said
22 it could be one, it could be two additional partial
23 profiles in this mixture, correct?

24 A Yes, sir.

25 Q And would that be sufficient to submit to compare to

1 a CODIS, try to get a CODIS hit?

2 A The minor contributor would not be. The major
3 contributor would be an example to profile in CODIS.

4 Q Okay. So the major contributor, even though you
5 already have a match, so you wouldn't submit to CODIS,
6 correct?

7 A As long as the profile is eligible. There's
8 different rules for eligibility. As long as it's
9 eligible, yes, I could put it into CODIS.

10 Q Okay. These other minor contributors that are in
11 this profile could not submit that or that wouldn't be
12 sufficient for a CODIS submission?

13 A Correct. CODIS submissions are based on the
14 potential number of matches. So CODIS is only as good as
15 what you're going to get out of it. So if I put a profile
16 in there and I get 500 matches, it really doesn't tell me
17 anything. CODIS will try to put a sample in there and get
18 as few number of matches back as possible to try to base
19 identity on these samples.

20 Q Okay. So if you just have a smattering of numbers
21 across a profile, you could get a huge number of hits as
22 to that?

23 A Yes, sir.

24 Q Now, and again this is State's 39, the major
25 contributor on this matches the profile for Kenny Ruff --

1 A Yes, sir.

2 Q -- Kenny Ruff? Okay. And that would be one in 210
3 quadrillion?

4 A Yes, sir.

5 MR. STUMBO: No further questions.

6 THE COURT: Any recross?

7 MR. VERNER: No, no questions, Your Honor.

8 THE COURT: Thank you, ma'am. You can step down.

9 I'm thinking our SLED agents, you're finished with SLED?

10 MR. STUMBO: I was going to ask that they be
11 released, Your Honor.

12 THE COURT: All right. You're welcome to remain with
13 us, but you are free to leave. How long do you anticipate
14 Mr. Bentley to take.

15 MR. SCOTT: We will call Walter Bentley, if you care
16 to take a break.

17 THE COURT: Okay. All right. Well, let's go ahead
18 and, and take a short afternoon break before we start with
19 Mr. Bentley. And, ladies and gentlemen, take a break.
20 Again, I know you get tired of me saying this, but do not
21 begin any discussions about this case and we'll get you
22 back out shortly, okay?

23 (Whereupon, the jury was excused from open court for
24 a break.)

25 (Whereupon, a short break was taken.)

1 THE COURT: All right. Let's bring the jury out,
2 Madam Bailiff.

3 (Whereupon, the jury came into open court at
4 approximately 3:35 p.m.

5 THE COURT: Okay. Let the record reflect the jury is
6 back in. Solicitor Scott, call your next witness.

7 MR. SCOTT: Thank you. The State calls Walter
8 Bentley.

9 WALTER BENTLEY, being
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Scott:

13 Q Okay. Mr. Bentley, and the jury has been seeing you
14 work our TV during the trial, but just to be clear, you
15 and I are, work together, don't we?

16 A That's correct.

17 Q And you were hired as an investigator in the same
18 office I work in?

19 A Yes.

20 Q And we regularly work together prepping cases for
21 trial, don't we?

22 A Yes, we do.

23 Q And you have worked with me extensively in getting
24 this case ready for trial, have you not?

25 A Yes.

1 Q Okay. And as part of your preparation, you've had
2 occasion to view the Brothers BP videos?

3 A Yes, I have.

4 Q And the Kunkle Oil videos?

5 A Yes.

6 Q Have you had a chance to review the Heritage Square
7 video that shows the dumpster?

8 A Yes.

9 Q Have you had an occasion to view the Wal-Mart video
10 that Defense introduced, some still shots from that depict
11 Kenny Ruff going into Wal-Mart?

12 A Yes.

13 Q Have you also reviewed the footage from inside of
14 Leslie's Salon?

15 A Yes, sir.

16 Q Okay. Early on, what was one of the things that you
17 had to do in order to, I guess, kind of make sense of
18 these videos as chronologically speaking?

19 A The issue we had was is, Brothers BP and Kunkle Oil.
20 The times didn't make sense. They were off. I went to
21 both locations and examined systems. Both locations had a
22 digital video recording system or a DVR, very simple
23 system where the cameras are plugged directly into the
24 DVR, much like VCR's back in the day where you put your
25 tape in and play it, much like a VCR would have. You

1 would put a tape into record and these DVR systems have a
2 hard drive that you record on. Also much like a VCR or
3 even as Mr. Verner said earlier in his opening, a clock in
4 a car or a stove, it also has a clock on it. If that
5 clock is not set or if the power goes out, it resets to
6 12:00 o'clock and unless you go back in and manually reset
7 it correctly, these times are going to be off and we found
8 that in Kunkle and in Brothers, that was the case. We
9 also found that neither one of these systems were
10 networked and when I say networked, they weren't connected
11 to a computer that was internet connected. If they were,
12 like we found out some of the other systems were, then
13 they would have been pulling correct time from a network
14 computer on the Internet which would have given it actual
15 time.

16 Q Okay. So early on you were able to determine Kunkle
17 Oil, the time listed or the timestamps listed on the video
18 did not coincide with real time?

19 A That's correct.

20 Q And let me ask you this. What was the way you were
21 able to reconcile the time at Kunkle Oil with the correct
22 time?

23 A What I did for Kunkle Oil is I got a copy of the
24 dispatch, 911's dispatchers CAD report. The CAD report is
25 a computer automated report. This CAD report in this

1 particular case had the Newberry Police Department and
2 Newberry County EMS arriving at Leslie's Hair Salon at
3 2:02 p.m. In Newberry County I've found out EMS and the
4 Police Department are both on separate readings. So I
5 feel like the 2:02 time is very accurate, because both
6 individually, the police and EMS would have both had to
7 physically be on the radio to sign out and both of those
8 times be recorded separately due that they are on separate
9 channels. So I used 2:02 p.m. as my baseline. I then
10 went to the Kunkle Oil video and I found where EMS and the
11 police department arrived. That was able to let me see
12 exactly how far off in time the Kunkle Oil video was from
13 our baseline, which our baseline is the, what time we knew
14 from the CAD report, EMS and law enforcement arrived.

15 Q All right. So just to clarify. You watched the
16 Kunkle Oil video, and then when you saw the initial first
17 responders arrive, you checked the timestamp of Kunkle Oil
18 and because you knew 2:02 p.m. is when the first
19 responders got there?

20 A Yes.

21 MR. VERNER: Your Honor, that's leading.

22 THE COURT: Okay. Try and rephrase just a little
23 bit.

24 Q Well, what did you determine? What was the time
25 difference, Kunkle Oil was operating on a delay or was it

1 fast?

2 A When I looked at the Kunkle Oil video and I saw that
3 law enforcement arrived at 1:50, right at 1:53 p.m., I
4 know that they arrived actually at 2:02, that made me know
5 that Kunkle Oil's video was eight minutes slower than the
6 actual time or real time.

7 Q Eight minutes slow.

8 A So when the Kunkle Oil video shows a timestamp of
9 1:54, actually it's 2:02.

10 Q Okay, eight minutes slow. All right. Brothers BP,
11 did you watch some of the videos from Brothers BP?

12 A I did. I watched several.

13 Q Okay. And did you determine that it was accurate or
14 that the timestamps on those videos were off?

15 A It was actually much further off than Kunkle Oil in
16 actual time. I determined that it was 20 minutes faster
17 than Kunkle Oil. The way I went about doing that was I
18 decided, we have an outdoor image or a video of Brothers
19 BP shooting towards Main Street in Newberry. Also, Kunkle
20 Oil's video was also shooting towards Main Street in
21 Newberry. So for me to reconcile the time, what I decided
22 to do was I looked for common vehicles passing. The first
23 common vehicle that I located, that looked like a vehicle,
24 I might be able to find it on videos was a small white
25 bus.

1 Q Okay. Let me show you State's number 48.

2 A State's 48 is--

3 Q Okay.

4 A State's 48 is a screen shot image I used from camera
5 14 at Brothers BP.

6 Q Okay.

7 A It shows a Brothers BP time stamp of 1:55 p.m. And
8 it shows a white bus passing by with a small gray car in
9 the lane beside it.

10 Q Okay. And that's kind of in the upper left-hand
11 portion of the, of the screen?

12 A Yes, sir; it is.

13 Q Okay. And so, explain again, how you going to use
14 that in conjunction with the Kunkle Oil video?

15 A What I am going to do, I going to try to find this
16 same vehicle passing in the Kunkle Oil.

17 Q Okay.

18 MR. SCOTT: Your Honor, State does go ahead and offer
19 48 in evidence.

20 THE COURT: 48 is already into evidence.

21 MR. SCOTT: All right.

22 Q 47, too, and this is State's 47.

23 A 47 is an image from Kunkle Oil timestamp, Kunkle Oil
24 time of 13:35 or 1:35 p.m. in the afternoon. You can see
25 where I feel like it's the same white bus. Also, in the

1 lane is a gray car.

2 Q Okay. The same car is kind of lagging behind that
3 you saw up the street in the Brothers video?

4 A Yes.

5 Q And again, I know this has kind of been talked about
6 a lot, but the Brothers BP is what, a block or so up the
7 street from Kunkle Oil or two blocks maybe?

8 A Yes, it's probably 200 yards or so.

9 Q So what you're, you're seeing the white bus in front
10 of Brothers, and then you're also seeing it captured on
11 the Kunkle Oil video?

12 A Yes.

13 Q Okay. And so then using that were you then
14 reconciling the Brothers BP video with Kunkle Oil?

15 A Yes. But I wanted to go a little further. I wanted
16 to make sure that this one bus wasn't an anomaly and that,
17 that there were more than one bus that passed by. So I
18 continue watching several seconds after the bus, a
19 motorcycle comes by into frame on the Brothers video.

20 Q Let me show you State's 49.

21 A And this is a picture of Brothers camera 14 at 1:55
22 p.m. and 11 seconds. And you see a gentleman or a person
23 riding a motorcycle at Brothers BP.

24 Q Okay. And then, I guess, were you able to find that
25 in the Kunkle Oil video?

1 A I was.

2 Q All right. Let me show you State's 52.

3 A This is the, once again, right after the bus and the
4 silver car is gone, I was able to find that same
5 motorcycle that I see in Brothers coming behind them to
6 reconcile that time.

7 Q Okay. And did you stop and try to reconcile any
8 further?

9 A Yeah. I like to, I like to do things in excess
10 sometimes so I decided to, let me just check one more
11 different vehicle. So I found a yellow SUV that passes,
12 driving in the opposite direction. And I decided to see
13 if my theory of the 20 minutes, approximately 20 minutes
14 was correct. I found the yellow SUV in the Kunkle Oil
15 video at 13:30 or 1:30 p.m. And I went to the Brothers
16 video in an attempt to find that.

17 Q Let me pull up State's 51. Okay. Is that the yellow
18 vehicle in front of Leslie's, in between Leslie's and
19 Kunkle's that you're talking about?

20 A 51, yes.

21 Q Okay. And then you were able to find that when it
22 passed Brothers BP?

23 A Right.

24 Q Let me show you State's 50. So doing this,
25 cross-referencing and looking at the vehicles from one

1 video and then finding them in the next video from
2 different businesses, how far off was Brothers BP from
3 Kunkle Oil's time?

4 A Brothers BP was almost 20 minutes faster than Kunkle
5 Oil.

6 Q Okay. Well, are you able to determine Brother's
7 video, how fast or slow is it from real time?

8 A To determine that, I know that Kunkle Oil is eight
9 minutes slower than real time. Brothers BP is 20 minutes
10 faster. So that left me with 12 minutes, so that makes
11 Brothers BP 12 minutes faster than actual time.

12 Q Okay. So you got to do a little bit of math when we
13 look at timestamps from Brothers BP to Kunkle Oil?

14 A Yes, I do.

15 Q All right. So for instance in State's, I think
16 that's, 51 or is that 50? So if we're looking at State's
17 50, this is the Brothers BP camera. It's saying 1:49 p.m.
18 If we use your formula, we have to subtract 12 minutes?

19 A Subtract 12, so 1:37.

20 Q Okay. So that's 1:37 p.m. is how we would do that.
21 All right. So for Kunkle Oil, if we look at those videos,
22 we basically to get real time we have to add 8 minutes.
23 If we're watching Brothers BP and we want real time we
24 subtract 12 minutes?

25 A Yes.

1 Q Leslie's Hair Salon, were you able to determine that
2 it had a lag or it was off somehow?

3 A It was also off. I examined the area, looked at
4 their DVR also. Much like the one at Brothers, much like
5 the one at Kunkle, also the VCR effected I told you
6 earlier, it is a plug in the wall, you have got to reset
7 the time if the power goes out or gets unplugged. It was
8 approximately 43 minutes fast from actual time.

9 Q 43 minutes fast? Describe how you were able to, we
10 haven't watched it yet, we will. But does Leslie's video
11 depict when the mysterious figure in all black enters the
12 store?

13 A Yes, it does.

14 Q And then were you able to look at that in conjunction
15 with the Kunkle Oil video?

16 A Yes. I was able to compare that with the Kunkle
17 video with the individual crossing the street that is
18 going into the store. With the video, Leslie's Salon with
19 the individual actually coming into the store, which gave
20 me my timeframe there.

21 Q Okay. And you said it was 43 minutes fast or 43
22 minutes slow?

23 A It's 43 minutes fast.

24 Q Heritage Square, that was the video at the apartment.
25 Let me show you, that's State's 45. I don't see the

1 timestamp on there, the screen shot where we have the
2 video. Was it real time, was it accurate, was it fast or
3 slow?

4 A It's actually accurate. And I was able to determine
5 that from, I worked with the IT people there for the
6 apartment complex. I mean, I was working with them in
7 this case, I was actually having trouble getting the video
8 to play in the software. They have a proprietary
9 software. And in working with them I learned about their
10 system and I was actually able to look at their system.
11 Their system is recorded on a computer, a network Internet
12 computer, so it's pulling the time off the Internet. So
13 it's pulling correct time. So the 1:46 timestamp to 1:47
14 timestamp on the Heritage video is correct time.

15 Q Okay. And then Defense put in Defendant's Exhibit 5.
16 It was, it depicted Kenny Ruff entering a Wal-Mart?

17 A Yes.

18 Q Were you able to determine Wal-Mart's video being
19 accurate, fast or slow?

20 A Wal-Mart's video is the correct time, also. They
21 also are on a network system that I've actually had some
22 interaction with in other cases and in this case. So I
23 can say that system is correct time.

24 Q Based on the math you had to do, were you able to I
25 guess kind of generate a timeline where you were able to

1 link together Brothers BP, Kunkle Oil, Leslie's, Heritage
2 Square and Wal-Mart? Were you able to kind of formulate
3 the timeline?

4 A Yes, I was.

5 Q Okay. Now, were you able to find a number of
6 reference points with the State, where the State's
7 alleging through these various pictures is Kenny Ruff?

8 A Yes.

9 Q Were you able to determine, I guess, wardrobe changes
10 throughout the day of August 26th, 2015?

11 A Yes, I was.

12 Q Okay. I want to try to start early on at BP. We got
13 Defense Exhibit 1.

14 MR. VERNER: Your Honor, can I see you at sidebar on
15 this?

16 THE COURT: Sure.

17 MR. VERNER: Briefly.

18 THE COURT: Sure.

19 (Whereupon, a bench conference was held in the
20 presence of the jury but out of the hearing of the
21 jury.)

22 MR. VERNER: Okay. Thank you, Judge. And subject to
23 my objection.

24 THE COURT: Sure.

25 Q State's Exhibit 1 or Defense Exhibit 1, are you

1 familiar with that picture?

2 A Yes.

3 Q Okay. And what is the establishment?

4 A That's the inside of Brothers BP, camera number six.

5 Q Okay. And it's saying 11:51 a.m. What is the true
6 time?

7 A Subtract 12 minutes from it so it would make it, math
8 is not my strong suit, but 11:39.

9 Q All right. 11:39 a.m. This is Defense Exhibit
10 wherein they say Kenny Ruff, here is short-sleeved sort of
11 light blue shirt with stripes on it.

12 A Yes.

13 Q 11:39 a.m. in the morning. What is he wearing,
14 describe what he's wearing here?

15 A Appears to be jeans, a gray and white striped shirt
16 and the shoes looks to be white with some type of
17 coloration around front and sides of them. And he has
18 nothing on his head.

19 Q Okay. Let me go to Defense Exhibit 4. Without
20 saying who this is, describe what this man is wearing
21 here?

22 A It is a black male individual with a skull cap on his
23 head. Looks to have some type of dark-colored shirt on.
24 There is blue jeans. Looks to be something like a black
25 type of clothing under this green shirt or dark-colored

1 shirt. And the shoes look to be reddish in color.

2 Q Okay. And what -- where is that location? Where is
3 that camera footage?

4 A It's camera 12 of Brothers BP.

5 Q All right. And so 12:43, so is that 12:31 p.m.?

6 A 12:31.

7 Q So about an hour later, an hour after the Defense
8 Exhibit 1, we see Defense Exhibit 4. Okay. Let me ask
9 you about, this is State's 30 and 31 and describe what the
10 man in this picture is wearing?

11 A State's 30 is a inside view of Brothers BP once
12 again. It's a black male, he's wearing blue jeans. Looks
13 like white shoes, it looks like the laces are dark and a
14 dark-colored over shirt and a doo-rag.

15 Q Go ahead and describe that one.

16 A State's 31 seems to be an image of the same
17 individual several, 22 seconds later, yeah, 22 seconds
18 later.

19 Q Okay. So these last two, State's 30 and 31, were the
20 same visit to the store?

21 A Yes.

22 Q And this is, what, about an hour after Defense
23 Exhibit 4? Defense Exhibit 4 is 12:31 p.m. realtime.

24 A This would have been 1:32 realtime.

25 Q This would have been an hour after, give or take a

1 minute or two?

2 A 1:32 in realtime.

3 Q And this individual is at the BP again. Now tell me,
4 if you look at Defense Exhibit 4 and State's 31, are the
5 shoes the same or different?

6 A These shoes appear to be different. The shoes in
7 Defendant's 4 have a red tone to them. The shoes in
8 State's 31 almost look to be Adidas. They have the Adidas
9 stripes on the side.

10 Q Okay. You sort of see what appears to be stripes?

11 A They also have dark colored laces also.

12 Q But then this is an hour before in Defense Exhibit 4,
13 they're sort of red shoes?

14 A Yes.

15 Q Defense Exhibit 4 and State's 30 are both the BP
16 right there on Main Street, Brothers BP?

17 A Brothers BP, yes.

18 Q Okay. Let me show you State's 29. This appears to
19 be about three minutes just before.

20 A Yeah. State's 39 shows an individual wearing, once
21 again, a skull cap. He has a dark-colored shirt over his
22 shoulder. He's wearing a light blue shirt with some type
23 of white print in a block formation. And you can actually
24 see the shoes a little better. He's wearing blue jeans.
25 You actually see the shoes better, they definitely appear

1 to be Adidas with black laces. And interesting in this
2 picture, there's also some type of lanyard or string
3 hanging from his back pocket.

4 Q Okay. You're talking about just under his left hand
5 kind of that string-looking thing is what you're talking
6 about?

7 A Yes.

8 Q You describe it as a lanyard, apparently?

9 A A lanyard or some type of strings. I know the back
10 of doo-rags sometimes have those type of strings on them.

11 Q Okay. So 1:41, if we do our math, about 1:29 p.m.,
12 is that right?

13 A Yes.

14 Q 1:29 p.m. and this is State's Exhibit--

15 MR. SCOTT: Without taking that down, Taylor, I want
16 to, State's number 86?

17 A Yes. That's at 1:45. Which you subtract down to
18 actual time is 1:33.

19 Q Now, the one, this is four minutes different from
20 that?

21 A Yes, four minutes.

22 Q Okay. So if this is saying 1:29--

23 A That's 1:33.

24 Q 1:33. So 1:33, the same camera angle. State's
25 number 86 is, what is different between State's 29 and

1 State's 86?

2 A Really the only difference is the over-shirt.
3 There's an over-shirt now, this dark-colored over-shirt.

4 Q Okay.

5 A Appears to be the same individual. Appears to be
6 wearing a skull cap, blue jeans. And, like I said, the
7 Adidas with the dark laces. And also the lanyard or
8 strings hanging from his back pocket.

9 Q All right. You see the lanyard is what you're
10 saying?

11 A Yes.

12 Q All right. Let me ask you this. Were you able to
13 determine, we've all seen the video of the dark figure
14 enter Kunkle Oil and then exit. Realtime, when did the
15 individual enter Leslie's hair salon?

16 A He would have entered Leslie's Hair Salon in actual
17 time at 1:37 p.m.

18 Q 1:37 p.m. realtime. This picture was taken, what
19 realtime?

20 A State's 86?

21 Q Yes, sir.

22 A 1:33 realtime.

23 Q 1:33. So four minutes before the entry into
24 Leslie's, this is taken outside of Brothers?

25 A Yes.

1 Q Brothers, three minutes later, the individual enters
2 Leslie's. Now, there's been a lot of talk about colors.
3 Very clearly, 37 is a black shirt?

4 A Yes, it is black.

5 Q The testimony was that this was discovered in the
6 dumpster at Heritage Square, it's been testified to. This
7 individual shown here in State's 86, was that somebody
8 whose movements you detected in multiple cameras that you
9 felt like it was the same individual?

10 A Yes, I detected him in numerous cameras. One outside
11 and numerous on the inside of Brothers BP.

12 Q Okay. Tell me something you observed as far as a
13 tint, I guess, or lighting rather?

14 A And what's interesting and I've got a series of
15 pictures that demonstrate this, but what's interesting is
16 in some pictures, in some cameras, the shirt looks green
17 depending on the lighting or if it's inside or outside.
18 In some it looks black. I can't explain exactly why that
19 is. I do know in my experience with surveillance systems,
20 if the cameras aren't routinely focused and cleaned there
21 are a few problems and there are issues with them. But in
22 some instances the shirt looks black inside and outside
23 and in some it looks green.

24 Q Okay. And this particular, State's 86, around this
25 time frame, according to this stamp it says 1:45 BP time.

1 Show me, look at State's 77.

2 A State's 77, let's go back to State's 86 for a minute.
3 It's at 1:45 and 42 seconds. It's an outside shot. If we
4 go to State's 77, this is Brothers time. This is an
5 actual time. It's a timestamp of 1:44 and 25 seconds. So
6 it is roughly a minute and 20 seconds earlier. You see an
7 individual, the shoes are similar or the same, the shirt
8 and the doo-rag and blue jeans. It appears to be the same
9 individual from camera 12 in State's 86. In that picture,
10 the shirt looks dark, like a black color.

11 Q But then, State's 78, is that just a different angle?

12 A Yeah. That's actually one second later. This is at
13 1:44 and 26 seconds Brothers BP time. And the shirt
14 appears to be more, a little more green in this picture
15 than the other one.

16 Q Okay.

17 A But it's the same individual from State's 77.

18 Q Then if you look at State's 79?

19 A It's a different camera view, which it is about 30
20 seconds, a little over 30 seconds later. And you see, 40
21 seconds later from camera 10, and there the shirt, the
22 shirt kind of has a green tint in that picture too. It's
23 not quite as green as some of the other pictures but it
24 does have darker green tint in that picture.

25 Q And you felt like this was the same individual?

1 A It is definitely the same individual. I followed his
2 movements with the cameras in live action and then stopped
3 them and took a still shot with a computer program I have.
4 So it is definitely the same individual.

5 Q State's 76.

6 A This is at 1:44 and 20 seconds. This is earlier as
7 he is walking into the store. You once again see a
8 different view of him. This one to me is significant
9 because if you look, looks like the light is coming in
10 from the windows. And it looks like the shirt looks green
11 from behind. But the front of the shirt it looks black
12 which just goes to the fact, I think the light is playing
13 tricks on us on some of these pictures.

14 Q Well, and again, look at 75.

15 A 75 is at 1:44 and 19 seconds and this is from camera
16 number one. The previous exhibit in 76 is from camera
17 number 9. And definitely, the shirt definitely looks
18 black in this picture.

19 Q And what about the doo-rag?

20 A The doo-rag also looks black in this picture.

21 Q And finally 80.

22 A 80 is from the camera number one also, it is at 1:45
23 and 27 seconds. This individual made a purchase in the
24 store and was leaving the store, also, 1:45 and 28,
25 approximately a minute and 20 seconds later. The shirt

1 definitely looks black and the doo-rag also looks black in
2 this picture.

3 Q Okay. And that's the individual at the bottom right?

4 A The bottom right.

5 Q Do what?

6 A Yes, the bottom right.

7 Q Bottom right. Okay. What number is that one?

8 A State's number 80.

9 Q Were you able to, do you have any information why
10 sometimes his shirt appears and his doo-rag appears olive
11 green tint and other times dark black?

12 MR. VERNER: Your Honor, that sounds to me like it's
13 going to involve speculation.

14 THE COURT: Ask it a different way and maybe that
15 would resolve Mr. Verner's concern.

16 Q Okay. I think you explained it. Did you make
17 efforts to take still shots of what you believed to be the
18 same individual as he moved inside and outside Brothers
19 BP?

20 A Yes, I did.

21 Q And what did you observed?

22 A I observed, depending on the lighting and depending
23 on the light coming from outside or even being outside had
24 a direct effect on what color his shirt looked in the
25 video and in the still shots.

1 Q Okay. 45, this is, looks like a still shot from
2 Heritage Square, have you seen that picture before?

3 A Yes, I have. I took this still shot.

4 Q Okay. Was that image or, I guess, the clothing
5 noteworthy to you in any way?

6 A It was. I'm trying to find the exhibit to compare it
7 to. In State's number 45 there is a, this individual who
8 was putting a white trash bag into this dumpster is
9 wearing a blue shirt with a square white print, a light
10 blue shirt with a square white print.

11 Q Okay. A blue shirt with a square white print around
12 the, what area of the shirt?

13 A Around the center part of the shirt.

14 Q Okay. And you compare that to which picture then?

15 A I compared that to State's number 29. And State's
16 number 29, you can see this individual here. He's wearing
17 a light blue shirt with a square white print in the center
18 of the shirt.

19 Q Okay. And this particular image, again, is 1:29?

20 A 1:29.

21 Q Eight minutes before the man enters Leslie's Hair
22 Salon. This is State's 46. What have you got here?

23 A What I have done here is I have taken a GIS image
24 from Newberry County Tax Assessor's Office of the area of
25 Main Street and Wilson Road here in the City of Newberry.

1 I have taken and made little pins to show you where things
2 are. I made one from Brothers BP, I made one for Kunkle
3 Oil, one for Leslie's Salon and one for Heritage Square.
4 Also I had Main Street labeled for convenience. What I've
5 done here is taken some of the same stills that I just
6 testified to, made them a little smaller to put on the
7 poster board. And I put them in sequential order. I took
8 the stills starting and I got the timestamp from the
9 company and I have put a sticky here saying what the
10 actual time is and where the image is from. And it goes
11 in sequential order as you are reading.

12 Q Okay. Is your testimony that you have ensured the
13 accuracy of these timestamps as far as reconciling the
14 inaccuracies of Brothers BP timestamps and Kunkle's
15 timestamps but you've reconciled it with realtime?

16 A Yes.

17 Q Okay. And are you able to testify to where these
18 images were captured?

19 A Yes, I am.

20 Q Okay.

21 MR. SCOTT: Your Honor, the State offers 46 for
22 admission into evidence.

23 THE COURT: It's already in evidence. That was in
24 the group 45 to 57.

25 Q All right. With the Court's permission, Walter, I'm

1 going to ask you to step down for a minute.

2 THE COURT: Be sure to speak up loud, Mr. Bentley, so
3 we can hear you.

4 Q All right. The first image we see at the top left,
5 that is an image taken where?

6 A It's taken at Brothers BP on Main Street here in
7 Newberry.

8 Q Okay. If you would, this purple tag, I know you've
9 got them labeled, but can you kind of tact where Brothers
10 BP is.

11 A (WITNESS COMPLIES.)

12 Q And what time was that image taken at Brothers BP?

13 A It was taken at actual time of 1:29 p.m.

14 Q Okay. And then the second picture going down, that
15 is what?

16 A This is the inside picture from camera number two
17 taken at Brothers BP at 1:32 p.m.

18 Q Okay. So it's the same visit from that individual?

19 A Yes.

20 Q And then the third one down is what?

21 A This is another from camera number 12 taken at 1:33
22 p.m.

23 Q 1:33 p.m. And then this one down here was taken
24 where?

25 A This is Kunkle Oil.

1 Q Would you put a drop pin on Kunkle Oil.

2 A (WITNESS COMPLIES.

3 Q Okay. So these first three are here at BP and then
4 the fourth one is down the road here at Kunkle. And that
5 is depicting, is that what we've had the testimony as far
6 as the individual entering Leslie's around-about?

7 A Yes. This is the individual entering Leslie's and
8 the actual correct time is 1:36 p.m.

9 Q 1:36 p.m. We have not seen the video yet, but what
10 is this that we see up at the top right corner?

11 A This is a picture from Leslie's Hair Salon at 1:36
12 p.m. with an individual entering with a handgun.

13 Q And then the second one down on the right side is?

14 A It's another image from a second camera which is in
15 the side room of Leslie's Hair Salon of an individual
16 armed with a firearm and, it is 1:37 p.m. actual time.

17 Q Okay. Now, what is it at the bottom that was the
18 third one down on the right side is showing?

19 A This is another image from Kunkle Oil. It's taken at
20 1:41 p.m. actual time and it's an individual exiting with
21 a white item in his hand.

22 Q With a white, how long was that individual inside of
23 Leslie's?

24 A He entered at 1:36 and he left at 1:41, so
25 approximately five minutes.

1 Q All right. Finally, the bottom picture, where was
2 that taken?

3 A This picture was taken at Heritage Square Apartments.
4 It's timestamped at 1:47 p.m. and it's an individual in a
5 light blue shirt with white writing in the center putting
6 a white trash bag in the dumpster. Heritage Square is
7 located, actually the dumpster is located right here at
8 Heritage Square.

9 Q Okay. So we see the man leave Leslie's at 1:41?

10 A Yes.

11 Q And he appears at Heritage Square at when?

12 A 1:46. That timestamp is actually 1:47 when he puts
13 the item in the trashcan.

14 Q Okay. So about five minutes later he, this
15 individual is at the dumpster at Heritage Square?

16 A Yes.

17 Q Okay. Now, I want to ask you, well, have I asked you
18 to look up pictures on social media?

19 A Yes.

20 MR. VERNER: Your Honor, I would have an objection on
21 or I'd like to be heard at least on this issue.

22 THE COURT: Okay. All right. Well, Madame Forelady
23 and ladies and gentlemen of the jury, let's take another
24 break. We have a legal issue that I've got to discuss
25 with the lawyers. So if you would go back to the jury

1 room and we'll get you back out as soon as we can. I'll
2 remind you, no discussion about this case among
3 yourselves.

4 (Whereupon, the jury was excused from open court for
5 a break.)

6 THE COURT: Okay. We have got an issue related to
7 Facebook. I got it on my notes that there are Exhibits
8 70, 73, well, 70, 72, 73, and 74 have been marked for
9 identification. Is that the subject of what you're
10 objecting to, Mr. Verner?

11 MR. VERNER: Your Honor, I think the State indicated
12 to the Court and me at sidebar that the State was only
13 seeking to introduce two of the photographs.

14 MR. SCOTT: 72 and 73.

15 MR. VERNER: 72 and 73. May I borrow it for just one
16 second?

17 THE COURT: Okay. 72 and 73. Okay. All right. Let
18 me hear from the State as far as what they have and well,
19 let me see. Now, if it's Facebook-related, if I look at
20 it, it may not, okay, these appear to be photographs of
21 the Defendant and they, evidently, were posted on Facebook
22 at some point in time?

23 MR. SCOTT: Yes, sir.

24 THE COURT: Okay. All right. Go into a little bit
25 more detail for me, Solicitor, if you would concerning

1 when these were posted, how Mr. Bentley evidently got
2 possession of these. And then I can have a better idea to
3 deal with your objection, okay?

4 MR. VERNER: And, Your Honor, and the Court hit the
5 nail on the head when the Court said at some point in
6 time. That would be one of the bases of my objection is
7 that the pictures don't indicate how old or at what point
8 they were taken.

9 THE COURT: Okay.

10 MR. VERNER: And so the Court's right on that one.

11 THE COURT: All right. Give me a little bit more
12 substance to these pictures, Solicitor.

13 MR. SCOTT: I don't even know, Your Honor. I hadn't
14 asked him if he's ready to testify on when they were
15 posted. But, Your Honor, it has become probative. I
16 can't make Mr. Ruff stand up and put on a wave cap right
17 now, obviously. But a lot of the questioning has been
18 about, by the Defense, about a wave cap and people's
19 propensity to wear them. I think the implication is only
20 people with hair wear them so they can create a wavy
21 affect to their hair or something to that effect,
22 basically insinuating that that is not the habit of Mr.
23 Ruff to wear one. Again, this is a ID case. We got a
24 picture of Mr. Ruff right there wearing the wave cap that
25 is certainly prevalent in all of our pictures, in all of

1 our videos. We think it's highly probative being a
2 identification case. And his sister says he wears them
3 from time-to-time, but that line of questioning has
4 continued about the wave cap. So offer it solely really
5 for the purpose of just for the jury to have a picture of
6 Mr. Ruff wearing a wave cap.

7 THE COURT: Okay. All right. And so Mr. Bentley at
8 some point in time in his investigation for your office
9 went on Facebook, found these pictures and printed them
10 off, correct?

11 MR. SCOTT: Well, we know they were sometime prior to
12 April or, excuse me, August 26th, 2015. I'd have to ask
13 him. I hadn't asked him if he knows when they were
14 posted.

15 THE COURT: Okay. Well, go ahead and ask him that.

16 MR. SCOTT: Okay. Yeah.

17 Q Mr. Bentley, at my request, did you seek and print
18 out some photos of Mr. Ruff?

19 A Yes, I did a Facebook research for Kenny Ruff or
20 Kenny Ruff. I located a page where I saw a profile
21 picture of an individual I recognized as being the
22 Defendant. I then clicked on those photos, this was not a
23 page, it was private. This is an open page on Facebook.
24 And then clicked on his photos page and found several
25 photos, but two in particular they were talking about

1 today. I do not recall the date right offhand. I know it
2 was approximately a year before the incident was the date
3 on those photos, but I'd have to go back and look again to
4 get these.

5 Q Okay. Well, is that something that's, I don't have
6 Facebook. Is that something you can do, you can find out
7 when a picture was posted?

8 A They will have a, they'll have a date that they were
9 posted, not the date that the picture was taken but a date
10 that it was posted on that person's profile.

11 Q Okay. The picture won't necessarily describe when it
12 was taken, but you'll only be able to determine when it
13 was posted --

14 A Posted.

15 Q -- on his page. Okay.

16 MR. SCOTT: Your Honor, I think that's all the
17 questions I will have.

18 THE COURT: Okay. Mr. Bentley, was this the
19 Defendant's Facebook page?

20 MR. BENTLEY: Yes, it was. It was under the name,
21 Kenny Ruff.

22 THE COURT: Okay.

23 Q And let me, well, I hadn't intended to, but for the
24 Court's or for this limited purpose of this hearing, let
25 me, State's 70 is what?

1 A It's the front profile page, when you pull up Kenny
2 Ruff. Also to further find that this was Kenny Ruff that
3 we're talking about here today. I looked under his
4 friends list and he has Angela Ruff, his sister, and his
5 friends page on his Facebook.

6 Q And in his intro, where does it list that he went to
7 high school?

8 A And it said he lives in Newberry and went to Newberry
9 High School.

10 THE COURT: Okay. I got a pretty good handle on
11 where the State's coming from now. Mr. Verner, your
12 objection, the grounds for your objection?

13 MR. VERNER: One, Your Honor, and though he
14 testified, I've got some concern about the, how old or
15 stale the photographs are compared to the date in
16 question. And while he testified you can determine when
17 they are posted, which he didn't have that information. I
18 think he said, possibly a year or more prior to the
19 incident. But, of course, you can post pictures at any
20 time at any age. And my second objection would be on the
21 403 grounds, Your Honor. Wave caps are fairly common
22 articles of clothing, I guess, in the African American
23 community. To put a picture of him in a wave cap and in
24 an identity type question where he's been identified by
25 other witnesses, and then for this witness to identify him

1 kind of backdoor by saying here he is in a wave cap I
2 think would be, the prejudice of putting him with a wave
3 cap picture in an identity type situation is going to
4 confuse the jury and I think be prejudicial and I
5 disagree. The Solicitor has kind of intimated that we put
6 in his habit of not wearing wave caps. I don't know that
7 we did that. In fact, his sister testified that she's
8 seen him in a wave cap. So it's already in there, so he's
9 not really rebutting anything that we've put in the
10 record.

11 THE COURT: Right.

12 MR. VERNER: So I take exception with his argument on
13 that point. And as far as the, I guess, we're getting a
14 little bit side, I don't know why the State can't put him
15 in a, I seem to recall a fairly famous case where the
16 State had a Defendant put on a certain article of
17 clothing. So I don't know necessarily why the State
18 couldn't non-testimonial put or at least ask the Court
19 to dress him in dark-colored clothing. I'm referring to
20 the OJ glove situation.

21 MR. SCOTT: I think it was the Defense doing that.

22 MR. VERNER: No. I think that was the State who
23 asked him to put on the glove.

24 MR. SCOTT: If he's willing to do it, that would be
25 the best evidence.

1 MR. VERNER: Well, I think the State would have to
2 make that motion, and then do our objections to it then.

3 THE COURT: Well, all right. Let me just say this as
4 far as anything that came out of the O.J. Simpson murder
5 trial case would not create any precedential effect on
6 this Court's ruling on the admissibility of evidence.

7 MR. VERNER: Yes, sir. And I don't think the State
8 would, but I kind of tongue-in-cheek put that in.

9 THE COURT: I understand. I understand.

10 MR. VERNER: But I was just addressing his issue
11 about whether the State could have a Defendant wear
12 articles of clothing. The 403 and I think it's confusing.
13 I think it's unfairly prejudicial in an identification
14 case as close as this where you, essentially, allow the
15 State to make another kind of in-court backdoor
16 identification through suggestive clothing. And it's not
17 really rebutting anything we've put in the record.

18 MR. SCOTT: Judge, if we can be heard just briefly on
19 that. One and three, Defense's one and three, the
20 testimony that was elicited was that it appeared the male
21 was baldheaded. And, if you'll recall, we got into a lot
22 of discussion through cross-examination on why certain men
23 wear wave caps. And my recollection of the testimony was
24 to create a wavy effect on somebody's hair. So the
25 implication was why would somebody with no hair want to

1 seek wavy hair. And so further implication was Kenny Ruff
2 has no reason to wear a wave cap and that was the clear
3 implication. And 403, that was kind of the door opened by
4 the Defense and the implication was Kenny Ruff doesn't
5 wear wave caps at the time because he's bald at the time.

6 THE COURT: And the outside BP picture or pictures
7 are the pictures that show an individual wearing a wave
8 cap.

9 MR. VERNER: From inside, too, Your Honor.

10 THE COURT: Oh, inside, too? Okay. I remember
11 outside and couldn't remember. Okay. All right.

12 MR. VERNER: Well, the, not necessarily Kenny Ruff
13 but the man that they --

14 THE COURT: -- the person in the pictures, that's
15 correct, have on a wave cap. Okay. All right. Let's
16 take a five-minute break and we'll come back out and I'll
17 give you my ruling on this.

18 MR. VERNER: And I just, but if I could briefly just
19 comment on something the Solicitor just argued?

20 THE COURT: Sure.

21 MR. VERNER: Just when he said about there is no
22 indication of what Kenny Ruff's hair would have been at
23 the time those pictures were taken because there's no
24 comparable pictures that I've seen of him, what his hair
25 would be underneath the cap.

1 THE COURT: Right. I understand. Thank you. We'll
2 take about a five-minute break. Let me ask you this
3 before we, we still going to have an issue, I think, when
4 Captain Dennis testifies as it relates to the hard drive
5 because I made myself a note, Exhibit 34, that there needs
6 to be some discussion concerning the hard drive coming
7 into evidence. So we still have that to deal with when we
8 get to Captain Dennis.

9 MR. VERNER: I think the State has resolved that by
10 introducing the chain-of-custody, but they tell me they've
11 introduced it as the Court's exhibit that we talked about
12 earlier. And I think that that would resolve, the
13 Solicitor indicated that he filed the chain-of-custody
14 report.

15 MR. STUMBO: You talking about the SLED chain?
16 That's what I, that's what I thought you were asking
17 about, the chain.

18 MR. VERNER: Right. My objection was more on SLED's
19 testing of it coming in and the chain-of-custody because
20 it had gone to Quantico and back.

21 MR. STUMBO: The Sheriff's Office, Captain Dennis
22 directly sent this to Quantico.

23 MR. VERNER: And I had objected pretrial to it coming
24 in without the chain-of-custody. I've got the
25 chain-of-custody report as part of my discovery --

1 THE COURT: Okay.

2 MR. VERNER: -- and the Solicitor has also indicated
3 to me that they have filed it as a Court's exhibit. It's
4 a 56-page document.

5 THE COURT: Okay. What number, of course, that's not
6 on my sheet, not to say that it has not been given to the
7 Court Reporter but but I don't have that as a Court's
8 Exhibit.

9 MR. VERNER: Okay. But then my objection would be
10 satisfied, my objection would be on the chain-of-custody
11 grounds. But the State's indicated before trial they were
12 going to introduce it. That's the basis of my objection.
13 As long as it's a Court's exhibit on the chain.

14 THE COURT: Okay. And even though it has not been,
15 it will be before we conclude the trial?

16 MR. SCOTT: Yes, sir. We can we do that.

17 THE COURT: Okay.

18 MR. STUMBO: We're going to get an additional copy.
19 The copy we brought out earlier I think we gave to Mr.
20 Verner.

21 THE COURT: Okay. The chain-of-custody as it relates
22 to the hard drive will be, at some point in time, Court's
23 Exhibit number 6. Okay.

24 MR. VERNER: I'm not agreeing it come in without the
25 chain-of-custody. And the State's indicated that they,

1 and I've had the chain-of-custody for a while in the file.

2 THE COURT: Okay. All right. We'll be at recess
3 about five minutes.

4 (Whereupon, a break was taken.)

5 THE COURT: All right. The chain-of-custody has now
6 been marked as Court's Exhibit number 6. So Mr. Verner,
7 it is Exhibit number 34 to agree that that goes into
8 evidence and there's no other admissibility issue with
9 that.

10 (Whereupon, Court's Exhibit 6 was marked for
11 identification only.)

12 MR. VERNER: Yes, sir. And, I believe, the State's
13 also indicated they provided the chain-of-custody as a
14 Court's Exhibit for the SLED exhibits as well.

15 THE COURT: I am saying chain-of-custody is a good
16 many pages, so I guess it's all encompassing with respect
17 to whatever items are in evidence, I assume, I haven't
18 looked at.

19 MR. STUMBO: And I think that's what we were doing.
20 We were making a copy of the Newberry County chain forms
21 as to that hard drive and DVR. We can just clamp that and
22 attach it with the SLED chain.

23 MR. VERNER: That's fine, Your Honor. That'll work.

24 THE COURT: Okay. All right. So with that said,
25 number 34 is agreed to be in evidence.

1 MR. VERNER: Yes, sir. I wanted the chain of custody
2 that I was provided in discovery.

3 THE COURT: Sure, okay.

4 (Whereupon, State's Exhibit No. 34 was admitted into
5 evidence.)

6 THE COURT: Okay. All right. And concerning the two
7 Facebook pictures of the Defendant, I'm going to allow
8 those in. The sister testified that on occasion he wears
9 the wave cap. It's his Facebook page. The uncertainty as
10 to when the pictures were taken goes to the weight of the,
11 of that evidence as opposed to the admissibility. We do
12 have a picture or more than one picture of an individual
13 wearing a wave cap. Since this is an identification case,
14 the jury can elect to use those pictures if they so choose
15 for comparison purposes with the other pictures and video
16 that's been put into evidence. So I believe the probative
17 value does outweigh prejudicial, whatever prejudicial
18 effect, if any, that may be in existence. All of that is
19 related to Rule 403. So I'm going to allow those pictures
20 in. Okay. Anything further before I bring the jury out?
21 We're still, I guess, we're still in direct examination
22 with Mr. Bentley, correct.

23 MR. SCOTT: Yes, sir.

24 THE COURT: Okay. All right. Madam Bailiff, if you
25 will bring the jury back out.

1 (Whereupon, State's Exhibits 72 and 73 were admitted
2 into evidence.)

3 (Whereupon, the jury came into open court at
4 approximately 4:15 p.m.)

5 THE COURT: Okay. Let the record reflect the jury is
6 back in. Solicitor Scott, we're still in direct
7 examination of Mr. Bentley.

8 MR. SCOTT: Thank you, Your Honor.

9 CONTINUE DIRECT EXAMINATION

10 By Mr. Scott:

11 Q Okay. At my direction, did you pull some or did you
12 go to social media looking for anything?

13 A Yes. I went to Facebook to attempt to see if Kenny
14 Ruff had a Facebook page.

15 Q Okay. And did you determine that or did you find one
16 that was associated with Kenny Ruff?

17 A I did find one. I looked at the photographs and did
18 realize they were the Defendant and also compared to the
19 information that he was friends with his sister, Angela
20 Ruff, on Facebook. And his, about part of his Facebook
21 page had him listed as living in Newberry and going to
22 Newberry High School. So I felt extremely confident that
23 it was the same Kenny Ruff.

24 Q Okay. Let me show you State's 72 and 73. What are
25 those?

1 A These are two pictures from Mr. Ruff's Facebook page
2 that I screen shotted and made copies of. State's number
3 72 is wearing a red shirt with black print and he's
4 wearing a skull cap or a wave cap.

5 Q 73?

6 A In State's 73, he's wearing a red shirt with a red,
7 white and blue flag and stars, also wearing a skull cap or
8 wave cap.

9 Q Okay. Well, why did you pick these two particular
10 pictures, is it the wave cap aspect?

11 A Yes. The wave cap is the reason I picked these.

12 Q Thank you. Answer any questions Mr. Verner has.

13 THE COURT: Mr. Verner.

14 CROSS-EXAMINATION

15 By Mr. Verner:

16 Q You're not suggesting are you, Mr. Bentley, that that
17 72 and 73 are the same wave cap involved in the killing of
18 Mr. Facio, are you?

19 A I don't know whether it is or not.

20 Q Well, I mean, don't you see kind of a hang-down
21 portion of a wave cap in the one that the man is wearing
22 on August 26th of 2015 in the back?

23 A If you can show me the exhibit you're referring to I
24 might can.

25 Q Well, all of them have kind of a, you don't recall

1 where it hangs back and covers the neck?

2 A Yes, I'm familiar with that.

3 Q Okay. And does that appear to be the type of wave
4 cap that you've got in the Facebook pages on 72 and 73?

5 A And the way this photograph is angled, I do not see
6 the hanging attachment you're speaking of.

7 Q I'm not asking for an address, Mr. Bentley, but just
8 where, in general, do you live?

9 A I live in Laurens.

10 Q Laurens County. A wave cap is a fairly common thing
11 for black people, black men to wear, isn't it? And you
12 don't go to Wal-Mart or walk down the street during the
13 summer time?

14 A I've seen a few wearing wave caps.

15 Q Okay. So it's not uncommon for many people but
16 particularly in the African-American communities wearing a
17 wave cap?

18 A I think that'd be a fair statement.

19 Q Okay. All right. Let's get this straight so we can
20 clarify it. What time do you believe that Mr. Facio was
21 killed? I think you've narrowed it down to kind of a
22 five-minute window?

23 A Yes. The individual enters the salon at 1:37 actual
24 time and he leaves the salon at 1:41. So between 1:37 and
25 1:41.

1 Q And there was clearly, you can see some video where
2 Mr. Facio is being led around or moved in the location?

3 A Yes.

4 Q So, realistically, it would be closer to the 1:41?
5 If he wasn't immediately killed --

6 A It wasn't 1:37. It was in between there would be
7 fair.

8 Q All right. So is it fair to say approximately 1:40
9 would have been the approximate time that Mr. Facio was
10 killed?

11 A I couldn't tell you definitively 1:40.

12 Q It could be a minute or two earlier?

13 A Yeah.

14 Q It could be a little bit later, but just 1:40, within
15 a minute or two is the approximate time of death?

16 A Correct.

17 Q And that's based on you reconciling all of the times
18 on the videos and watching the videos from Leslie's?

19 A Yes.

20 Q What type of light does Brothers Fast Stop have
21 inside?

22 A I don't recall.

23 Q You don't know if they're fluorescent, long
24 fluorescent lights that run down the aisles or
25 incandescent lights?

1 A I don't recall.

2 Q Okay. In general, when you go to a convenience
3 store, what generally kind of lights does a gas station
4 convenience stores have inside?

5 A Mr. Verner, I've been in a bunch of convenience
6 stores and they all have different kind of lighting.

7 Q I mean, we all understand what you have testified to.
8 This question, I guess, is what you're not testifying to.
9 You are not identifying the man in those photographs as
10 Kenny Ruff, are you?

11 A I am not identifying him, no.

12 Q You're just stating the time that the person in those
13 photographs is at different locations, and then you've
14 mapped them out for us?

15 A I did not know Mr. Ruff until my involvement in this
16 case.

17 Q And you're not here to identify the man on the camera
18 as Kenny Ruff?

19 A No.

20 Q Okay. You're relying on the other officers who've
21 indicated to you that that, they believe that is Kenny
22 Ruff to make your, that kind of is the basis of your
23 report?

24 A Other officers and Emmanuel Richardson and other
25 evidence, yes.

1 Q But the other identifications, not yours?

2 A No.

3 Q Okay. And so we've testified, you know that Kenny
4 Ruff is in Brothers Fast Stop 12 minutes before 11:51?

5 A Yes.

6 Q Okay. So about 11:39?

7 A 11:39 would be correct.

8 Q Okay. Are you able to identify that as Kenny Ruff or
9 you would still need more?

10 A It appears to have, like I said, until this last few
11 months, I didn't have involvement in this case.

12 Q Okay.

13 A So I, it is a gentleman I don't know.

14 Q The only time you've had, been involved in the case,
15 Kenny has been the, already arrested and the suspect in
16 the crime?

17 A Yes.

18 Q Okay. So that's pretty much where you started the
19 ball running from your investigation?

20 A I started the ball running in, doing the trial
21 preparation.

22 Q Okay. But this picture is not in your, this is a
23 pretty clear picture? Whoever the man is, it's a pretty
24 well-lit clear image?

25 A Yeah. I didn't put him in my board because, number

1 one, it is not very much space. Number two, the timeframe
2 is well before the time of the murder.

3 Q You've seen the video of Leslie's and Kunkle's. It
4 appears from all the videos that you've reviewed that
5 August 26th about 1:30, 1:40 in the afternoon would be a
6 pretty bright, clear day?

7 A I don't know what the weather was that day.

8 Q It didn't appear to be raining, did it?

9 A It was not raining, no.

10 Q Okay. Saw a lot of pedestrians walking down the
11 streets?

12 A There was pedestrian traffic.

13 Q Okay. I think you testified at the, you've reviewed
14 the Wal-Mart tape at 2:00 o'clock?

15 A I have.

16 Q Does that appear to be a fairly bright sunny day
17 outside the door?

18 A It appears the sun is shining in this picture, yes.
19 This picture isn't from 2:00 o'clock though, it is from
20 2:41.

21 Q Okay. So at 3:00 o'clock, it's pretty bright that
22 day. And at, here's my question, too. At 12:46, less
23 12:00, it still appears to be a pretty bright sunny day?

24 A It does, yes.

25 Q Okay. I guess, I've got a question. It appears

1 Brothers has about 14 different cameras, at least they
2 have 14 identified?

3 A They have 14 channels.

4 Q Okay.

5 A That means there's 14 channels assigned to a camera.
6 That doesn't necessarily mean every one of them has a
7 working camera. They do have quite a few cameras though.

8 Q And is it fair to say that they have at least 10 of
9 those 14 running or close to that number?

10 A I'd say it's close. I would have to look to give you
11 an exact number.

12 Q Now, the timestamp, and I don't know this, but is the
13 timestamps for each of those camera channels coming from
14 the same source?

15 A Each of those camera channels plug each camera plugs
16 into the same recording box. So the times would be
17 consistent across each camera.

18 Q That's my question. So no matter which of these
19 cameras you're using, they would all be on the same
20 timestamp whether it's right or wrong?

21 A Yes.

22 Q And I think from this photograph, Defendant's 6, you
23 can see blue skies in the distance?

24 A Yes.

25 Q Okay. You don't have any evidence that the, that

1 it's anything other than what appears to be a fairly
2 bright, sunny day on August 26th?

3 A At the time of the picture you just showed me, it
4 does appear to be sunny, now that is prior to the murder.

5 Q Prior and before, prior and after.

6 A It appears to be both, it seems to be a sunny day.

7 Q Okay. You would think that the outside of the store
8 would be brighter than inside the store, wouldn't you?

9 A You would think but all, but you kind of got to
10 understand there is, you've got the awnings from the gas
11 pump that are casting shadows and you have things casting
12 shadows there.

13 Q Right. But, I mean, we can see from the State's 1,
14 and I think you had other pictures, when Kenny enters the
15 store, the light is clearly brighter coming through the
16 doorway as he goes in?

17 A Yes and there's sunlight coming in through those
18 windows.

19 Q Yeah. So, I mean, it appears to be brighter outside
20 than inside, right?

21 A Yes.

22 Q Okay. And on all of the outside photographs, it
23 appears that the man you have identified has on a green or
24 a khaki green sweater?

25 A I wouldn't say khaki green. It looks like a dark

1 olive green.

2 Q Olive and khaki.

3 A Except in the Kunkle Oil video the person appears to
4 be wearing black.

5 Q Okay. When I say khaki, I mean olive green. But you
6 would agree from the outside photographs where it's
7 brighter, the man appears clearly to have a green stocking
8 cap and a green sweater. Is there anything interesting,
9 but you're saying at different times inside the store it
10 appears to be darker and black?

11 A This picture showing right here is from 12:43. You
12 are showing me a picture from well before the murder. I
13 mean you are asking me to talk about the time of the
14 murder but the picture is 45 minutes earlier.

15 Q Well, which one is that, Defendant's what?

16 A This is Defendant's number 4.

17 Q Four?

18 A Number 4.

19 Q Okay. In Defendant's number 4, well, the man you see
20 in that picture clearly appears to have a greenish, khaki
21 green or olive green sweater?

22 A Yes.

23 Q Okay. And but you're saying that's not the article
24 of clothing that you're talking about inside the store,
25 because it's, at times I believe you testified it looks

1 like inside the store, it sometimes appears green, too?

2 A Yeah, depending on which camera you're looking at.

3 Some of the cameras give it a green hue and some of them
4 give a black hue.

5 Q Are you sure that's not the same article of clothing
6 that the man inside the store is wearing?

7 A I think you're confusing this, Mr. Verner. This
8 picture I didn't testify to earlier. I testified to
9 pictures that were right before the murder scene. This
10 picture is from 12:43 minus the 12 minutes.

11 Q Right.

12 A So it's hard for me to say this is the same as what's
13 in the, what's in a picture 45 minutes later.

14 Q Well, that's my question. Are you saying that's the
15 same--

16 A No I am not, I don't know.

17 Q Okay. Well, that's, I guess my other question is,
18 are you saying that's not the same article of clothing?

19 A I'm not saying it is or isn't. This is a picture
20 from earlier in the day.

21 Q Okay. About an hour earlier?

22 A 12:43 minus 12, so yeah, about an hour earlier.

23 Q Okay. But if 1:41, the same thing, the man is
24 outside the store in the sunlight. He has a, what appears
25 to be an article of clothing draped over his shoulder.

1 A Yes.

2 Q What color does that article of clothing appear to
3 be?

4 A It appears to be a dark olive green.

5 Q Okay. And that is at the 1:41 time that you're
6 talking about, right?

7 A It is 1:41 minus the 12, yes.

8 Q Okay. That appears to be the same kind of olive
9 green doo-rag and the same olive green sweater or at least
10 color?

11 A In that picture, yes.

12 Q Okay. So just indulge me for a second because that's
13 the same color article of clothing, what I had as
14 Defendant's number 4 and State's number 29, assuming that
15 those are the same doo-rags and the same sweater. Is
16 there anything distinctive about the green?

17 A In this particular picture, I am just looking at a
18 still image of the picture. It does appear that there is
19 something black under the green and there also appears to
20 be some type of slit maybe, possibility where a button is
21 but I do not know that. I'm just looking at the way the
22 camera is.

23 Q Okay. So you're testifying that it appears that
24 there could be a black article of clothing underneath that
25 sweater?

1 A It does appear to be something black hanging under
2 that sweater.

3 Q But that sweater also appears to be a slit-style at
4 the neck?

5 A It does kind of look that way from this picture, yes.

6 Q All right. So there's no way that that, what you're
7 talking about can be this one, because this one is both
8 dark black and doesn't have a slit?

9 A It's black and it doesn't have a slit but this is
10 not, this is, once again, a picture from much earlier in
11 the day.

12 Q Well, that's 1:41 isn't it or this is 1:40.

13 A No, it's not 1:41, Mr. Verner.

14 Q Assuming that they are the same article of clothing?

15 A If they're the same. I do not know. There's no way,
16 I would have to speculate to tell you those are the same
17 article of clothing and I can't speculate.

18 Q But it's the same color, general color, isn't it?
19 They both appear to be khaki or olive green?

20 A They both appear to be olive green, yes.

21 Q They both appear to be longer shirts or they both
22 appear to be shirts, short-sleeve or not, I know you can't
23 tell.

24 A Yes, I can't tell what sleeve length is on them. I
25 can't tell you if that's a towel or a shirt.

1 Q And the doo-rags appear to be similar?

2 A They do appear to be similar, yes.

3 Q Okay. Isn't it fair to say that the photographs
4 you're talking about, the only times they look darker
5 black is when the man is further in the store, in the
6 shadier areas of the store?

7 A No. I think if you give me the exhibits I can point
8 out a couple right when he's passing the register going
9 back to the front door that it looked black.

10 Q Okay. Do you have them under those other pictures
11 there?

12 A No, I am using the Facebook pictures.

13 MR. VERNER: Well, do you have, do you remember what
14 numbers some of them were and we can just let Mr. Daniels
15 hold them up. And do you remember what some of the
16 numbers of the exhibits? Okay, 47, 49, 52 and 50, I
17 believe are, no, those are the, can we try 29. 29 is what
18 we just talked about a minute ago.

19 Q Okay. How about 77? Okay. We're looking at State's
20 77 and in this instance, it appears that man is standing
21 closer to the entrance?

22 A Correct.

23 Q And it appears to be a, well, what color tint do you
24 see?

25 A It's not really close. This is, actually, the middle

1 of the store. This is the middle aisle of the store.

2 Q Okay. But you would agree with me that the glass
3 door and the entrance would be on the left of this
4 photograph?

5 A If we're facing the photograph.

6 Q Facing the photograph. And does it not appear to get
7 brighter, and then gradually dimmer as you go further into
8 the store?

9 A From that angle, yes.

10 Q Okay. And you don't think that that would affect
11 possibly the tinting that you would see in an article of
12 clothing?

13 A No, because there's other photos that I showed
14 earlier--

15 Q Well--

16 THE COURT: Now, don't talk over each other.

17 Q 78.

18 THE COURT: Do you want to explain your answer, Mr.
19 Bentley?

20 MR. BENTLEY: Yes, sir.

21 THE COURT: Okay. Go ahead. And you go first and
22 then Mr. Verner, you can ask another question.

23 A There's one photo, in particular, he's walking,
24 leaving the register and walking out. You can see it's a
25 black shirt.

1 Q Okay. Well, we're not there yet. This is 78.

2 A No, we're not. This is, once again, the middle of
3 the store.

4 Q And, once again, this is the man you talked about
5 with his, we're looking at his, the man's right-hand side?

6 A Yes.

7 Q That ought to be his right shoulder?

8 A Yes.

9 Q And what color does the clothing appear to be on his
10 right side?

11 A It appears to be a dark green color.

12 Q Dark green? Does it not gradually get darker as it
13 goes towards his left-hand side?

14 A In that photo, yes.

15 Q It doesn't, a shade darker and, in fact, where I'm
16 putting my finger on the bottom left-hand side, it's dark,
17 and then it goes to kind of a pitch black in that
18 photograph?

19 A Mr. Verner, that could be shadowing on the shirt.
20 That could be anything with the hue in the cameras. I
21 can't tell you exactly what that is.

22 Q That's exactly right. How about 79? This is the
23 gentleman or if we, I'm not going to call him gentleman,
24 but this is the man at the cash register. I suppose
25 that's why you've taken this photograph?

1 A Yes.

2 Q Okay. What, what tint color does he appear to be
3 wearing?

4 A This looks to be a dark green, green, according to
5 your theory earlier, even a little gray.

6 Q Okay. So you can see at least three different tints
7 in the photograph, green to gray to black?

8 A Yes.

9 Q And on his, on the man's right-hand side which would
10 be closest to the light, outside light, it would be more
11 green to almost a pitch black on his left-hand side?

12 A That's going to the front door.

13 Q Okay.

14 A This is this side of the store, this is the front
15 side.

16 Q All right. But you'd agree with me that the tint
17 changes of the shirt because of the outside lighting or
18 the inside lighting affects the tint of the shirt?

19 A Yeah, that's one of the factors, yes.

20 Q Okay. All right. And would you think that the
21 brighter light that you have on the individual, the truer
22 tint that the man is wearing, like it would be tougher to
23 gauge the color of the man's shirt and the tint of it if
24 he was in the shadowy area as opposed to a brighter area?

25 A You're asking me to speculate.

1 Q Well, that's now what you've been doing for a while,
2 is it? All right, Defendant's 6. What does that appear
3 to be?

4 A This is an individual with a shirt on and a doo-rag
5 walking under the gas pumps towards Main Street.

6 Q Okay. And that's a picture taken from outside?

7 A Yes.

8 Q Appear to be?

9 A A timestamp 12:46 which is actually minus the 12,
10 it'd be 12:34.

11 Q 12:34; about an hour before the killing?

12 A Correct.

13 Q And that's taken in the out, you can see the blue
14 sky?

15 A Correct.

16 Q Okay. So it appears to be taken in the light of the
17 midday sun?

18 A Yes.

19 Q No question about it, that is a dark black shirt?

20 A In this photograph, yes.

21 Q Okay. Because you can clearly see a lighter or a
22 khaki green head covering?

23 A I see a dark green.

24 Q Okay. But you can see the different tint of it, but
25 not the color?

1 A It's a different shade.

2 Q And you saw the video on that one and that's clearly
3 somebody wearing a short-sleeve black shirt?

4 A Yes.

5 Q Okay. Is that the man that you're talking about in
6 these photographs on State's 46?

7 A It does not appear to be.

8 Q Okay. So there's at least a second black man on the
9 same day within the, within an hour wearing a doo-rag and
10 a black shirt?

11 A I was going to explain that further.

12 Q Okay. Well, go ahead.

13 A It doesn't appear to be the same man, but I'm only
14 looking at a rearview of the person. I can't see the
15 face. I can't see the print on the shirt, anything.

16 Q Okay.

17 A All I see is the back of a person walking away from
18 it.

19 Q Right. And, in fairness, on none of these pictures
20 are you making an identification of anybody?

21 A No, I'm not.

22 Q Okay. But from your study of the films, it appears
23 that that is someone who's inconsistently attired than the
24 man that you were looking at earlier?

25 A I can't tell you if that's Mr. Ruff in a different

1 outfit. He was in numerous outfits that day.

2 Q Do you still have, Mr. Bentley, the Facebook
3 photographs?

4 A I do.

5 Q 73, okay. Do you know when that picture of Kenny
6 Ruff was taken?

7 A I do not know when it was taken and I don't recall
8 exactly when it was posted. I know it was sometime before
9 the incident, but maybe up to a year. I cannot recall,
10 but I do not know when it was taken.

11 Q And, again, that appears to be a solid black wave
12 cap?

13 A Yes.

14 Q Okay. And does it appear to have the hang-down
15 feature that the wave cap of the--

16 A -- you actually asked me this earlier. At that
17 angle, I can't see one hanging down.

18 Q Do you think it's fair to identify Kenny Ruff as the
19 killer on the basis of the Facebook picture where he's
20 wearing, also wearing a doo-rag?

21 A I think it--

22 Q -- you wouldn't base your decision on that?

23 A Well, I have not made an identification.

24 Q Okay. But just the fact that if you had two
25 individuals to identify, you wouldn't use just the common

1 article of clothing to identify?

2 A No. I would look at all the evidence in the case.

3 Q Okay.

4 A The DNA evidence, all the different videos.

5 Q That's right. You would look at all of the --

6 THE COURT: Don't talk over each other.

7 A I would look at all the different evidence, and I
8 would have it all together. And then I would make an
9 identification based on the scientific and the videos.

10 Q And that's a sound way to do it, right?

11 A Correct.

12 Q Okay. Thank you, Mr. Bentley. If the State has
13 follow up.

14 THE COURT: How much redirect do you have?

15 MR. SCOTT: Really, I just want to talk about the
16 lanyard thing, just that brief issue.

17 THE COURT: Okay.

18 REDIRECT EXAMINATION

19 By Mr. Scott:

20 Q State's number 29, the lanyard, you talked about that
21 a little while ago. Was that an important characteristic
22 for you?

23 A It really was. See the lanyard in this picture. You
24 can see it in several of the inside of the pictures from
25 Brothers, and you also see a lanyard hanging from the

1 individual in Leslie's Hair Salon, some of the still
2 photos and the video, that lanyard hanging down also.

3 Q All right. So the lanyard, and the jury's going to
4 get the video, did you spot the lanyard in multiple scenes
5 at Brothers BP?

6 A Yes, I did.

7 Q And in State's 46, we hadn't got to the inside of
8 Leslie's, that film yet, but at least the footage here or
9 the still shot you have inside of this exhibit, do you see
10 the lanyard on the person inside of Leslie's hair salon?

11 A Yes, you do.

12 Q Okay. And were you able to determine what the person
13 inside of Leslie's was wearing on their head, if anything?

14 A Yes, I did. I would call it a doo-rag or a skull
15 cap, I believe.

16 Q Okay. The State was asking about or Defense was
17 asking about Defense number 6. It depicts another
18 individual with a doo-rag kind of walking away. The
19 timestamp on that at Brothers is 12:46. If I look at my
20 cheat-sheet and subtract 12 minutes, about 12:34 is when
21 this individual is walking by. Do you see that same
22 lanyard on that individual walking away from the scene?

23 A No, you do not.

24 Q Okay. And just, again, State's number 79. Okay.
25 That would be about 1:33 or so. 1:33, that is an

1 individual inside of Brothers BP?

2 A Yes.

3 Q If I go to State's 80. And is that the same
4 individual at the same time-period at the bottom right?

5 A Yes, sir.

6 Q All right. What color doo-rag and what color shirt
7 is this guy wearing?

8 A It's black and that's the photo I was referencing
9 earlier during Mr. Verner's questioning.

10 Q That's 1:32 and the entry at Leslie's is 1:37. And
11 in this camera at Brothers, it appears black?

12 A Yes.

13 Q State's 75, do you have that. Again, just different
14 camera, different angle, and that's the same individual
15 there?

16 A Yes, and this is actually the entrance side of the
17 store versus the far wall of the store, so this is the
18 closest to the doors.

19 Q Okay. Well, so the Defense was talking about, you
20 know, the sun is coming in from the left. Well, the sun
21 is shining right on his back in this picture, isn't it?

22 A Correct.

23 Q But what color is the doo-rag and his shirt in this
24 angle?

25 A It's black.

1 Q Okay. So is it fair to say different cameras has
2 different angles, you're seeing either an olive or a black
3 color on the same individual?

4 A Yes.

5 Q Okay. So the tints were different in these different
6 cameras is what you're saying?

7 A It could have been the tint. It could have been the
8 shadowing. It could have been, like a TV, when you hook
9 up a TV when you buy it in a store, you have to adjust the
10 picture and when the picture gets out of whack, the colors
11 get out of whack. The same thing with a camera. If you
12 don't focus the camera, it gets out of whack and the hue
13 could be bad on it, anything like that. Anything to
14 compensate for that difference in the color.

15 Q Okay. And just one last question now. The Defense
16 was asking about, this is Defense number 4 and it's at
17 12:31.

18 A Yes, sir.

19 Q You noted the slit kind of in the front of that
20 shirt?

21 A Yes.

22 Q The shirt that was found that will be introduced that
23 was found in the dumpster, it does not have that slit in
24 the front, does it not, does it?

25 A No, it does not.

1 Q If we look at, State's number 30.

2 A State's 30 is a still shot.

3 Q Okay. And that, that's a little bit, that's an hour
4 after Defense exhibit where he had the slit in his neck or
5 the slit in the neck of his shirt?

6 A Yes. This is the 1:30. This is, this photograph is
7 the 1:32, Defendant's number 4 with the slit.

8 Q 1:32, five minutes before the entry into the store at
9 Leslie's?

10 A Yes.

11 Q And this shirt, does it have the slit in the front?

12 A State's 30 does not have the slit in the front.

13 Q Okay. So it's a different shirt than the Defense
14 exhibit?

15 A It's a different shirt in Defense number 4.

16 Q Okay. So it's yet another wardrobe change?

17 A Correct.

18 Q Thank you. Nothing further. Thank you, Mr. Bentley.

19 A Yes, sir.

20 THE COURT: Any recross?

21 MR. VERNER: Very brief, Your Honor.

22 RECROSS-EXAMINATION

23 By Mr. Verner:

24 Q I just, you testified just a second ago on the
25 redirect that the difference in the tints could be because

1 the television cameras, the tinting on the TV monitors?

2 A No. I was equating when you buy a new TV and you
3 plug it in, you have to adjust the colors. That's what I
4 was equating. I wasn't saying that the monitors, I was
5 equating it to buying a new TV and adjusting the colors.
6 Or those who have children, our kids get on the remote
7 and, say, mess with your settings on your TV. It changes
8 the way tints look on a TV.

9 Q But these weren't taken off. These are direct
10 pictures from your computer, I would think, from the
11 digital files taken from the store?

12 A And the same thing goes for a camera. Cameras can
13 get out of focus and out of whack also with what's called
14 hue and saturation, color saturation and white block
15 saturation.

16 Q All of these tints appear to be different in
17 different, multiple different cameras?

18 A Correct.

19 Q So they're all making the same mistake or they're all
20 recording green?

21 A Some are recording green, some are recording black.
22 They're not all recording the same color. It is the same
23 person.

24 Q And your testimony is that this shirt that we're
25 looking at. What is this exhibit?

1 A State's 30.

2 Q Do you believe that the shirt in State's 30 is the
3 same shirt I'm holding up? Well, the same, not
4 necessarily the same shirt, but the same color?

5 A I think based on what we've seen with the cameras, we
6 can say that's the same thing, could be the same color.

7 Q What, what about this little thing on his left-hand
8 shoulder where there appears to be, there's not going to
9 appear to be some kind of discreet folding or tear or
10 something darker?

11 A It could be something as simple as a wrinkle.

12 Q And you're testifying in the light that this doesn't
13 appear more green than black?

14 A This photograph has a little more green tint than the
15 other photographs that you just showed that are black.

16 Q Okay. Thank you, Mr. Bentley.

17 THE COURT: All right. Thank you, Mr. Bentley. You
18 can step down. Okay. Madam Forelady, ladies and
19 gentlemen of the jury. We're going to go ahead and break
20 for the evening and because it's hitting almost 5:30 and
21 want you back here at 9:15 in the morning and get you a
22 good night's rest. Appreciate your hard work. We've gone
23 really hard and long today, and appreciate your hard work
24 and we going to have a full day tomorrow. So hang in
25 there with us. So be here at 9:15 in the morning. Again,

1 no discussion about this case with anyone. No independent
2 research on your own, and we'll see you in the morning at
3 9:15. Have a good evening.

4 (Whereupon, the jury was excused from open court for
5 the day.)

6 THE COURT: Okay. Let's try to get together at 8:45
7 in the morning and have a little charge conference. I've
8 been emailed the draft charge and let's try to get that
9 kind of covered the best that we can before we start back
10 at 9:15.

11 MR. STUMBO: Yes, sir.

12 MR. VERNER: I am going to talk to my client this
13 evening about our strategy. You have got anticipated one
14 more witness, okay.

15 THE COURT: Everyone have a good evening.

16 (Whereupon, the trial will resume the next morning at
17 8:45 a.m.)

18 JANUARY 13, 2017.

19 THE COURT: Anything before we bring the jury out?

20 MR. STUMBO: No sir, Your Honor.

21 MR. VERNER: No, sir.

22 (Whereupon, the jury came into open court at
23 approximately 9:50 a.m.)

24 THE COURT: Let the record reflect the jury is back
25 in. Good morning, ladies and gentlemen. I hope everyone

1 is doing well. I do want to thank you. One thing that I
2 have noticed is that you have been prompt, all 15 of you,
3 been here on time in the mornings, after lunch breaks and
4 that's good, that's good, and I really do appreciate that.
5 All right. Solicitor Scott, if you want to call your next
6 witness. I understand, ladies and gentlemen, I think the
7 State has one more witness in their case-in-chief.

8 MR. SCOTT: That's true.

9 THE COURT: Is that correct?

10 MR. SCOTT: Yes, sir.

11 THE COURT: All right. Solicitor Scott.

12 MR. SCOTT: Your Honor, the State calls Captain
13 Robert Dennis.

14 THE COURT: Come around, Captain Dennis.

15 DIRECT EXAMINATION

16 ROBERT DENNIS, being
17 first duly sworn, testified as follows:

18 By Mr. Scott:

19 Q Okay. Captain Dennis, this is a City of Newberry
20 case, isn't it?

21 A That is correct, yes.

22 Q Okay. So the jurisdiction would be within the City
23 limits. So how did the Sheriff's Department become
24 involved?

25 A The Sheriff's Office is included in the

1 communications, dispatch. We receive all the calls and we
2 dispatch out to County deputies, as well as the City of
3 Newberry, as well as Whitmire Police Department, the
4 rescue squads, Prosperity Police. With that being said,
5 communications dispatch to City Police Department once
6 they receive the call, they also made us aware of the
7 call. And once that call was made, Chief Roy McClurkin
8 and myself communicated with each other due to the fact he
9 was out of town and was responding and asked for our
10 assistance.

11 Q Okay. And did you get to go to Leslie's Hair Salon?

12 A I did, yes.

13 Q And were you able to go to Kunkle Oil and review the
14 video?

15 A One of my roles as Captain is to coordinate with
16 other investigators. Once I got there, I coordinated with
17 Kevin Goodman who was the officer on the scene for the
18 City of Newberry and once my investigators got there, we
19 actually fanned out and began going to the different
20 stores along Main Street next to where Leslie's was at,
21 across from where Leslie's was at, to see if we could
22 obtain any video.

23 Q Okay. So you did go to Kunkle Oil and did you watch
24 some of those videos?

25 A We did, yes.

1 Q All right. What about Brothers BP?

2 A We did also, yes.

3 Q Okay. Now, Kunkle Oil, we watched it. Did you go,
4 did you try, go to Pike Circle, the road that goes back
5 behind Leslie's towards Heritage Square; did you track
6 along that area?

7 A We went behind where Leslie's was after reviewing the
8 Kunkle Oil video. Didn't really get into a full search
9 due to the fact there were a couple of houses back there.
10 We wanted to make sure those houses were clear of a
11 suspect or anything like that and just looking around the
12 area in which we saw the individual once exiting Leslie's
13 and go behind the store, we checked that area just
14 immediately to see if we found anything.

15 Q Okay.

16 MR. SCOTT: Walter, can I have the State's number 64.
17 Can you blow that up a little bit? That should be good.

18 Q All right. And this, Robert, you can come back here.

19 A If I could step down.

20 Q Okay. All right. Show us Leslie's.

21 A This building right here, brown with the light brown
22 roof, that is Leslie's.

23 Q Okay.

24 A This is actually the Hispanic store and I can't
25 remember, I think this is a vacant building here, but the

1 drive goes kind of a half-circle drive. That's what we
2 call Pike Circle.

3 Q Okay. This was a picture taken recently. At the
4 time, this was all wooded, was it not?

5 A That is correct. This area where the two houses are
6 being built, it's kind of grown up. There used to be a
7 house there and it had been bulldozed and cleaned up. So
8 there's a lot of little thicket underbrush that was
9 growing.

10 Q Okay. If we went out here today to Pike Circle, this
11 area is paved, is it not?

12 A That is correct.

13 Q Okay. Did you proceed to, I guess, kind of a worn
14 down footpath?

15 A What we did is not on the day of the, the incident,
16 but the following morning, we had coordinated with the
17 City of Newberry and we responded back to the Pike Circle
18 area. Once, again, we started here at the back of
19 Leslie's. We checked the houses again, under the houses.
20 We came and checked the wood line to where there is a path
21 that leads right here in this curve that goes back to the
22 left.

23 MR. SCOTT: Can you blow up that path, Walter?

24 Q Is that, point to the footpath you're talking about?

25 A Pretty much what you see here, this is a chain-link

1 fence. It looked kind of like a white line goes. That's
2 the top of the chain-link fence. This is the path that
3 had been worn pretty good that goes back into where
4 Heritage Square is at. There is another fence back here,
5 but there is an open spot behind Heritage Square. Most of
6 your residents from Heritage Square that would want to
7 walk, they would catch that path and walk to come to
8 either Koon's ABC Store or go to Brothers across the
9 street. It would also give them access to Winnsboro Road,
10 to McDonald's, or the bank, or whatever they may want to
11 go to that way.

12 Q But, Robert, State's 18, is that the path kind of
13 looking like you're looking at Heritage Square?

14 A That is correct.

15 Q That would be the path you just outlined how it
16 looked at the time if you were walking from Pike's Circle
17 to Heritage Square. Okay. Along that footpath, did you
18 locate or did any agents to your knowledge locate any
19 evidence?

20 A Yes, we did. Well, on that footpath to the right if
21 you looked at State's 18, if you're walking down on the
22 right side which is at the back of the oil company, not
23 Kunkle, but that Coleman Oil, there's a fence there. At
24 the corner of where that fence was at, we located part of
25 a cover that looked like it was on a DVR.

1 Q Okay. And that was just at the side of the footpath
2 that we just looked at?

3 A That is correct.

4 Q And describe the cover; what was it?

5 A The cover is the face piece that would have the
6 directional buttons on it for on, off, stop, play,
7 different things like that for the DVR.

8 Q Okay. Were you aware that a DVR or hard drive was
9 missing from the salon?

10 A Yes. During the investigation, the investigators
11 inside Leslie's had discovered that the DVR that was
12 sitting on top of the shelf was missing.

13 Q Okay. All right. Any other evidence located there
14 on the trail?

15 A There was nothing else located there in the immediate
16 area of where that face piece was found there at the
17 fencepost.

18 Q Okay. Then, you, ultimately, you said proceeded into
19 the parking lot area of Heritage Square. That building we
20 see kind of on the left side of the screen there, is that
21 some of the apartments at Heritage Square?

22 A Let me step down, please. Just in this area, which
23 is the wood line, is the fence and once you come in
24 through the fence, these are buildings that are located on
25 the right side. So you've got buildings here on the right

1 side and then you've got buildings this way coming around.
2 And then the office is over in the corner and there's
3 several buildings kind of off-setting there. Once you
4 come into that fenced area, there is a trash dumpster that
5 sits between this building. The trash dumpster would be
6 right around this area and then another building on that
7 left side of the trash dumpster.

8 Q Okay.

9 MR. SCOTT: Walter, can we have State's 25?

10 Q All right. Is that the dumpster you're describing?

11 A That is the dumpster. That is the dumpster as it was
12 the day that we located the face piece. The reason why
13 this picture is pretty significant to me is because up
14 here on the corner of the building to the left is a camera
15 that is aiming down here at the trash dumpster.

16 Q Okay. Did you climb inside the dumpster?

17 A I did.

18 MR. SCOTT: Walter, can we have State's 19?

19 Q All right. Is that you with the white jumpsuit
20 there?

21 A That is me in the white --

22 MR. VERNER: Your Honor, respectfully, I know it's,
23 but just constantly leading questions.

24 THE COURT: Try and rephrase, Solicitor.

25 Q Robert Dennis, where are you in this picture, please?

1 A I am located inside of the dumpster in the white
2 Tyvek suit with blue gloves on.

3 Q And what is that in your left hand?

4 A That is a bag that we discovered down in underneath
5 some trash that contained a DVR player, as well as a
6 shirt, and a phone, which was a white phone that would
7 have, it's a cordless phone is what it is. And it was
8 taken off of the base that would have been in Leslie's
9 store.

10 Q Okay. And anything else?

11 A The black shirt, the DVR, the phone.

12 Q Okay.

13 MR. SCOTT: Let me see State's 21.

14 Q All right. What are we looking at here?

15 A This is the bag that we're kind of, I'm ripping open
16 so that we can photograph the contents in the bag.

17 Q Okay. That silver kind of thing we're looking at
18 down there, what is that?

19 A At the bottom of the screen, the silver with the tags
20 on it, that is the base or the unit of the DVR.

21 Q Okay. And up top, the black thing?

22 A This is a black shirt. I see there's red and kind of
23 yellow. I think we pulled it completely out, but these
24 are some wires. I don't know what they were until we can
25 maybe look at a picture of the evidence.

1 Q Just really quick. State's 37, do you recognize
2 this?

3 A State's 37 would be the shirt that was removed from
4 the white trash bag that was found.

5 Q Let me show you what has been premarked State's 34.
6 Do you recognize what this is?

7 A State's 34 is the, the base of the DVR that was
8 located, which is here.

9 Q Okay. And you took possession of that DVR that day?

10 A Yes. We took possession of the DVR so that we could
11 have it further analyzed with someone a little more savvy
12 in dealing with electronics.

13 MR. SCOTT: Your Honor, State offers 34 for admission
14 into evidence.

15 THE COURT: It's already in evidence.

16 Q Do you see State's 23, what is that?

17 A State's 23 is an iPad. That was underneath the DVR
18 base recorder.

19 Q Okay. So that was in the bag, as well?

20 A Yes, sir.

21 Q And then State's 24.

22 A That is the, a screen shot on the iPad.

23 Q Okay. It was still, had battery life to it?

24 A Yes, sir.

25 Q That phone you were mentioning. The phone was

1 significant to you. State's 35 and 36, State's 36, is
2 that the phone you found in the dumpster?

3 A Yes, sir.

4 Q And you were talking about a base. Let me show you
5 State's number 85. What is this a picture of?

6 A State's 85 is a picture of the room. I would guess
7 you would call it the break room within Leslie's. On a
8 brown table, there's a microwave underneath. On top of
9 that table next to a bowl is a white base in which this
10 phone would sit. And that, it's a Uniden base and this is
11 a Uniden cordless phone.

12 Q Okay. There's a bunch of stuff in that picture.
13 Will you circle with the marker where you see the base on
14 that picture?

15 A (WITNESS COMPLIES.)

16 MR. SCOTT: Your Honor, State offers 85 for admission
17 into evidence.

18 THE COURT: Okay. What says the Defense?

19 MR. VERNER: No objection, Your Honor.

20 THE COURT: All right. Without objection, 85 into
21 evidence for the State.

22 (Whereupon, State's Exhibit number 85 was admitted
23 into evidence.)

24 MR. SCOTT: Walter, can you bring down that picture a
25 little bit.

1 MR. VERNER: Now, I think the photograph is different
2 than the exhibit he is talking about, because it's got the
3 writing on it. That is not the exact same exhibit.

4 MR. SCOTT: I just had him circle the base.

5 MR. VERNER: Is that what Mr. Dennis--

6 MR. DENNIS: Yes, I just circled it.

7 MR. VERNER: Okay. Just, just so we're clear to
8 what's being shown to the jury is not quite the same.
9 It's the same photograph, just without the markings from
10 the deputy.

11 THE COURT: Okay.

12 Q For the jury's, when the jury deliberates, they'll
13 get to see it, but there's a bunch of stuff here. I'll
14 have Walter zoom in, Robert. Will you just stand up and
15 just point to where that phone base is in that picture.

16 THE COURT: And, Solicitor, mainly just go ahead and
17 let the jury see what Captain Dennis marked on the
18 picture.

19 MR. SCOTT: Wait a minute, sit tight till they look
20 at that.

21 Q Was the phone you found in the dumpster match to the
22 phone base that you saw in Leslie's?

23 A It is. From the picture that the jury just got
24 through looking at where I circled, this here is the base.
25 Underneath, this is the brown table. Underneath here is

1 the microwave. So this is the base of the Uniden phone.

2 Q Okay. State's 35, what is this?

3 A State's 35 is the white bag that was used to carry
4 the items that we located in the trash dumpster and ripped
5 open to expose.

6 Q Okay. And you had, by the time you got in the
7 dumpster, had you already looked at the Kunkle Oil video?

8 A Oh, yes, sir. We looked at the Kunkle video the day
9 of the incident which was August the 26th, and that kind
10 of gave us the information of seeing the individual run
11 behind Leslie's.

12 Q Okay. And was the white bag significant to you after
13 watching the Kunkle Oil video?

14 A Yes. We had seen a white bag in the individual's
15 hand that came out of the store.

16 Q Okay. The shape of the hard drive, State's number
17 34, what was the, when you observed it in the dumpster,
18 what kind of shape was it in?

19 A The hard drive was, as I stated earlier, we located
20 the face piece, which would have been probably a good 50
21 yards from where the dumpster was at. So the DVR itself
22 had been struck or hit or tossed or whatever. So there
23 was some damage to the DVR itself. It was bent and broken
24 open.

25 MR. SCOTT: State's number 22, Walter.

1 Q Okay. Was that what you observed August 27th of
2 2015?

3 A Yes, sir. State's 22 is the DVR as we've took it out
4 of the bag and began photographing to show that it had,
5 was bent, open and, you know, exposing the inside of the
6 DVR.

7 Q Okay. Did you attempt to get any video off the hard
8 drive?

9 A Not locally. We consulted with Chief McClurkin and
10 Lieutenant Goodman at the time about having the DVR sent
11 off. And we chose to send it to SLED, South Carolina Law
12 Enforcement Division, their Computer Division, to assist
13 us in trying to retrieve any video.

14 Q Okay. Were they able to retrieve video to your
15 knowledge?

16 A The individual that we were working with, Agent Mark
17 Gabe, indicated that they did not feel comfortable or did
18 they have the expertise in dealing with trying to retrieve
19 any information from the hard drive. What that did was is
20 put the wheels in motion for us to reach out to a Federal
21 agency, which is the FBI. We contacted the Columbia field
22 office in Columbia, South Carolina, and spoke with Agent
23 Luke Davis and his supervisor who assisted us with sending
24 the DVR and the hard drive to Quantico for them to work
25 on.

1 Q Okay. And so you sent it up there. At some point,
2 were you able or were they able to retrieve video that you
3 were able to watch?

4 A Yes, sir. They were able to get images from the DVR
5 and they were able to recover two segments. One of the
6 segments was a single individual coming inside the
7 business, and then the next image was inside the break
8 room area.

9 Q Okay. Let me show you State's 88. What is that an
10 image of?

11 A State's 88 is an image of a Hispanic male and a black
12 male. The Hispanic male is reaching up on top of the
13 cabinet area where the DVR looks like it had been located.
14 The black male is standing there with an object in his
15 right hand, and this is the break room area that, that I
16 would classify in Leslie's Hair Salon.

17 Q Okay. And that's ultimately where Mr. Facio was
18 found?

19 A That is correct.

20 Q And where did this still-shot come from?

21 A That still-shot came from the FBI once they were able
22 to retrieve it from the hard drive of the DVR that we sent
23 to them.

24 Q Okay. So that, that would be a still-shot from the
25 video that the FBI retrieved off the damaged hard drive?

1 A That is correct. What, the DVR is a recorder, so
2 this is a moving image of what they were able to recover.
3 So what happened for that State's exhibit to be taken is
4 we played the video and just took what's called a snapshot
5 of it so that you've got a hard picture, but you can still
6 play it through.

7 Q Okay. The same with 89?

8 A That is correct. That's just a snapshot of, matter
9 of fact, from the one Mr. Verner is looking at to this
10 one, the black male is just a little bit closer to Mr.
11 Facio.

12 Q Okay. Based on the video and just looking at these
13 still-shots, were you able to get a description of the
14 suspect in this case?

15 A Yes. From looking at the Kunkle Oil video, and then,
16 finally, looking at this, we were able to kind of
17 establish an individual that was wearing a dark-colored
18 shirt, jeans. And whenever I speak, I always talk about
19 either light color or dark color and a black male. So we
20 were able to not only from Kunkle's but also going to
21 Brothers and pull the same pictures.

22 Q Okay. Were there any other, I guess, characteristics
23 about the clothing, what he was wearing on him or what was
24 on the suspect that you would go back and look at the
25 other video to see if you could identify?

1 A One of the main points of looking is trying to get
2 something that really stands out to you. On the pictures
3 that I'm looking at with 88 and 89, a couple of things
4 stood out. Number one was a, whether it was a doo-rag,
5 whether it was a hairnet, whether it was pantyhose or
6 whatever, the individual had something on his head. The
7 other thing that stood out in his left hip pocket was
8 either a string, lanyard waving that was hanging out, as
9 well on his right side was either a handkerchief, a
10 doo-rag, or the pocket pulled out. You know, you just,
11 until you're able to get the individual and see, you won't
12 know what that is.

13 Q Okay. And were you able to based on lanyard, the
14 white thing hanging out of his right pocket, the doo-rag,
15 the dark shirt, jeans, did you note his shoes?

16 A Yes, sir. There was a pair of white shoes and it
17 looked like it had some dark coloring in it, maybe stripe
18 or, or a base.

19 Q Okay. Based on that what you view from the suspect
20 in Leslie's, the scene of the crime, were you able to go
21 back and find somebody with similar characteristics at
22 Brothers BP?

23 A And maybe we kind of getting ahead of ourselves just
24 a little bit. We were able to establish, because we did
25 not have the DVR or information the day of, of the death.

1 We did not have that DVR so that we could pull from
2 Leslie's. What we were able to do was look and compare
3 from Kunkle Oil of what we saw of the individual on the
4 sidewalk, and then going across the road, and then into
5 Leslie's. We had that description. So with that
6 description, we back up to Brothers and begin looking at
7 Brothers video to try and establish an individual that
8 would have those similar clothes on that we saw from the
9 Kunkle video.

10 MR. SCOTT: Let me do this, what I'll do now is let
11 me introduce State's 88 and 89 for admission into
12 evidence.

13 THE COURT: You have seen them?

14 MR. VERNER: I have, Your Honor.

15 THE COURT: Okay. What says the Defense?

16 MR. VERNER: No objection.

17 THE COURT: All right. Without objection, 88 and 89
18 into evidence for the State.

19 (Whereupon, State's Exhibits numbers 88 and 89 were
20 admitted into evidence.)

21 MR. SCOTT: 88 first, Walter.

22 Q Okay. Yeah, Robert, can you step down. You've
23 already described it, but go ahead and the, where is the
24 black male, let me ask you that?

25 A The black male is positioned here on the right side

1 of the screen which is the still-shot.

2 Q Okay.

3 A Fabio[sic] is here on the left side. You see him
4 reaching up and messing with the DVR. The DVR is here in
5 front, and then this is the screen that would be used to
6 view any video within the store. The black male standing
7 here and in his right hand, you see an object extending
8 from his hand pointing at Mr. Fabio[sic] --

9 Q I think it's Facio, is that right?

10 A Facio. I'm sorry. Here on the left side is either
11 classified as a lanyard, string, rope that you can see
12 dangling and it's dark in color. From the right side,
13 looks like either rear pocket, there is a light-colored
14 object sticking out. Whether it's a handkerchief,
15 doo-rag, pocket, glove, you just can't tell from that
16 picture.

17 Q Do you know if it was a white bag?

18 A And it very well could have been a white bag.

19 Q Okay. But so you see the lanyard, the white item in
20 the back right pocket, doo-rag, dark shirt, jeans, and
21 then an item in his hands?

22 A That's correct.

23 Q Okay.

24 MR. SCOTT: And, Walter, can I have, before I put it
25 up, 87?

1 Q What is this?

2 A 87 is a still-shot from Brothers' BP located on Main
3 Street just up to the road from Leslie's.

4 Q Okay.

5 MR. SCOTT: The State offers 87 for admission into
6 evidence, Your Honor.

7 THE COURT: Mr. Verner?

8 MR. VERNER: No objection, Your Honor.

9 THE COURT: All right. Without objection, 87 for the
10 State into evidence.

11 (Whereupon, State's Exhibit 87 was admitted into
12 evidence.)

13 Q All right. Why is this picture significant to you?

14 A This is, the one that I'm looking at, there's an
15 individual with a white shirt in the still-shot.

16 MR. VERNER: Your Honor, I understand that that's not
17 Exhibit 87 they have got up.

18 THE COURT: Well, I think, maybe that's just one Mr.
19 Bentley informed Solicitor Scott, so take a minute to get
20 that cleared up. Do what you need to do.

21 Q Okay. So you reviewed something from inside footage
22 of the Brothers BP, I'm going to show you a video.

23 THE COURT: Do we need to do something with Exhibit
24 87, if it is not the correct 87? Do we need to clear that
25 up first?

1 MR. SCOTT: It's just a, it's a different angle of
2 the same picture.

3 MR. VERNER: I guess they put into evidence without
4 objection, that's fine. But just I have no problem with
5 they want to move on with the rest of the testimony and
6 maybe come back to it.

7 THE COURT: Okay.

8 MR. VERNER: But the actual photograph has been moved
9 into evidence.

10 THE COURT: Okay.

11 MR. SCOTT: I don't have a blown up, I'll publish
12 this to the jury just, and then we'll move on from there.

13 THE COURT: Okay. That, that's what's been marked as
14 87?

15 MR. SCOTT: It is.

16 THE COURT: Okay.

17 MR. SCOTT: I just don't have it on the screen right
18 now.

19 THE COURT: Okay.

20 Q This picture, this is the one that you see, what do
21 you see there?

22 A 87 will be--

23 MR. VERNER: They've got an unidentified video that
24 they're running that, that hasn't been moved in.

25 MR. SCOTT: It's in evidence. It's the BP video.

1 THE COURT: Right. What appears to be on the screen
2 is not 87.

3 MR. VERNER: I don't know if it's been moved into
4 evidence, but it's certainly not what they're asking the
5 witness about.

6 Q All right. Here we go. I think we're on the same
7 page now. 87, what is that one again?

8 A 87 is a still-shot within Brothers store. There are
9 two individuals at the cashier line. One individual has a
10 white shirt on and he's paying out what appears to be.
11 The other individual is a black male wearing a
12 dark-colored shirt, has a dark-colored rag over his head,
13 dark-colored jeans, a pair of white shoes with
14 dark-colored stripes bottom and side. And there's also a
15 light-colored item sticking from the right hip-pocket
16 area.

17 Q Okay. And then that was significant because? Why is
18 the white thing in the back pocket significant?

19 A The clothing that you see in State's 87 is similar to
20 the clothes that were worn by the individual and with the
21 white object out the right pocket, and I believe there is
22 another picture of the lanyard with the doo-rag inside
23 Brothers.

24 Q Okay. And that's a still-shot from the Brothers
25 video?

1 A That is correct.

2 Q And Brothers video has been introduced into evidence
3 as State's number 57.

4 MR. SCOTT: Walter, can we have State's number 57,
5 Camera 2 at about 1:44 time mark.

6 Q Okay.

7 A This is the individual coming in. Our white shirt
8 guy is paying out. He's got an object that he's holding
9 in his hand, as well as you saw the lanyard as he was
10 walking through. In just a minute, the right side of his
11 shirt will come up and you'll see the light-colored object
12 in his right hip pocket. You can also see the rag over,
13 over his head.

14 Q All right. And the shoes?

15 A The shoes, light-colored with the dark-colored
16 markings on them.

17 Q Testimony was that for Brothers BP you'd have to
18 subtract 12 for the realtime, 12 minutes, and so this is
19 approximately 1:32 p.m.?

20 A If you subtract the 12 that would be, I'd have to
21 write it down real quick.

22 Q Okay. Okay.

23 MR. SCOTT: Walter, can we have State's 86.

24 Q What is State's 86?

25 A State's 86 is a picture of the outside of Brothers

1 and it is the individual, I believe, walking away from
2 where the building is out here, but you can see the
3 lanyard on the left side dangling. The individual has on
4 the white shoes with dark-colored striping again,
5 dark-colored jeans, pants, and the dark-colored
6 long-sleeve shirt, as well as the dark rag on his head.

7 Q Okay.

8 MR. SCOTT: State offers 86 for admission into
9 evidence.

10 THE COURT: Any objection?

11 MR. VERNER: No objection, Your Honor.

12 THE COURT: What number is that, Solicitor?

13 MR. SCOTT: 86.

14 THE COURT: 86 without objection into evidence.

15 (Whereupon, State's exhibit number 86 was admitted
16 into evidence.)

17 Q All right. Show us the lanyard that you see there.

18 A You can see the lanyard here. You know, this is a
19 still-shot, you can see that it's kind of distorted just a
20 little bit which is normal whenever you start blowing
21 stuff up. But you could tell the white shoes with the
22 dark-colored striping, dark-colored pants, dark-colored
23 shirt, and then the rag, the dark-colored rag.

24 Q Okay. And that is 1:32?

25 A Yes. If you, 1:32 thereabouts.

1 Q Okay.

2 MR. SCOTT: Walter, can I see camera 12 about
3 1:45:40.

4 A We can see the lanyard moving back and forth on the
5 leg on the left side.

6 Q 1:33 p.m., do you know what time the, an individual
7 entered into Leslie's?

8 A Without looking at the, a picture, a still-shot, I
9 can't remember right off the top of my head.

10 Q Okay. Do you dispute that it is 1:37 p.m.?

11 A No, I, I would not dispute that if that's already
12 been talked about, yes sir.

13 Q All right. Video, when were you first able to watch
14 the video that captured what happened inside of Leslie's
15 between 1:37 and 1:41, August 26th of 2015?

16 A It was probably not until about July of 2016 that we
17 were able to really look at the video. Quantico had the
18 video and working on that to retrieve the video for a
19 period of time and one of the reasons why is because of
20 when you're dealing with a Federal system, many of their
21 cases take precedent over the lower communities, sheriff's
22 office, police department because they are dealing not
23 only with homicides and major cases, but they're also
24 dealing with national security. So, you know, we were
25 kind of in the middle of getting our evidence worked on as

1 well as them handling their own cases, too.

2 Q I show you State's number 1. What is that?

3 A This is a DVD on the outside of it, which I would
4 call the face piece, it has the information. Computer
5 Analyst Response Team, Operational Technology Division
6 result media from the modem DVR. It identifies the serial
7 number and the FBI logo and this is the DVD that was
8 presented to Newberry County Sheriff's Office. And then,
9 ultimately, to the Newberry City Police Department of what
10 they recovered off of the DVR.

11 Q Okay. So State's 1, your testimony is that this
12 video that was ultimately recovered from State's 34?

13 A Yes, sir. What you're holding in your hand is no
14 more than the housing of the actual hard drive, and I
15 believe the hard drive is also attached to the bag. So
16 the hard drive is what you would pull for the video.

17 Q State's 1 is a video that was pulled from State's 34
18 which is the hard drive you found in that dumpster at
19 Heritage Square?

20 A That is correct.

21 MR. SCOTT: Your Honor, the State at this time would
22 move to admit State's number 1 for admission into
23 evidence.

24 THE COURT: Number 1 is already in evidence.

25 MR. SCOTT: We'll publish at this time.

1 THE COURT: Okay.

2 (Whereupon, State's Exhibit 1 was published to the
3 jury starting at 10:32 a.m.)

4 Q Captain, had you not seen, we don't see anymore. Why
5 don't we see the individual leave?

6 A Whenever we look at the next video, you will see that
7 the victim is unplugging the DVR. So once that is
8 unplugged from its power source, as well as the
9 connections from the camera, that ends any type of video
10 recording or images that you would see. So once that
11 stopped, that was it. You would not see any more activity
12 within the hair salon.

13 Q How many doors does that building have, though?

14 A Right now, I'm only familiar with the one going in.

15 Q Okay.

16 A I can't remember if there was a backdoor.

17 (Whereupon, the DVR continued to play and stopped at
18 10:38 a.m.)

19 MR. SCOTT: Can we see the second angle to the video?
20 Captain Dennis, answer any questions Mr. Verner has for
21 you, please.

22 THE COURT: Mr. Verner, any cross-examination?

23 MR. VERNER: May I have, Mr. Bentley, if you would be
24 good enough to show us number 86? A little bit larger,
25 please, Mr. Bentley.

CROSS-EXAMINATION

1
2 By Mr. Verner:

3 Q Okay. This appears to be a still shot from Brothers
4 Fast Stop video footage?

5 A That is correct.

6 Q And you're familiar with Brothers Fast Stop?

7 A I am, yes sir. It used to be Heller Store and some
8 of you might remember that.

9 Q What's the outside color of the building? It's
10 highlighted in what color?

11 A It kind of depends on the corners. You've got some
12 possibly, some darker-colored, but it's also gray has been
13 the standard color of Brothers.

14 Q Right. And just, I guess, you can just look at this,
15 is Brothers Fast Stop is highlighted in kind of a bright
16 fluorescent green?

17 A I don't want to say fluorescent because your
18 fluorescent may be different than my fluorescent, but that
19 is a greenish-color.

20 Q Okay. Is that consistent with the color of Brothers
21 Fast Stop?

22 A It would be consistent, yes.

23 Q Okay. And you can kind of see a silver car to the
24 left-hand side of the picture?

25 A Yes, sir.

1 Q And it appears to have kind of an orange where the
2 turn signal cover is?

3 A You call it orange. I'm going to call it kind of a
4 reddish tint.

5 Q Okay.

6 A I mean, just looking at it.

7 Q All right. Is that consistent with the general color
8 of the, that plate over those lights on the side of the
9 cars; that's typically what the color you would expect to
10 see?

11 A You would, you know, typically, you know, unless we
12 get into a color class, amber, orange, red. You're
13 looking at that significant kind of pattern.

14 Q And the little triangular piece we're looking at, you
15 would agree with me appears to be either amber, red, or
16 orangey?

17 A That's correct.

18 Q The man is wearing blue jeans in that photograph?

19 A Yes, sir.

20 Q But appears to be blue?

21 A Dark or dark-colored.

22 Q Okay.

23 A I mean, they appear in the picture blue; yes, sir.

24 Q All right.

25 A They could be lighter; they could be darker.

1 Q And you remember earlier on one of the other video
2 footages you seen a man walk by with a blue, I'd say,
3 Tarheels-colored short-sleeve shirt?

4 A Mr. Verner, I, that was not shown. I have not seen
5 that photograph.

6 Q Okay. And while I'm looking for it just to be sure
7 that anything that happens in the City of Newberry also
8 happens in the County of Newberry, and you would have
9 jurisdiction as the Sheriff's Department?

10 A As, yes, the City is within the County. What you
11 will find here in Newberry is we have a great working
12 relationship with the City of Newberry, Whitmire Police
13 Department, and Prosperity Police Department. Newberry
14 City is a little step above Whitmire and Prosperity,
15 because they do have the investigators, they do have the
16 knowledge for investigation, collecting evidence and
17 different things like that. Your smaller police
18 departments do not. So we would be more apt to take a
19 leading role in Whitmire or Prosperity assisting them with
20 an investigation. And then we would follow with the City
21 of Newberry with assisting them, more so manpower,
22 interviews, canvassing a neighborhood, maybe even to the
23 possibility of what we did here is, is reaching out to
24 several contacts we have within the Federal government to
25 aid us, both agencies.

1 Q Okay. And, Investigator, I just asked you that
2 question to kill some time until I found my picture and
3 you do good for it.

4 A Thank you, sir.

5 MR. VERNER: May I have number 29?

6 Q Okay. The man we see walking by the same general
7 area --

8 A Yes, sir.

9 Q -- of Brothers Fast Stop.

10 A Yes, sir.

11 Q I call it kind of a Tarheel-blue shirt?

12 A I call it a light blue-looking shirt with white
13 writing on it.

14 Q Okay. And that appears to be consistent from the
15 video that you uncovered from Heritage Apartments, the
16 same general tint of blue?

17 A I am not following the question you are asking me.

18 Q Did you see the video from the dumpster of the man
19 dumping the white bag in the dumpster at Heritage?

20 A No, sir. I did not see that.

21 Q Okay.

22 A I had, one of my investigators is the one that
23 actually saw it, Matthew Womack, because he was able to go
24 and work with the manager there to retrieve the video
25 information to come back and tell us that individual come

1 off the trail and put something in that dumpster.

2 MR. VERNER: Mr. Bentley, would you be good enough to
3 show me 45, please, sir?

4 A Before, before you move from that picture --

5 MR. VERNER: Okay. Well, we'll wait for a second.
6 He wants to expound.

7 A Before and you were asking about the group.
8 Significant in this picture from the pictures that the
9 Solicitor was asking me about, you still have the white
10 shoes with the dark-colored markings, the blue jeans. You
11 can see the writing --

12 Q And I'd prefer you not, that's not responsive to my
13 question.

14 MR. VERNER: That's a question that the State asked
15 him and he got into. I've got my own set of questions I'd
16 like him to--

17 THE COURT: Okay. All right. Just answer Mr.
18 Verner's questions.

19 MR. DENNIS: Yes sir, Your Honor.

20 MR. VERNER: 45. Thank you, Mr. Bentley. Can you
21 enlarge a little bit, Mr. Bentley, please.

22 Q You haven't seen this?

23 A No, sir. This is the first time I've seen this
24 photograph.

25 Q Okay. But are you recognizing what this is?

1 A The more you blow it up, the more distorted it
2 becomes, as you can see. But you can tell this is a
3 lighter blue-colored shirt. The lighter or blue jeans
4 that you see, and then you can see white shoes there.

5 Q And I understand this isn't crystal clear, but does
6 that shirt appear to be generally the same tint we see
7 from the Brothers Fast Stop?

8 A That is correct.

9 Q Okay. Well, I guess my question, Investigator
10 Dennis, is why again the earlier photographs we've talked
11 about, it appears that the man in 29 --

12 MR. VERNER: May we have 29, please, again, Mr.
13 Bentley?

14 Q What color does it appear the sweater that man has
15 over his shoulder?

16 A It's a dark-color.

17 Q But you wouldn't agree with me that it at least looks
18 greenish or olive green?

19 A No, sir. I would not agree with you because one of
20 the things that you've got to take into consideration is
21 outside, you've got sunlight. You've also got the
22 reflection of the sun bouncing off of this building that
23 may affect the color of it. The lens, you got to deal
24 with dirt, grime on the lens. So what I can tell you is
25 that's a dark-colored shirt that would have been

1 consistent with the other photographs that we identified.

2 Q You're telling me that doesn't at least look greenish
3 from my perspective?

4 A From your perspective and looking here --

5 Q Looking at the photograph right now.

6 A -- there, there is a greenish tint to it but it is a
7 dark color once again.

8 Q It is a dark-colored piece of clothing that, in
9 fairness, looked greenish. I understand you're saying you
10 have reasons --

11 A That it looks greenish.

12 Q Okay.

13 A I would go along with that.

14 Q And the doo-cap, too?

15 A And the doo-cap, too.

16 Q And, I believe, you're testifying you think that
17 there might be reasons for that?

18 A Yes, sir. I mean, common sense will tell you out in
19 the sunlight would give an appearance of maybe a lighter
20 color. If you go in with fluorescent lighting, it may
21 give you a different color. If you go into an area that's
22 not well lit, it's going to be darker. So until we're
23 actually standing face-to-face with that individual, we
24 won't know exactly what color that is until we actually
25 allow hands on him.

1 Q But the blue jeans still appear to be blue jeans and
2 that tint's consistent?

3 A Yes, sir. It might be a little bit more faded. I
4 mean, you got, depending on the wear of them.

5 Q But the blue shirt still tends to be the same tint as
6 the blue shirt in the other photographs?

7 A Yes, sir.

8 Q The green awnings or side of the building still
9 appears to be the same general tint of Brothers Fast Stop?

10 A They're lighter green than the darker green, greenish
11 that you are talking about.

12 Q And the red/orange on the side of the car appears to
13 be the consistent, all of those other colors are
14 consistent with their true tint, aren't they?

15 A Along that line; yes, sir.

16 Q Okay. Do you know, Investigator, if the man would
17 have had to walk from Brothers Fast Stop, you've seen the
18 Kunkle video?

19 A Yes, sir.

20 Q The man is certainly walking from the direction of
21 Brothers Fast Stop towards the salon, is that correct?

22 A That is correct, yes.

23 Q But he would not necessarily have had to come from
24 Brothers Fast Stop, would he?

25 A He, he could have come from anywhere up from that and

1 from looking at the video would have been the left
2 direction.

3 Q There, there's no video tracking him all the way to
4 Brothers Fast Stop?

5 A Only Brothers and Kunkle.

6 Q Okay. And, in fact, Copeland Street runs beside of
7 Brothers in between the salon and Brothers?

8 A That is correct, yes.

9 Q Okay. And Copeland would go to Wise Street
10 Community?

11 A It would, actually, go to Johnstone Street, and then
12 back over to the Wise Street area.

13 Q But that wouldn't be the typical route people from
14 Wise Street would be walking to get to the, this part of
15 town?

16 A There are a couple of paths through Wise Street, and
17 then across Johnstone Street, and then behind Tremont
18 Apartments that they would make a cut through.

19 Q Okay. The photographs we saw of you in the dumpster.

20 MR. VERNER: Thank you, Mr. Bentley.

21 Q The photographs we saw of you in the dumpster, when
22 did you go to the dumpster, was that the day of the death
23 of Mr. Facio or was that another day?

24 A That was the following morning.

25 Q Okay.

1 A We went there after coordinating with the City of
2 Newberry to walk behind Leslie's, Pike Circle, the trail,
3 and then eventually, there at Heritage Square.

4 Q Okay. But by that time, you had already, by you I
5 mean, law enforcement, the investigators had already
6 recovered the Kunkle video?

7 A Yes, sir. Mr. Mercer with the City of Newberry had
8 began the download process not only with Kunkle but also
9 with Brothers video.

10 Q Okay. And you had the Brothers video?

11 A That is correct.

12 Q Obviously, would not have had the Heritage Square
13 video yet, because you were in the dumpster?

14 A We were able to, my investigator Matthew Womack, once
15 we walked the trail and discovered that the camera was on
16 the side of the building that I talked about earlier, he
17 went directly to the management to access that video and,
18 and gather that information of what you just showed me.

19 Q Let me try to remember my question. Did you have
20 access to the Kunkle video prior to the 27th? By you I
21 mean, law enforcement?

22 A Law enforcement; yes, we had it on the evening of the
23 26th, the date of the incident.

24 Q And Brothers, as well?

25 A Brothers, as well.

1 Q Okay. And you, and on the evening of the 26th, you
2 had already had a man in custody as the suspect in this
3 murder?

4 A Yes. By looking at the Kunkle video, and then
5 looking at the Brothers video, Kenny Smurf Ruff had
6 already been identified.

7 Q Okay. And he was already in custody and believed to
8 be the suspect?

9 A That is correct.

10 Q Okay. And the video from the FBI didn't come until
11 maybe seven months, give or take, after Kenny Ruff had
12 already been arrested?

13 A That is correct.

14 Q Had you personally watched the videos, either Kunkle
15 or Brothers or both?

16 A Yes. I had watched both videos. Once they located
17 on the video the individual that had the similar clothing
18 that we were looking at.

19 Q Okay. And you coordinated with both the City Police
20 and SLED?

21 A That is correct, yes.

22 Q And isn't it fair that y'all identified the man y'all
23 were looking for was wearing a short-sleeve black shirt?
24 Do you recall telling SLED agents that you believed the
25 suspect, well, I'll let you answer before I approach you.

1 A Thank you. At the time whenever you began looking at
2 the distance of judging a video, you're trying to get
3 information out as quickly as possible. Whether we said a
4 short-sleeve, a long-sleeve, because of the distance that
5 we were dealing with, that was relayed to SLED, because we
6 had the aviation unit come up to respond as well as the
7 tracking team from SLED.

8 MR. VERNER: Your Honor, I'd just respectfully, it's
9 non-responsive.

10 THE COURT: Well, he can explain his answer. And I
11 think that's what he's trying to, trying to do. But and
12 I'll allow him to explain his answer. But, Captain
13 Dennis, just be real careful as to responding specifically
14 to what Mr. Verner ask you, okay?

15 MR. DENNIS: Yes, sir.

16 Q Yes or no question, but you can explain it if you
17 need to afterwards. Did you tell SLED agents that you
18 were looking for a man in a short-sleeve black shirt?

19 A I would have to review the notes on what was taken.

20 MR. VERNER: May I approach?

21 THE COURT: Sure.

22 A This is a report from SLED.

23 Q Well, it's a yes or no question, and then you can go
24 further or much further as your want.

25 A Okay. Ask the question again, Mr. Verner.

1 Q Okay. Did you tell SLED agents that you were looking
2 for a suspect in a short-sleeve black shirt?

3 A That would be a good question.

4 Q Well, that's why--

5 A -- it's, and, Mr. Verner, I just can't say yes or no
6 because if I gave a description of the individual based
7 off of what I seen, it could have been short-sleeve black
8 male or long-sleeve black male. I can't, because this is
9 a SLED report.

10 Q Right.

11 A This is what they wrote.

12 Q Right. Right. But they are writing something that
13 they're saying that you told them, right?

14 A It depends on how it got to them and how they relayed
15 it.

16 MR. VERNER: Well, Your Honor, may I publish a prior
17 inconsistent statement.

18 MR. SCOTT: I don't think that's a prior inconsistent
19 statement. He's asking him to testify to what a SLED
20 agent reported and he can ask him did he say it or not and
21 if he doesn't have a recollection of it I think is what he
22 was saying.

23 MR. VERNER: How else do you get prior inconsistent
24 statements in if they're not somebody else saying he said
25 the inconsistent statement?

1 MR. SCOTT: Because that's not his prior inconsistent
2 statement; that's the SLED agent's statement.

3 THE COURT: Let me see what you're referring to, Mr.
4 Verner.

5 MR. VERNER: The fourth bullet point from the bottom,
6 Your Honor.

7 THE COURT: I think instead of publishing it, you can
8 certainly ask him does the SLED report indicate what he
9 may have said.

10 MR. VERNER: I'll just, Your Honor, we're ten minutes
11 in a yes/no or I don't know question.

12 THE COURT: Well, I mean, he says he can't say yes or
13 no, so but you can ask him if the SLED report indicates
14 whatever it indicates.

15 Q You told SLED, do you remember when you were working
16 with SLED at the scene? This would have been August 26th
17 of 2015, right?

18 A That is correct.

19 Q Okay. Captain Dennis further reports---

20 MR. SCOTT: Now, you can't, that's hearsay and he's
21 just trying to get around--

22 MR. VERNER: It's a prior inconsistent statement.

23 THE COURT: Don't. You guys don't talk over each
24 other. Just ask him does the SLED report indicate that he
25 said whatever the report says and let's move onto

1 something else.

2 MR. VERNER: And I'll just note that if it is a prior
3 inconsistent statement it's admissible.

4 THE COURT: Well, I don't think it's necessarily a
5 prior inconsistent statement if it is generated from
6 someone else's report. Again, just ask him if the SLED
7 report indicates whatever it indicates and let's move onto
8 something else.

9 Q Did you understand the Court's paraphrasing of my
10 question, does the SLED report that I handed up indicate
11 that you told SLED that you were looking for a suspect
12 wearing a short-sleeved black shirt?

13 A It, it does indicate that, but there are several
14 factors that go into that report, if I may elaborate.

15 Q I don't think I can stop you, so go ahead.

16 A The information that is relayed is relayed not only
17 by me contacting SLED by phone and talking with what's
18 called a phone boy or a phone person, they would take that
19 information as to what we need such as aviation, crime
20 scene, tracking team. We relay what information we have
21 at the time to them, which is then relayed out. So there
22 are several individuals that is sending information out,
23 and then once they get on the scene, we're giving
24 information out. Again, whether we are updating the
25 information or changing the information to what we have

1 found as far as evidence, description, and different
2 things like that.

3 MR. VERNER: And may I approach, Your Honor.

4 THE COURT: You sure can.

5 Q The man in Defendant's number 6, is it possible that
6 you had seen that video and that was the man you were
7 giving the description of to SLED?

8 A No, sir. I did not see this, this angle, plus the
9 other thing that you've got to take in consideration is
10 this is at 12:46, and then if you subtract from that,
11 that's going to be 12:30-something.

12 Q Right, but that's not in the, you just didn't review,
13 on August 26-27th, you weren't aware of the time
14 discrepancy in the videos, right, or specifically what
15 they were?

16 A The, the specific time discrepancy, no.

17 Q Okay.

18 A Once we started prepping, we identified the
19 discrepancy and then made the adjustments according to the
20 CAD card.

21 Q And even if you believed that the timestamps were
22 completely right, my hunch is that you would review not
23 just that few minutes of the crime scene, but a window of
24 time both before and after?

25 A That would be correct, yes.

1 Q Okay. And it's not possible you came across this
2 picture--

3 MR. VERNER: May I retrieve it?

4 Q -- is it not possible that the man in the black
5 short-sleeve shirt you were talking about was that man?

6 A Once again, you are an hour difference in that
7 picture you're showing me and the actual time that we were
8 looking at on Kunkle as well as Brothers.

9 Q And the man I'm talking about in number 6 would be,
10 I'm not asking you to make an identification of him, but
11 he would be consistent with Kenny Ruff?

12 A Is number 6 that photograph?

13 Q Yes, sir.

14 A You know, that's a backside picture. The clothing is
15 similar. You say it's short-sleeve; I can't really tell.

16 Q Okay. And you weren't in court when we played the
17 video of it earlier in this trial?

18 A No, sir.

19 Q Okay. When you found the white bag in the dumpster,
20 was it partially torn open at all or was it completely
21 sealed?

22 A No, sir. It was completely tied. Matter of fact,
23 you can see it's still tied where I ripped it open.

24 Q Okay. But the, but there were no other rips other
25 than your original rip to look inside of it?

1 A No, sir.

2 Q Okay. So there's no way short of going through that
3 plastic bag that other people's clothing items or debris
4 could be in contact with the shirt and the items inside of
5 the white back?

6 A Ask, ask again, please.

7 Q The black shirt that we've talked about for the jury,
8 was, was in the white, was it a garbage bag or a store,
9 the white bag that you retrieved from the dumpster?

10 A Well, it's a, it's a white garbage bag. It's a trash
11 bag.

12 Q Okay. It's an actual trash bag and not one of these
13 plastic bags I get from a convenience store or a shopping
14 center?

15 A No, sir. No, sir. It's an actual trash bag.

16 Q Okay.

17 A I understand what you are saying.

18 Q Which is a little bit thicker than the store bag?

19 A That's correct, yes.

20 Q And it was tied tight?

21 A It was tied; yes, sir.

22 Q And there were no other openings or holes in the bag
23 other than when you made the original tear yourself?

24 A No, sir.

25 Q Okay. So there's, there wouldn't have been any, the

1 items inside the white garbage bag wouldn't have been in
2 contact with the other items in the dumpster?

3 A That is correct.

4 Q Okay.

5 A There was no way for those items within that bag to
6 fall out and there was no way for any other items to
7 penetrate unless it was liquid or something like that
8 would have gotten into it.

9 Q Well trash bags are, even liquids, you know, you can,
10 can't you kind of pour coffee or some liquids without at
11 least, I guess, maybe a cheap bag it might go through.
12 But they're made to keep liquids inside, too, aren't they?

13 A It depends on the bag.

14 Q Okay.

15 A And Glad's probably the best.

16 Q Do you recall what kind this trash bag was?

17 A No, sir.

18 Q So the Dennis household would have Glad bags in it?

19 A Yes, sir.

20 Q Okay.

21 A We use Glad.

22 Q And, I believe, you looked at the Kunkle video, too,
23 and it looks like the suspect walks away from the salon
24 heading towards the Heritage Square?

25 A Yes, sir.

1 Q Okay.

2 A Once he exited the front of Leslie's, he's goes
3 around the building, and then across the road, Pike
4 Circle, and then back across, and, and then he disappears
5 out of the camera sight.

6 Q Okay.

7 A Which he would have been going toward the right back
8 toward the trail that we spoke about earlier.

9 Q Are you aware if there are any witnesses or anybody
10 who said they saw anybody in the Heritage Square area?

11 A I'm not aware of any witnesses that we talked to and
12 identified anybody, no.

13 Q Do you know if law enforcement went door-to-door to
14 try to see if anybody had seen and could identify anybody
15 passing through the neighborhood?

16 A While we were on-scene going through the trash, there
17 were several residents coming out that I know law
18 enforcement talked to. But as far as going door-to-door,
19 I can't answer that.

20 Q And how many people, just ball-park it, but are you
21 familiar with how many people would be living in Heritage
22 Square?

23 A I would say there is about fifty something units
24 there or apartments. So if you've got fifty apartments,
25 then if you just say you've got a family of four --

1 Q Okay.

2 A -- then that's a good number of folks you going to
3 have living in that apartment complex.

4 Q So fairly well-populated but no witnesses or anybody
5 who saw anybody come through the neighborhood that you're
6 aware of?

7 A None that I'm aware of.

8 Q Okay. When you look at the Kunkle video, it's clear
9 to you that the man who comes in the store is not carrying
10 anything in his hands? I'm not talking about when he gets
11 in the store, and but on the way in, he doesn't appear to
12 be carrying anything, does he?

13 A It does not appear from the Kunkle video that he has
14 anything visible in his hand.

15 Q Do you see any other sweatshirts or shirts over his
16 shoulder or tied around his waist?

17 A No, sir. No, sir.

18 Q So if he had a second shirt that he took off to
19 reveal the black undershirt, he certainly didn't carry it
20 into the store with him?

21 A No, he could have had it on up underneath of what he
22 already had on.

23 Q And, in fact, we know from the video that he doesn't
24 discard anything before he goes into the store at least
25 from the Kunkle Street area to once he decides to go into

1 the salon?

2 A That is correct.

3 Q Okay. You've seen the Leslie Salon video?

4 A Yes, sir. I went down with the Solicitor and
5 reviewed it once they recovered it at the FBI.

6 Q Is it fair to say it does not appear that the man who
7 entered the store was wearing gloves?

8 A From the video, no.

9 Q Okay. No sign of them? If he was wearing them,
10 there is no sign of them that you are able to recall?

11 A No.

12 Q Okay. And, and you would be looking at it as an
13 investigator, and you would note that and that would be an
14 important fact if you believed you saw evidence of it?

15 A That, that is correct.

16 Q Okay. You're familiar with where this salon is --

17 A Yes, sir.

18 Q -- Leslie's is?

19 A Yes, sir.

20 Q And directly across the salon, is it fair to say that
21 would be the driveway where the Kunkle videos are?

22 A That is correct; yes, sir.

23 Q And where the videos are from Kunkle's, that's kind
24 of a driveway into the main gate or at least the parking
25 gate of Kunkle's?

1 A Yes, sir. For the trucks to go into the rear of
2 Kunkle's.

3 Q Okay. And several video cameras pointing all kinds
4 of angles at the gate?

5 A That is correct; yes, sir.

6 Q Okay. But the only one we're interested in is the
7 one pointing towards Main Street and the salon?

8 A Yes.

9 Q Okay.

10 A Catching the salon/Pike Circle area.

11 Q From that driveway, and, Mr. Dennis, if you'd please
12 step down, Investigator. Just so we're clear for the jury
13 and I'm pointing to State's 64, hold on a second.

14 A Okay.

15 Q I'll hold it and you mark.

16 A Okay.

17 Q I'm interested in, this way. Where is the driveway
18 that, put the pen on where the Kunkle's driveway is?

19 A The driveway is right here to the left of the
20 building.

21 Q Okay.

22 A Leslie's is here.

23 Q All right. What's this kind of white square thing in
24 the photograph?

25 A I'm not exactly sure. I believe it's the sign, but

1 unless I got a little bit, you know, had a closer up, I
2 couldn't tell you.

3 Q Well, when you look at Kunkle's video, that doesn't
4 appear to be the street sign that he walked?

5 A I can't remember, it says 76 or 34. I think that is
6 what it is.

7 Q Okay. My question is from where you see the, the men
8 both and you remember seeing Womp, the man called Womp?

9 A Oh, yes, sir. That's Emmanuel Richardson.

10 Q Okay. Put your tip of your pen from where the
11 Kunkle's driveway is.

12 A Okay. This is the driveway here.

13 Q And that's where the suspect walks from to enter the
14 store?

15 A He's more passed the driveway just a little bit,
16 because if you're looking, Leslie's is almost directly
17 across to the sign. So he would have had to go past that
18 sign, and then come across the road because then he comes
19 into the picture going into Leslie's from this side.

20 Q Okay. And while he's going towards Leslie's from
21 behind a sign, would his back be facing Turner Street or
22 would, would he be walking toward Turner Street or away
23 from Turner Street?

24 A Well, Turner Street is right here.

25 Q Okay.

1 A So if he's coming across the street, then his back is
2 toward Turner and Kunkle's.

3 Q And anybody walking down Turner Street would see the
4 man's back?

5 A That's correct.

6 Q Okay. Did you see from the video, we'll watch it
7 again, on the Kunkle's video, when once the man starts
8 walking from here into Kunkle's, he never turns around and
9 stops, does he?

10 A No, sir.

11 Q Okay.

12 A You talking about going into Leslie's?

13 Q Yes, sir.

14 A No, sir. He walks in.

15 Q So his back would have constantly been towards Turner
16 Street?

17 A That's, yes sir.

18 Q Okay. Do you have any idea the, this is Turner
19 Street I believe you identified?

20 A That's correct. That's Turner Street.

21 Q And Turner Street, just for the record, would be the
22 first street on the right looking from the bottom of this
23 street?

24 A That's correct, yes sir. And it crosses over to
25 Johnstone Street.

1 Q All right. And do you know the distance from this
2 driveway to the edge of Turner Street or can you
3 approximate?

4 A I would say probably about maybe 40 yards.

5 Q Could it be as much as 50 yards?

6 A 40-50, give or take.

7 Q Could it be slightly more than that?

8 A It could, yes.

9 Q Okay. And this red building on the bottom right or
10 kind of on the far right-hand side of the page about
11 halfway up on the right is a red brick building?

12 A Kunkle Oil.

13 Q That's Kunkle Oil who owns the videos that, in this
14 case?

15 A That's correct.

16 Q Now, appears to be a parking lot beside, to the
17 right-hand side of the building?

18 A That's correct.

19 Q If you were looking at it from Main Street?

20 A Yes, on the Turner Street side.

21 Q What are all these things in the parking lot?

22 A Those are cars but, you know, this was taken this
23 year, because the houses are there now. So I don't know
24 when it was taken.

25 Q Who owns those cars? Is it fair to say the people

1 who work at Kunkle's, that's where they park?

2 A I mean, that could be workers; that could be
3 customers. I don't know.

4 Q Okay. Do you know when the State took this picture?

5 A No, sir. I mean, it was, it had to be taken this
6 year because the houses are there.

7 Q All right. Do you know how many people, how many
8 trucks are in the parking lot in this photograph?

9 A Two, four, six.

10 Q Okay.

11 A And then there is a car in front.

12 Q All right.

13 A So six vehicles on the right side and one in the
14 front.

15 Q And they're all pickup trucks, aren't they?

16 A Yes, on the right side and the car in front.

17 Q Okay. And you don't think those are the employees of
18 Kunkle's?

19 A I mean, they could be employees or they could be
20 customers. Without going that day that the picture was
21 taken and identifying them, I would not know.

22 Q That's not where the employees typically park at
23 Kunkle's?

24 A I can't answer that, Mr. Verner.

25 Q I'm going to ask you if you can identify the picture

1 from my iPhone.

2 A Something came up, Mr. Verner. Can I close it?

3 MR. VERNER: Text message from my brother asking me
4 if I'm doing okay.

5 Q Can you identify the photograph?

6 A This photograph appears to be the parking lot. I
7 mean, it's a parking lot with vehicles parked in it and
8 it's aiming back towards Turner Street.

9 Q Okay.

10 A And the reason why I know that is because of the
11 house across the street.

12 Q And you can see the fence on the edge of the--

13 A Yes, sir.

14 Q And what's in that parking lot?

15 A Vehicles.

16 Q Several?

17 A Yes, sir. There it looks like four trucks, an SUV,
18 and I can't tell what the other one is because we cut it
19 off.

20 Q But all big vehicles in the Kunkle parking lot?

21 A Yes, sir.

22 Q Okay. Do you know if that's a picture taken on the
23 way into, this morning of the, what the parking lot looks
24 like today?

25 A I have no idea when or where that, or at what

1 time-period that was taken.

2 Q Okay. I don't know if you know this, sir. Do you
3 know what kind of car I drive?

4 A It's a little small one.

5 Q Have you ever seen me in a gold Prius?

6 A I think so.

7 Q Okay. Does that appear to be my gold Prius in Turner
8 Street? That's a gold Prius?

9 A That is a gold Prius; yes, sir.

10 Q It may not be mine, but that's --

11 A Somebody else driving it.

12 Q Okay.

13 MR. VERNER: Can we have number 1, what's the
14 Kunkle's video four, Kunkle video? Can we have number 2,
15 Mr. Bentley? And, Your Honor, I'm almost through.

16 THE COURT: That's fine.

17 MR. VERNER: After we do this video clip, I'll be
18 through.

19 THE COURT: That's fine. And, Mr. Bentley, I trust
20 you to get it to the moment that the suspect comes on the
21 screen, which would be 13:28.

22 MR. STUMBO: 13:29 on this video, I believe.

23 MR. VERNER: I want to go to 13:28. Okay. And then
24 just stop for one second, Mr. Bentley.

25 Q What are we looking at in this video screen?

1 A From where I'm positioned at, this is the drive
2 across, directly across from Leslie's going in behind
3 Kunkle Oil. Kunkle Oil would be the building itself down
4 toward the lower part of the screen or to the left of the
5 screen.

6 Q Video cameras are kind of on the side kind of like
7 that?

8 A The corners.

9 Q Okay. And how wide is the Main Street at this
10 location?

11 A You got four lanes.

12 Q And a, what about a median?

13 A There's a median, but I, you know, it kind of depends
14 on where you at through there, whether you've got what's
15 called a turning lane where it's open or this is just a
16 double line there.

17 Q Okay. Somewhere between four to five lanes at that
18 point?

19 A Yes, sir.

20 Q Okay. And that's from standing at the very edge of
21 the street looking at the salon?

22 A Because you got to take into consideration the
23 sidewalk, so sidewalk-to-sidewalk and roadway.

24 Q Okay.

25 A There's sidewalks on both sides of the street.

1 Q And the little square thing I was asking you to
2 identify from the aerial is the, appears to be those 219
3 signs?

4 A Yes, sir.

5 Q Okay.

6 A 219 Junction and 34 to the left.

7 Q Okay. So just ballpark, what's estimated distance
8 for me to cross two lanes of traffic and the median and
9 the salon is actually not on the street, it's actually a
10 little bit back from the street, isn't it?

11 A Yes, sir.

12 Q Okay.

13 A There's just, there's a little bit of parking area
14 there in front of the store.

15 Q Okay. Just estimate a distance that you would think
16 from the signs to the front door of the salon?

17 A Twenty-five yards.

18 Q What'd you say, it'd be further than twenty-five
19 yards?

20 A I would say 20-25, give or take.

21 Q All right.

22 MR. VERNER: Mr. Bentley, you can go ahead and leave
23 it running. And, if you would, Mr. Bentley, stop it as
24 soon as the first man in the picture starts walking into
25 Main Street towards the salon.

1 Q Okay. At 37 seconds, we can see your suspect walking
2 into the picture behind the truck.

3 A We see an individual, you say suspect, I'd have to
4 see a little bit more of the video.

5 Q Oh, okay.

6 MR. VERNER: Let's see a couple of more seconds, Mr.
7 Bentley.

8 A Yes, sir. You could tell, once he's walking, you can
9 see the rope lanyard moving back and forth on this side,
10 as well as his stride.

11 MR. VERNER: Roll forward, Mr. Bentley. All right.
12 Stop it, please, Mr. Bentley.

13 Q 13:28:58 is when he makes his movement towards the
14 salon?

15 A Yes, sir; crossing the street.

16 Q Okay.

17 MR. VERNER: Mr. Bentley, roll it until the man gets
18 to the door, please, sir. Okay, sir.

19 Q And it's about 13:29:16 when he enters the store or
20 the salon, hair salon?

21 A 13:29 is what's timestamped, but then you need to
22 take into consideration--

23 Q -- I'm just asking about the timestamp on this.

24 A The timestamp is 13:29.

25 Q Okay, 16?

1 A 16 seconds; yes, sir.

2 Q That's right. Okay.

3 MR. VERNER: Mr. Bentley, can you roll up to about
4 13:29, just slightly before 13:30. Okay. We'll just let
5 it run like this.

6 Q And these are all seconds that are passing marked on
7 the video?

8 A Yes, sir. 36, 37, 38, also.

9 MR. VERNER: All right. Stop it, please, Mr.
10 Bentley.

11 Q 13:29:58, that's when my friend who goes by Womp
12 enters the picture, right?

13 A Emmanuel Richardson; yes, sir.

14 Q Mr. Richardson.

15 A Yes, sir. He's got a hop to him. He's had it for
16 many years.

17 Q A hop?

18 A A limp.

19 Q Oh, okay.

20 A If you'll watch, he's limping.

21 Q Is that's how he gets the nickname?

22 A I don't know how he got the nickname. I have known
23 him for 26 years.

24 Q All right.

25 MR. VERNER: Mr. Bentley, let's see how Mr. Womp

1 walks by playing it forward.

2 Q Is it fair to say he's walking at a fairly brisk pace
3 and he's not dragging the leg or moving --

4 A -- no, sir. He's not dragging the leg. He's, like I
5 said, he's got just a little hop to him going. He walks
6 just about everywhere he goes.

7 MR. VERNER: All right. Mr. Bentley, back it up just
8 one more second back to 13:29:58, just so we got an idea
9 of how long it takes Mr. Womp to clear through that area.
10 All right. That's good, Mr. Bentley, and just play it.

11 Q And would you, is it fair to say he's walking at a
12 fairly brisk pace?

13 A It took him 18 seconds from the time he came into the
14 video until the time he passed into, I couldn't see him
15 anymore.

16 Q Okay.

17 A He's making a step about every second and he did
18 pretty good.

19 Q And so you would agree with me, wouldn't you, that if
20 the video shows that your suspect enters the store at
21 13:29 and 18 seconds. No, I am sorry. You can step down.
22 The suspect is standing here at the same point where Mr.
23 Womp generally enters the screen at 13:29:18. Is that, do
24 you recall that time? Let's talk about that time.

25 A Well, where you were pointing, I mean, I was focused

1 right here. And once he comes here, then I marked the
2 time and just started counting.

3 Q I'm not talking about Mr. Womp. You remember when I
4 asked Mr. Bentley to stop the video at when the suspect
5 made it across the road?

6 A Yes.

7 Q That was 13:29:18.

8 A Okay.

9 Q You want me to replay it?

10 A Yeah, if you don't mind, yeah.

11 MR. VERNER: All right. Let's go back to 13:29:18.

12 All right. We might have to back up, back up a little bit
13 more, Mr. Bentley. 13:29:16 is what I should have told
14 you. Right there.

15 Q 13:28:58.

16 A Yes, sir.

17 Q 13:28:58 is when the suspect walks from one side of
18 Main Street directly towards the salon.

19 A Okay. He begins to walk; yes, sir.

20 Q Okay. And he never turns around towards Turner
21 Street from that walk, does he?

22 A Let's play the video and see.

23 Q All right. Well, let's play the video and see.

24 (Whereupon, a video was played for the jury.)

25 MR. VERNER: All right. Stop, thank you, Mr.

1 Bentley.

2 Q And when he's walking, when this man is walking
3 towards the salon, he's walking away from Turner Street
4 both. He's moving in the direction towards the Brothers
5 Fast Stop and he's also moving across the street kind of
6 at an angle further away from Turner Street, right?

7 A A slight angle but still his side could be viewed
8 from Turner Street.

9 Q But he's moving even further away from Turner Street?

10 A Yes, sir.

11 Q Okay.

12 A And about 20 seconds to cross the road and then go
13 inside.

14 Q And I know you indicated to us earlier that your math
15 wasn't great, but I'm going to give you a fairly simple
16 one and see if you can tell me the time difference between
17 13:29:58 and 13:28:58.

18 A Probably about 20-something seconds.

19 Q 13:29--

20 A Oh, okay.

21 Q -- minus 13:28?

22 A So you roughly have a minute.

23 Q Well, it's not roughly a minute, it's exactly a
24 minute to the second, isn't it?

25 A If you say.

1 Q Okay. 13 minutes, 1:29:58.

2 A 1:29:58.

3 Q Minus 1:28:58.

4 A That's one minute.

5 Q Exactly a minute. So Mr. Womp who appears to be
6 walking at a pretty, Mr. Richardson, I guess, who appears
7 to be walking at a pretty good clip, it takes him a minute
8 before he's at the same location where the suspect was
9 when he started walking towards the salon. It, it takes
10 him a minute of walking to even reach the Kunkle Street
11 where the suspect was when he started walking into the
12 salon?

13 A Yes, sir.

14 Q Okay. So his vantage point is from a minute's worth
15 of walk away from when he would have been able to identify
16 or best been able to identify the man who walked in the
17 store?

18 A Ask, ask it, ask again, please.

19 Q It would have, for him to reach the spot where he
20 would have been able to see the suspect from the closest
21 point, it took him a minute of walking to get there?

22 A Yes, it would take him roughly that, yes.

23 Q Okay. Because they're exactly at the same part,
24 they're almost exactly at the same spot one minute apart?

25 A One minute.

1 Q Right. So Mr. Womp would have been, would have had
2 to been about a minute's worth of walk away when he would
3 have had to make his identification of the man?

4 A There's several factors with that.

5 Q He could have stopped and tied his shoe. He could
6 have looked at some birds. But assuming he's walking like
7 he is in the video, he would have been walking for a
8 minute?

9 A If he is walking like he is from Turner Street and
10 you brought up the pictures of vehicles parked there, the
11 question that we have to ask is was his view obstructed
12 from Turner Street for the individual to be seen walking
13 across the road.

14 Q That is an excellent question.

15 A From the pictures that you showed today, there are
16 vehicles there, but there is still an observation point
17 from Turner Street behind your little car, looking that
18 way that we could have viewed someone walking across the
19 street.

20 Q That's exactly right. I should hire you when you
21 retire. Because, do you know how long it would take to
22 walk from Kunkle Street, the driveway, to Turner Street?

23 A To walk from Kunkle Street?

24 Q Presuming Mr. Richardson is walking from his house to
25 Main Street down Turner Street?

1 A Turner Street.

2 Q Then he would turn right all the way up the street to
3 Brothers Fast Stop?

4 A Correct.

5 Q Okay. So and we know he's a minute away of walking
6 to reach the same location as the suspect?

7 A Okay.

8 Q So the, if he's on Main Street the whole time and it
9 just takes, you could walk for more than a minute on Main
10 Street, right? In fact, you could walk for several
11 minutes up Main Street from Turner Street to get to
12 Brothers Fast Stop?

13 A Depends on at the pace that you're walking.

14 Q Right. But presuming I'm on the same road and
15 walking in the same direction my vantage point is straight
16 ahead to everything in front of me?

17 A Correct.

18 Q Okay. So if where the deputy is sitting down there?

19 A Yes. Officer Ren Henderson.

20 Q Mr. Henderson. If he is the location of the video
21 cameras right here on this screen where we know the
22 suspect walked in the store?

23 A So what you're saying if Mr. Henderson is the video?

24 Q Right. If Mr. Henderson is at this point where the
25 suspect turned and started walking across the street.

1 A Okay.

2 Q And it takes me a minute, at least a minute to walk
3 from Turner Street to that driveway, I've got a clear
4 vantage point of him the whole way, don't I?

5 A Yes, sir. From where you're sitting; yes, sir.

6 Q Okay.

7 A But also from my vantage point from where you are
8 standing and if I was here, I'd still have a great vantage
9 point of identifying Officer Henderson.

10 Q I'm going to come, I am going to come back in a
11 second. But let's just start, from a straight walk, even
12 if I'm a minute away, I still got a minute's worth of
13 observation of him --

14 A Yes, sir.

15 Q -- the whole way? All right. Indulge me for a
16 second. Let's say it doesn't take quite a minute of
17 walking to get from Kunkle's street to Turner Street?

18 A From Turner Street?

19 Q To the driveway?

20 A To where we are right here in front of Kunkle's?

21 Q Right.

22 A You're throwing me off, Mr. Verner. You said Kunkle
23 Street.

24 Q Well, I'm trying to, well, by Kunkle street, I mean
25 this little driveway right here.

1 A Okay.

2 Q All right. If right here is Turner Street?

3 A Yes, sir.

4 Q Where we know Mr. Richardson was walking from and it
5 dead-ends into Main Street?

6 A Yes, sir.

7 Q And then you have to turn right to walk towards the
8 Brothers Fast Stop. Let's just for the sake of just
9 argument, what if I could walk from where Ren is, the
10 Deputy Henderson, which is to the edge of this driveway,
11 what if I could reach Turner Street in less than a minute,
12 then I would have some portion of walking this way, right?

13 A That's correct.

14 Q And even if I'm walking towards Main Street, I no
15 longer have the straight vantage point of the Kunkle
16 driveway?

17 A Depending on where you are located on Kunkle Street,
18 as well as your vision obstruction, vehicles.

19 Q I'm going to come back to that in a second. I'm
20 assuming no, no obstructions at this point.

21 A No obstructions.

22 Q If I'm just walking from Turner Street towards Main
23 Street I would generally be looking straight ahead? I
24 might be turning my head but just assuming for right now,
25 I'm just looking this way.

1 A Yes, sir.

2 Q If it takes me less than a minute to get to Turner
3 Street and then I turn onto Turner Street, it's kind of,
4 some distance up Turner Street before I can see him.

5 A Okay.

6 Q All right. Well, what obstructions would there be on
7 Turner Street if I was on Turner Street?

8 A Looking straight ahead?

9 Q No, sir; looking towards Kunkle.

10 A Looking toward Kunkle.

11 Q Well, at some point, if I'm walking down Turner
12 Street, there's a stand of bamboo on the left-hand side,
13 but we're not really worried about that, are we?

14 A No, sir.

15 Q Because that's in the other direction?

16 A That's, yes sir.

17 Q But you know what stand of bamboo I'm talking about?

18 A Yes, sir.

19 Q If I look to my right, there is the Kunkle, the red
20 brick building that's Kunkle, right?

21 A That is correct.

22 Q Okay. There would also be these gas tanks at some
23 point further back in there, but it starts with kind of
24 gas tanks or propane tanks or some kind of--

25 A There are gas tanks, dispensers.

1 Q Okay. But those would be obstructing me from looking
2 towards the salon at some point?

3 A Yes, sir.

4 Q And then the building of Kunkle's itself at some
5 point would be obstructing me?

6 A At some point; yes, sir.

7 Q You'll pass it at some point?

8 A Correct.

9 Q And then it, there's a question of how many cars
10 there are in the parking lot?

11 A That's correct.

12 Q And then there's also the, there's a fairly tall
13 chain-link fence, too?

14 A Correct.

15 Q Okay. And do you know how far Mr. Womp could have
16 walked in a minute from the Kunkle driveway towards Turner
17 Street, and then up Turner Street?

18 A From the distance of this to that truck, back of the
19 truck where he went out of sight it took him eighteen
20 seconds.

21 Q But the problem is we don't know that from this scale
22 though, do we?

23 A We do, we do not know the distance.

24 Q Okay.

25 A But if we can kind of visualize it may be just a

1 little bit.

2 Q But wouldn't it make more sense if--

3 A But the distance from this driveway back to Turner
4 Street is a shorter distance than that right there.

5 Q Now, if, if I had gone out there and had some
6 evidence of the distances, you would think that that would
7 be a little bit better?

8 A That would have helped draw a picture better, yes.

9 Q Okay. So, I guess, all those questions for the point
10 would be that Mr. Richardson, as an investigator, you
11 would agree that there is some distance away that he would
12 be from the man before he could make the identification?
13 It's at least 50, it's roughly 40 to 50 yards we agreed to
14 on Turner Street?

15 A Yes, sir.

16 Q So Mr. Turner[sic], would have had to be at least 40
17 or 50 yards away just down Main Street?

18 A Unknowing exactly where he was at, you would have to
19 take in the factors of Emmanuel, his knowledge.

20 Q I'm just asking distance questions. If Mr. Turner
21 was, if Mr. Richardson was on Turner Street when he made
22 that identification, he's at least 40 to 50 yards away and
23 I understand there's lots of other factors too.

24 A At least. If he's on Turner Street and once he
25 clears to be able to see from Turner Street across that

1 parking lot to an individual getting ready to walk across
2 to Leslie's, roughly give or take 40 to 50 yards, which he
3 can make an identification.

4 Q Okay. I'm only asking questions about distance. Mr.
5 Turner[sic] would have been, just in a straight-line
6 distance from Turner Street 50 yards away? Let's just say
7 we can do, say 50.

8 A Now, what's the green line?

9 Q Just a straight-line distance from Turner Street to
10 the Kunkle street drive?

11 A Yes, sir. A straight line.

12 Q Assuming that's 50 yards?

13 A Correct.

14 Q And then he would also be whatever distance he was up
15 Turner Street, assuming he was still on Turner Street when
16 he made that identification?

17 A Correct.

18 Q And you don't recall him saying that he was looking
19 through the chain-link fence or were you here for that
20 testimony?

21 A No, sir. I wasn't here for that testimony. I was
22 there whenever we interviewed him, myself and Chief
23 McClurkin.

24 Q Okay. So we would have just a straight-line distance
25 down Main Street?

1 A Correct.

2 Q And then depending on how far up he was down Turner,
3 we would have the Turner Street distance from Main Street.
4 And then what we have, what they call a hypotenuse which
5 is the angle and the hypotenuse is typically longer than
6 the two other sides, right?

7 A It could be, yes.

8 Q Yeah. The longest distance in a triangle is the, is
9 the side opposite the right triangle. So he's well over
10 50 yards if he's still on Turner Street?

11 A Could be, yes.

12 Q Okay. Looking through a chain-link fence?

13 A Once again, you can see through a chain-link fence
14 for identification as long as there is no other
15 obstructions there.

16 Q Looking to his right, not looking straight ahead.
17 He'd be looking to his right if he was on Turner Street.

18 A Right, left, up, down, all around.

19 Q But to make this identification, he would have to be
20 looking to his right?

21 A He would have to be looking, yes.

22 Q A question about how many cars or trucks were in the
23 parking lot of the building. You've got the traffic in
24 the street?

25 A Correct.

1 Q And then, so you have to be mindful of the traffic
2 when you're walking in the edge of the street, right?

3 A Correct.

4 Q And Turner Street doesn't have sidewalks, does it?

5 A No, sir.

6 Q Okay. So he's walking in the road, presumably the
7 edge of the road.

8 A Edge of the road, would be probably the edge of the
9 road; yes, sir.

10 Q Okay. And then you've also got the issue of the man
11 is not walking towards Mr. Womp, he's walking away from
12 Mr. Richardson.

13 A Kind of at a side angle.

14 Q A side angle but away?

15 A Yes.

16 Q Okay.

17 A Yes.

18 THE COURT: Mr. Verner, if you think you going to be
19 a little bit longer on cross, I think it'd be a good time
20 to take a break. I'm not trying to limit you at all.

21 MR. VERNER: Your Honor, I think that is my cross but
22 I will defer to the State.

23 THE COURT: All right. Solicitor Scott, do you have
24 an redirect?

25 MR. SCOTT: I do, Your Honor.

1 THE COURT: Okay. Well, let's go ahead and take a
2 break because we been at it now for almost two hours
3 straight. Madam Forelady and ladies and gentlemen of the
4 jury, we're going to take a morning break. We've gone a
5 little bit longer than we normally do, but you've been
6 patient and appreciate that. And so go back to the jury
7 room, take your break. Again, remind you no discussion
8 about this case among yourselves, and we'll get you back
9 out in about 10-15 minutes. Okay. Thank you.

10 (Whereupon, the jury was excused from open court for
11 a break.)

12 THE COURT: We will be in recess for about 10 or 15
13 minutes.

14 (Whereupon, a short break was taken.)

15 THE COURT: Madam Bailiff, if you will bring the jury
16 out, please.

17 (Whereupon, the jury came into open court at
18 approximately 12:05 p.m.)

19 THE COURT: All right. Let the record reflect the
20 jury is back in. We're still in your, you had some
21 additional cross-examination of Captain Dennis, Mr.
22 Verner?

23 MR. VERNER: Yes, sir.

24 THE COURT: Okay.

25 CONTINUE CROSS-EXAMINATION

1 By Mr. Verner:

2 Q During the break we just had a few minutes ago,
3 Captain Dennis, you were able to watch some video that I
4 had produced for you?

5 A Yes, I did.

6 Q And what was the video of?

7 A The video was--

8 Q Just, in general, a short definition?

9 A The video was taken by Mr. Verner this morning
10 probably right around 9:30 or less, and it was of an
11 individual he had walk from the Kunkle driveway to the
12 corner of Turner Street which took about 38-39 seconds.
13 And then turned left onto Turner Street by way of a little
14 path that kind of goes over at the direct corner of
15 Kunkle's drive and Turner Street, and then back onto a
16 roadway at Turner Street walking towards Johnstone. And
17 then he got to a speed limit sign that says 20 miles an
18 hour. Once he got to that sign, he was roughly about 58
19 seconds of walking from Kunkle to that speed marking sign
20 on Turner Street.

21 Q And the little walk through at the edge of Turner and
22 Main appear to be kind of a walking path where most people
23 were using?

24 A Yes, sir. Just a cut-through between the fence and
25 the stop sign and road sign name.

1 Q There's no sidewalk at that intersection on the
2 Turner side?

3 A No, there's not.

4 Q So the cut-through would be the logical place that
5 you would think that most people would walk through?

6 A Yes, sir. Just a little heel-dirt path.

7 Q So it appeared, did it appear to be a fair depiction
8 of someone walking from Turner?

9 A Yes, sir. Depending on the pace of the individual.

10 Q Okay. So 38-39 seconds to get from the, and was it
11 from the, taken from the middle of the driveway?

12 A From the middle of, well, maybe more so toward Turner
13 Street because it was not on the Brothers side or Copeland
14 Street side, it was closer to Turner, and then back toward
15 Turner.

16 Q Okay. But did the camera pan to the left so that you
17 could see the Kunkle video cameras on the building?

18 A Your camera?

19 Q Yes, sir.

20 A Yes, sir. Yes, sir. He did pan and show that.

21 Q And then to the right to show the salon on the
22 right-hand side of the road?

23 A Leslie's, that's correct.

24 Q Okay. So it may not be in the exact center, but it
25 appeared to be from somewhere in the middle of the Kunkle

1 driveway walking towards Turner Street?

2 A That is correct.

3 Q And it took that individual about how long?

4 A It took him approximately 38-39 seconds to go from
5 the driveway from Kunkle going to the back to the corner
6 of Main Street and Turner. And then once he turned up
7 Turner and got to the speed signs, it was 58-59 seconds.

8 Q Okay. And I showed you a photograph of the parking
9 lot today of Kunkle?

10 A That is correct, the parking area.

11 Q Taken about 9:30 this morning?

12 A That is correct.

13 Q Okay. And I understand this is today and not August
14 26th, right?

15 A That is correct.

16 Q What's in that parking lot?

17 A This morning there were at least five vehicles parked
18 along the fence.

19 Q No telling who those vehicles belonged to?

20 A No, sir.

21 Q But we don't have any photographs that you know of of
22 August 26th of that parking lot either, do we?

23 A None that I have seen, no.

24 Q Okay.

25 MR. VERNER: Thank you, Investigator. The State has

1 some follow-up.

2 THE COURT: Okay. Solicitor Scott, any redirect?

3 MR. SCOTT: Briefly, Your Honor.

4 REDIRECT EXAMINATION

5 By Mr. Scott:

6 Q All right. So Womp, you said you and Chief McClurkin
7 talked with Womp, Emmanuel Richardson. Were you able to
8 identify him with the Kunkle video?

9 A Yes, sir. We saw on the Kunkle video, we were able
10 to identify him as that individual.

11 Q Okay. Well, you couldn't see his face on the video,
12 could you?

13 A No, sir. He was walking down the side of the road on
14 the sidewalk.

15 Q But you were able to positively identify Womp from
16 the video?

17 A Yes, sir. I've known Womp for 26 years now working
18 with the Newberry City Police Department and Newberry
19 County Sheriff's Office.

20 Q All right. Do you have a son?

21 A Sir?

22 Q Do you have a son?

23 A Yes, sir.

24 Q I know, well, you got a daughter.

25 A Yes sir; son and daughter.

1 Q All right. So you've known them their whole life?

2 A Yes, sir.

3 Q Without seeing a face, do you think you could
4 recognize them from 50 yards away?

5 A Yes. He's a chip off the old block.

6 Q A hundred yards away just walking across the street,
7 would you be able to say that's Junior?

8 A I believe so; yes, sir.

9 Q Did you know him his whole life?

10 A His whole life; 16 years.

11 Q All right. And Womp, do you know where he lives?

12 A Yes, sir. Womp lives on, Emmanuel Richardson lives
13 on Turner Street and that's where he's lived the entire
14 time I've known him.

15 Q Do you know where Kenny Smurf Ruff lives?

16 A During that time, he was living there on Turner
17 Street.

18 Q The same street as Emmanuel Richardson?

19 A Yes, sir.

20 Q Okay. Do you know how close their houses were to one
21 another?

22 A They, they're across the way from each other, but, I
23 mean, there's some distance. You've got the road
24 distance, and then there's a yard distance between the
25 two.

1 Q Okay. I'm only calling him Womp. Now, he, I think
2 he likes the nickname and no disrespect, that's how we've
3 talked about him throughout the trial. But Womp's, you
4 see him regularly on Main Street?

5 A Yes, sir. I've seen Womp not only walking on Main
6 Street, but as a janitorial at the school, Newberry High
7 School, as well as one time he was helping a grave digger
8 dig graves and for the funeral home.

9 Q He walks everywhere, doesn't he?

10 A Pretty much unless he's riding with someone, you
11 know, in transit during a work period or grabs a cab. But
12 the majority of his getting around is he's on foot
13 walking.

14 Q And I'm not going to spend very much time on this
15 issue. Let me show you State's 71, just briefly.

16 MR. SCOTT: Walter, you got 71.

17 Q What is this a picture of?

18 A 71 is a picture of Turner Street of pretty much maybe
19 standing in the roadway and looking back across the bottom
20 part of the parking lot of Kunkle, Kunkle Oil to catch
21 Leslie's here, Pike Circle, the old store here, and then
22 the actual Hispanic store. It's like a grocery store.

23 Q Okay. And can you see or, excuse me, can you see
24 Leslie's Hair Salon from this angle?

25 A Yes sir; from this angle.

1 Q Okay. And it took, according to Mr. Verner's video,
2 how long for his witness to walk from in front of Leslie's
3 to that stop sign there?

4 A From about this point behind this vehicle straight
5 down through here to the time he started around this
6 corner where I was talking about the corner fence road
7 sign, about 38-39 seconds. And then once he came down
8 this part, he made it up just about maybe another 10-15
9 yards up Turner Street. And then there is a speed limit
10 sign, 20 miles an hour. That's where I cut him off at
11 58-59 seconds.

12 Q Okay. Well, according to the video, would you agree
13 with me that 41 seconds passed from the time that the
14 suspect was on the porch at Leslie's, and then when Womp
15 entered the screen which would have been somewhere down
16 about 51 seconds passed?

17 A Yes, sir. I would agree with that.

18 Q Okay. And Womp lives on Turner Street and he's lived
19 there as long as you've known him?

20 A Yes, sir.

21 Q And walks up and down Main Street regularly?

22 A Yes, sir.

23 Q Okay. And you don't even know, let me ask you this.
24 Do you even know if Womp was standing on the street corner
25 right there at the stop sign before he entered the screen?

1 A No, sir; I do not.

2 Q Okay. And the screen as we sit, the Kunkle Oil video
3 doesn't even start until it's the other side of this
4 driveway that the screen cuts off at, isn't that right?

5 A That's correct. Yes, sir.

6 Q All right. I don't care to spend any more time on
7 that. Did you review the, and we talked about this
8 earlier. This last issue I want to talk about. You
9 reviewed the Brothers BP surveillance and some of the
10 images captured therein?

11 A Yes, sir.

12 MR. SCOTT: Let me see State's 75. All right.

13 Q What is that a picture of?

14 A That is a picture of an individual coming into the --

15 Q Okay. What is it?

16 A State's Exhibit 75 is a picture kind of covering the
17 angle of the Brothers BP coming inside and it's capturing
18 kind of the back right side of the individual.

19 Q All right. At 1:32, right? That video is at 1:32
20 p.m.?

21 A Yes, sir. If you subtract it.

22 Q And what color is the individual's clothing,
23 according to this camera?

24 A According to this camera, that is a dark, almost
25 black silhouette there.

1 Q Okay.

2 MR. SCOTT: Let me see State's 80, briefly, and then
3 I'm almost done.

4 Q Okay. 1:33 p.m., what is the, according to this
5 camera and according to this angle, what does the doo-rag
6 and shirt, what color does it appear based on this camera
7 and this angle?

8 A This is just a different angle coming out. The
9 clothing is that of a dark color again, black.

10 Q Okay. So tracking the individual, did you note
11 different shades according to the different cameras that
12 you viewed inside Brothers?

13 A Yes, sir. All the camera angles that were looked at
14 either Kunkle, there, there was just, because of light and
15 the cameras themselves, there were different angles of
16 shading or coloration of the clothing.

17 MR. SCOTT: Okay. Thank you, Captain Dennis. That's
18 all.

19 THE COURT: Recross, Mr. Verner?

20 MR. VERNER: Very briefly, Your Honor.

21 THE COURT: Okay.

22 RECROSS-EXAMINATION

23 By Mr. Verner:

24 Q You've known Womp for 26 years?

25 A Yes, sir.

1 Q Do you know what house he lives in?

2 A He lives on Turner Street. I was thinking it was
3 1109, but it's right there on the left.

4 Q He got a blue, what color is it?

5 A It's blue.

6 Q Can you see his house from the photograph I'm handing
7 you?

8 A Just barely but yes, it's through the trees there.

9 Q Okay. If I told you I parked on Turner and there's a
10 street sign right there shows what street he lives on,
11 what street does Mr. Richardson live on?

12 A I can't remember that street, but it depends on how
13 they go and address it. I'm trying to look for who you
14 have to go to, the addressing neighborhood, how it faces
15 as far as the address that you are going to get.

16 Q It appears that street has a name because it's got a
17 street sign, right?

18 A That appears what?

19 Q The street has a name. You don't know Norris Street?

20 A Okay. I couldn't remember the name, Mr. Verner. I'm
21 sorry.

22 Q Okay. Does that sound consistent?

23 A Yes, sir. It's just a kind of a little dirt, if I
24 remember correctly, it's a dead-end road.

25 Q Norris is a fairly short dead-end?

1 A Yes, sir.

2 Q Would you say from that photograph Mr. Richardson
3 lives on Turner Street or Norris Street?

4 A I mean, the house is, depending on the yard and, once
5 again, how it's addressed. It can be the Turner Street
6 address or it can be the Norris Street address.

7 Q Okay.

8 A I just can't, I know his house. I just don't know
9 how it's addressed.

10 MR. VERNER: Is this 7, Your Honor, for the
11 Defendant?

12 THE COURT: Without objection, 7 is in evidence on
13 behalf of the Defense.

14 (Whereupon, Defendant's Exhibit 7 was admitted into
15 evidence.)

16 Q And now Norris is a fairly small street, short
17 street?

18 A Yes, it's a dead-end street, I know.

19 Q Okay. It dead-ends in one direction and dead-ends
20 the other direction into Turner.

21 A I mean, you got an outlet to turn on Turner Street,
22 left to right.

23 Q That's right. Norris dead-ends into Turner?

24 A Yes, sir.

25 Q Okay. And in this photograph, you can see the street

1 sign that indicates Norris Street?

2 A I can see the street sign. But yes sir, that's, I
3 mean, it's Norris Street.

4 Q And you can see the corner of Turner and Norris?

5 A Yes, sir.

6 Q Okay. And it doesn't appear that Mr. Richardson
7 lives close to but you wouldn't say that's, you know, and
8 it's certainly not on the corner of Turner and Norris, is
9 it?

10 A No, sir. And as I testified, there is some distance
11 between Womp's house, Turner Street, and then where Mr.
12 Ruff was, Kenny was living.

13 Q But it'd be fair to say that he lives in the Turner
14 Street area?

15 A Yes, sir.

16 Q And even if he doesn't technically live on Turner
17 Street?

18 A Close-knit neighborhood, knowing people,
19 door-to-door.

20 MR. VERNER: Thank you, Investigator.

21 THE COURT: Okay. You can step down, sir.

22 MR. DENNIS: Thank you, Judge.

23 THE COURT: Anything from the State?

24 MR. SCOTT: Your Honor, at this time, that's the
25 State's case.

1 THE COURT: Okay. All right. Madam Forelady and
2 ladies and gentlemen of the jury, we have a legal matter
3 that I need to discuss with the lawyers and if you'll go
4 back to the jury room, and we'll get you back out shortly,
5 okay?

6 (Whereupon, the jury was excused from open court for
7 a break.)

8 THE COURT: Okay. Mr. Verner, any motions you need
9 to place on the record, sir.

10 MR. VERNER: Your Honor, we believe the State has
11 failed to meet the burden of proof in the State's
12 case-in-chief on all three counts on the identity issue,
13 as well as other issues, and we would move for a directed
14 verdict.

15 THE COURT: Okay. Viewing the evidence in a light
16 most favorable to the State, the Court finds as it relates
17 to all three charges that there does exist evidence that
18 justifies this court in denying your motion and allowing
19 the case to proceed forward. Let me, at this time,
20 advise, even though I did advise Mr. Ruff on, I guess it
21 was Monday, concerning testifying in the Jackson v. Denno
22 hearing. Let me give him his rights concerning testifying
23 at trial. Madam Clerk, would you swear Mr. Ruff, please?

24 KENNY RUFF, being
25 first duly sworn, testified as follows:

1 THE COURT: Mr. Ruff, you remember, I think it was on
2 Monday, that I instructed you on your rights concerning
3 you testifying outside the presence of the jury at that,
4 what we were calling a Jackson v. Denno hearing. You
5 remember that?

6 MR. RUFF: Yes, sir.

7 THE COURT: I'm going to instruct you very similar to
8 that instruction, but this relates to you testifying or
9 not testifying at this trial in the presence of the jury.
10 Okay, sir?

11 MR. RUFF: Yes, sir.

12 THE COURT: At this time, I'm going to explain to you
13 certain of your rights. If you do not understand anything
14 I say, please let me know that. If you want me to explain
15 anything in more detail, please let me know that as well.
16 You understand, sir?

17 MR. RUFF: Yes, sir.

18 THE COURT: Okay. We've now reached the stage of
19 this trial where you may present your defense. You have
20 the right to claim the protections given to you by the
21 Fifth Amendment to the Constitution of the United States
22 and this amendment states, in part, no person shall be
23 compelled in any criminal case to be a witness against
24 themselves. This means that you cannot be required to
25 testify in this case. You have the right to testify in

1 your own behalf; however, no one can make you testify.
2 This is a personal right and no one can waive this right
3 except you, sir. If you decide to testify, you'll be
4 subject to the same rules that govern other witnesses and
5 you may be examined and cross-examined on any relevant
6 issue in this case. In addition, if you have any
7 convictions involving dishonesty or false statement or for
8 crimes punishable by imprisonment for more than one year
9 and this Court determines that the probative value of
10 admitting this evidence outweighs it's prejudicial effect
11 to you, the Solicitor would be able to introduce your
12 record to attack your credibility. If you decide to
13 testify, this decision on your part must be freely,
14 voluntarily and intelligently made with knowledge of the
15 protections given to you by the Fifth Amendment and the
16 consequences of your decision to testify. However, if you
17 decide not to testify, I will specifically instruct the
18 jurors that they cannot give the fact that you did not
19 testify any consideration whatsoever and that there is to
20 be absolutely no prejudice to you because you did not
21 testify. It is left entirely up to you whether or not you
22 testify. You certainly, and I'm sure you can talk to Mr.
23 Verner, you have the right to continue to talk with him on
24 this issue, any of your family members, friends, anyone
25 else, this decision, your final decision, must be left

1 entirely up to you. Have you understood what I've
2 explained to you, sir?

3 MR. RUFF: Yes, sir.

4 THE COURT: Okay. Do you have any questions about
5 what I have explained to you?

6 MR. RUFF: No, sir.

7 THE COURT: Have you had ample time to talk with Mr.
8 Verner or any of your family members, friends, or anyone
9 else on this particular issue?

10 MR. RUFF: Yes, sir.

11 THE COURT: Okay. Do you need any more time to talk
12 with Mr. Verner about this particular issue?

13 MR. RUFF: Yes, sir.

14 THE COURT: You do need some more time?

15 MR. RUFF: Yes, sir.

16 THE COURT: Okay. All right. What we will do, we
17 will, I will let you talk to him now. If you need to go
18 back to his office, Sheriff, if you would just escort him
19 down there and take some time, and then come back out.
20 Before we break for lunch, I just want this decision, I
21 need to know what the decision is either way.

22 MR. RUFF: Okay.

23 MR. VERNER: For just a second and, yes, sir, I
24 understand the Court's ruling. For just a second, I'd
25 like for him to sit on the bench right here.

1 THE COURT: Okay.

2 MR. VERNER: I don't mind that Deputy Johnson sit in
3 close proximity.

4 THE COURT: Okay.

5 MR. VERNER: That he's not going to be called as a
6 witness, we assume.

7 THE COURT: Sure. That's right.

8 MR. VERNER: I just want to have a chance where we
9 are not at touching distance but us to have a, just a
10 brief discussion to make sure we're clear.

11 THE COURT: That's fine. These are your people back
12 here?

13 MR. VERNER: Yes, sir.

14 THE COURT: So they can certainly participate in that
15 decision, too. So just position yourself in the courtroom
16 wherever you need to.

17 MR. VERNER: Just over there in the corner.

18 THE COURT: Does that suit you, Mr. Ruff?

19 MR. RUFF: Yes, sir.

20 THE COURT: We will do that, everybody be at ease and
21 to give them enough time to talk.

22 (Whereupon, a short break was taken.)

23 THE COURT: Okay. We're back on the record. Mr.
24 Ruff have you made a decision whether or not you're going
25 to testify?

1 MR. RUFF: I won't testify, Your Honor.

2 THE COURT: You are not going to testify?

3 MR. RUFF: No, sir.

4 THE COURT: Is that decision not to testify, has that
5 been made by you freely, voluntarily, and intelligently?

6 MR. RUFF: Yes, sir; it has.

7 THE COURT: Okay. All right. Thank you very much,
8 sir. You can have a seat. Mr. Verner, are you planning
9 to put on, I know you have some exhibits into evidence but
10 any other defense?

11 MR. VERNER: Your Honor, if that's all the State has,
12 I'm prepared to argue it.

13 THE COURT: Okay. All right. We'll bring the jury
14 out. You could rest on the record, and then we'll break
15 for lunch until 2:00 o'clock, and then argue and charge at
16 that time. Okay. All right. Madam Bailiff, if you will
17 bring the jury out.

18 (Whereupon, the jury came into open court at
19 approximately 1:40 p.m.)

20 THE COURT: All right. Let the record reflect the
21 jury is back in the courtroom. Mr. Verner?

22 MR. VERNER: If that's the State's case, the Defense
23 will raise the argument of our case for the jury.

24 THE COURT: Okay. So Defense rests?

25 MR. VERNER: We do.

1 THE COURT: Okay. All right. The evidentiary record
2 in this case is now closed. Ladies and gentlemen of the
3 jury, we're going to go ahead and break for lunch, and I
4 need you back at 2:00 o'clock. What we will do when you
5 come back is that the lawyers will make their closing
6 arguments to you. And then I will charge you the law
7 applicable to this case and then after that is done, I
8 will give you instructions concerning the beginning of
9 your deliberations. But until I give you those
10 instructions to begin your deliberations, please do not
11 engage in any discussion about anything related to this
12 case or anyone that you come in contact with during your
13 lunch break. And, once, again, if you're out in public at
14 a restaurant and that sort of thing, be sure your juror
15 button is visible. So have a good lunch, and we'll see
16 you back at 2:00 o'clock.

17 (Whereupon, the jury was excused from open court for
18 a lunch break.)

19 THE COURT: And just one housekeeping matter for the
20 record that this is based upon our discussions. I think
21 yesterday in accordance with my reading and understanding
22 of the recent Beatty case, Solicitor Stumbo, you will open
23 your closing argument in full. Mr. Verner will then
24 follow you in full. And then you would have the right to
25 offer any reply argument concerning any new matters that

1 Mr. Verner may bring out.

2 MR. STUMBO: Yes, sir.

3 THE COURT: Okay. All right.

4 MR. SCOTT: Your Honor, might be, I think the ruling
5 is at the moving parties motion, and I assume you will.

6 MR. VERNER: I will move for the State to open on the
7 law, Your Honor.

8 THE COURT: Okay. All right.

9 MR. STUMBO: Which means we'll have, moving for us to
10 open in full.

11 THE COURT: Right.

12 MR. STUMBO: According to the new case.

13 THE COURT: Right. That's correct.

14 MR. STUMBO: Which is fine. That's what we
15 anticipated.

16 THE COURT: Okay. All right. We'll be in recess
17 till 2:00 o'clock for lunch. We'll see you back at 2:00.

18 (Whereupon, a lunch break was taken.)

19 THE COURT: Okay. You gentlemen ready to do your
20 closing?

21 MR. STUMBO: Yes, sir.

22 THE COURT: Okay. All right. Madam Bailiff, if
23 you'll bring the jury out, please?

24 (Whereupon, the jury came into open court at
25 approximately 2:10 p.m.)

1 THE COURT: Let the record reflect that the jury is
2 back in. Ladies and gentlemen, as I told you before the
3 lunch break that what we have left to do is the lawyers
4 will make their closing arguments to you, and then I will
5 charge you on the law. We'll probably take a real short
6 break between the arguments and my charge, so please give
7 these lawyers their, your undivided attention during
8 closing arguments. Solicitor, you ready to proceed, sir.

9 MR. STUMBO: Thank you, Your Honor. If it please the
10 Court. Just another regular Wednesday in the middle of
11 August in the summer here in this town of Newberry.
12 Wednesday, right in the middle of a workweek and Roberto
13 Facio started that day, on that Wednesday probably like he
14 had many other Wednesdays of his life and I would submit
15 to you probably just like many other Wednesdays that
16 everybody in this courtroom starts their Wednesdays in a
17 similar way. Work for him was a barbershop that he and
18 his wife owned. Just like most of us in this courtroom,
19 when he went to work Wednesday, I'm sure he believed that
20 night when he got through with cutting hair or doing what
21 he did at work and making a living for his family, I'm
22 sure Roberto thought he would go home that night to his
23 house and see his family, just like the rest of us,
24 hopefully, will do tonight. What happened, though, that
25 day was there was one man, one man came into the midst of

1 that with hatred, with coldness, with malice and he made
2 sure that Roberto wasn't going to go home that night
3 because he decided he was going to go in and take
4 something that wasn't his at gunpoint and not just take it
5 at gunpoint, make sure he didn't leave any witnesses. So
6 instead of going home that night to his family, Roberto
7 Facio was put on his knees by this guy right over here,
8 had a gun put to his head and the trigger was pulled were
9 the last moments he spent on this Earth right there on
10 Main Street. Now, Mr. Scott told y'all in his opening
11 statement, we, the State prosecute for the Solicitor's
12 Office and it's been a pleasure spending this week with
13 y'all. I know y'all didn't think you'd be spending this
14 whole week sitting in a courtroom, I'm sure, when we
15 started on Monday, and I want to thank you for your
16 attention, your close attention to this case and it's been
17 a long week. There's been a lot of witnesses. Heard a
18 lot of stuff you've probably never heard before. You've
19 heard from doctors, you've heard from chemists, you've
20 heard from experts, you've heard from law enforcement
21 officers, and y'all have paid attention and done a great
22 job of hanging in there with us with each and every
23 witness. And I want to tell you, I apologize we are here
24 on Friday. This is a long case because there were a lot
25 of witnesses and we bear the burden, so we have to call,

1 Mr. Scott and I have to call those witnesses in front of
2 you so you have the tools that you need in your hands to
3 go back into the jury room to deliberate and come back
4 with a verdict. And so I want to thank you for the
5 attention you've paid. Now, we do bear the burden and I
6 want to tell you folks, it's a burden of proof in this
7 case that we gladly bear. We gladly bear the burden of
8 proof in this case because the evidence is so strong, so
9 overwhelming, and we're going to talk a little bit more
10 about what that burden is in a moment. Now, the burden of
11 proof is very important, and I'm sure Mr. Verner would
12 tell you and as the Judge will tell you, it's a
13 constitutional right for a Defendant to have a trial and
14 for the State to come in and prove the case beyond a
15 reasonable doubt. It's a right in our constitution for
16 many, many years to protect citizens. But it's a burden
17 that we gladly bear in this case when we presented the
18 case to you this week. Now, let's talk about, a little
19 bit about that burden and the law, what the law is in
20 South Carolina as it applies to this case and then we can
21 go over some other facts. But what I'd like to do is turn
22 your attention to the screen here and we're going to go
23 through what the elements are in this case that we have to
24 prove to you beyond a reasonable doubt. We'll talk a
25 little bit about what reasonable doubt is. Proof beyond a

1 reasonable doubt and the burden is on us to prove each and
2 every element. Now, I want you to listen to this term,
3 firmly convinced, two words. Sometimes, this is, probably
4 proof beyond a reasonable doubt is not terminology that
5 you use in everyday life but what the Judge is going to
6 instruct you in a few minutes, and I want you to listen
7 out for these words when the Judge gives his instruction
8 is that this is proof that leaves you firmly convinced of
9 the guilt of the Defendant. And firmly convinced, what
10 does that mean? It's the firm belief, looking at a big
11 picture of this case, not just bits and pieces, but taking
12 all the evidence as a whole, putting it into that puzzle as
13 Mr. Scott talked about earlier in the case and when you
14 get the whole picture, you are firmly convinced that the
15 Defendant did what he's charged with and that's all it is.
16 It's not some magical thing that's hard to understand.
17 It's not a scientific experiment. It's not a mathematical
18 equation. It's just at the end of the day when you look
19 at the evidence as a whole, you're firmly convinced that
20 Kenny Ruff did what he's accused of doing. But that's the
21 burden of proof and there again, once you hear that from
22 the Judge, I think you'll understand. Once you go back
23 into the jury room, not just looking at one piece of
24 evidence or two pieces of evidence or three pieces of
25 evidence, but looking at it as a whole, and did he do what

1 he's accused of doing and that's a burden of proof beyond
2 a reasonable doubt. As I said, we gladly bear that burden
3 here and we believe that that proof has been firmly, and
4 solidly, and overwhelmingly met in this case. Now, what
5 is murder? The Judge is going to instruct you on murder.
6 In South Carolina, you may have heard definitions on TV
7 before and different states have different classifications
8 of homicides. But in South Carolina we have just the
9 charge of murder. It's not murder, first degree; murder
10 second degree. In South Carolina, it's just murder. And
11 the statute says that murder is killing another person,
12 which is a homicide with malice aforethought either
13 expressed or implied. Malice aforethought is, there
14 again, a word you probably don't use in everyday life. We
15 don't have pre-mediated in South Carolina. Some other
16 places have that. We have malice aforethought. Let's
17 talk about what malice aforethought is here for a moment.
18 Malice is defined in the law as the intentional doing of a
19 wrongful act without just cause or excuse and with the
20 intent to inflict an injury. That's one way to define
21 malice. Expressed malice is essentially if someone comes
22 with the expressed intention. The most blatant form of
23 expressed malice is someone saying I'm going to kill you
24 or I'm going to kill someone else. That would be
25 expressing the malicious intention to kill. But it could

1 also be implied, and I want you to pay attention to this.
2 The law says that implied malice or inferred malice means
3 there are actions that demonstrate a willful and conscious
4 intent to cause death or great bodily harm. So they could
5 be proven by your actions. In other words, if you point a
6 gun at somebody, pull the trigger and shoot them that
7 could be a malicious act because your actions demonstrate
8 a clear intention to cause death or great bodily harm.
9 Another way to describe is the extreme indifference to the
10 value of human life. And, ladies and gentlemen, I would
11 submit to you in this case that this Defendant
12 demonstrated such an extreme indifference to the value of
13 Roberto Facio's life, that I don't know that I've ever
14 seen such a high level of extreme indifference. This is
15 the other thing the Judge is going to tell you. Malice
16 can be inferred from the use of a deadly weapon.

17 MR. VERNER: Just subject to my earlier objection,
18 Your Honor.

19 THE COURT: Certainly.

20 MR. STUMBO: Thank you, Judge. Here there was a
21 deadly weapon used. We know a bullet is what killed, a
22 small caliber bullet is what killed Mr. Facio, and then
23 the perpetrator in this case very clearly, and you have
24 the exhibits, was holding a gun to the victim's head. So
25 malice can be inferred from the use of a deadly weapon.

1 What does aforethought mean? It's similar of the concept
2 of pre-mediated, but it's not quite the same and here's
3 why. The law says that there is not, no requirement that
4 malice must exist for any appreciable length of time
5 before the commission of the act. It may be conceived at
6 the moment the assault occurs. So, in other words, as it
7 applies to this case, Kenny Ruff may not have had the
8 intention even when he walked in the hair salon to murder
9 Mr. Facio. But at some point when he was in there, he
10 decided he's not going to leave a witness. And so that's
11 what this means. It doesn't, that's all aforethought
12 means is that the malice has to be formed even and it
13 could be right up until the moment that the trigger is
14 pulled. So I don't want y'all to get caught up in this
15 idea you may have heard on TV before, pre-mediated. This
16 is malice aforethought in this case, ladies and gentlemen.
17 Armed robbery is another fairly simple concept in the law.
18 It's robbery of another, all a robbery is is a taking or
19 stealing by the use of force and that's, that's what a
20 robbery is, those two elements. And then, additionally,
21 an armed robbery, the additional element is that the force
22 is accomplished by using a weapon so to speak. Here we
23 have a gun in this case. Clearly, a deadly weapon and
24 those are the elements for armed robbery, robbery using a
25 deadly weapon. The third is commission of a weapon in the

1 commission of a violent crime. And quite simply, this is
2 possessing the weapon during the commission of the crime.
3 It could be constructive or actual here. We have a video
4 of the perpetrator with the gun in his hand. It could be
5 a gun or a knife here. We have a gun. And violent crime
6 is defined by our statute. Murder and armed robbery both
7 qualify. So here if you find that the Defendant is guilty
8 of murder and armed robbery, him merely possessing the gun
9 in the commission of those crimes, makes him guilty of
10 this offense as well. So those are our three indictments.
11 Now, Mr. Verner in his opening statement said very clearly
12 to y'all, this is a case about my guy didn't do it. This
13 is a horrible crime. I'm not saying it's not a murder,
14 but I'm saying it's not my guy who did it and that's,
15 that's, that's really what his defense is, that some other
16 mystery man committed this murder. Let's talk a little
17 bit about the timeline of what happened here. We,
18 fortunately can't tell you how many crimes, cases that
19 I've prosecuted throughout my career as a prosecutor where
20 I haven't had the first bit of video evidence. There's
21 many times where we say, man, I wish we had video evidence
22 in or around the time the crime was committed. Now, I
23 would submit to you as you're putting the pieces of the
24 puzzle in this case together or is painting a picture,
25 about the only pieces you're missing are the actual

1 trigger being pulled. And the reason you're missing that
2 element is because as you see in the video, Kenny Ruff
3 goes with Mr. Facio and makes him yank that DVR out of the
4 wall before he shoots and kills him. Still have firmly
5 convinced proof beyond a reasonable doubt and I would
6 submit that's about the only piece of video we don't have
7 in this case. Well, what do we do have? Well, witness
8 after witness after witness after witness in this case
9 have come before you and sat on this witness stand and
10 they confirmed the identity of Kenny Ruff. Let's talk a
11 little bit about that. You'll have this exhibit back in
12 the jury room and I'm going to spend a lot of time on
13 this, State's 46. What we have here are a series of eight
14 pictures along the sides of this exhibit. In the middle
15 we have is, so you can reference different locations and
16 it starts at the top left and works its way down as far as
17 the front. We have at 1:29 actual time and then, there
18 again, this chart that Mr. Scott went through with Mr.
19 Bentley where we were able to cross-reference actual times
20 with times. 1:29 p.m. at the Brothers BP we have this
21 picture right here which is State's 29. You'll have a
22 larger picture of that back in the jury room. 1:32 just
23 three minutes later, we have the individual with a skull
24 cap, jeans, and these very distinctive Adidas-looking
25 shoes here at the bottom, light-colored shoes with the

1 black stripes on the side. We have, again, at 1:33 what
2 appears to be the same individual walking out the door.
3 Just three minutes later, three to four minutes later
4 between 1:36 and 1:37 p.m., we have an individual walking
5 down the street with a skull cap, short jeans, tennis
6 shoes. We have at 1:36 p.m., now we're going to shift to
7 the inside of the salon videos, the same individual
8 walking in through the door. 1:37 holding a gun to Mr.
9 Facio. 1:41 coming out the front door and it's hard to
10 see with the small picture, but you will have it, a
11 version of this back in the jury room, holding a white bag
12 in his hand. And then, ultimately, at 1:47 he makes it
13 back down this path to the BP station wearing a blue shirt
14 with light writing on it. At 1:47 discards the white bag
15 in the dumpster back at the apartment complex. All of
16 this happened that we have depicted on this board within
17 18 minutes. Now, just to give you a little bit of and
18 there again, you'll have these pictures back in the back
19 as we saw before, a blue shirt with white writing on it is
20 the State's 29. We have the over-shirt, the dark
21 over-shirt put back on with the doo-rag and you've got the
22 video and the still-shots to view during your
23 deliberations. We have another angle from inside the
24 store where it looks almost like that the shade of the
25 colors is more like the kind of dark green that we saw in

1 the BP videos. And there again, I'm not going to spend a
2 lot of time on the dark green versus black because as it
3 was explained through several witnesses different
4 lighting, different settings on different cameras and just
5 like this TV here, I can take that remote control, go to
6 the color contrast, black and white settings and y'all can
7 do the same thing at home. You can change the colors to
8 different tints depending on what the settings look like.
9 And so we know this is the same individual holding the gun
10 in there what looks like a revolver. If you notice this
11 State's 67, it's a little bit larger here in the chamber
12 which would indicate there had been a revolver gun that
13 would not extract a bullet after it was shot. It stays in
14 the chamber. Now, you have the black shirt taken off
15 because we know where it is now. It's inside of the bag.
16 We have the shirt, we have the bag and, thank goodness,
17 the trash company didn't come and empty that dumpster
18 before law enforcement was able to get to it that day.
19 But there is a blue shirt with white writing, the
20 light-colored shoes, jeans, and the skull-cap on the head.
21 And, ultimately, although we heard questions, a series of
22 questions from, on cross-examination it would be unusual
23 for someone who's essentially doesn't have any hair to
24 wear a skull cap, because you got to have hair to wear it.
25 But we have pictures from Mr. Ruff's Facebook page of him

1 wearing a skull cap looking exactly like the one that he
2 was wearing on the day that he murdered Mr. Facio.
3 Ultimately, that black shirt, ladies gentlemen, you'll
4 have these pictures back in the jury room, was found
5 inside the bag with the DVR from the surveillance, with
6 Mr. Facio's iPad which was at the scene. So there's no
7 question the person that's wearing this shirt, who
8 discards it in the white bag with everything else is the
9 one who robbed the store and killed Mr. Facio.
10 Ultimately, State's number 20, again, show that bag but
11 what's on top. He'd already made it out the door with all
12 the stuff that he'd loaded up inside, the phone, the iPad,
13 the DVR that he tried to destroy but couldn't destroy, and
14 then the last thing he puts in there on top was the shirt
15 and we'll come back to that shirt in a second. As I said
16 before, folks, you'll have not only these physical
17 exhibits, but you have your memory of all the testimony
18 you have in this case and we had witness after witness
19 after witness who identifies the person in these
20 surveillance videos as Mr. Kenny Ruff, who's sitting here
21 in this courtroom. Not only do we have those witnesses
22 that identify him, we ultimately have, as we'll talk about
23 in a few minutes, the SLED agent and DNA findings. Let's
24 talk a little bit about the witnesses we've heard from.
25 Ms. Simms, y'all remember the taxi driver. Ms. Simms that

1 morning was in the car with Kenny Ruff. She has a
2 conversation with him. He's mad. He's going over to his
3 girlfriend's house and he ultimately says, tells her that
4 he's angry enough to kill his girlfriend. He has a gun
5 that falls out of his pocket onto the seat as he's trying
6 to slide out to go to the door and she doesn't come to the
7 door. He ultimately gets back in. He's still angry and
8 he says, I don't know if y'all remember this from Ms.
9 Simms testimony, she says that Kenny Ruff said that day he
10 was going to kill somebody. That's how mad he was that
11 day. Simms doesn't have any, any side to take in this
12 case, folks. She drives a taxi here in Newberry.
13 Nothing, no friends to reward, no enemies to punish.
14 She's just telling y'all what Kenny Ruff said to her that
15 day. Now, she says that he's wearing a white and red
16 striped shirt, and I'm not going to get the evidence out.
17 There's a picture of, we know Mr. Ruff and here's another
18 thing. He changed clothes how many times that day? Who
19 does that? What normal person changes clothes four or
20 five times during a day. Because that morning he's
21 wearing this red and white striped shirt. I want you to
22 look at the search warrant that's done on the house.
23 There's a picture of this .22 shell casing in the drawer
24 with a red and white striped shirt. Is that the same one?
25 I don't know. It very well could have been. We know he

1 went back to the house several times to change his
2 clothing. What else did Ms. Simms tell us, though? She
3 said later on that day, she saw him again. She didn't
4 really know him that well, but she's driving her taxi by
5 the Turner Street area on Main Street and she sees Kenny
6 Ruff wearing what she described as a black shirt, a
7 long-sleeve shirt and a skull cap. And so she describes
8 him later that day wearing ultimately the clothes that he
9 would commit this murder in, so we have Ms. Simms. About
10 Womp, we heard all kinds of stuff about Mr. Emmanuel
11 Richardson today and Mr. Womp's very well-known around
12 town. He likes to walk around Main Street and a very
13 well-known figure here in Newberry. He lives right around
14 the corner, right catty corner I think across the road
15 from Kenny Ruff. And let me tell y'all. He said, listen,
16 I've known Kenny my whole life. If anything, he would not
17 want to give testimony that would hurt Kenny Ruff, don't
18 you think, but he came in here and told you what he saw
19 that day. He has no reason to make this up, folks. And
20 we heard a lot about times. Earlier testimony, and I'm
21 sure Mr. Verner when he gets up here is going to tell you
22 that it's impossible for Womp to have seen Kenny Ruff.
23 Well, as Mr. Scott pointed out someone who you've known
24 since they were a baby, have seen them grown up, I could
25 probably look out this window here and even as long as

1 I've known say Mr. Scott, if I saw him way down near the
2 street and saw him crossing the road, it doesn't matter
3 how he was dressed, I'd probably be able to tell, oh,
4 yeah, that's Dale Scott, that's Dale Scott. And it's a
5 very similar thing with Mr. Womp. State's 71, you'll have
6 this back in the jury room. This is a picture taken
7 walking up as if you were walking up Turner Street. He
8 hadn't turned the corner yet to go right on Main and start
9 walking down towards the Brothers BP. But as you'll be
10 able to see very clearly here folks, you can see just as
11 Womp described it, you can see through the chain linked
12 fence. As you're approaching, probably even from further
13 back at this angle, it's going to take, even according to
14 what we heard from Mr. Verner, 45 seconds probably to a
15 minute, 15 minutes and a half, and it took 18 seconds just
16 as we saw Womp to walk from point-to-point to walk off
17 that street. And so don't be fooled by this line of
18 argument, that there's no way, it's physically possible
19 for Womp to have seen this. You can look at the times
20 again, but it was about 40 seconds, roughly 40 seconds
21 from the time Kenny Ruff enters the salon, he's crossed
22 the street and enters the salon until you first see Womp
23 come on the screen. So the times really are about right,
24 folks, depending how fast we walk and there's other
25 factors. And you can see this. That's not very far.

1 There again you can see and have a very clear view across
2 the road through the chain-link fence. What Womp saw
3 Kenny Ruff, who he's known his whole life and y'all
4 remember this, he said even earlier in his testimony, I
5 saw him earlier that day, I saw him that same day with the
6 same clothes on, with the black shirt, with the black
7 skull cap. So he saw him dressed in a similar way, but he
8 saw him crossing the road. He had no doubt. He sat on
9 this witness stand, under oath, and told y'all that was
10 Kenny. He didn't hedge on that one bit. He saw Kenny go
11 into that hair salon to rob the place and kill Mr. Facio.
12 How about Aaryon Dowdy? Listen, he was locked up in the
13 same area of the jail as Mr. Ruff when he was awaiting
14 down at Alvin S. Glenn, which is a detention center down
15 in Columbia. Mr. Dowdy has absolutely no ability to gain
16 anything from me or Mr. Scott in my office. In this case,
17 he was charged with a crime in Richland County which is
18 out of my jurisdiction. I can't make a decision on his
19 case. And so he came here and as he told you on the
20 witness stand, listen, he was offended at what Mr. Ruff
21 had done. There's even honor among some that have
22 committed crimes, folks. Even he was offended at how
23 horrific this murder is. And he came here at probably
24 risk to himself and his own safety for being a snitch to
25 tell you what he knew and what does he know? What's

1 exactly what, he wasn't there when this happened in
2 Newberry. All he can tell you is what Kenny told him, and
3 I'm sure Kenny had his motivations to tell Aaryon Dowdy
4 what he had done, a tough guy. But he told him exactly
5 what he did and it matches, folks, the evidence in this
6 case to a T, matches it to a T. And we find out from
7 Aaryon Dowdy that, additionally, and this is consistent
8 with the low blood spatter on the wall and the downward
9 trajectory of the bullet. We have what would be
10 consistent with blood spatter to come from someone who's
11 shot when they're on their knees, right? Now, the only
12 way we had any evidence in this case that corroborates to
13 that is Mr. Aaryon Dowdy because Kenny told him what he
14 did. He told him he killed him, because he was, he was
15 crying. He was, obviously, he didn't want to hear the
16 crying and he didn't want to leave a witness and he killed
17 him. So Aaryon Dowdy identifies. A third witness
18 identifies really from the mouth of Kenny Ruff himself.
19 Kenny Ruff is the perpetrator of this crime. Now, Ms.
20 Angela Simms, Angela is Kenny's sister who knows their
21 brother like their own sister or family member. And I
22 think what's interesting is, listen, I know Ms. Angela was
23 in a bad position when she was in the courtroom. A very
24 bad position because she's got her brother here on trial
25 for murder and she's got to sit on this witness stand and

1 tell what, what she knows, what he told her, and she had a
2 hard time doing that and that's very understandable. And
3 I think Mr. Scott and I, and Investigator Goodman, we
4 understand that she's in a tough position, but she
5 identifies Kenny as the one in the Kunkle video, Kunkle
6 Oil video, this picture here and we're going to play a
7 little soundbite from that phone conversation that they
8 had. And then the Brothers BP video where he's, with the
9 shirt on and the shirt slung over his shoulder. Let's
10 give this a listen here as to the Kunkle video.
11 Now, Angela, this is the day right after Kenny Ruff's
12 locked up in the jail that they're having this
13 conversation. Well, Angela, at that point had seen the
14 Kunkle Oil video and she identifies him as this guy. They
15 got you right here in front of Kunkle Oil. Additionally,
16 this which is really a still-shot of State's 29 which is
17 in evidence, let's see what she had to say about this
18 particular part of the video.

19 (Whereupon, a portion of a video was published for
20 the jury.)

21 All right. She's talking about the Adidas that Jay
22 Money gave him, and even specifically knowing where he got
23 these Adidas from. Most importantly, who identified Kenny
24 Ruff but Kenny Ruff himself. Now, the first statement he
25 gives to Investigator Goodman after they confront him with

1 the fact, well, listen, we got you on a video crossing the
2 road and going in the hair salon and what's his
3 explanation for that? Well, he says that, well,
4 Investigator Goodman, I have this as State's 43. You got
5 the statement in evidence. I went over there and went in
6 the store just to say hello. Just to check out the
7 interior of it. It had changed up, and I needed to go in
8 and see the inside of it myself. So he says he goes in,
9 speaks with the gentleman and in there, there's a Hispanic
10 gentleman and leaves in less than three minutes. So,
11 folks, his self-going in the store and we know from
12 looking at these videos, there's only two people that went
13 in the store. There was the young Hispanic man, José, in
14 a red shirt and another African-American gentleman with a
15 long-sleeve black shirt on and a skull cap. So he's told
16 you already he's the one that went in there. There's
17 nobody else and that's the first statement he gives to law
18 enforcement. Of course, secondly, there's another story
19 that he gives to Angela. You'll have the whole audio of
20 this call he had with his sister. But he, he starts
21 saying, well, she says, well, you got to tell them who did
22 it if it wasn't you. And then all of the sudden he starts
23 to fish and, okay, well, let me, I got to come up with
24 something. And he says Dale, Dale Vellie was the name
25 that he used, and then some other guy named Velli and

1 starts throwing names out there. Well, we know from
2 looking at the video, there's not multiple parties that go
3 in there and he basically says he shot that man. I don't
4 know if y'all heard that on the tape him saying Dale shot
5 that man. Well, that could only be coming from someone
6 who's saying in the store that I was there and I saw him
7 shoot him. Well know that there wasn't but one person
8 that went in there and no other witnesses. But, there
9 again, we know from physical video evidence that that
10 story is completely false. He was trying to understand
11 what to tell his sister that I didn't commit this murder
12 and she knew he had committed it. So, there again, he
13 even says in that version I was there when it happened or
14 implied that he was there when it happened. But,
15 ultimately, ladies and gentlemen, quite frankly, you just
16 can't get around this long-sleeve black shirt, the one in
17 the picture that's found on top of the bag with all that
18 other stuff in that dumpster. This shirt is the actual
19 shirt consistent with what we see in the videos. There
20 again, some of the angles on these cameras make it look a
21 darker green, along with the skull cap which in every
22 other video is black. This shirt is the one piece of
23 evidence that he didn't count on law enforcement finding.
24 He changed his clothes all these times. Even has his
25 nephew take him down to the Columbia Mall to change

1 clothes and leaves his clothes there. He admitted to
2 doing that. That wasn't the outfit that he, I don't
3 believe that he killed Mr. Ruff in, because he'd even
4 changed even before then. But this shirt which is found
5 in the same bag with Mr. Facio's iPad with the phone that
6 came out, that came out of the salon. And, ultimately,
7 that hard drive that has the footage from inside the store
8 with Mr. Facio's last moments, all of that's in that same
9 white trash bag with a shirt that matches Kenny Ruff, one
10 in 210 quadrillion. That's a match, ladies and gentlemen,
11 and I know you'll hear it from Mr. Verner and he's going
12 to say there's some other trace on there of an
13 unidentified male. This is Kenny Ruff's shirt, folks, and
14 a SLED agent has testified to is that 30 million times the
15 population of earth, one in that big number. Let's look
16 at that number for a second. That's one in 210
17 quadrillion and just a mind boggling number, a number
18 which tells you that that black shirt in that bag is the
19 shirt that Kenny Ruff wore that day when he murdered Mr.
20 Facio, period. It's the one piece of evidence that he
21 thought he could get away with dumping in that trash can,
22 along with the video surveillance of inside the salon of
23 him making Mr. Facio pull it out of the wall, pull it out
24 of the cables. And you heard from law enforcement. They
25 told you that they went and they scoured the place for

1 DNA, for fingerprints and tried to get everything else
2 they could with the positive hits, the most positive hits
3 they were able to get were from that shirt because as the
4 DNA analyst explained to you, if you're wearing clothing,
5 it's making contact with your skin, like a collar and a
6 cuff on your sleeve. You can deposit skin cells, you can
7 deposit sweat, and there's a large amount of your DNA in
8 those areas which is exactly what was found. It's Kenny
9 Ruff's shirt, folks. I'm sure you will hear that this has
10 got to be some mystery man or third party or, you know,
11 maybe Dale Vellie, whose Mr. Ruff tells his sister. And
12 we know from all the people that identified Kenny,
13 including himself, as going in that store, we know from
14 the DNA evidence and, in addition to that, what else
15 besides his DNA was on that shirt? Gunshot residue. If
16 that wasn't enough, ladies and gentlemen, I want you to
17 look at this, and this may be the most damaging evidence
18 of all. The same person who is own sister identified as
19 being him with the, with the long-sleeve slung over his
20 shoulder and this was taken just a few minutes before Mr.
21 Facio was murdered down at Brothers BP. And if you look,
22 this is a blown-up picture. It's a little bit fuzzy, but
23 you'll have the actual picture that's a little clearer,
24 it's a blue shirt with white writing, dressed the same
25 exact way. So his own sister has him being the one with

1 the white bag putting it in the dumpster with all this
2 evidence now. There, again, ladies and gentlemen, this is
3 again at Brothers BP and moments before with a .22 pistol
4 held up to Mr. Facio's head as he's making him unplug the
5 surveillance DVR. I want you to look real closely. It's
6 the same guy that Angela Simms identified as her brother,
7 Kenny Ruff, has something white hanging out of his pocket
8 in this picture. And then the one that's actually in
9 there committing the crime hanging out of his back pocket,
10 there's something white. Now, I don't know exactly what
11 that is. I would submit to you it's very possible it's
12 that white trash bag that he's about to put all the
13 evidence in and throw away, but can't tell and couldn't as
14 the evidence came out, we can't see that clearly enough,
15 but it's very distinctive in that it links these two
16 individuals. Folks, it's been a long week. You've heard
17 from many witnesses. You've heard from me probably too
18 long by now and sick of me talking, so I'm going to sit
19 down and I'm going to shut up. This is a very important
20 moment. Y'all are all citizens of Newberry County and you
21 come from various walks of life to serve this week on this
22 jury to do as Judge Hocker has told you is one of the
23 highest duties you can have as a citizen to serve on a
24 jury and you are the collective conscience and commonsense
25 for Newberry County. And so I ask you, you're going to

1 get a verdict form from the Judge and the Judge is going
2 to talk about a verdict, but you'll get a verdict form
3 that'll have options. And all a verdict, folks, is a vere
4 dictum comes from two Latin words veris dictum are the two
5 Latin words that make up our word verdict and all vere
6 dictum means in Latin is to speak truthfully and to speak
7 the truth. And so I will submit to you, ladies and
8 gentlemen, that you go back into this jury room with all
9 this overwhelming evidence of Kenny Ruff's guilt, that you
10 will go in, reason together as 12 individuals and you
11 return a verdict, the only verdict that speaks the truth
12 in this case and that's that Kenny Ruff is guilty as
13 charged. Thank you.

14 THE COURT: Thank you, Solicitor. Mr. Verner, are
15 you ready, sir.

16 MR. VERNER: May it please the Court, Your Honor?

17 THE COURT: Yes, sir.

18 MR. VERNER: Madam Forelady, it's a charge of murder
19 and we know and all we're asking for is a fair trial
20 because we all know if you get it wrong, this is a murder
21 charge. There's no second chances. I'm going to start
22 with and I'll try to be pretty pointed. I think it's a
23 straight-forward case on identity, and I'll address all
24 points, and I'll try to do it fairly quickly because I'll
25 start with Mr. Dowdy, Aaryon Dowdy, the inmate, came in

1 inmate clothing. The gentleman that the Solicitor says
2 has a code of honor and he just wants to do this as his
3 civic duty. He's got an attempted murder pending charge.
4 He's got a code of honor where somehow he's looking down
5 at Kenny Ruff. Recent convictions he testified about were
6 violent burglary and all he wants to do, I don't want to
7 get into the human nature, but you cannot base a
8 conviction on a jailhouse snitch. You just morally
9 cannot. You know they have incredible bias. You know, I
10 know, they know he ain't doing it because he's a good guy.
11 If there's not an expressed promise to help him, I
12 guarantee you, there's an implied hope he's getting help.
13 He's got Federal, Federal gun charges. He's got an
14 attempted murder. He has violent crimes in his past.
15 He's facing a crime that carries 30 years violent in
16 prison. Ain't coming home early. You think he might have
17 some incentive to want to try to help people out to, and
18 maybe some of this good karma will come back to him and
19 the only factually you'll know, need to know about his
20 story is it doesn't make sense. 56 inmates in the Alvin
21 Glenn SHU, one button and he's saying he's able to
22 communicate to who he wants to. They're in individual
23 cells. You know that one button is the master intercom
24 from the deputies or the CO's to the inmates that say come
25 out, pick your mail up, or get your meal, or come out.

1 It's not, they don't have telephone access to each other.
2 They don't have an intercom that magically he has figured
3 out how to call cell 44. That's just a lie. But that's
4 the inmate buzzer. And I'll tell you exactly what
5 happened, because how does his story track with, you know,
6 in his testimony. You damn right it does, because he's
7 got the discovery. He can read the discovery and come in
8 here and testify according to discovery, this is what
9 happened. He is just testifying to the man's discovery in
10 the jail. It is absolutely valueless testimony and really
11 shouldn't even be considered. It's just flat out
12 including lies and they can see it. If you don't find
13 guilt, I would ask you to actually consider the legitimate
14 testimony, legitimate evidence. Let's start with it. The
15 Solicitor and County, they've had witness, after witness,
16 after witness, after witness. Well, that's about right.
17 They have four identification witnesses. They start with
18 Womp Richardson, and I like Mr. Richardson. I, on his
19 demeanor that just you start with it's clear he lives on
20 Norris Road from listening to Captain Dennis, that he
21 lives in the vicinity of Turner Street. He doesn't face
22 and he's not even on the block of Turner Street. You've
23 got his house in evidence, Defendant's, what, 7. In
24 fairness, you can't even say that he lives on the corner
25 of Turner Street. I'm not implying he's a liar at all.

1 It's just kind of shaky testimony. There's his house and
2 there's Norris Street. There's the street sign. This is
3 Turner Street. I just don't see when he was confused. He
4 said, well, I live, I think I live on Turner Street. No,
5 I think he probably lives on Norris Street about a block
6 away from Turner Street. Here is the problem with his
7 testimony and we know what he's doing. He's walking up to
8 Brothers Fast Stop. He's not walking around. He's
9 walking straight and I submit to you he's walking in the
10 video and it shows how fast he walks. He's got a normal
11 walk. He's not limping. He's not walking slow. He's not
12 looking around. And I'm not arguing science. I'm just
13 arguing commonsense. At no time would the man he
14 identified as the guy who lives a few blocks away from him
15 would have been looking at him. We know for at least a
16 minute that he was a minute's walk from even getting to
17 the place, to the Kunkle Drive. Captain Dennis testified
18 that the man he saw, by Captain Dennis' count, would have
19 taken 38 seconds to get to Turner Street. And then you
20 kind of take that little cut-through, so he's another, I'm
21 going to estimate it for you, 40 seconds. We'll use a
22 round number and say it takes 40 seconds to get to Turner
23 Street. That's another 20 seconds of walking up Turner
24 Street where when you see the man in the Kunkle driveway,
25 Mr. Womp Richardson is still 20 seconds away from walking

1 and getting to Main Street and but where the man's not
2 looking at him. You, through a chain-link fence. I
3 understand we don't know what the parking looked like,
4 there's a big building with gas tanks on your right. We
5 don't know what was in the parking lot at 1:30 on August
6 26th of 2015, but I submit to you it was the same thing
7 that was on the parking lot today and in all of their
8 pictures of the parking lot, you can see pickup trucks
9 parking there. That's where the employees park. Mr.
10 Dennis counted six pickup trucks in the pictures we gave
11 him that he testified to. Mr. Womp Richardson would have
12 to be looking through those six pickup trucks. When the
13 State showed you the picture at the end of Turner Street
14 heading towards Main Street, if you look at that picture
15 and I'm not going to take the time to find it, but you can
16 see the edges of cars on it in the parking lot. So even
17 if, whenever they took the photographs much closer into
18 the dates, well, we know that there would have been
19 several trucks. There's no reason to think that a
20 Wednesday afternoon would be different in August than a
21 Wednesday afternoon in that parking lot now. You're
22 looking through a chain-link fence at an angle to the
23 right, looking over pickup trucks, at a building across
24 the street with traffic at a man who's not looking your
25 way, just as Investigator Dennis testified to you from

1 Kunkle driveway to Turner Street that he said would be up
2 to 50 yards away or slightly more. Well, if a man on the
3 video that Mr. Dennis watched took 38 seconds to walk from
4 the middle of the Kunkle driveway to Turner Street, and
5 I'm going to round up to 40 seconds, that still gives him
6 20 seconds more of walking up Turner Street. If it is 50
7 yards from Kunkle driveway to Turner Street in 40 seconds
8 and you've got 20 seconds left, then you're still walking
9 another 25 yards up Turner Street, assuming you're walking
10 at the same speed. And if he's not walking at the same
11 speed, he's even further away. Just, it's not, from where
12 Womp Richardson would have had to be to identify the man
13 as Kenny Ruff in the Kunkle video, he would have been 56
14 yards away looking at a man through the chain-link fence
15 over the pickup trucks from about, from about 56 yards
16 away. And we know that, and here's how we know he's
17 walking at about the same speed, because you heard
18 Captain Dennis say it's about 25 yards across the lanes of
19 traffic through the front door. And so when Womp would
20 have been about 41 or 42 seconds away is when the man
21 entered the door and we know he didn't stop at the door or
22 stay, he went straight in. You can see the video. He
23 goes straight in not looking back. At that time, Mr.
24 Richardson is still two or three seconds away from getting
25 to Main Street. Let's look at that distance. If you look

1 at the man going in the door, if it was 25 yards away from
2 where he would have been standing at the edge of the road
3 and Mr. Womp is 25 yards closer to Main Street. You can
4 do the same math, 50 yards to the driveway, 25 yards up,
5 he's 54 yards away at the edge of Turner Street to the
6 front door of the salon. He's still walking at the same
7 speed. He doesn't ever get closer than 50 yards, 54 yards
8 from the man he's trying to identify from behind, assuming
9 he's even paying attention, across the chain-link fence at
10 a man who's not stopping and turned and walking completely
11 away from him. I submit to you what happened and I think
12 we know what happened is the police say, you know, we
13 think that's Womp on the video. You know, they watched
14 the video. You know, that looks like Womp walking down
15 the road. Let's go talk to him and see if he saw
16 anything. Womp, do you think you saw Kenny Richardson, I
17 mean, Kenny Ruff walk in that door? Yeah, I mean, that
18 could be Kenny. Are you sure now, are you sure you saw
19 it? Yeah, yeah, I saw. And Womp's got it in his head
20 that he saw Kenny Ruff and he really didn't and there's
21 just no way he could have. But just giving him all credit
22 for being a good man, but there is just no way he can make
23 an identification that you can hang a murder charge on
24 from 54 yards away, over the trucks, through the fence at
25 somebody not looking away from and constantly moving away

1 from you with traffic and minding their own business at an
2 angle. Officer Mercer testified and before I get to
3 Officer Mercer, let me come back to, and it's Angela Ruff,
4 Angela Ruff, not Angela Simms. So let's get that, his
5 sister. She doesn't identify Kenny Ruff in those
6 photographs. She was here on the witness stand and I
7 guarantee you if you go back in the record, I double-dog
8 dare the Solicitor to show where in the record she
9 identifies Kenny Ruff from the witness stand in the video.
10 She didn't. What they are saying is they think that she
11 did in the jailhouse phone call when she was talking to
12 him saying, and if you listen to it, she's saying they got
13 you on video. She's not identifying him. She's telling
14 Kenny what they're telling her, we've got your brother on
15 video. And that's what she's saying, Kenny, they got you
16 on video. There's no way where she's saying I saw the
17 video myself and that's definitely you. That's not in
18 there and you're going to have it. It's they got you,
19 they got the videos. What she's talking about, I mean,
20 it's clear from the conversation is what they've told here
21 they've got on your brother. They're not inviting her
22 into the middle of the police station showing her all the
23 evidence. It doesn't work that way. You know it doesn't
24 work that way. They are, by telephone or in-person saying
25 we got him on video and, and that is what she's conveying

1 is what the police tell her they have as she says it in
2 the phone call if you listen to it, they got you, they
3 say. Just Angela Ruff, I submit that they're trying to
4 make her an identification witness. She's not. She's a
5 sister talking to the brother in jail telling her brother,
6 what have they got on me? Well, this is what they got on
7 you. Mr. Mercer, the problem with his identification is
8 it's really no better than yours and in his terms. He's
9 saying I've looked at the video of Brothers Fast Stop. He
10 says, first of all, Kunkle's is, you cannot make an
11 identification from Kunkle's. It's just too far away. I
12 look, I'm making my decision on the Brothers Fast Stop.
13 You're going to have all of the video and the film from
14 Brothers Fast Stop, and you're just going to have to
15 independently determine if that is a good enough picture
16 to base a conviction off of. You know, the amazing thing
17 was when we show Officer Mercer what is the clearest video
18 up here, no question, that's Kenny Ruff. You can tell
19 he's baldheaded. You can look at him today. That is the
20 clearest picture of Kenny Ruff they have in the file.
21 Officer Mercer says I cannot identify who that is. The
22 one I'm identifying is the one wearing a doo-rag over his
23 eyes with the head scarf. But when he's not wearing a
24 head scarf, Officer Mercer says that I can't identify that
25 man as Kenny Ruff. And, and the same with Officer

1 Goodman, Investigator Goodman, all of his identification
2 come from the Brothers Fast Stop video where he's saying,
3 I'm looking at the individual in the Brothers Fast Stop
4 and I'm saying that that is similarly dressed to the man
5 who killed Mr. Facio to be the same guy. Shawarrior,
6 review her testimony. The Solicitor said she said she saw
7 Kenny Ruff later that day when she, you remember how
8 precise she was on the time. I know it was 12:45 because
9 that was my dentist appointment. And do you recall her
10 testimony and how long, she said he had a short-sleeve
11 black shirt on. If you have a question, they can replay
12 her video, her testimony for you. But do you recall her
13 saying he had a short-sleeve black shirt? The importance
14 of that video is they have a man that they agree is not
15 the suspect at right around 12:45 in the parking lot in a
16 short-sleeve black shirt and a doo-rag which I submit to
17 you is if that is the person that Shawarrior is talking
18 about who more likely fits her description because he's
19 wearing a short-sleeve black shirt and a doo-rag, 12:46.
20 So we know if, if they're correct, if Mr. Bentley's report
21 is correct and this is 12 minute's fast, then 12:34.
22 Greenish doo-rag, short-sleeve black shirt, and you
23 remember watching the video where you can see his arms,
24 and they're saying that's not the man we're looking for.
25 If that's Kenny Ruff, then we know that, and if nothing

1 else, this shows that there's another black man with a
2 doo-rag that summer walking around the parking lot. So
3 it's not a rare piece of clothing to wear. But all this
4 argument about the different tints on the clothing, I
5 don't know how to argue that to you. It appears in the
6 best light that at times they have got a man wearing a
7 green shirt with a slit in the throat or the collar. I
8 understand they are saying Kenny must have been wearing,
9 the only way this crime makes sense for it to be Kenny
10 Ruff is that he must have been switching clothes. Other
11 than the one black shirt they find in the dumpster, they
12 don't have a single article of clothing that matches any
13 of these several outfit changes they're making, saying
14 Kenny's making them. They don't have the blue shirt with
15 the lettering. They don't have a blue striped shirt or a
16 gray striped shirt. None of the outfits that they're
17 saying or the green shirt, the doo-rags. Not a single
18 item. The shoes, you remember they talked about they
19 found shoes, but they were Nike's. There's not a single
20 article of clothing they have that matches anything that
21 they're alleging Kenny Ruff wore with the exception of the
22 black shirt in the trash can. All right. Gunshot
23 residue, nobody's confessing that they possibly could have
24 found gunshot residue but just the only reason I'm even
25 going to raise that is one, I think you have to weigh it

1 in the State's case where they didn't test it until this
2 week. They tested it several months ago, and then they
3 said we don't approve of the system of the prior analyst.
4 And so they don't test it until this week of trial. That
5 somebody's not following the policy at SLED, and so
6 they've got to retest evidence just makes it suspicious.
7 Solicitor tries to say, indicated to you, said they wiped
8 everything and they tried to get all the evidence they
9 could from the scene. All the evidence except five hours
10 later when you have the man you believe shot the gun, they
11 refused to do a gunshot residue for him at his request.
12 Even if they knew it was likely to turn up zero, is there
13 any conscionable reason when you've got a man involved in
14 a shooting and he's facing murder charges and he's saying
15 take the test of my arms, is there any conscionable reason
16 that you would refuse to take that evidence other than
17 just the fear that it might hurt you down the line? They
18 say that they've got this bullet, the casing for a .22. I
19 know the Solicitor talks about putting pieces in a puzzle
20 and I agree with you, you have to do a puzzle. If there
21 was any forensic evidence that they could match, you don't
22 think that they can match a bullet casing up to a bullet?
23 If they had any evidence that tended to show it came from
24 that weapon or the bullet in Mr. Facio's head, that is
25 just an ending piece that doesn't collect. There is, it's

1 circumstantial evidence that doesn't really prove anything
2 to this murder. I will just point out from day-one, Kenny
3 Ruff said y'all go investigate Dale Bailey through the
4 sister. It's the same day he's in jail, go investigate
5 Dale Bailey and they don't. And the problem is you've got
6 DNA that's on the shirt at 18 months later and we know
7 there's another man's DNA on the shirt and we know it's
8 not the victim's DNA and we know it's not anybody else
9 who's been in the shop. They've got DNA on the shirt when
10 Dale saying I was with the man earlier that time, y'all go
11 investigate him and they don't and the deputies indicate
12 he is very similar, tall, thin, similar aged black man,
13 he's asking to investigate him and they don't. And,
14 Deputy, I'm going to let you just come up here. I'm just
15 going to have my client just come up to this point right
16 here.

17 THE COURT: Okay.

18 MR. VERNER: So the jury can get a look at him.

19 THE COURT: Okay.

20 MR. VERNER: And just, wherever you feel comfortable.
21 Come on up here for a second, Kenny. You tell me where
22 you feel comfortable. We're just trying to let y'all see
23 without scaring people today. Y'all going to look at the
24 video and you're going to make an identification because
25 that's how the police did it. They didn't do it any other

1 way than looking at the Brothers Fast Stop video, and then
2 comparing clothing of Kenny Ruff. Look at the jury.
3 Okay. Just shake my hand for just a second. All right.
4 Okay. With the left hand, are you left-handed or
5 right-handed?

6 MR. RUFF: (Inaudible.)

7 MR. VERNER: All right. Y'all got a good enough
8 look? Go ahead and sit down for a second. Video of the
9 murder. This is a very rare case. I've been defending
10 people for 20 years and never had a crime scene video for
11 it. I don't know that they have a, well, I'm sure they
12 have, I'm sure those work out pretty quickly. Look at the
13 hands of the killer. Thank you, Your Honor.

14 THE COURT: Okay. Thank you, Mr. Verner. Solicitor,
15 do you have any rebuttal argument?

16 MR. STUMBO: Judge, it's been a long week. I'm going
17 to rest and rely on my initial argument.

18 THE COURT: All right. Very good. Madam Forelady
19 and ladies and gentlemen of the jury, we're going to take
20 a real short break and bring you back in, and I'm going to
21 then charge you on the law in the case. Let's take about
22 a 10-minute break and catch our breath, and then we'll get
23 you back out and I'll charge you on the law, okay. Again,
24 don't start your deliberations yet.

25 (Whereupon, the jury was excused from open court for

1 a break.)

2 THE COURT: We will take about a ten minute recess.
3 You were 40 minutes and you were 22 minutes, for your
4 information.

5 MR. STUMBO: Impressive.

6 MR. VERNER: Thank you.

7 (Whereupon, a short break was taken.)

8 THE COURT: Let's bring the jury in.

9 (Whereupon, the jury came into open court at
10 approximately 3:25 p.m.)

11 THE COURT: Let the record reflect the jury is back
12 in. Madam Forelady and ladies and gentlemen of the jury,
13 I now will charge you the law applicable to this case.
14 You must consider this charge as a whole and not focus on
15 some portions to the exclusion of other portions.

16 As you know the indictments charge the Defendant with
17 three crimes, murder, armed robbery and possession of a
18 weapon during the commission of a violent crime. I remind
19 you the fact that the Defendant was arrested, charged and
20 indicted in this case is not evidence in this case and
21 cannot be considered by you as evidence of guilt in this
22 case nor does it create any presumption or inference of
23 guilt. These documents are simply the formal written
24 instructions which contain the charges made against the
25 Defendant. These are the formal documents by which this

1 case is brought into this court.

2 The fact that we have three charges, multiple charges
3 in this case, and each indictment charges a separate and
4 distinct offense. You must decide each indictment
5 separately on the evidence and the law applicable to it
6 uninfluenced by your decision as to any other indictment.
7 One exception concerning the offense of possession of a
8 weapon during the commission of a violent crime and I will
9 get to that kind of towards the end of my charge. The
10 Defendant may be convicted or acquitted on any or all of
11 the offenses charged and you will be asked to write a
12 separate verdict of guilty or not guilty for each
13 indictment. And I have a verdict form, Madam Forelady
14 that I will show you in just a minute how that is done.

15 The Defendant has exercised his constitutional right
16 and has plead not guilty to these indictments. And that
17 plea of not guilty puts the burden on the State to prove
18 the Defendant guilty. A person charged with committing a
19 criminal offense in South Carolina is never required to
20 prove himself innocent. I charge you that it is an
21 important rule of the law that the Defendant in a criminal
22 trial, no matter what the seriousness or how serious the
23 charge may be, will always be presumed to be innocent for
24 the crime for which the indictment was issued unless guilt
25 has been proven by evidence satisfying you of that guilt

1 beyond a reasonable doubt. This presumption of innocence
2 does not end when you begin your deliberations but it
3 accompanies the Defendant throughout the trial unless you
4 reach a verdict of guilt based on evidence satisfying you
5 of that guilt beyond a reasonable doubt. This presumption
6 of innocence is like a robe of righteousness placed about
7 the shoulders of the Defendant which remains with the
8 Defendant unless it has been stripped from the Defendant
9 by evidence satisfying you of the Defendant's guilt beyond
10 a reasonable doubt. This presumption of innocence is not
11 a mere legal theory, it is not just a legal phrase that
12 Judges and lawyers use. It is a substantial right to
13 which every Defendant is entitled unless you, the jury,
14 are satisfied from the evidence of the Defendant's guilt
15 beyond a reasonable doubt.

16 Let's talk about this reasonable doubt. First of
17 all, some of you may served as jurors in civil cases,
18 where you were told by the Judge that it is only necessary
19 to prove that a fact is more likely true than not true,
20 such as by the greater weight or the preponderance of the
21 evidence. In criminal cases, however, the State's proof
22 must be more powerful than that. It must be beyond a
23 reasonable doubt. Proof beyond a reasonable doubt is
24 proof that leaves you firmly convinced of the Defendant's
25 guilt. Now, Madam Forelady and ladies and gentlemen of

1 the jury, there are very few things in this world that we
2 know with absolute certainty and in criminal cases the law
3 does not require proof that overcomes every possible
4 doubt. If based on your consideration of the evidence you
5 are firmly convinced that the Defendant is guilty of the
6 crime or crimes charged you must find the Defendant
7 guilty. If on the other hand you think there is a real
8 possibility that the Defendant is not guilty you must give
9 the Defendant the benefit of the doubt and find him not
10 guilty.

11 Now, as I told you at the beginning of this trial
12 that you and I have had certain duties to perform. As the
13 trial Judge it has been my responsibility to preside over
14 the trial of this case and I have also, have had the duty
15 to rule on the admissibility of evidence offered during
16 this trial. You are to consider only the competent
17 evidence before you. If there was any evidence ordered
18 stricken from the record in this case during this trial
19 you must disregard that testimony or evidence. You are
20 only to consider testimony which has been presented from
21 the witness stand, any exhibits which have been made a
22 part of the record in this case and there are quite a
23 number of exhibits, and any stipulations or agreement of
24 counsel.

25 I have the additional duty to charge you the law

1 applicable to this case as I am doing now. As the
2 presiding Judge I am the sole Judge of the law of this
3 case. And it is your duty as I told you on Monday, maybe
4 Monday I believe it was, maybe Tuesday, it is your duty as
5 jurors to accept and apply the law as I now state it to
6 you. If you already have any idea as to what the law is
7 or what the law ought to be and it does not agree with
8 what I now tell you the law is you must abandon your idea
9 because you are sworn to accept the law and apply the law
10 exactly as I state it to you.

11 I also told you in every case tried in this court
12 before a jury the jury becomes the sole and exclusive
13 Judge of the facts in the case. A trial Judge cannot
14 intimate, state, comment on or make any statement to a
15 trial jury about the facts in a case. Since you, the
16 jury, are the sole judge of the facts in this case you are
17 not to infer from what I have said during the progress of
18 this trial in ruling upon the admissibility of evidence or
19 otherwise or anything that I say now during the course of
20 this instruction to you that I have any opinion about the
21 facts in this case. I do not have an opinion about the
22 facts in this case because the law does not allow me to
23 have an opinion about the facts in this case. This is a
24 matter solely for you, the jury, to determine. As jurors,
25 it is your duty to determine the effect, value and weight

1 of the evidence presented during this trial.

2 Madam Forelady and ladies and gentlemen of the jury,
3 there are two types of evidence which are typically or
4 generally presented during the trial, that being direct
5 evidence and that being circumstantial evidence. Direct
6 evidence directly proves the existence of a fact and does
7 not require deduction. Circumstantial evidence, however,
8 is proof of a chain of facts and circumstances indicating
9 the existence of a fact. Crimes may be proven by
10 circumstantial evidence. The law makes no distinction
11 between the weight or value to be given to either direct
12 or circumstantial evidence. However, to the extent the
13 State relies on circumstantial evidence, all of the
14 circumstances must be consistent with each other and when
15 taken together point conclusively to the guilt of the
16 accused beyond a reasonable doubt. If these circumstances
17 merely portray the Defendant's behavior as suspicious the
18 proof has failed. So again, the State has the burden of
19 proving the Defendant guilty beyond a reasonable doubt and
20 this burden rests with the State regardless of whether the
21 State relies on direct evidence, circumstantial evidence
22 or some combination of the two.

23 Necessarily, you must determine the credibility of
24 the witnesses who have testified in this case and the
25 evidence presented. Credibility simply means

1 believability. It becomes your duty as jurors to analyze
2 and to evaluate the witnesses and the evidence and
3 determine the credibility of the witnesses and the
4 evidence. In determining the credibility of witnesses who
5 have testified in this case you may believe one witness
6 over several witnesses or several witnesses over one
7 witness. You may believe a part of the testimony of a
8 witness and reject the remaining part of the testimony of
9 that same witness. You may believe the testimony of a
10 witness in its entirety or reject the testimony of a
11 witness in its entirety. You may consider whether any
12 witness has exhibited to you any interest, bias, prejudice
13 or other motive in this case. You may also consider the
14 appearance and manner of a witness while on the witness
15 stand.

16 Now, Madam Forelady and ladies and gentlemen of the
17 jury, we have had some expert witnesses in this case. As
18 I told you and I will explain to you again in probably a
19 little bit more detail, the rules of evidence ordinarily
20 do not permit witnesses to testify to opinions or
21 conclusions. An exception to this rule exists for
22 witnesses we call expert witnesses. A witness who by
23 education and experience has become an expert in some art,
24 science, profession or calling may state an opinion as to
25 relevant and material matter in which the witness claims

1 to be an expert and may also state the reasons for the
2 opinion. You should consider any expert opinion received
3 in evidence in this case and like any other evidence give
4 it the weight you think it deserves. If you decide that
5 the opinion of an expert witness is not based on
6 sufficient education and experience or you conclude that
7 the reasons given in support of the opinion are not sound
8 or that the opinion is outweighed by other evidence you
9 may disregard the opinion entirely. An expert witness'
10 testimony is to be given no greater weight than that of
11 other witnesses simply because the witness is an expert.
12 Furthermore, you are not required to accept an expert's
13 opinion even though it is not contradicted.

14 Now, the Defendant in this case elected not to
15 testify. I instruct you and emphasize that the fact the
16 Defendant did not testify is not a factor to be considered
17 by you in any way in your deliberations and in your
18 consideration on the question of the guilt or innocence of
19 the Defendant. It must not be considered by you in any
20 manner whatsoever. A Defendant has the constitutional
21 right to remain silent, and the assertion of this right
22 must not be considered by you in your deliberations. I
23 repeat, ladies and gentlemen, under your oath you are to
24 draw no conclusion whatsoever from the fact that the
25 Defendant in this case elected not to testify. The fact

1 that he did not testify should not even be discussed in
2 your jury room. The burden of proof, as I have stated to
3 you several times is on the State. The Defendant is never
4 required to prove his innocence. The burden of proof
5 remains on the State to prove guilt beyond a reasonable
6 doubt.

7 A statement and or statements alleged to have been
8 made by the Defendant have been admitted into evidence in
9 this case. While the Court has determined that the
10 statement or statements are admissible I instruct you that
11 you make the ultimate decision on whether or not the
12 Defendant made the statement. And I will just refer to
13 that as a singular statement even though you may find more
14 than one statement was made. And if the Defendant did
15 make the statement you must determine whether the
16 statement was made by the Defendant voluntarily and of his
17 own free will. This means that the Defendant was not
18 caused by pressure, force, fear, threats, coercion or
19 intimidation or by hope or a promise of leniency or a
20 reward of any kind. In determining whether the statement
21 was voluntary you should consider both the characteristics
22 of the Defendant and the details of the question. Some of
23 the factors that you must consider are the age of the
24 Defendant, his education or lack thereof; the Defendant's
25 mental ability or capacity; the Defendant's I.Q. or

1 intelligence; the Defendant's background and environment;
2 the place and length of detention; the nature of the
3 questioning and the advice or lack thereof to the
4 Defendant of his constitutional rights including but not
5 limited to the right to remain silent. That any statement
6 could be used against him in a court of law. The right to
7 have a lawyer present, that if he could not afford a
8 lawyer a lawyer would be appointed to represent him
9 without any cost. And that he could stop making a
10 statement at any time. You must carefully consider all of
11 the surrounding circumstances before you give any weight
12 to any alleged statement. The State has the burden of
13 proving beyond a reasonable doubt that the alleged
14 statement was voluntary. If you determine it was you may
15 give the statement any further consideration that you deem
16 proper. You must decide what weight, if any, should be
17 given to any alleged statement. If you determine the
18 alleged statement was not the free and voluntary statement
19 of the Defendant you should not consider the statement at
20 all.

21 Now, let me discuss a few, the matter of intent. In
22 order to establish criminal liability, criminal intent is
23 required. For example, the mental state required to be
24 proven by the State for a particular crime might be
25 purpose, intent, knowledge, recklessness or criminal

1 negligence. Criminal intent must be proven by the State
2 beyond a reasonable doubt. Criminal intent is always a
3 matter that must be determined by a jury from the
4 circumstances surrounding the situation. Now, there is no
5 way to prove intent to any mathematical certainty. There
6 is no way medical science can dissect a person's brain and
7 determine what the person had in mind. So the law says
8 that criminal intent may be inferred from the
9 circumstances shown to have existed. This is how you make
10 a determination of whether or not the element requiring
11 intent was present. It is not necessary to establish
12 intent by direct and positive evidence, but intent may be
13 established by inference in the same way as any other fact
14 by taking into consideration the acts of the parties and
15 all the facts and circumstances in the case. Criminal
16 intent is defined as a mental state, a conscious
17 wrongdoing. It is up to you to determine what the
18 Defendant intended to do based on the circumstances shown
19 to have existed. Criminal intent can arise from action or
20 a failure to act. It may arise from negligence,
21 recklessness or an indifference to duty or to consequences
22 that is considered by the law to be the equivalent of
23 criminal intent.

24 An issue in this case is the identification of the
25 Defendant as the person who committed the crimes charged.

1 The State has the burden of proving identity beyond a
2 reasonable doubt. You must be satisfied beyond a
3 reasonable doubt of the accuracy of the identification of
4 the Defendant before you may convict the Defendant of the
5 crimes charged. Identification testimony is an expression
6 or belief or impression by a witness. You must determine
7 the accuracy of the identification of the Defendant. You
8 must consider the believability of each identification
9 witness in the same way as any other witness. You may
10 consider whether the witness had an adequate opportunity
11 to observe the offender at the time of the offense. This
12 will be affected by things like how long or short a time
13 was available. How far or close the witness was, the
14 lighting conditions and whether the witness had a chance
15 to see or know the person in the past. Once again, I
16 instruct you the burden of proof is on the State, again,
17 repeat that, once again, I instruct you the burden of
18 proof on the State extends to every element of the crimes
19 charged. And this specifically includes the burden of
20 proving beyond a reasonable doubt the identity of the
21 Defendant as the person who committed the crimes charged.
22 If after examining the testimony in evidence you have a
23 reasonable doubt as to the accuracy of the identification
24 evidence offered by the State you must find the Defendant
25 not guilty.

1 Now, let me explain to you each of the three charges
2 that the Defendant has been charged with. First is
3 murder. The State must prove beyond a reasonable doubt
4 that the Defendant killed another person with malice
5 aforethought. Malice is hatred, ill-will or hostility
6 towards another person. It is the intentional doing of a
7 wrongful act without just cause or excuse and with an
8 intent to inflict an injury or under circumstances that
9 the law will infer an evil intent. Malice aforethought
10 does not require that malice exists for any particular
11 time before the act is committed but malice must exist in
12 the mind of the Defendant just before and at the time of
13 the act is committed. Therefore there must be a
14 combination of the previous evil intent and the act.
15 Malice aforethought may be expressed or inferred. These
16 terms, express and inferred, do not mean different kinds
17 of malice but merely the manner in which malice may be
18 shown to exist. That is either by direct evidence or by
19 inference from the facts and circumstances which are
20 proved. Expressed malice is shown when a person speaks
21 words which express hatred or ill will for another or when
22 the person prepared beforehand to do the act which was
23 later accomplished. For example, just as an example,
24 lying in wait for a person or any other acts of
25 preparation going to show that the deed was within the

1 Defendant's mind would be an example of expressed malice.
2 Malice may be inferred from conduct showing a total
3 disregard for human life. Inferred malice may also arise
4 when the deed is done with a deadly weapon. A deadly
5 weapon is an article, instrument, or substance which is
6 likely to cause death or great bodily harm. Whether an
7 instrument has been used as a deadly weapon depends on the
8 facts and circumstances of each case. A gun is a deadly
9 weapon.

10 Secondly, armed robbery. The Defendant is charged
11 with armed robbery. In order to prove this offense the
12 State must first prove beyond a reasonable doubt that the
13 Defendant took personal property from the person or
14 presence of another person. Property is in the presence
15 of a person if it is within the person's reach,
16 inspection, observation or control so that the person
17 could, if not overcome with violence or prevented by fear,
18 keep possession of the property. The State must also
19 prove beyond a reasonable doubt that the Defendant carried
20 the property away intending to permanently deprive the
21 owner of the property and to keep the property for the
22 Defendant's own use. The slightest removal of the
23 property or the complete possession of the property even
24 for an instance by the Defendant is sufficient to show a
25 taking and carrying away of the property. The taking and

1 carrying away of the property must have been done with
2 violence or by putting the owner of the property in fear
3 of violence.

4 Finally the State must prove beyond a reasonable
5 doubt that the Defendant was armed with a deadly weapon
6 during the robbery. A deadly weapon is any article,
7 instrument, or substance which is likely to cause death or
8 great bodily harm. Again, whether an instrument has been
9 used as a deadly weapon depends on the facts and
10 circumstances of each case. Again, a gun is a deadly
11 weapon.

12 And thirdly, the charge of possession of a weapon
13 during the commission or attempt to commit a violent
14 crime. The State must prove, once again, beyond a
15 reasonable doubt that the Defendant was in possession of a
16 firearm or visibly displayed what appeared to be a firearm
17 during the commission of a violent crime. A firearm means
18 any machine gun, automatic rifle, revolver, pistol or any
19 weapon which will, is designed to or may be readily
20 converted to expel a projectile. Now listen very
21 carefully to this, this is where this charge is a little
22 different than the others, as I mentioned at the outset.
23 In order to find the Defendant guilty of possession of a
24 weapon during the commission of a violent crime you must
25 first find the Defendant guilty of either committing a

1 violent crime or attempting to commit a violent crime.

2 The offenses of murder and armed robbery are violent
3 crimes. The State must prove beyond a reasonable doubt
4 that the weapon further, furthered advanced or helped in
5 the commission of the crime.

6 Now, Madam Forelady and ladies and gentlemen of the
7 jury, there are two possible verdicts for each of the
8 three offenses. That being guilty and not guilty. And
9 the order that you will see on the verdict form in just a
10 second, guilty is written first before not guilty, there
11 is no significance for the order of that. Madam Forelady
12 and ladies and gentlemen of the jury, your verdict must be
13 unanimous among the twelve of you as to each charge. And
14 on the verdict form I will show you in just a second, you
15 will write a separate verdict for each of the three
16 charges. And once you have reached a unanimous verdict
17 for each of the three charges you will knock on the door
18 and inform the bailiff that you have reached such a
19 verdict. Now, that was quite a mouthful, wasn't it. I
20 will give you a copy of what I have just read to you to
21 carry back to the jury room and use in whatever manner
22 that you feel like is important to you. And I will come
23 down and I am going to show you this verdict form. It is
24 broken down into three parts because we have three
25 separate offenses. And it refers to the indictment and

1 the indictment numbers, charges the Defendant with murder.
2 We, the jury, find the Defendant, and you will put your
3 initials, Madam Forelady, on whatever verdict you reach as
4 to that charge. And the same for the armed robbery and
5 the same for the possession of a weapon during the
6 commission of a violent crime. Once you do that, you will
7 sign it and it is already dated for you. Now, I am going
8 to ask that all 15 of you go back to the jury room and do
9 not begin the deliberations. I need to talk to the
10 lawyers to make sure that what I have just charged you is
11 correct and I do not need to make any changes or
12 amendments to what I have charged you. If I do need to
13 charge you further on something then I will bring all 15
14 of you back out, and I will do that. If I do not have to
15 then two things will happen. Once all of the exhibits are
16 brought to you then the three alternates, you need to exit
17 the jury room. You will not participate in the
18 deliberations. And I know you have spent all week here
19 and you put in just the same amount of hard work as the
20 other 12. And going through a week trial and not have to
21 excuse any of the 12 is somewhat unusual. And but in this
22 case everybody has been here and didn't have to excuse
23 anybody. So when the exhibits, the verdict form and a
24 copy of the charge that I read to you is brought back into
25 the jury room that will be the cue for the three

1 alternates to come back here for further instructions.
2 And at that time you will be allowed to begin your
3 deliberations in order to reach a unanimous verdict on the
4 three charges. If at any time, during the course of your
5 deliberations, you want to view or listen to anything that
6 has been put on this screen or the audio that was produced
7 just write out your request, knock on the door, give it to
8 the bailiff and we will bring you back out. That is a lot
9 better than sending all that back into the jury room and
10 then depending upon the 12 of you to operate all of this
11 equipment even though I am sure some of you probably can.
12 But they have got the expertise to play whatever you need
13 to have played if that is your decision to do so. Okay.
14 All right. So, let me talk to the lawyers, go back to the
15 jury room and don't begin your deliberations yet.

16 (Whereupon, the jury was excused from open court.)

17 THE COURT: Does the State have any exceptions or
18 objections to the Court's charge?

19 MR. STUMBO: None, Your Honor.

20 THE COURT: And from the defense?

21 MR. VERNER: Your Honor, I object to the malice with
22 the weapon charge that we raised and ruled on earlier.

23 THE COURT: Right.

24 MR. VERNER: And in this case, Your Honor, in this
25 particular case I insist that the evidence be sent back

1 with the jury, the videos. This is an identification
2 case.

3 THE COURT: Oh, it will all go back but if they want
4 anything played they are going to have to come back here
5 and it will be played for them. But, yes, it will go back
6 as an exhibit.

7 MR. VERNER: I object to that. If the jury is not
8 allowed to go back in there and review the video tapes for
9 themselves, I think my client would be prejudiced by them
10 having to all convene, come back in there and cue it up.
11 I think in this case where identity is crucial and it
12 comes from the video tapes, they should have the ability
13 to play the tapes in the jury room.

14 THE COURT: What is the position of the State?

15 MR. STUMBO: Your Honor, just causes a logistic
16 nightmare. I don't know of any legal basis for objecting
17 to that other than potentially sending a computer back, a
18 laptop without any of our stuff on it and I don't think
19 any of us have one, quite frankly, Judge. There is no way
20 for us to play it for them in deliberations unless we send
21 it back in the jury room which we obviously can't. I have
22 seen that done before but only if there is equipment
23 available to make it happen. If Mr. Verner has a clean
24 video laptop that has no other information on it but that
25 will be fine. But I know Mr. Bentley's laptop is full of

1 other case files and whatnot.

2 THE COURT: And I have in cases that I have presided
3 over, when there has been made available through whatever
4 means a clean computer, I have sent that back. And we
5 have even talked, I think I have had conversations with
6 the State and with the Defense Bar about seeing if the
7 various counties would purchase a computer for that
8 expressed purpose. But we certainly don't have a clean
9 computer and I don't think anybody else. So, it is going
10 to be kind of difficult then to, unless you can come up
11 with another solution, Mr. Verner, in order to have the
12 jury play whatever they want to play in the jury room, I
13 mean I don't see how we can accomplish it.

14 MR. VERNER: I don't believe that the burden should
15 be put on the Defendant.

16 THE COURT: And I am not putting the burden on there
17 in any way to suggest that if you can't give me a
18 suggestion I am not going to rule for you.

19 MR. VERNER: Right.

20 THE COURT: I am just asking for some assistance from
21 you as an officer of the Court, that's all.

22 MR. VERNER: I don't have the ability, I had assumed
23 that all of the videos would be at some point on DVD's.

24 MR. STUMBO: They are, it is just, these surveillance
25 videos, Judge, as testified to, I think by Mr. Bentley, a

1 lot of them have proprietary software that is specific to
2 those videos. So in other words, you have to play it on a
3 laptop, you can't put it on a DVD player that you buy at
4 Walmart.

5 THE COURT: Right.

6 MR. STUMBO: I don't know of any other way to protect
7 the integrity of publishing the evidence, video evidence
8 unless we do it right here.

9 THE COURT: I am trying, you indicated, Mr. Verner,
10 that you believe your client would be prejudiced if the
11 jury wanted to view or listen to some of that evidence and
12 brought them back out, that he would be prejudiced. Can
13 you tell me why you believe he would be prejudiced for
14 that to happen.

15 MR. VERNER: Even if an individual juror, just say
16 one to watch the video tapes himself which, I would think
17 that he would be conscious about bringing the jury back
18 out here, reassembling, would feel inhibited about
19 replaying sections of it that they wanted to see again.
20 Walking up to the screen, looking at it closely. Holding
21 up the paper work that the still images against the
22 screen.

23 THE COURT: Here is what I will do, this may be a
24 compromise. First of all, the ruling that you did note in
25 our charge conference concerning the charge of the malice

1 inference, the use of a deadly weapon and I denied your
2 request. I felt like under State versus Belcher there was
3 no mitigation in this case to justify deleting that
4 charge. So, that was, denied at the time and denied
5 again. What I will do, I will bring the jury back out and
6 tell them that, if they want to view or listen to any of
7 that evidence that needs some computer operation and if
8 they would rather it be done back in the jury room then we
9 are going to have to find a computer. But if they are
10 satisfied in viewing it as they did during the course of
11 the trial then we will accept their desires. But if they
12 feel on the other hand that they need to view it back in
13 the jury room we are just going to have find some computer
14 that will assist them in that. So, before I bring them
15 out, let's just go off the record I am going to offer one
16 other suggestion but I am doing it off the record. Come
17 on over here.

18 (Whereupon, a bench conference was held with the
19 Court and the attorneys.)

20 THE COURT: Back on the record, I had a sidebar
21 conference with the lawyers. And even though may have a
22 preference, what we have agreed to do, I am going to bring
23 the jury out. I am going to tell them that if any time
24 they want to listen to any audio or view any video and
25 they are comfortable, all of them are comfortable in doing

1 it in the courtroom then we will accommodate them in that
2 fashion. If at any time they want to listen to any audio
3 or view any video and they feel more comfortable in doing
4 it back in the jury room then I am going to send my law
5 clerk back with her laptop, with exception of the
6 apartment video, she has to use Mr. Bentley's apartment
7 and then she can go back and play whatever they want
8 played. Okay.

9 MR. VERNER: You are going to tell them that
10 directly?

11 THE COURT: I am going to bring them all out and tell
12 them that directly and then go back and then we will get
13 the exhibits to them in just a minute. Bring the jury
14 out, please.

15 (Whereupon, the jury came into open court at
16 approximately 4:03 p.m.)

17 THE COURT: Let the record reflect the jury is back
18 in. You ought to feel good that the jury room is in close
19 proximity with the jury box. If you were in Laurens your
20 walk from the courtroom to the jury room would be probably
21 ten to fifteen times more in distance. I am not going to
22 recharge anything or correct any of my charge but just to
23 kind of further clarification. If at any time the jury
24 wants to either listen to some audio or view some video
25 and the jury is fine with doing it here in the courtroom

1 then that is how we will do it. If at any time you decide
2 you want to listen to some audio or view any video that
3 concerns the evidence in this case. However, if at any
4 time the jury wants to listen to that audio or view that
5 video back in your jury room then what I will do is I will
6 send my law clerk back with her computer and she will put
7 in the necessary DVD or CD in order to assist you, the
8 jury, in listening to whatever you wanted to listen to or
9 view whatever you wanted to listen to. That is going to
10 be your call and you just need to let us know that, if it
11 arises that you want to listen to some audio or view some
12 video. Okay. So, with that said, we will get the
13 exhibits together, all fifteen of you go back. Don't
14 begin your deliberations yet but we will be getting the
15 exhibits to you in just a moment.

16 (Whereupon, the jury was excused from open court.)

17 THE COURT: If the lawyers will get with the Court
18 Reporter and make sure all of the exhibits are together.

19 (Whereupon, the Court Reporter and the attorneys go
20 over the exhibits.)

21 THE COURT: Let's get the exhibits and verdict forms
22 to the jury.

23 (Whereupon, the jury started deliberations at
24 approximately 4:22 p.m.)

25 (Whereupon, the alternates were excused from the

1 trial of the case.)

2 THE COURT: Let's go on the record just for a moment,
3 marked as Court's exhibit number 7, it was about 5:45,
4 maybe 20 minutes ago we received a note from the jury
5 requesting the following, hear the audio of Kenny speaking
6 with Angela at the detention center. So we can provide
7 that to them. Next, see the video footage when Kenny
8 exits Leslie's Salon. And with the help of Mr. Bentley,
9 he is going to provide to Ms. Thomas the actual time to
10 where she can run that video to that time to show that.
11 Thirdly, video of Mr. Facio at gunpoint at Leslie's Salon,
12 so that would be the salon video. And so she is going to
13 do those three things in the jury room. Once that is done
14 then they are going to come out because they want to
15 listen to Mr. Dowdy's testimony. So while Ms. Thomas is
16 back there then the Court Reporter can be getting set up
17 to play the testimony.

18 MR. VERNER: Is the Court taking the full TV or just
19 the laptop?

20 THE COURT: Just her laptop. She is not going to
21 operate the TV or do anything with that. It is going to
22 be the laptop, her laptop.

23 MR. VERNER: If the Clerk could advise them if they
24 would rather see it on the big screen.

25 THE COURT: I sent the bailiff back there to ask them

1 and she wrote on there, the audio is better heard in the
2 jury room than possible can hear it in here. So I
3 interpret that to mean the first three items they want
4 back in the jury room.

5 MR. VERNER: So the laptop is just the audio.

6 THE COURT: They want to hear the audio of the
7 conversations between Mr. Ruff and his sister and then two
8 videos.

9 MR. VERNER: So she is also playing the video on just
10 the laptop.

11 THE COURT: That's right.

12 MR. VERNER: Okay. Just, if it could be positive to
13 them that they could watch it on TV too, if they would
14 prefer.

15 MR. STUMBO: Judge, I think they know that.

16 THE COURT: That is the sole purpose for my sending
17 the Bailiff back to ask them do they want to do it all out
18 here, even though they don't realize that the testimony of
19 Mr. Dowdy is out here. Do they want to do it out here or
20 in the jury room and the way I read the note at the bottom
21 that I had her add to the note was that they want to be in
22 the jury room. So that would mean Ms. Thomas and her
23 laptop.

24 MR. VERNER: I would just note that the TV could be
25 made available in the jury room too.

1 THE COURT: Well, then that is going to require
2 somebody other than Ms. Thomas to operate it.

3 MR. VERNER: Yes, sir. I understand, that was our
4 preference in the beginning that it will all go back but I
5 understand where we are.

6 THE COURT: Okay.

7 (Whereupon, Judge Hocker's Law Clerk, Callie Thomas
8 went to the jury room to play videos that the jury
9 requested.)

10 (Whereupon, Court's Exhibit 7 was marked for
11 identification only.)

12 THE COURT: The jury does not want to hear the
13 testimony of Dowdy.

14 (Whereupon, Court's Exhibit 8 was marked for
15 identification only.)

16 (Whereupon, the Court sent a note to the jury asking
17 if they would like pizza ordered and they said no.)

18 (Whereupon, Court's Exhibit 9 was marked for
19 identification only.)

20 THE COURT: Okay, gentlemen, it is my understanding
21 that we have a verdict and is there anything we need to
22 put on the record before I bring the jury out and receive
23 the verdict?

24 MR. STUMBO: No, Your Honor.

25 THE COURT: Nothing from the State. Defense?

1 MR. VERNER: Just, Your Honor, procedurally and I
2 don't know how we put on the record but I have renewed my
3 motion for a directed verdict at the end of the State's
4 case.

5 THE COURT: Okay.

6 MR. VERNER: Okay.

7 THE COURT: So noted.

8 MR. VERNER: And how does the Court prefer the
9 Defendant, does the Court want a standing Defendant or
10 sitting or do you have a preference either way, Your
11 Honor?

12 THE COURT: Probably standing. But in the location
13 at your counsel table. Madam Bailiff, if you will bring
14 the jury out, please. Wait a minute. Let me just, any
15 family members in the courtroom, some other people. Let
16 me just instruct you that if you feel like when the
17 verdict is announced that you would be unable to control
18 your emotions, in other words if you feel like you are
19 going to create some outburst of some sort then I am going
20 to ask that you exit the courtroom at this time. If you
21 feel like you can control your emotions and there be no
22 outburst that is fine, I want you to stay in the courtroom
23 when the verdict is received. Because if you do create an
24 outburst then you could be subject to being held in
25 contempt. I just want to make sure everybody feels like

1 they can control their emotions.

2 MR. VERNER: On that point, if it is a good verdict
3 obviously we are going to leave quietly. But if it is an
4 adverse verdict, I have asked just the mother to come down
5 as a representative of the family.

6 THE COURT: Okay. Sure. Now, Madam Bailiff, if you
7 will bring the jury out.

8 (Whereupon, the jury came into open court with the
9 verdict at approximately 6:55 p.m.)

10 THE COURT: Let the record reflect that the jury is
11 back in. Madam Forelady, it is my understanding that you
12 have reached a verdict on the charges?

13 MADAM FORELADY: Yes, sir.

14 THE COURT: And without telling me what the verdict
15 is on the charges, is the verdict unanimous, all twelve of
16 you?

17 MADAM FORELADY: Yes, sir.

18 THE COURT: If you will fold the verdict form and
19 hand it to the Bailiff, she will hand it to me to inspect.

20 (Whereupon, the Bailiff handed the verdict form to
21 the Court.)

22 THE COURT: Okay, Madam Clerk, would you publish the
23 verdict, please.

24 CLERK OF COURT: The State of South Carolina versus
25 Kenny Ruff. As to indictment number 2015-GS-36-594 which

1 charges the Defendant with murder. We, the jury, find the
2 Defendant guilty.

3 As to indictment 2015-GS-36-0595 which charges the
4 Defendant with armed robbery. We, the jury, find the
5 Defendant guilty.

6 As to indictment number 2015-GS-36-596 which charges
7 the Defendant with possession of a weapon during the
8 commission of a violent crime. We, the jury, find the
9 Defendant guilty.

10 Singed Tracy Boyd, foreperson. Ladies and gentlemen
11 of the jury, if this is your verdict please indicate by
12 raising your right hand.

13 (Whereupon, all jurors raised their hand.)

14 THE COURT: Let the record reflect that all twelve
15 raised their right hand. Does either side want individual
16 polling of the jury? By the State?

17 MR. STUMBO: None from the State.

18 THE COURT: The defense, individual polling?

19 MR. VERNER: Your Honor, we ask that the jury be
20 polled.

21 THE COURT: The clerk will call out your name and you
22 will need to indicate, do you request a verbal?

23 CLERK OF COURT: Yes, sir.

24 THE COURT: Okay, verbal. Your name will be called
25 out indicated if that is your verdict.

1 CLERK OF COURT: Travis Capron, is this your verdict
2 and is it still your verdict?

3 JUROR-MR. CAPRON: Yes.

4 CLERK OF COURT: Brandie Amick, is this your verdict
5 and is it still your verdict?

6 JUROR-MS. AMICK: Yes.

7 CLERK OF COURT: Tracy Boyd, is this your verdict and
8 is it still your verdict?

9 JUROR-MS. BOYD: Yes.

10 CLERK OF COURT: Erin Connor, is this your verdict
11 and is it still your verdict?

12 JUROR-MS CONNOR: Yes.

13 CLERK OF COURT: Claudia Davenport-Clark, is this
14 your verdict and is it still your verdict?

15 JUROR-MS. DAVENPORT-CLARK: Yes.

16 CLERK OF COURT: Cathy Boland, is this your verdict
17 and is it still your verdict?

18 JUROR-MS. BOLAND: Yes.

19 CLERK OF COURT: Phyllis Knight, is this your
20 verdict and is it still your verdict?

21 JUROR-MS. KNIGHT: Yes.

22 CLERK OF COURT: Ashley Anderson, is this your
23 verdict and is it still your verdict?

24 JUROR-MS. ANDERSON: Yes.

25 CLERK OF COURT: Paula Wise, is this your verdict and

1 is it still your verdict?

2 JUROR-MS. WISE: Yes.

3 CLERK OF COURT: Richard Banach, is this your verdict
4 and is it still your verdict?

5 JUROR-MR. BANACH: Yes.

6 CLERK OF COURT: Mary Wilson, is this your verdict
7 and is it still your verdict?

8 JUROR-MS. WILSON: Yes.

9 CLERK OF COURT: William Buchanan, is this your
10 verdict and is it still your verdict?

11 JUROR-MR. BUCHANAN: Yes.

12 THE COURT: Thank you very much, Madam Clerk. Ladies
13 and gentlemen of the jury, I want to thank you for your
14 jury service. Your verdict that you have reached does not
15 matter to me at all. What matters is that I have twelve
16 individuals who have taken this proceeding extremely
17 serious and have fulfilled their responsibilities as a
18 juror on this jury. And I am confident that the twelve of
19 you have. This has been a long trial, typically a week
20 long trial, some trials actually go longer. But some go
21 shorter than a week, so it is tough to come here early in
22 the morning and work all day, we have worked some long
23 hours a few nights. It is not an easy task serving on the
24 jury. But you have been very attentive, I know we had one
25 little lift as far as some folks kind of being sleepy

1 headed but other than that I have kept my eye on you and
2 you have been extremely attentive and you have performed
3 your service as a juror, all twelve of you, I believe
4 consciously. I thank you for that. Again, I don't thank
5 juries for their verdict because their verdict does not
6 matter to me. But I want someone to be conscious, fair
7 minded in serving on a jury and I believe that you have
8 done that. I hope this experience has been educational
9 for you and may be an experience that you have not had
10 before and that sometime down the road that you may like
11 to sit on a jury again, whether in the criminal arena or
12 whether in the civil arena. You are welcome, there will
13 be a sentencing proceeding in just a few minutes in this
14 case, you are more than welcome to remain for that. I
15 will just ask that you sit back in the gallery if you do
16 want to observe the sentencing. You certainly don't have
17 to. Probably some of you are ready to get home. And you
18 certainly can do that. Our deputies can assist you out
19 the court house or back in the back if you want to remain
20 for the sentencing proceeding. Madam Forelady, you will
21 need to stay for just a second because you will need to
22 sign the back of the three indictments concerning the
23 verdict. But I would like to shake the hands of my jurors
24 so when you exit I will shake your hand and thank you for
25 your jury service. You will be mailed a check in about a

1 week to compensate you for your time here, it will not
2 compensate a whole lot but it will provide some
3 compensation. If you need now a work excuse then we can,
4 get with one of the clerk's and they can provide that to
5 you. They can help you back here if you want to stay for
6 the sentencing.

7 (Whereupon, the jury was excused from open court at
8 approximately 7:00 p.m.)

9 THE COURT: Okay, this is the sentencing phase of the
10 proceeding of the State of South Carolina versus Kenny
11 Octavius Ruff. The record reflects that the jury just
12 came back a few minutes ago with a guilty verdict on all
13 three charges. And, Solicitor, I will be glad to hear
14 from you and if the family members concerning the victim,
15 if they want to address the Court they can, just whatever
16 you want to present will be glad to hear from you.

17 MR. STUMBO: Thank you, Your Honor, I will try to be
18 brief, it has been a long week. There is, let me get this
19 out of the way first. There is a significant record
20 particularly the qualifying offense that is the strike,
21 qualifies this case for a life without parole sentence.
22 Judge, that was an accessory before the fact of an armed
23 robbery. It involved the store, ironically, I think I
24 mentioned this Monday, the little Hispanic store that just
25 is right beside the salon. This was back in 2006. He

1 served some time on that, I believe about eight years, he
2 was released in 2014. And a little more than a year after
3 he was released this crime was committed as well, Judge.
4 So that is what qualifies him under our law for a
5 mandatory life sentence which we noticed him for that at
6 this trial. That is in Court's exhibit 1. Judge, the
7 conviction, just for the record was, the date of that
8 conviction was back in 2006, August the 8th was when he
9 was convicted, accessory before the fact of an armed
10 robbery. That was in Newberry County and was indictment
11 2005-GS-36-83. And under the statute, Your Honor, that
12 qualifies for this conviction for a life sentence.

13 THE COURT: Let me just stop. Mr. Verner, do you
14 agree that there is a prior conviction, accessory before
15 the fact of armed robbery which under the statute,
16 17-25-45 would be a most serious offense. Do you agree
17 that there is that conviction on his record?

18 MR. VERNER: Yes, Your Honor.

19 THE COURT: Okay. Thank you, sir.

20 MR. STUMBO: We did want to point that out to the
21 Court. There is other criminal records that goes back to
22 the year of 2000. There is a burglary, there is an arson,
23 there is a trespassing. But, of course Your Honor, none
24 of that is really relevant with the LWOP being a mandatory
25 sentence here. As far as victim impact, Judge, the two

1 ladies to my left are family members. We have Maria and
2 we have Leslie. And they would like to say something to
3 Your Honor as part of sentencing. I can't image the
4 tragic event that they have been through and the pain that
5 they have suffered since then. And will continue to have
6 the loss in their lives. They would like to address Your
7 Honor at this time.

8 THE COURT: Okay, give me one second. Madam Clerk,
9 do both of them want to address the Court?

10 MR. STUMBO: Just Leslie and she is going to address
11 Your Honor.

12 THE COURT: Madam Clerk, if you would swear the lady
13 in, please.

14 LESLIE FACIO, being
15 first duly sworn, testified as follows:

16 THE COURT: Yes ma'am, Ms. Facio. I will be glad to
17 hear from you.

18 MS. FACIO: This has taken a great toll on our family
19 and I now worry about my future. And nothing will ever be
20 the same, I have lost my hero, I was a huge Daddy's girl.
21 I lost my reason to continue in this life. And this has
22 taken a great impact on my mother as well. We are still
23 hurting and we will continue to hurt for the longest time.

24 THE COURT: The Court is very sorry for your loss.

25 MR. STUMBO: And, Your Honor, obviously the salon is

1 called Leslie's Hair Salon.

2 THE COURT: Right.

3 MR. STUMBO: And I am sure Your Honor has already put
4 those pieces together. This family is just devastated.
5 And, Judge, obviously we don't have any problem seeking a
6 life sentence in this case. And I will be honest with the
7 Court, frankly for the record, I considered noticing this
8 case today on the case. That is how offended I was by the
9 fact that Mr. Facio was as innocent of a victim as I have
10 ever had in my years as a prosecutor. And this crime was
11 senseless, it was absolutely unnecessary and we have no
12 problem asking the Court to send Mr. Ruff to prison for
13 the rest of his life.

14 THE COURT: Okay. Thank you, Solicitor. Mr. Verner,
15 I will be glad to hear from you and anybody else on your
16 side of the courtroom.

17 MR. VERNER: The State's notice to life sentence,
18 which we acknowledge receipt, unfortunately the Court's
19 hands are tied, I believe, on that issue. I would reserve
20 my right to file any motions within ten days. Your Honor,
21 if the Court is inclined, I don't know if Kenny has any
22 statements to give. Kenny, you want to say anything, you
23 don't have. I would ask the Court to entertain what Mr.
24 Ruff would say, Your Honor.

25 THE COURT: Mr. Ruff, I will need to have you sworn

1 in, please, sir.

2 KENNY RUFF, being
3 first duly sworn, testified as follows:

4 MR. VERNER: May I, just real quickly.

5 THE COURT: Yes, do you need to step back for a
6 minute?

7 MR. VERNER: I don't need to step back.

8 (Whereupon, Mr. Verner and the Defendant have a
9 conversation.)

10 MR. VERNER: Thank you, Your Honor.

11 THE COURT: Mr. Ruff, I will be glad to hear from
12 you, sir.

13 MR. RUFF: I want to say something, I am sorry what
14 happened to your father. I truly am. I did not take your
15 father's life but I am so sorry for what happened to your
16 daddy. I am so sorry, I am so sorry what happened to your
17 family, I truly am. I hate you are going through that.
18 It is harder for me to stand up here knowing, going
19 through that and hearing what you had to say. I wish the
20 verdict was different, I wish the evidence was different.
21 I am so sorry. I know you will never get over what
22 happened but I ask that you forgive me for what you are
23 going through. I should have came forward with
24 information, a whole lot of stuff that's not cleared up.
25 And I am sorry that I didn't come forward, two lives are

1 gone, mine and your father's. I am so sorry. I just want
2 to tell my mom, I am sorry. So sorry. I ask the Judge to
3 have mercy on me.

4 MR. VERNER: Judge, Ms. Teresa Sanders, his mother
5 ask permission, if the Court would entertain her
6 statement.

7 THE COURT: Will be glad to hear from you. I will
8 need to have you sworn in.

9 TERESA SANDERS, being
10 first duly sworn, testified as follows:

11 THE COURT: Yes ma'am, state your name for the
12 record.

13 MS. SANDERS: Teresa Sanders.

14 THE COURT: Ms. Sanders, I will be glad to hear from
15 you.

16 MS. SANDERS: I just want to say, I am sorry for what
17 happened to your husband and your father too. It is my
18 first time meeting them, seeing them, I live on Turner
19 Street, I go in and out of Turner Street, every day I see
20 the salon. I never met them, I wanted to meet them when
21 it happened but it wasn't a good time to go to her and
22 tell her I was sorry. My son was a suspect but I still
23 want to say to you and to have mercy on my son's life.
24 And just have mercy on them too and me. My heart is
25 heavy, this is a lot for me to deal with. Don't you think

1 I am rejoicing this, I am not rejoicing this and I have
2 asked, all mighty god, that is all I have right now, is my
3 Father above us and my son. Just have mercy upon him and
4 myself too. And I am a good mother. What he got accused
5 of, the way he got found guilty of, I didn't raise him
6 that way. And I am asking you from my heart, have mercy
7 upon him. I am not sad, if he did it it was right, it
8 wasn't right. If you have got to get justice done do it
9 fairly, spare his life too. And I am asking you that from
10 my heart. In the name of Jesus.

11 THE COURT: Mr. Verner, anything from your side?

12 MR. VERNER: Not at this moment, Your Honor.

13 THE COURT: All right. Thank you. Solicitor,
14 anything from your side?

15 MR. STUMBO: No more from the State.

16 THE COURT: Well, this is a tragedy all the way
17 around. Any time a life is taken, it is a tragedy for the
18 victim's family, it is a tragedy for the Defendant's
19 family. The law is pretty clear in this case in so far as
20 the sentencing and what is required. I would commend the
21 lawyers for their extremely hard work in this case, both
22 sides, solicitors and defense counsel, y'all have worked
23 really hard in preparing this case and trying this case.
24 And I would commend y'all for that. Mr. Ruff, on
25 indictment 15-GS-36-594, on the charge of murder. You be

1 committed to the State Department of Corrections for a
2 term of life without parole.

3 On 15-GS-35-595, the charge of armed robbery. Mr.
4 Ruff, you will be committed to the State Department of
5 Corrections of life without parole.

6 And on the possession charge, there will not be an
7 additional sentence but the sentencing sheet does note
8 that there was a conviction. The two life terms without
9 parole will run concurrent. Thank you very much, good
10 luck to you.

11 MR. VERNER: Your Honor, before we leave, I would ask
12 for permission to let him, while he is still in the
13 Court's custody, let him hug his mother before he goes.
14 He has got a life term to do.

15 THE COURT: I have no problem with that.

16 MR. VERNER: Thank you, Your Honor, for your
17 patience.

18 THE COURT: You say you want ten days to file some
19 posttrial motions?

20 MR. VERNER: Unlikely to but I would ask for it, Your
21 Honor.

22 THE COURT: Well, you have got it, you have got it if
23 you feel compelled to.

24 MR. VERNER: Thank you, Judge.

25 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 CERTIFICATE OF REPORTER

2
3
4 State of South Carolina)
5 County of Newberry)
6
7

8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Newberry, South
14 Carolina on the 9th through 13th day of January, 2017.

15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17

18 April 8 2017
19

20 *Joy Holston*
21

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026
24
25

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 869

COUNTY OF Newberry
STATE VS.
Kenny Octavis RuffAKA:
Race: AFRICAN AME Sex: M Age: 33
DOB: SS#:Address:
City, State, Zip:
DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330 of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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: Daniel Taylor SC Bar# Charles Ruff SC Bar#
Daniel, Taylor / David Shamba Defendant Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Life without Parole 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: 15-66-36-594☐ 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.☐ 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

§ 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 \$ _____

§ 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) \$ _____

TOTAL \$ _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender

Other: _____

JAN 23 2017

SC Court of Appeals

☐ 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.Presiding Judge Charles RuffJudge Code: 2167Sentence Date: 1/13/17Clerk of Court/ Deputy Clerk Elyse H. HallCourt Reporter: Joy Holston

SCCA/217 (07/2016)

SCANNED

870
STATE OF SOUTH CAROLINA

COUNTY OF Newberry
STATE VS.
Kenny Octavis Ruff
AKA:
Race: AFRICAN AME Sex: M Age: 33
DOB: SS#
Address:
City, State, Zip:
DL#: SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 15GS36-0594
A/W#: 2015A3620200338
Date of Offense: 8/26/2015
S.C. Code § : 16-03-0010
CDR Code #: 0116

SCANNED
WOP Noticed

SENTENCE SHEET

17-25-45

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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: David Skerbo 00588 SC Bar# Defendant Charles 10038 Attorney for Defendant -SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Life without parole 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: 15-GS-36-595
☐ 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.

☐ 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: _____

*Fine: \$
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$
§ 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 \$
§ 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) \$

TOTAL \$

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

RECEIVED

JAN 23 2017

☐ 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.

Presiding Judge 2167
Judge Code: 11/3/17
Sentence Date: 11/3/17

Clerk of Court/ Deputy Clerk Elizabeth Hall
Court Reporter: Jay Habalton
SCCA/217 (07/2016)

STATE OF SOUTH CAROLINA

COUNTY OF Newberry
 STATE VS.
Kenny Octavis Ruff

AKA: _____
 AFRICAN AMESex: M Age: 33

DOB: 03-10-1981 SS#: 5

Address: _____

City, State, Zip: New

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Weapons/Poss Weapon During Violent Crime,

IN THE COURT OF GENERAL SESSIONS

871

INDICTMENT/CASE#: 15GS36-0596

A/W#: 2015A3620200340

Date of Offense: 8/26/2015

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ 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: [Signature] 100588

Daniel, Taylor

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 1 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years
 and/or to pay a fine of \$ 100; provided that upon the service of 1 days/months/years and/or payment
 of \$ 100; 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.

☐ 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: \$ 100 plus 20% fee: \$ 20

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

§ 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 \$ _____

§ 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) \$ _____

TOTAL \$ _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

RECEIVED

JAN 23 2017

SC Court of Appeals

☐ 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

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2167

Sentence Date: 1/13/17

FEB 11 2019

Elizabeth P. Folk
Clerk of Court

FORM 5

FILED

STATE OF SOUTH CAROLINA

COUNTY OF Newberry, SC.

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

Henry Octavio Buff 29108

State of South Carolina

FEB 11 PM 3:06

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

Newberry SC 29108

1. Place of detention Newberry County Detention Center
2. Name and location of Court which imposed sentence Newberry County General Session
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) 15G536-0595 Robbery/Armed Robbery
- (b) 15G536-0594 Murder
- (c) 15G536-0596 - possession of weapon during violent crime

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) Robbery/Armed 1-13-17 1.5 Sentence without parole
- (b) Murder 1-13-17 1.5 Sentence without parole

1-13-17 1.5 sentence 15 years
 (c) Weapon Possession During Violent Crime

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

** found guilty by jury*

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. The State of South Carolina, in the Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Appeal Denied & Dismissed

MAY 1, 2018 - JUDGE STOKES

ii. _____

iii. _____

(c) the date of each such result:

i. November 28, 2017

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

*STRICKLAND v. WASHINGTON
 Cite 45 104 S. Ct. 2032 (1984)*

revised 12-99

- (a) During the Beginning investigations of my case
 (b) _____
 (c) _____

1 1. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Failure to investigate case and give legal assistance
 (b) _____
 (c) _____

1 2. Prior to this application have you filed with respect to this conviction:

- (a) South Carolina Court of Appeals
 any petition in a State Court under South Carolina Law? _____
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

1 3. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. South Carolina Court of Appeals
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. _____
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not

previously been presented:

(a) _____

(b) _____

(c) _____

My Attorney Did not see fit to do so.
stating he was ill had to go to
trial with. I ALSO sent stamped dated
clocked. letter's through the Clerk's Office.

7. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Charles Vernet Esquire 1219 Boyce Street
Newberry SC. 29108
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. _____
- ii. _____
- iii. _____

Preliminary
Hearing
TRIAL

19. State clearly the relief you seek in filing this application:

I'm seeking the Relief of A full And new Trial

20. Are you now under sentence from any other court that you have not challenged?

NO

2019-CP-36-00064

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

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

Kenny Ruff

S WORN to and subscribed before me this 8th
day of January, 2019.

John A. Br (L.S.)
Notary Public

My Commission Expires: 6-20-26

FILED
CLERK OF COURT
2019 JAN 28 PM 10:51

FILED
CLERK OF COURT
2019 FEB 11 PM 3:06

2019-CP-36-00064

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

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

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

Denny Dataris Bulb
Applicant

SWORN or affirmed to and subscribed before me this
8th day of January, 2019.

John K. B.
Notary Public

My Commission Expires: 6-20-26

FILED
2019 JAN 28 AM 10:50
CLERK OF COURT

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CLERK OF COURT

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VOID
FEB 11 2019
CLERK OF COURT

(a) During the course of my trial I was held at the Columbia, Alvin S. Glenn Detention Center on a safe keep from Newberry County. I was appointed public defender Charles Vernet who was the only public defender for Newberry County. I only met with Mr. Vernet once at the Alvin S. Glenn Detention after writing him through the Newberry County public defender's office as well as Clerk of Court for a period of over 5 months before he met with me to discuss the development of my case, he in return never responded. I had and have clock, dated and stamped letters as proof of every letter to Mr. Vernet in reference to my case. Mr. Vernet refused to allow me to be present for my preliminary hearing which was held at the Newberry city municipal court on 1507 Vance Street in Newberry County by Judge Pitts. I was mailed a letter, typed, by Mary W. Sims Clerk of Court, stating the hearing was to be held on a Monday, October 20, 2015 at 2:30 p.m. in which no one from Newberry County at the Alvin S. Glenn Detention transported me to be present. As Benjamin V. State, states I had a right to be. I

find out the facts of my case's status since Mr. Vernet
 had not advised me of. The Clerk's office mailed me
 a paper clock dated and stamped for November 2015,
 (November 2.) P.M. 1:47. It shows the judge's
 signature, charges, and states probable cause
 1.2.3 - murder, possession, Armed Robbery,
 Probable Cause - Vernet did not show up for
 hearing." My Court appointed attorney Mr. Vernet
 violated and denied me the Right of my 14th
 Amendment Due process, when we finally met I
 asked about it he told me I didn't need a pre-
 liminary hearing and it need be he'll give me one. Mr.
 Vernet refused to question witnesses on my behalf
 to help my case. I repeatedly filed for motions such
 as the Brady and listed all that I needed within
 it. Mr. Vernet tried to move forward stating it wasn't
 important and only a Pull five discovery. I kept
 writing Mr. Vernet to be removed as my counsel and
 to be taken in front of the judge to do so. He refused
 to respond to my letters to him through the Public
 Defender's office as well as Clerk's of Court. I
 submitted letters to the District Attorney as well.

Continue from page 2 question (a)

3

All Clock dated And Stamped through the Newberry County Jackie S. Bowers Clerk of Court. I still have copies in my possession As proof. Mr. Vernet told me I couldn't hire him And I couldn't represent myself. I asked Mr. Vernet to hire a private investigator to Review evidence such as photos, Amers, And Lab work, Mr. Vernet Refused. I only saw Mr. Vernet "3 times" Before going to trial in January 2011. While Being Detained At the Alvin S. Glenn Detention Center, I kept writing Mr. Vernet to have me moved Back to Newberry County so we can work on my case Better since he stated he wasn't Being paid to Drive to Columbia to visit About the case And he was using his own funds. I Had legal material such As my Rule five stolen from my property while At the Alvin S. Glenn Detention center By A inmate there name Anthony Dawdy who testified in my case, And wrote Mr. Vernet Ahead of my issues there, he Refused to Act upon Any Request. My Court appointed Attorney Mr. Charles Vernet allowed the State to Bring forth DNA evidence on the week of my trial And Didnot Subpoena the witness to testify, As well As Several Other key witnesses to my

my ⁸⁸² Court appointed attorney could not focus on my case
and give it the attention it needed because he was the
only public defender in Newberry County who had all the
case loads of others which hindered key elements of my
case. my Court appointed attorney mt. Vernet was very
ineffective in his counsel by attitude and action. mt.
vernet allowed jury members to fall asleep during my
trial even when the judge spoke upon it, which proves
also his ineffective nature because I was to be tried
by a jury of my peers family. mt. Vernet allowed
witnesses for the state who were convicted felons to
testify at my trial on the states behalf and a witness
whom he had previously represented, also with a
memory problem to take the stand against me. my
Court appointed attorney mt. Vernet allowed a jury
member to sit in on my jury who was the mother
of a corrections officer at the Newberry County
Detention center and who was also a family issue.
During my trial one of the states witnesses sat with
my family and discussed the prosecutors tactics and
admitted the prosecutor sent her to my family the night
before my trial ended, to collect information for them
since she was taking the stand on the states behalf.
mt. Vernet had no working relationship with me as
his client and refused to give me the loyalty his
Duty Required

my court appointed Attorney Mr. Charles Vernet
took me to trial drawing I made complaints
against him trying to have him removed as my
counsel, all letters to Mr. Vernet, judges and
prosecutors went ignored. I have copies of
each motion, letter, and complaints to the courts
prior to my sentence as proof from the Newberry
County Clerk's office. I was forced into a trial
with a lawyer who refused to give me the custody
and duty his service required. By my counsel's
actions I am able to prove his ineffectiveness.

201810
Sign: Jimmy Proff
201810

Date: 1-18-2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Kenny Octavis Ruff, #264816	)	Case No.: 2019-CP-36-00064
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR MORE
	)	DEFINITE STATEMENT
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State (Respondent), making its Return to the application for post-conviction relief filed on February 11, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. During its November 2015 term, the Newberry County Grand Jury indicted Applicant for murder (2015-GS-36-0594), armed robbery (2015-GS-36-0595), and possession of a firearm during the commission of a violent crime (2015-GS-36-0596). Assistant Public Defender Charles Verner represented Applicant at trial. Solicitor David Stumbo and Assistant Solicitor Taylor Daniel of the Eighth Circuit Solicitor's Office prosecuted the case. On January 9, 2017, Applicant proceeded to trial before the Honorable Donald B. Hocker. The jury found Applicant guilty on all three counts. Judge Hocker sentenced Applicant to imprisonment for life without parole.

Subsequently, Applicant filed a timely notice of appeal. Robert Dudek, Esquire, of the Office of Appellate Defense perfected the appeal pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. The Remittitur was sent on July 13, 2018.

II. Factual History

On August 26, 2015, Applicant, Kenny Ruff, called a cab company around 7:00 a.m. to go to his estranged girlfriend's house. (R. pp. 336, 352). On the way there, he called his girlfriend and they began arguing. (R. pp. 337-338, 343, 353). The cabdriver, Shawarrior Simms, testified at trial, that Applicant stated multiple times that he was going to kill her and also said "somebody's going to get killed" (R. pp. 337-338, 343-344, 353). Although the cab driver had brain surgery in 2012 and has trouble with his memory, he testified that Applicant was wearing a white shirt with a red stripe on it and khaki pants. (R. pp. 336, ll. 18-22, 352-354, 362-363). The cab driver also stated that Applicant had a pistol in his pocket that slid out onto the seat of the cab when he was trying to get out. (R. p. 339). At his girlfriend's house, Applicant knocked on her door but she didn't answer. (R. pp. 338-339, 355). Applicant went back into the cab but got out later off Chick Drive (R. p. 357). Security cameras captured him walking into Brothers BP and leaving around 1:33 p.m. (R. pp. 263, 269, 271, 480, 533, 647, 710-713). Applicant then walked into Leslie's Salon, which the victim, Robert Facio Ledesma and his wife own. (R. pp. 182, ll. 21-23, 265, 648, 713). The cab driver also testified at trial that she saw Applicant later that day before 1:00 p.m. walking off Main onto Turner Street and that he was wearing a black fleece and a doo-rag on his head. (R. pp. 345-346, 360-361, 366).

Surveillance cameras at Kunkle Oil, which was located near Leslie's salon, captured Applicant walking in to Leslie's and leaving at 1:41p.m. (R. pp. 207, 225, 227, 265, 279, 283, 287-289, 478-479, 498). In the video, he is seen walking out with a white bag in his hands. (R. pp. 267, 385-387, 498). The victim's niece, Elitania Martinez, was going to bring her uncle lunch that day like she normally did on Wednesdays but she was running late and arrived at Leslie's at 1:55 p.m. (R. pp. 182-183). Once she got there, she testified at trial that she walked through the salon and

couldn't find her uncle. (R. p. 183). She then continued to search the salon and found him on the floor face down with blood coming from his head. (Id.). She called 911 and police were dispatched and arrived at 2:02pm. (R. pp. 183, 187, 219, 302-303). Police discovered the victim was unresponsive and he was declared dead at the scene from bullet wound to the back of his head. (R. pp. 188, 196, 248). The police conducted a search and found that the register drawers were open and contained no money except for some change. (R. pp. 192, 480-481). Blood splatter was located on the wall near the victim indicating that the person shedding the blood, the victim, was at a low position at the time. (R. p. 248). Leslie's salon had video camera surveillance but the hard drive with the recordings was missing. (R. pp. 198, 246).

After investigating the scene, the police then tried to follow the trail that they believe the suspect took along Pike Circle. (R. pp. 203-205). They proceeded down the path and found a faceplate that belonged to the hard drive of the video cameras at Leslie's. (R. pp. 203-205, 382, 384). As they continued to walk, they ended up in Heritage Square where they noticed a security camera facing a dumpster. (R. pp. 211, 384-385). That camera recorded the Applicant there with a white bag at 1:46pm. (R. pp. 208, 385, 389, 649). After obtaining a search warrant, they searched through the dumpster and located a white bag that contained a landline phone that was taken from Leslie's and an iPad that belonged to the victim. (R. pp. 209-211, 390-394). Also in the bag was a black shirt that contained the Applicant's DNA on it and gunshot residue along the smashed hard drive that belonged to Leslie's video surveillance cameras. (R. pp. 209-211, 227, 390-393, 568, 582, 594, 603). A white cord that seems to belong to the landline phone was located on the trail. (R. pp. 394-395). The hard drive was so badly smashed that the police were worried nothing could be recovered but they proceeded to send the hard drive to the FBI. (R. pp. 393, 702-704). However, the FBI was able to rebuild the system and got the video from inside the salon. (Id.). In that video,

the suspect is seen walking from Kunkle's Oil to the salon. (R. pp. 509-511, 648, 704-708). He was wearing a black doo-rag, black shirt and jeans. (Id.). In the video, the suspect opened the door and pulled out his pistol and aimed it at the victim. (Id.). He then marched the victim into the back, asked him to unplug the hard drive for the cameras and everything went black on the camera. (R. pp. 509-511, 704-708, 715). Captain Goodman testified that the shoes in the video appeared to be Adidas and that was consistent with what the suspect was wearing in the Kunkle Oil video. (R. pp. 512-513). Later, the police determined that person to be Kenny Ruff, the Applicant. (Id.).

At trial, Investigator Richard Mercer testified that he collected the videos from the other stores near Leslie's and was able to positively identify Applicant in the videos because he had known him for years prior to the crime. (R. pp. 270-271). He also stated that he noticed Applicant changed multiple times throughout the different videos but that he had a doo-rag on his head. (R. pp. 263, 270, 272, 282, 297, 522, 525-527). Walter Bentley testified at trial that he located two pictures on Applicant's Facebook showing Applicant wearing a wave cap or doo-rag. (R. p. 663). Mercer further testified that he conducted a search of Applicant's home and found a small caliber shell casing, not an actual bullet, but a bullet that had been fired. (R. pp. 470-474). It was identified as a .22 caliber shell casing. (R. p. 473). On cross-examination, the defense introduced another potential suspect, known as "Womp", as well as a man on a bicycle that were also in the surveillance cameras at Kunkle around the time of the crime. (R. pp. 288-293). However, Mercer testified that he never spoke with "Womp" the day of the murder and that he felt confident in his identification of the man as Kenny Ruff, the Applicant. (R. pp. 293, 296). Emmanuel Richardson, nickname "Womp", testified at trial that he lives on Turner Street, the same street as Applicant or as he knows him as "Smurf" and that he's known him ever since he was born (R. pp. 304-305). Richardson also identified himself in the video walking to the BP store and stated that he saw

Applicant going into Mr. Leslie's store. (R. pp. 306-308, 320-326). On direct-examination, Richardson was asked what Applicant was wearing when he walking into the store and he said, "he had a black shirt and a doo-rag on his head. (R. p. 309, ll. 12-13). The Solicitor then asked him to identify the person he knows as Kenny Ruff, and Richardson identified Applicant. (R. pp. 311-312). The man on his bicycle that was in the surveillance footage also testified at trial; he was identified as Jose Galvez. (R. pp. 328-334, 498). He recalled August 26th and stated that he left his job to get a haircut at Leslie's. (R. pp. 328-329). He went into the store, said hello, then went to La Princesa nearby to buy cards and returned back to Leslie's. (Id.). However, no one responded or came to him so he left. (R. p. 333). Galvez then identified himself as the man on the bicycle in the video. (R. p. 329, ll. 21-24). He also testified that he didn't see anyone go into Leslie's. (R. p. 330). A gunshot residue test was conducted on Galvez but no gunshot residue was found. (R. p. 563).

Later on August 26th, the police apprehended Applicant. (R. pp. 273-278). Applicant was then interviewed by Captain Goodman and he admitted to being in Leslie's Salon but said he just wanted to check the place out. (R. pp. 485-489). Applicant also indicated that he had changed his clothes the day of the crime. (R. pp. 489, 491). Once he was in jail, he called his sister and those conversations were recorded. (R. p. 423). Applicant's sister, Angela Ruff, testified at trial but initially didn't want to answer questions because she didn't want to be involved. (R. pp. 426, 435-436). However, Angela Ruff did confirm it was her voice and her brother, Kenny's on the tape. (R. pp. 426, 435-436). On the tape, Applicant said he was in Leslie's on the 26th and that he was with Dale Bailey and Machiavelli. (R. pp. 431-432, 497). Applicant also said that Dale "snatched" the footage. (R. pp. 437-438). On direct examination, Angela admitted that she was able to look at the videos and see that it was Applicant. (R. p. 439, ll. 6-10). Angela also said Applicant wears

doo-rags from time to time and that he indicated to her that Dale shot the man. (R. pp. 439-441). Following hearing this story, Captain Goodman looked at the videos again but never saw three guys entering the salon as Applicant indicated. (R. pp. 507-508).

Aaryon Dowdy, an inmate at Alvin S. Glenn, who was in the Special Housing Unit with Applicant, also testified at trial. (R. p. 441). Dowdy explained that a mic, similar to an intercom system, is on the wall in the rooms and that it's always on. (R. pp. 443, 454-456). He testified that he used this to communicate with Applicant while at the detention center. (R. pp. 444-445). While speaking to him, Applicant told Dowdy his side of the story. (R. p. 446). Dowdy testified that,

He told me that he entered a hair salon, to, with intentions to rob. And he told me that he took a Spanish guy in the back and the guy was begging for his life. He shot him in the side of his head. He told me that when the police arrived, that he, the guy was blue in the face. He said that the police didn't know how he died until the autopsy because the caliber of the gun, because his hole had closed up on him. He also stated that he left the salon with a white bag. He also told me that took at least \$1,200.00 and a black monitor.

(R. p. 446, ll. 7-16). Applicant also told Dowdy he used a .22 revolver and that after the shooting, he went to BP and Wal-mart. (R. pp. 446-447). Police confirmed Applicant went to Wal-Mart that afternoon through a receipt that was found in his home, surveillance cameras and Applicant mentioned it in his statement to police. (R. pp. 174, 284, 468, 514-516, 520, 524). Video surveillance in BP also confirmed he went there after the shooting. (R. pp. 520-521). Dowdy further testified that he said he went to the mall to change clothes and that he gave the weapon to his nephew after the murder. (R. pp. 448-449). Following the investigation, Applicant was charged with murder, armed robbery and possession of a firearm during the commission of a violent crime.

III. Current Application

In his application for post-conviction relief, Applicant lists numerous allegations, which Respondent interprets as the following:

1. Ineffective Assistance of Counsel

- a. Failure to permit Applicant to attend Applicant's preliminary hearing
- b. Failure to investigate / prepare for trial
 - i. Failure to obtain private investigator
 - ii. Failure to investigate into incident where Applicant's "rule five" items were stolen by another inmate
 - iii. Failure to adequately communicate and visit client
 - iv. Failure to subpoena witnesses
- c. Failure to prevent DNA evidence from being introduced the week of Applicant's trial
- d. Failure to object to jurors falling asleep during Applicant's trial
- e. Failure to prevent mother of a Newberry County Detention Center corrections officer from serving on the jury

2. Prosecutorial Misconduct

- a. Prosecutor utilized a witness to obtain information from Applicant's family

Attached to this Return and incorporated by reference are the records of the Newberry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the appellate records (including the Record on Appeal), and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Allegations of Ineffective Assistance of Counsel

In his Application, Applicant alleges various claims of ineffective assistance of counsel. First, Applicant has alleged counsel was ineffective for: (1) failure to permit applicant to attend a preliminary hearing; (2) failure to investigate and prepare for trial; (3) failure to prevent DNA evidence from being introduced the week of Applicant's trial; (4) failure to object to jurors falling asleep during Applicant's trial; and (5) failure to prevent mother of a Newberry County Detention Center corrections officer from serving on the jury. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the

adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Allow Applicant to Attend a Preliminary Hearing

Applicant asserts that Verner was ineffective for failing to allow him to attend a preliminary hearing. However, there is no constitutional right to a preliminary hearing. State v. McClure, 277 U.S. 432 (1982); State v. Keenan, 278 S.C. 361 (1982). Furthermore, a preliminary hearing shall not be held if the defendant is already indicted by a grand jury. Rule 2(b), SCRCrimP; see also State v. Hawkins, 310 S.C. 50 (Ct. App. 1992). During its November 2015 term, the Newberry County Grand Jury indicted Applicant for murder (2015-GS-36-0594), armed robbery

(2015-GS-36-0595), and possession of a firearm during the commission of a violent crime (2015-GS-36-0596). Accordingly, Applicant's allegation is without merit.

Failure to Investigate / Prepare for Trial

Applicant alleges that Verner failed to adequately investigate and prepare for trial for allegedly failing to hire an investigator and for failure to investigate into an incident where "Applicant's 'rule five' items were stolen" by another inmate. To establish that counsel was inadequately prepared, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). Applicant fails to identify how this alleged lack of investigation or preparation has prejudiced him, nor does he present evidence of what counsel could have discovered that would have helped his case. Accordingly, Respondent submits that these allegations are without merit.

Additionally, Applicant alleges that Verner was deficient for "failing to subpoena witnesses" but fails to mention what witnesses Verner could and should have subpoenaed and what favorable information such witnesses would have provided. Without this additional information, it is impossible for Respondent to fully respond to this allegation.

Applicant also asserts that Verner was ineffective for failing to adequately communicate and visit him prior to his trial. However, Applicant fails to identify how this alleged failure prejudiced his case. Furthermore, “the brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008)). Accordingly, Respondent submits this claim is without merit.

Failure to Prevent DNA Evidence From Being Introduced the Week of Trial

Applicant asserts that Verner was ineffective for failing to prevent DNA evidence from being introduced at trial. Respondent interprets this allegation as referring to the black shirt containing Applicant’s DNA that was found at the scene of the crime. Respondent submits Applicant can satisfy neither requirement of the Strickland test as to this allegation. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Failure to Object to Juror Misconduct

Applicant asserts that Verner was ineffective for failing to object to jurors “falling asleep.” Respondent submits Applicant can satisfy neither requirement of the Strickland test as to this allegation. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Failure to Prevent an Improper Juror From Serving on the Jury

Applicant alleges that Verner was ineffective for failing to “prevent a mother of a Newberry

County Detention Center correction officer from serving on the jury.” Even if the mother of a corrections officer served on Applicant’s jury¹, Applicant has not and cannot allege that he suffered prejudice as a result. During *voir dire*, the trial judge asked whether there was any member of the jury panel who knew of “any reason whatsoever why he or she should not serve as a juror in this case with particular emphasis being placed on your ability to be fair and impartial to both the State or the Defendant. This is the key. If you believe for some reason that you cannot be fair and impartial to both sides please stand at this time.” (Trial Tr. 87). None of the prospective jurors stood, indicating that they all could be fair and impartial in Applicant’s trial. (*Id.*). Furthermore, the Court “must assume that the trial jury was legally and properly constituted, and that each and every individual member thereof was qualified to act as a juror as prescribed in the Constitution.” State v. Rasor, 168 S.C. 221, 233, 167 S.E. 396, 401 (1933). Accordingly, Respondent submits this claim is without merit.

IV. Response to Allegations of Prosecutorial Misconduct

Applicant asserts that the State committed prosecutorial misconduct by utilizing one of its witnesses to obtain information from Applicant’s family. However, Applicant does not show that he could not have raised this issue on appeal. Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). It appears that Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief.

Regardless of the propriety of raising this claim now on post-conviction relief, it is Applicant’s burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794

¹ It is not apparent from the record whether or not this assertion is accurate.

(1989). Respondent submits this ground for relief is without merit. However, the allegations concerning Applicant's prosecutorial misconduct probably raise questions of fact that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Motion for More Definite Statement

In her application, Applicant fails to set forth with specificity the facts and circumstances upon which several of his claim of ineffective assistance of counsel are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to his allegation that Verner failed to “subpoena witnesses.” Applicant fails to state what witnesses Verner could have and should have presented, and how such witnesses would have helped Applicant's case. Additionally, these allegations are not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCF, to require Applicant to provide a more definite statement of her allegations of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCF, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Therefore, Respondent moves

to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

V. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Request for an Evidentiary Hearing and Amended Return

WHEREFORE, having made its return, Respondent requests applicant, through his counsel, amend the application to provide the required specificity for the aforementioned allegations of ineffective assistance of counsel. Respondent further requests an evidentiary hearing solely as to the allegations which have been specifically and sufficiently alleged by Applicant.

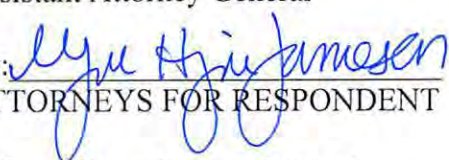
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

By:  Megan Harrigan Jameson

for ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 5, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
	)	
	)	2019-CP-36-00064
	)	
KENNY OCTAVIS RUFF, #264816,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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

**Overture E. Walker, Esquire
 Stoney & Walker, LLC
 1527 Blanding Street
 Columbia, South Carolina 29201**

DATED this the 5th day of June, 2019.

Caroline Collins, Administrative Coordinator
 For Respondent

DEAR

Clerk of Court Please Clock DATE AND
STAMP these Amendments to my PCR
And send a copy to the following."

* Ashley A. McMAHAN Esquire
Attorney at Law
P.O. Box 5501
West Columbia, SC. 29171

* Alan Wilson
Attorney General's office
Post office Box 11549
Columbia, SC. 29211

RECEIVED

OCT 25 2019

Referred to

Answered

Schill / PB

J.

Jerry Lewis Ruff would like to add collective actions to my post conviction Relief Application for the following claims so that my Application is Respectfully admitted and Accepted. On the grounds of ineffective of Counsel in which I was Represented By Charles Vernet Esquire of the Newberry County Public Defender's office on the date of January 9th - 13th of 2017 for the following charges:

- 1.) Murder - 2015 GS-36-0594
- 2.) Armed Robbery - 2015-GS-36-0595
- 3.) Possession of a weapon during the commission of a violent crime - 2015-GS-36-0596

RECEIVED
JAN 17 2017
CLERK OF SUPERIOR COURT
NEWBERRY COUNTY, GA

Amendments to PCT filed at February 11, 2019

State of South Carolina
County of Newberry, SC
Applicant, Kerry Octavio Ruff #201816
v.

State of South Carolina

Case No. 2019-CP-36-00064

Return And motion for more Definite Statement

offense charges

Misdemeanor - (2015-GS-36-0594)

Armed Robbery (2015-GS-36-0595)

Possession of a Fire Arm during the Commission of a
Violent Crime (2015-GS-36-0596)

FILED
2019 FEB 11 PM 2:26
CLERK OF COURT
NEWBERRY COUNTY, SC

902 In the following claims of ineffective of counsel my Court Appointed Attorney Charles Vernet Esquire failed to properly Represent me During the course of trial for the following claims:

a) failure to permit applicant to attend preliminary hearing on the date and time of Monday, October 26, 2015 at 2:30 p.m. to be held at the Newberry Public Safety complex located at 1507 Rance Street, Newberry. In the event of this claim, The defendant argues that he had a right to be present by law to be present at any form of trial to question any witness as well as review any evidence that the accused is being accused of. The pre-liminary hearing was held to review any evidence before being indicted on the charges of murder, possession of a weapon during the commission of a violent crime and Armed Robbery that was said to have happened on August 26, 2015 in the City of Newberry, SC in which the defendant was not transported to the hearing by the Newberry City Police Department nor the Alvin S. Glen Detention Center who was at that time housing him. The Defendant's Rights were violated due to his presence not being shown for that hearing. Kenan vs. State - states An Accused has the right to be present at such proceedings.

I was denied this Right Having my Hearing waived without Any knowledge of it. The defendant could have proved his innocence At that Hearing And time if Being Present. My court Appointed Attorney Charles Vernet instead worked with prosecuting agencies By giving them the time they Requested to find guilt on Mr. Ruff instead of Asking for evidence to Be presented At that Hearing By witnesses Against the Defendant or for the defendant. The preliminary Hearing should have Been Asked for An extension or Continuance until he met with his Client to discuss matters" of the case Against him." Due process was violated in this matter And manner. I Had no knowledge of the Hearing until later dates And paper work sent By the newberry county clerks office By Request of the Accused. Instead in a later time when I Asked my court Appointed Attorney Mr. Vernet He made claims He felt a Hearing wasn't needed And he'll give me one when And if he sees fit. By my presence At the Hearing I'm quite sure the outcome would And could have Been different. Instead I was indicted on all (3) Accounts without the proper procedures Being met And held.

B) Failure to investigate / prepare for trial.

Mr. Vernet failed to properly investigate this case by ignoring the fact his client Mr. Henry O. Ruff had written him several letters through the Clerk's office as well as to his office with claims of his Rule five Discovery motion being stolen by a witness who the state used against Mr. Ruff at trial. Inmate Arvon Dwyer some how was able to retrieve the motion without being housed at the Alvin S. Glenn Detention center along with Mr. Ruff for charges that had nothing to do with Ruff's case. Officers of Alvin S. Glenn was notified of this and tried to locate the missing documents. Officer J. White of the Alvin S. Glenn Detention center was the notified officer and should have been subpoena to court at Ruff's trial to testify to this claim when in fact he's mentioned in letter to Mr. Vernet about the incident in which I have a copy of all letters from the Clerk's office to Mr. Vernet on hand and possession of. This inmate was allowed to use that motion against Mr. Ruff at trial as if Mr. Henry O. Ruff had told him of the nature of the offenses against him. Mr. Vernet ignored letters from his client that stated threats, against him from inmates at the Alvin S.

905
Mr. Vernet, Allowed witnesses for the state such
as ~~showing~~ Sim's to Testify on the state's Behalf
against me on stand never objecting to the fact that Ms.
Sim's was caught lying about the identity of me on the
date of the incident stating how she knew me and came
into contact with me when she never truly saw or had
any contact with me, stating she had given me a ride
to a girlfriends home (Sharon Denise Scurry) who
lived at the Grant's Apartments complex. when in fact
it was a male driver whom had driven me to the
home of Ms. Scurry that morning. Instead of having
evidence such as the CAB's call log Book into evidence
as proof. Ms. Sim's even was shown photos of me
and could not identify me on stand once shown to
her. She admitted it was not me in photos yet she
was testifying that she had indeed had contact with
me on that day, of the incident. Ms. Scurry could have
corrected the lies being told on stand stating I made
threats towards Ms. Scurry on my cell phone when
in fact I had no cell phone due to it was lost on a
work van that same morning while enroute to a new
job in Gray Court (Country Fresh) in which my
parents Teresa & James Sanders looked for the phone
on the work van once I notified them while... in.

ms. scurry that same day (morning) of the incident.
 we never made it to the Gray Court Area in Laurens
 Due to a flat tire on the van which happened on
 the interstate, "we all had to wait for new
 transportation". ms. scurry could have testified to the
 fact ms. sim's was lying about any all threats due
 to we were not on BAS terms and in fact she
 and i had left her from grant's apartment in a
 cab driven by a male." ms. scurry was taken to
 palmetto point's apartment's and I to the location
 of my home on Turner street where i lives
 next door to my parents (1109 Turner street) and
 used their phone talking to Sharon Scurry and
 while trying to call the owner of the work van
 back about my phone which was never located!!
 had these people been subpoena to trial we could
 have easily discredited the state's witnesses.
 ms. sim's told my family (Angela Ruff) and
 Teresa Sanders that prosecution had told her
 to go to the home of my sister Angela Ruff.

to get information on how she (Mrs. Ruff) would
 Testify as well which was in violation of a fair
 Trial and leading witnesses and misleading to the
 Jury." Mr. Vernet never objected to the fact that
 officer Richard Mercer of the Newberry City Police
 Department could not identify me in photos shown
 to him at trial yet testified it was me in the same
 photos." Being used, Kevin Goodman as well of the
 same Department could not even identify me in a
 crystal clear photo taken at Walmart But in the
 same photo in a different location. Has Mr. Vernet
 questioned more thoroughly at trial and argued
 these facts. The outcome would have been different.
 Mr. Vernet didn't argue the fact that when Mr. Ruff
 was apprehended an illegal search and seizure
 was done on the vehicle he was in as a passenger
 and owned by Angela Ruff who never consented
 and items said to belong to Mr. Ruff was taken
 as evidence such as the Gray, Black, and Red
 Jordans, a new HTC. my touch phone and cash."

Mr. Verner, never once asked for the original Analyst's Report on DNA / Gun shot Residue!! in which was mentioned at trial But we never knew the name of that person nor saw the Results of. It was her superior who testified on her behalf stating she was on extended medical leave!! And she has the same Results as the original Analyst But did a Retesting and found evidence!! if that was the case where's the Reports and Testing!! Mr. Verner failed to object to those claims and had those issues been raised the outcome would've been different.

Mr. Verner failed to object to jury members being asleep during trial in which wasn't fair to me because if asleep there is no way the trial was being heard and prejudiced me, in other words those members already had me as guilty!! Mr. Verner should have had those members removed due to I was entitled to a fair and just trial.

Mr. Vernet Allowed prosecution to use Shawanna
 Sim's testimony of threats made by Mr. Ruff
 towards Mrs. Scurry as the leading factor to
 the incident of murder which had nothing to
 do with that day's crime." stating Mr. Ruff
 said he would kill someone day as a leverage
 in the trial to say the Defendant's target at
 his girlfriend is the reason that crime happen.
 Two separate incidents used for one" Had Mr.
 Vernet objected it could have given a different
 mind state of jury's way of thinking." Mr.
 Vernet never objected to Mrs. Sim's lying on
 the stand which was "perjury" not to the fact
 any other witness for the state." They all
 swore to tell the truth and nothing but the
 truth yet under oath went against statements
 and other claims at trial." Had these
 issues been risen the outcome would have
 been different.

I would like to subpoena the following people in Reference to this case".

- 1.) Sharon Scurry - 3455 Chick Drive Apt 83
Grant's Apartments.
Newberry, SC. 29108
- 2.) Angela Ruff - 1105 Turner Street
Newberry, SC. 29108
- 3.) Teresa Sanders 1109 Turner Street
Newberry, SC. 29108
- 4.) Richard Mercet. - Newberry City Police Department
- 5.) Kevin Goodman - Newberry City Police Department
- 6.) Robert Dennis - Newberry Sheriff Department
- 7.) Jennifer Niles - SLED
- 8.) Shawanna Sims
- 9.) Stephanie Stanley

I'm asking for the full Report¹ and Analysis
of the original Analyst in the DNA/gun shot
Residue. As well as the name of that person
And to Be Subpoena to Court!! to prove the
ineffectiveness of my Counsel.

Jenny Ruff #261816

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 8 th JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	Case No.: 2019-CP-36-00064
Kenny O. Ruff, #264816,	)	
	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina.	)	
_____	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on February 11, 2019, to add the following:

1. Ineffective Assistance of Counsel of Charles V. Verner, Esquire:
 - a. Failure to disclose plea offer to Applicant.
 - b. Failure to strike Dorothy Gladney as alternate after she stated Teresa Sanders was related to her family. *See* ROA Vol. I, page 81, lines 16-24; ROA Vol. I, page 96, lines 1-5.
 - c. Did not adequately meet with Applicant prior to trial. Applicant tried to fire trial counsel but could not get motion in front of a judge. Did not get opportunity to talk to Mr. Verner until almost 5 months after arrest.
 - d. Did not move for a new trial after the judge admonished several jurors for falling asleep. ROA Vol II, page 583, line 8 – page 584, line 2.

Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006); *see also Love v. State of South Carolina*, 428 S.C. 231, 834 S.E.2d 196 (2019).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

McMAHAN LAW, LLC

PO Box 50536

Columbia, SC 29250

803-219-1110

ashley@mcmahantaylor.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

November 27, 2022

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Zachary W. Jones
Assistant Attorney General
zacharyjones@scag.gov

This 27th Day of November, 2022.



ASHLEY A. MCMAHAN, ESQUIRE

Attorney for Applicant

1 STATE OF SOUTH CAROLINA) IN THE COMMON PLEAS COURT OF
2) THE EIGHTH JUDICIAL CIRCUIT
3) 2019-CP-36-00064
4)
5 KENNY OCTAVIOUS RUFF,)
6)
7 Applicant,)
8)
9 vs.) TRANSCRIPT OF RECORD
10 STATE OF SOUTH CAROLINA,)
11 Respondent,)

12 November 28, 2022

13 Abbeville, South Carolina

14 B E F O R E:

15 HONORABLE R. SCOTT SPROUSE, JUDGE

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

17 Ashley A. McMahan, Esquire
18 Attorney for the Applicant

19 Zachary W. Jones, Esquire
20 Attorney for the State

21

22

23

24

25

Lisa G. Amick
Official Court Reporter

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E X H I B I T S

(NO EXHIBITS INTRODUCED.)

1 MR. JONES: May it please the Court?

2 THE COURT: Yes, sir.

3 MR. JONES: This is the matter of Kenny Octavious
4 Ruff versus the State of South Carolina, that case number is
5 2019-CP-36-00064. My name is Zachary Jones for the State of
6 South Carolina. Mr. Ruff is present along with his counsel,
7 Ashley McMahan. During the November 2015 term, the Newberry
8 County Grand Jury indicted Mr. Ruff for murder, that's
9 indictment number 2015-GS-36-594, armed robbery, 2015-GS-36-
10 595, and possession of a firearm during the commission of a
11 violent crime, 15-GS-36-596. He was represented at trial by
12 Assistant Public Defender, Charles Verner, and the case was
13 prosecuted by Solicitor David Stumbo and Assistant Solicitor
14 Taylor Daniel of the Eighth Circuit Solicitor's Office. He
15 proceeded to trial on January 9th, 2017 before the Honorable
16 Donald B. Hocker, the jury found him guilty on all three
17 counts and Judge Hocker sentenced Applicant to imprisonment for
18 life without parole. He filed a timely notice of appeal and
19 Robert Dudek of the Office of Appellate Defense perfected the
20 appeal pursuant to Anders v. California. The South Carolina
21 Court of Appeals dismissed the appeal, and the remitter was
22 sent on July 13th, 2018. This post-conviction relief
23 application was filed on February 11th, 2019. And Your Honor,
24 at this point, I'll turn it over to Ashley McMahan, it's my
25 understanding that the amended allegations that Your Honor just

1 received a copy of are the allegations she'll be going forward
2 on today. Thank you.

3 THE COURT: Thank you. Ms. McMahan?

4 MS. MCMAHAN: Yes, Your Honor. At this time the
5 applicant calls Mr. Ruff to the stand.

6 CLERK: Put your left hand on the Bible and raise
7 your right. Do you swear or affirm the testimony you're about
8 to give the Court will be the truth?

9 MR. RUFF: Yes, ma'am.

10 CLERK: You may have a seat.

11 **DIRECT EXAMINATION**

12 BY MS. MCMAHAN:

13 Q Okay, Mr. Ruff. Did you file this PCR application?

14 A Yes, ma'am.

15 Q Okay. And who was your former attorney?

16 A Prior to that?

17 Q Yeah, who represented you at your trial?

18 A Oh, Charles Verner.

19 Q Okay. And when was he appointed to you?

20 A August of 2015.

21 Q So right after your arrest?

22 A Yes, ma'am.

23 Q Were you in the Newberry Detention Center at that time?

24 A No, ma'am. I was in Alvin S. Glenn.

25 Q Okay. And when were you taken to Alvin S. Glenn?

- 1 A Like eight days after the arrest.
- 2 Q But you, they are Newberry charges and Newberry had just
3 asked that they hold you there?
- 4 A Yes, ma'am.
- 5 Q Okay. So how many times, so you were at Alvin S. Glenn
6 the whole time prior to your trial?
- 7 A Yes, ma'am.
- 8 Q Alright. And how many times did Mr. Verner come visit
9 you?
- 10 A Once.
- 11 Q What did you guys talk about?
- 12 A He just brought me a half rule 5 motion, supplementals,
13 and told me he would be back to see me, that was it. He hadn't
14 prepared anything on the case, said he was waiting on evidence
15 as he stated.
- 16 Q Did he go over what he had with you, what he had brought?
- 17 A Not really. To be frank, no, ma'am.
- 18 Q So how long was that visit with him, do you remember?
- 19 A At least 30 minutes.
- 20 Q Do you remember what else you guys talked about?
- 21 A There was nothing else, ma'am.
- 22 Q Okay. So y'all just ---
- 23 A He, it was just nothing to talk about at the moment.
- 24 Q So how long after you were arrested did he come and see
25 you down there?

1 A It was more than five months, it was over five months,
2 approaching a year, at least a year.

3 Q Okay. So prior to that, had you tried to attempt to make
4 any contact with him?

5 A Yes, ma'am, I did.

6 Q And what was that contact that you tried to make with him?

7 A I wrote him via letters, I had the Public Defender's
8 Office in Columbia to write him, let him know that I was
9 requesting to speak to him and see him concerning the case. I
10 never got a response back from neither letter, they never
11 contacted him.

12 Q So when you said you wrote the Public Defender's Office in
13 Columbia, you meant the South Carolina Commission on Indigent -
14 --

15 A Yes, ma'am.

16 Q --- Defense?

17 A Yes, ma'am.

18 Q Okay. And so at this point, had you asked for him to no
19 longer be your attorney?

20 A After that point, yes, ma'am, I did.

21 Q So tell me about that.

22 A I had written him, and I explained to him why I was
23 feeling that way, and it was best for him to be off of the
24 case. I never got a response back, in fact, I had written
25 several motions up that I was asking him to draw up, he never

1 responded back to those as well. And I think it was like a few
2 months after, at least five, six months after that, he brung me
3 to Newberry County and they was supposed to get him off of my
4 case, but he never took me in front of the Judge.

5 Q So he brought you to Newberry County, what were you guys
6 talking about in Newberry?

7 A He gave me, that's when I did, what is it ---

8 Q The Schmerber?

9 A Schmerber test.

10 Q So you were brought to Newberry to do a Schmerber motion?

11 A Yes, ma'am. And to have, originally, I thought it was to
12 get him off the case, that's what we was discussing when I was
13 there. And then Kevin Goodwin from the City Police Department?

14 Q Yeah.

15 A He said he was getting, Schmerber, how do you say it?

16 Q Schmerber.

17 A Schmerber test and that's what happened.

18 Q Okay. So for the Scherber hearing, so you never actually
19 had the hearing in front of the Judge about the swab?

20 A No, ma'am.

21 Q Okay. But you had talked to him at that particular time
22 about having him relieved?

23 A I talked to Charles Verner about trying to get him off the
24 case. Basically, he was trying to coach me not to get him off
25 the case, that's what he was doing. He was stating that they

1 wasn't going to appoint me another attorney because he was the
2 only public defender in Newberry County and I didn't have a
3 paid attorney, that's what he was referring to.

4 Q So were you under the impression that there were no other
5 public defenders available or appointed attorneys available for
6 Newberry County?

7 A Well, in Newberry County, I knew there wasn't any more
8 attorneys, he was the only one at that time.

9 Q Okay. And so what happened then, did you agree just to go
10 forward with him or ---

11 A No.

12 Q --- how did that go?

13 A No. I was shocked that I was going back to Alvin S. Glenn
14 after the Schmerber test. I was under the impression that I
15 was going back to the County of Newberry and going back in
16 front of that Judge to dismiss Charles Verner.

17 Q Okay.

18 A Because as I stated, I had it with me, and I had written a
19 Judge, supposedly a chief Judge, to get him off the case as
20 well as the solicitor. Every letter I wrote Charles Verner, I
21 sent copies to the solicitors.

22 Q Okay. So then when you get there at trial, let me back
23 up. When did you know you were going for trial?

24 A Like two weeks prior, not even two weeks prior, the week
25 of.

1 Q So how did you find out?

2 A They transported me back to Newberry County, Alvin S.
3 Glenn did, and upon me being transported there, I made it
4 straight to the Courthouse, and that's when Charles Verner told
5 me that they was preparing the next day, actually, to do my
6 trial. And I was shocked then because we hadn't discussed my
7 case, we haven't no defense or anything like that.

8 Q Had y'all talked about any plea offers or anything?

9 A He mentioned a plea offer and when I asked him what it
10 was, he told me it didn't matter because I be over, worry about
11 the time that was up and to take the trial. So that was the
12 reason I was under the impression that whatever time that he
13 was referring to was years that no one could do.

14 Q And what are you serving now?

15 A Ma'am?

16 Q And what is your sentence right now?

17 A I got a life sentence.

18 Q So you got life without parole?

19 A Yes, ma'am.

20 Q So you definitely won't be able old and gray when you
21 leave there. Okay. So how many letters do you think you've
22 wrote him?

23 A Several, at least a handful.

24 Q You talking about five?

25 A That I have in my possession?

1 Q Yeah.

2 A At least five letters.

3 Q Possibly more?

4 A Oh, it was more.

5 Q Okay. But you know the ones that you have copies of are
6 at least five?

7 A Yes, ma'am.

8 Q Okay. So let's just start your trial. So you said you
9 were brought back to Newberry County the day before the
10 trial?

11 A Yes, ma'am.

12 Q To talk to Mr. Verner. And what did you guys talk about
13 then?

14 A Well, when I came back, I was asking him what was the
15 defense going to be like that he was preparing for. And
16 basically, he really didn't have a defense to me. If he had a
17 defense, it was something that he knew only to himself, and I
18 was just going to catch on to it. But basically, I knew we was
19 reading over the discovery and he's, I was reading over
20 discovery, he was telling me he already knew what was in
21 discovery, but there was things missing out of discovery that I
22 was pointing out to him and he was telling me don't worry about
23 it. If he needs to get it, he'll obtain it.

24 Q Like what were a couple of things that you remember?

25 A Statements.

1 Q Statements from whom?

2 A Alonza Ruff, my nephew.

3 Q So y'all didn't really, you didn't realize at least until
4 the day of the trial that he had made a statement?

5 A No.

6 Q Until he got on the stand?

7 A (Nonverbal response).

8 Q So the nephew's statement, anybody else's?

9 A He didn't know about Emanuel Richardson who was formally
10 called Whomp, I didn't know that Whomp is a person the cops had
11 talked to that was never mentioned, like Chief McClurkin, at
12 the time, Robert McClurkin, he was the one who supposedly had
13 went down to a school that Mr. Whomp had worked at and
14 questioned him about who went into the salon and the
15 whereabouts of that person, I never knew about that until
16 trial.

17 Q So let's talk about that then. There are apparently some
18 videos and pictures involved with who was entering the salon,
19 right?

20 A Yes, ma'am.

21 Q And there were other pictures from other places, did you
22 get all those? Were you able to view those with Mr. Verner
23 before the trial?

24 A I was able to view a disc of the BP of the Brother's
25 Faststop, but I didn't view a disc of the Kunkle Oil.

1 Q Okay.

2 A And there was a disc that I seen that was supposed to be
3 the inside of the crime scene, I think it was a still shot.

4 Q Okay. So you saw some still photos from inside the crime
5 scene?

6 A Yes, ma'am.

7 Q And you saw a video from the BP?

8 A Yes, ma'am.

9 Q You didn't see anything from Kunkle Oil?

10 A No, ma'am.

11 Q Was there anything about Kunkle Oil discussed at your
12 trial?

13 A Yes, ma'am.

14 Q Okay. And what did you hear about on that
15 one?

16 A What we discussed about Kunkle Oil at the trial was
17 several suspects and one testimony from Richard Mercer, but
18 before I speak on that what was spoken of was there was a short
19 sleeve black guy who was going into the salon and coming out of
20 the salon. What was discussed about Kunkle Oil was it was
21 pointed directly across the street from the crime scene and
22 that's what they went off of initially because they said that
23 the video footage inside of the crime scene was missing and the
24 camera wasn't working so they was using that video from Kunkle
25 Oil since it was right directly placed at the crime scene. And

1 the timestamps, they was using the time on that to figure out
2 who the suspect supposedly was.

3 Q What was the issue with the timestamps?

4 A During the course of the trial, that's when the issues
5 came about the timestamps. They be saying they wasn't right,
6 they was off like 12 seconds he was saying, BP timestamps and
7 Kunkle Oil timestamps.

8 Q Both of them were wrong?

9 A They was saying they was wrong.

10 Q Okay. The police did testify, or somebody testified about
11 the timestamps at your trial, right?

12 A Yes, ma'am.

13 Q About them being wrong?

14 A Yes, ma'am. It was Walter Bently who works for the
15 solicitor's office, he was the one, he said that he had
16 installed the camera footage at Heritage Square and that one
17 was right that he said. He said the Kunkle Oil and the BP was
18 wrong and the Walmart's was right. But we know for a fact that
19 the camera footage inside the salon was like two hours off, way
20 off.

21 Q Did you and Mr. Verner talk about all that prior to going
22 into the Courtroom for your trial?

23 A Timestamps?

24 Q (Nonverbal response).

25 A I asked him did he ever get a private investigator

1 on it to check those timestamps at Kunkle Oil and BP and, you
2 know, and he never did. But he never knew until the course of
3 the trial about the timestamps was being off. It was my
4 question to him did he ever get any private investigators on
5 the case to check all the timestamps.

6 Q So the first time either one of y'all heard about these
7 timestamps being off was in the trial?

8 A Yes, ma'am.

9 Q Okay. Let's talk about the beginning of your trial. So
10 you're pulling a jury, and there was a juror named Dorothy
11 Gladden that got pulled as your alternate who at some point had
12 said that she was related to Teresa Sanders, do you remember
13 that?

14 A Yes, ma'am.

15 Q And she was seated as an alternate in your trial, do you
16 remember that?

17 A Yes, ma'am.

18 Q And did you ever ask Mr. Verner or tell him or expect him
19 to strike her or anything?

20 A Yes, ma'am. I had told Mr. Verner about her and another
21 lady that was on the trial, I can't remember her name, but her
22 daughter worked at the county jail.

23 Q Okay.

24 A But she used to date one of the, our first cousin.

25 Q Okay.

1 A But we didn't have good blood, it was kind of strife
2 between ---

3 Q But that lady was struck, wasn't she?

4 A No, ma'am. She served, too.

5 Q Okay. There was one individual that said she was your
6 cousin, though, and she was struck.

7 A That was Margie Austin, that was my mom's niece.

8 Q Okay. But then, so you had Dorothy Gladden who ended up
9 being an alternate and then you had the other individual ---

10 A They all stayed.

11 Q And what was her name, the other person's name, not
12 Dorothy, but the other girl?

13 A I can't remember her name.

14 Q But earlier when the Judge was asking questions, she said
15 that her daughter ---

16 A Oh, I knew her daughter, yeah, I knew all of them.
17 Sanders.

18 Q Okay. And so going on with the meeting with the jurors,
19 at one point, what happened with the jurors during trial?

20 A They was falling asleep.

21 Q Okay. And the Court said something to them, didn't
22 he?

23 A Yes, ma'am.

24 Q Did Mr. Verner ever make a motion for a new trial based on
25 that?

1 A My Court appointed attorney, Mr. Verner, did not make a
2 motion for that, he didn't object to it, he never said anything
3 which displeased me because if you got people in the jury
4 falling asleep, then they not paying attention to what's going
5 on in the Courtroom.

6 Q So after the Judge talked to them that first time, did you
7 see any of them kind of start nodding off again?

8 A Except for one, I nudged Mr. Verner, and nothing happened.

9 Q So there was one other individual afterwards that still
10 looked like they were sleeping?

11 A Yes, ma'am.

12 Q Okay.

13 A They had a sidebar or something.

14 Q Okay. What else did Mr. Verner not do adequately during
15 your trial that you felt he should have done?

16 A I felt that Mr. Verner should have objected to the fact
17 that when he was questioning Richard Mercer who was an
18 investigator on the case for identifying the suspect of the
19 crime, he asked Mr. Mercer was it a crystal clear picture of
20 the suspect who they was saying was me. And Mr. Mercer
21 testified that it wasn't crystal clear picture of me when you
22 stated that it was me that you was making a positive
23 identification of.

24 Q Okay. Let's back up because your yours and all that, so I
25 need to know exactly who you're talking about.

1 A I'm speaking of Mr. Verner questioning Richard Mercer who
2 was an investigator in the case.

3 Q So Mr. Mercer is on the stand and Mr. Verner is asking him
4 questions?

5 A Yes, ma'am.

6 Q Okay. And one of the questions that Mr. Verner
7 asked was is this a crystal clear photo of the killer,
8 something like that?

9 A Of Mr. Ruff, yes, ma'am.

10 Q And then what happened?

11 A Richard Mercer stated no, it's not a crystal clear
12 picture, no, sir, it is not a crystal clear picture. And
13 further, I felt that he should object to the fact that asked,
14 when the solicitor asked Mr. Mercer who was the suspect, the
15 figure going into the salon, Richard Mercer stated that it was
16 Whomp. And he asked him several times, the solicitor asked Mr.
17 Mercer several times was he sure, was that what he was
18 testifying to today, and he stated yes. And then he thought
19 for a moment when the solicitor asked him, he asked Mr. Mercer,
20 how long have you known Kenny Ruff, that's when he switched it
21 and started saying it was Kenny Ruff.

22 Q So do you feel like Mr. Verner probably should have
23 objected based on asked and answered or something ---

24 A Yes, ma'am. The answer that Richard Mercer was giving, I
25 think that he should have objected to his answer, his line of

1 answering because his line of answering wasn't true, he was
2 making identification of two different people which you're
3 saying is one.

4 Q Did you feel like Mr. Verner adequately addressed that
5 issue that Mr. Mercer couldn't really identify the killer in
6 his closing?

7 A No, ma'am, I did not.

8 Q Were there any situations Mr. Verner like addressing your
9 hands and stuff in Court?

10 A Yes, ma'am. Upon his closing arguments, Mr. Verner made a
11 statement to the jury, look at the hands of a killer. I felt
12 that that was very improper because you referring to me as a
13 killer but you representing me. And when you said, Mr. Verner
14 said it's based on a photo that was issued of a hand that was a
15 still shot from the crime scene. I have tatoos on both hands,
16 the still shot had no tattoos.

17 Q So was he holding up a picture and ---

18 A He didn't present the picture, he stood me in front of
19 the, Mr. Verner stood me ---

20 Q So you felt also that the picture should have been held up
21 that showed there were not tattoos ---

22 A Yes, ma'am, showing there was no tattoos.

23 Q But he didn't do that, instead he just had you stand up
24 there?

25 A Yes, ma'am.

1 Q Okay. So anything else you want the Court to know today
2 about Mr. Verner and what he should have done?

3 A Yes, ma'am. I felt like, I know that he should have done
4 this differently. I felt like Mr. Verner was wrong in allowing
5 the testimony of the supervisor over her colleague who she was
6 saying supervising Mrs. Standles. She was saying that ---

7 Q Was this for the DNA or the GSR?

8 A The GSR.

9 Q Okay.

10 A She was stating that the colleague was on extended medical
11 leave. We don't know who that colleague, Mr. Verner never knew
12 who the colleague was, I never knew who the colleague was,
13 never seen the chain of custody. She ain't doing this
14 colleague's final test, and what she erred on, how she erred,
15 we never seen that. We got the supervisor testifying saying
16 that you erred, and she supersedes you with her conclusions
17 because of her expertise. I felt like Mr. Verner should have
18 objected to that because she was just saying that your findings
19 was correct and hers was wrong. She's not there to testify to
20 her own findings.

21 Q So you felt like there was some possible hearsay issue?

22 A Yes, ma'am.

23 Q Any other issues that I forgot to mention?

24 A Yes, ma'am. Clothing, again, it goes back to the
25 clothing. The black long sleeve shirt that was tested, I have

1 documents showing that whatever was presented, and I don't know
2 because the documents doesn't state it, but they were saying
3 that no comparison DNA was needed and, or it'd be sent back to
4 the submitting agency in 90 days if they couldn't obtain it.
5 So with that piece of paper, that let me know that that DNA,
6 the shirt was already sent, it was sent back after 90 days,
7 this was in 2015.

8 Q Okay. So you're talking about the black long sleeve shirt
9 ---

10 A Yes, ma'am.

11 Q --- from the victim?

12 A From the suspect.

13 Q Okay.

14 A But Richard Mercer testified to the solicitor and Mr.
15 Verner that it was a long sleeve green shirt and not a black
16 shirt.

17 Q So you felt like because the report said they tested a
18 black long sleeve shirt then the police officer said it was a
19 green long sleeve shirt, that that wasn't adequately addressed
20 in Court?

21 A The police was saying that it was a black shirt, but
22 Richard Mercer, who was one of the investigators on the case
23 stated that it was a long sleeve olive green shirt.

24 Q Okay. And so you felt like Mr. Verner should have
25 addressed that ---

1 A Yes, ma'am, he should have addressed that because you're
2 giving different mixed identification who you saying the
3 suspect is and what the suspect wore into the crime scene.
4 We've gotten several different identifications. Captain Robert
5 Dennis gave identifications to SLED when he looked at cameras
6 and said that it was a short sleeve dark shirt. My attorney
7 didn't object to that, but he tried to get them, Mr. Verner
8 tried to get them to read the statement. The Judge wouldn't
9 allow it in front of the jury because he said it was a
10 supplemental report instead of a statement of findings of what
11 they were seeing on the camera at the crime scene as related to
12 the SLED and FBI as evidence, he didn't object to that. So I
13 felt like there was some evidence that wasn't allowed for the
14 jury to see or hear.

15 Q Well, also, would you agree with me that perhaps, you
16 know, that issue was preserved for appeal if he didn't
17 adequately object to all of that?

18 A Yes, ma'am.

19 Q What else did you want Judge Sprouse to know about your
20 request?

21 A Well, the fact that Mr. Verner, the statement from my
22 nephew, we didn't get that statement and I felt like he should
23 have objected to that whether it was used or not, you knew that
24 that was evidence that was withheld back because I asked Mr.
25 Verner myself to file a motion for Mr. Verner to have the full

1 discovery to get all written statements, whether it was
2 written, orally ---

3 Q So you didn't get that statement, you alluded to it
4 earlier in your testimony, but y'all didn't know anything about
5 that statement ---

6 A No, ma'am.

7 Q --- until your nephew was basically on the stand, right?

8 A Until, before he was on the stand, actually. When he got
9 on the stand, when the nephew got on the stand, he didn't
10 testify or was asked about his statement. He testified to what
11 we was doing when I was coming back to Newberry from Columbia.
12 He testified to whether I was drinking or coherent enough
13 basically for the Jackson v. Denno.

14 Q Jackson versus Denno?

15 A Yeah, that's right.

16 Q Yeah, he did. But did Mr. Verner ask him anything
17 about the statement or try to impeach him with that
18 statement?

19 A No, ma'am, he didn't. No one never asked, the solicitor
20 nor Mr. Verner. The Judge only asked the solicitors was there
21 a statement in existence and if so, it needs to be handed over
22 to Mr. Verner. The solicitor handed it over to Mr. Verner, but
23 he didn't present it to the full court.

24 Q And he didn't fully cross examine your nephew about that
25 statement, right?

1 A No, ma'am, he was never cross examined, never questioned
2 period by the State.

3 Q And did Mr. Verner, to your recollection, ever make a
4 motion to exclude that statement ---

5 A No, ma'am.

6 Q --- based on Brady, okay.

7 Q Anything else we need to touch on?

8 A Yes, ma'am. There was a shell casing, a 22-caliber shell
9 casing. Autopsy, Ms. Ross stated that there was a 22-caliber
10 firearm that supposedly had killed the victim. They found a
11 shell casing at my home, a spent shell casing, and they had
12 said that the shell casing was at least two weeks old, but no
13 ballistics was done on the shell casing. However, the
14 solicitor was stating that it was the shell casing from the
15 crime scene. Mr. Verner never objected to that which was wrong
16 and misleading to the jury because no ballistics was done on
17 that shell casing, no fingerprints was found on that shell
18 casing, but you allowed the solicitor to say that it was the
19 shell casing that came from that crime scene, the bullet was
20 fired from that particular shell casing.

21 Q So the solicitor in your case, when did he say this, in
22 closing?

23 A No, ma'am. It was during the trial ---

24 Q Okay. So ---

25 A --- during the evidence when they was going

1 through the evidence showing and was presenting, they was
2 showing it to the jury what they had and what they was using,
3 that timeframe.

4 Q Was it at the beginning or the end of the trial, do you
5 remember?

6 A In the beginning.

7 Q Okay. So the solicitor is telling the jury, look, we've
8 got this spent shell casing that came from the Defendant's
9 house?

10 A Yes, ma'am.

11 Q But that was never actually put into evidence, anything
12 about the spent shell casing?

13 A Oh, he had it in the Courtroom, but I don't think he had
14 put it into evidence.

15 Q There's nobody that testified to this ---

16 A No, ma'am.

17 Q Okay.

18 A The fact that, when it comes down to that also, with the
19 day that I was apprehended, I was pulled over, they searched,
20 Richard Mercer searched the vehicle and obtained some gray and
21 burgundy and black Jordan shoes that I had and some clothes out
22 of a bag and a taser. However, Mr. Verner didn't object to
23 this because, I feel he should have objected because it was
24 illegal search and seizure, no one gave him any permission to
25 search the vehicle, it wasn't my vehicle at all.

1 Q You're talking about the search when you and your nephew
2 were driving around?

3 A Yes, ma'am. And I asked Mr. Verner why wasn't he bringing
4 up the fact that that was an illegal search and seizure, Mr.
5 Verner told me it would open doors for other issues. I felt
6 like he should have objected to the fact that ---

7 Q Well, at one point he did bring up that he was going to
8 have a motion regarding the truck, right? But did that ever
9 actually get heard?

10 A No, ma'am.

11 Q But the car actually belonged to your sister, right?

12 A Yes, ma'am.

13 Q Anything else that we need to address?

14 A No, ma'am.

15 Q Okay. So answer any questions the Attorney General has,
16 okay?

17 A Yes, ma'am.

18 **CROSS EXAMINATION**

19 BY MR. JONES:

20 Q Thank you, Mr. Ruff. I just have a few questions. So you
21 testified that Mr. Verner brought you the Rule 5 discovery?

22 A Not a full Rule 5.

23 Q Did he, but he did bring you something and you went over
24 it?

25 A He brought me some discovery.

1 Q Okay. And then at some point you said you wanted Mr.
2 Verner off the case?

3 A Yes, sir.

4 Q But he told you, he advised you not to try to get him
5 removed from the case?

6 A He stated to me that, he was basically getting me to keep
7 him on the case and stated that they wasn't going to relieve
8 him of the case because there was no one else to represent me
9 and I wasn't prepared for trial.

10 Q And when did this conversation happen?

11 A When I came for the, how you say, Schmerber?

12 Q Yes.

13 A For the oral swab, it was that day.

14 Q Alright. So that ---

15 A They ---

16 Q So that was an additional meeting you had with Mr. Verner
17 in addition to the time he brought, was that the same time or a
18 different time than when he brought you the discovery that he
19 went over with you?

20 A No, he brought the discovery the first time ---

21 Q Okay.

22 A --- only the second time when I came, that was for the
23 Schmerber test.

24 Q Alright.

25 A Yeah. That was per Kevin Goodwin, I think he

1 had a warrant or something to do the Schmerber test, that was
2 that day.

3 Q And those all took place prior to trial?

4 A Yes, sir.

5 Q Alright. Now, as for the Kunkle Oil video, I believe you
6 testified that they used the Kunkle Oil video because they
7 thought initially that the video in the store was lost?

8 A Yes, sir. They used Kunkle Oil because they didn't have
9 any video footage of the crime scene.

10 Q Alright. But then it turned out that they were able to
11 obtain video footage of the crime scene?

12 A Months later.

13 Q Right. The ---

14 A But it wasn't a video, it was still shots.

15 Q Right. Have you seen the Kunkle Oil videos now? Or seen
16 footage or still shots from them?

17 A I seen the still shot.

18 Q Alright. Can you explain how seeing those prior to trial
19 would have changed your outcome in any way?

20 A Yes, sir. It would have changed a whole lot because you
21 got investigators, two investigators looking at the same
22 footage. You got Captain Robert Dennis with the Newberry
23 Sheriff's Office saying that the person going into the salon
24 has on a short black t-shirt and dark, and some jean pants.
25 You got Richard Mercer who was for the city police department

1 looking at the same crime footage going to the crime scene
2 saying that it's a dark olive-green long sleeve shirt. You got
3 Kevin Goodwin who was an investigator also on the case with the
4 city police department looked at the same footage saying that
5 it's a long sleeve black t-shirt going up to the crime scene.
6 Then you have Richard Mercer saying that it's a man named Whomp
7 and not Kenny Ruff in the beginning of his line of questioning
8 going to the crime scene. If the jurors would have heard and
9 seen that, it would have changed a whole lot because you giving
10 identification of a man ---

11 Q Well, isn't it fair to say that Mr. Verner did raise those
12 issues with the witnesses? He brought up that the, I mean, the
13 transcript shows what it shows, but do you recall Mr. Verner
14 asking witnesses about the difference between the green and
15 black shirt and the ---

16 A He asked Robert Dennis; I recall he asked Robert Dennis
17 about the color scheme because Robert Dennis was trying to say
18 it was a different color scheme played by the lights at the
19 store or dust on the camera and that type of thing. He was
20 asking that still to the fact Richard Mercer was asked several
21 times, is this what you're testifying to today that it was a
22 long sleeve olive-green shirt, Richard Mercer said yes. That's
23 his testimony, nothing can change that.

24 Q Right. Alright. And what color was the shirt that was
25 found in the white bag that the DNA was taken from?

1 A They said it was black.

2 Q Alright.

3 A I don't know what was found in the bag besides what they
4 said.

5 Q Okay. Now, the issue of the timestamps, of the different
6 videos. You did mention those to Charles Verner prior to the
7 trial?

8 A I asked him could he get an investigator, a private
9 investigator on the case to check all the timestamps prior to
10 the trial.

11 Q Alright.

12 A We didn't learn about the timestamps that was off as they
13 say per say until the course of the trial.

14 Q Right. So at trial, there was testimony about the
15 difference between the timestamps of the different videos?

16 A Yes, sir.

17 Q Alright. Mr. Ruff, I think that's all the questions I
18 have for you right now. Thank you.

19 THE COURT: Any redirect?

20 MS. MCMAHAN: Just briefly.

21 **REDIRECT EXAMINATION**

22 BY MS. MCMAHAN:

23 Q Regarding the timestamps, is your testimony that you
24 didn't realize how off those times were until the trial?

25 A Yes, ma'am.

1 Q But you knew prior to trial you had wanted somebody to
2 look into that?

3 A Yes, ma'am.

4 Q Okay. And then just, I think I just forgot to ask this or
5 if I did, I didn't clear it up. When Mr. Verner was visiting
6 you at Alvin S. Glenn, did you ever talk to him about a bond
7 hearing or anything?

8 A I asked Mr. Verner as I remember I brought up the bond
9 hearing and he said I couldn't get a bond.

10 Q Okay.

11 MS. MCMAHAN: I have no further questions, Your
12 Honor.

13 THE COURT: Anything further for this witness?

14 MR. JONES: No, thank you, Your Honor.

15 THE COURT: Thank you, sir, you can step down.

16 MS. MCMAHAN: Your Honor, at this point the Applicant
17 rests.

18 THE COURT: Okay.

19 MR. JONES: Thank you, Your Honor. I'd like to call
20 Charles Verner to the stand.

21 CLERK: Do you swear or affirm the testimony you're
22 about to give the Court will be the truth?

23 MR. VERNER: Yes, ma'am.

24 **DIRECT EXAMINATION**

25 BY MR. JONES:

1 Q Thank you, Mr. Verner. How many times did you meet with
2 Mr. Ruff prior to trial?

3 A I don't have an exact number. When he was at Alvin S.
4 Glenn, I did get an email in December of 2015 from the Richland
5 County Public Defender saying that he was a Newberry County
6 case, that he wanted a public defender, so I met him two or
7 three times in Columbia, I guess. And then he was brought to
8 Newberry on occasion, but he was in Newberry at least a month
9 before trial ---

10 Q Alright.

11 A --- so sometimes it was every day, sometimes it was
12 stretches because he was in jail from August, 2015, I think he
13 went to trial in 2017 so he was in jail for two years ---

14 Q Alright.

15 A --- or a year and a half.

16 Q So in the weeks prior to trial, you met with him several
17 times?

18 A Yeah. He was in jail; he came back to Newberry at least a
19 month before going to trial.

20 Q Alright. Did you go over discovery with him?

21 A Yes, I did. I think at some point in December of 2015 I
22 requested the discovery that the prosecutors had at the time,
23 and then made copies and took him everything we had to
24 Columbia.

25 Q Alright. And did you bring, so you say you brought

1 him everything you had?

2 A Well, not video, paper.

3 Q Right.

4 A Obviously, maybe some copies of pictures, but you know,
5 this case has a lot of video and stuff like that that I
6 wouldn't have been able to take into Alvin S. Glenn for him.

7 Q Right. Did you receive any letters from Mr. Ruff?

8 A Yes. Ruff, yes.

9 Q Oh, Ruff, I'm sorry.

10 A In Newberry it's Ruff.

11 Q Okay. And did he at any point move to relieve you as his
12 counsel?

13 A I don't recall, I mean, I wouldn't be surprised, but I
14 don't know.

15 Q Alright. You don't recall then whether you discussed with
16 him about the practicality of relieving you as counsel or...

17 A Oh, I wouldn't be surprised, you know, this was a big
18 case, emotional case, you know, dealing with him for, you know,
19 over a year or so, and had represented him in the past, so I
20 mean, I wouldn't be surprised if he had from time to time ---

21 Q Oh, alright.

22 A --- you know, but for the most part I got along pretty
23 well with him, so I didn't have any real personality, and I
24 don't remember him actually asking for another attorney.

25 Q Okay.

1 A I wouldn't be surprised if I saw something before trial,
2 but if it wasn't in the transcript in the beginning of the
3 trial then ---

4 Q Alright.

5 A Generally, if somebody has asked to relieve me and it is
6 going to trial, we'll reraise that motion the day of trial
7 before it starts.

8 Q Alright. Do you recall any plea offers made by the
9 State?

10 A No. He was a, Kenny had an armed robbery conviction in
11 2006 and he had just gotten out of SCDC about a year before he
12 picked up this charge, so they LWOP'd him, life without parole
13 notice almost from the beginning. And I don't recall what the
14 plea was, but I think if it was a plea, it was probably
15 straight up murder.

16 Q Alright. And what did the, did you attempt to negotiate a
17 more favorable plea?

18 A I'm sure I did, yeah.

19 Q Alright.

20 A I probably would have loved to do armed robbery or
21 voluntary manslaughter, but the, this was one almost from the
22 beginning the State was locked in, you know, they sent us an
23 LWOP notice almost right off the bat.

24 Q Alright. Now, can you explain the defense that you
25 prepared to present at trail?

1 A Well, it's tough because the shooting was on video, but
2 the actual killing or just shy of it, it's on video, the,
3 really the defense was that you can see Kenny entering the
4 store across the street from the salon where the man was
5 killed, but there was a discrepancy about the color. When
6 Kenny's walking in the parking lot and walked to the store, he
7 was clearly wearing a green sweatshirt, and when the person
8 walks into the salon, which is on the video, but it's
9 silhouetted against the front glass door, so it's, you know,
10 darker, you can't really make out the video of him when he
11 enters the store, but has a, appears to have a black long
12 sleeve shirt on. And of course, there's another video of the
13 room where in the back where the man was killed, and that's
14 also on the video, and the killer had a black shirt. Now, I
15 think they did find a green sweatshirt in Kenny's, you know,
16 bag. And I can't remember the, I think they did talk about
17 that possibly the video of the store could have distorted
18 colors, what they said to some extent do. And there was also
19 some eyewitnesses who knew Kenny and said they saw him walking
20 into the salon, so it was a tough case. But basically, our
21 argument was that the man who killed the shop owner appeared to
22 have different clothing on that Kenny had.

23 Q And did you ask witnesses about the discrepancy in
24 the color of the clothing that you observed on the
25 videos?

1 A I think we brought it up because several different
2 witnesses talked about the ---

3 Q And the issue of the timestamps of the videos, did you
4 bring that up at trial?

5 A We did, but that, but the timestamp was largely
6 irrelevant, there were multiple videos, they all had different
7 timestamps on them. In practicality it's pointless because you
8 can see the man who killed the person walk into the store at a
9 certain time and that there's a constant video on the store the
10 entire time and nobody enters the store after the Hispanic man
11 is killed until his daughter comes and finds the body there,
12 and you can see, you know, the commotion and the police car.
13 But there's constant video surveillance of the store where the
14 man was killed, and the killer walks in the salon and whether
15 it was 12:15 or 12:30 is really irrelevant because nobody else
16 walked into the store between the man who killed him and his
17 daughter finding the body.

18 Q I see.

19 A So but yeah, there were different timestamps, each video
20 had a different timestamp.

21 Q Alright. And you, you brought that up also with the
22 witnesses?

23 A To what extent, I don't remember, but I'm sure it came up
24 because my investigator and I, we actually walked from Kenny's
25 house to the store. In fact, I know we argued about the

1 timestamp because there was actually, we took video footage of
2 me walking from the edge of the Kunkle Oil Company which would
3 have been the direction Kenny would have been accused of coming
4 from. And my assistant video taped me and how long it took to
5 walk the same distances and so we measured the distance. I
6 assume we must have been talking about the timestamp and at the
7 time to do such and such because we actually filmed me walking
8 down several streets and I think played it for the jury or at
9 least on cross.

10 Q So you mentioned your private investigator. Can you
11 explain in a little more detail the extent of your
12 investigations in this case?

13 A Well, it wouldn't be private, it would have been an in-
14 office investigator ---

15 Q Oh, alright, sorry.

16 A --- but the, well, we talked, he and his family. We went,
17 obviously, to the scene, looked at that, we actually walked the
18 distance from Kenny's house to the store. We went, you know,
19 took time measurements of how long it would have taken him to
20 go places and then just, a lot of video footage. But the
21 actual killing is on video of the actual person walking in the
22 store is on multiple different store videos. Kenny is clearly
23 on the video at the store across the street, and I think that's
24 probably what the timestamp issue would have been because he
25 would have been there. But there's video of him walking down

1 the street towards the gas station, and of course, there were
2 eyewitnesses who testified they saw him.

3 Q Now, do you recall Richard Mercer testifying about
4 somebody named Whomp or nicknamed Whomp?

5 A I think that might be the eyewitness that we alleged had
6 been drinking, is that the one?

7 Q Oh, well, I was just trying to recall, at some point there
8 was another suspect in the investigation, do you recall that?

9 A Off the top of my head, no ---

10 Q Alright.

11 A --- but the, well, yeah, I think they did actually have
12 other people who were, I wouldn't call them suspects, but a
13 person of interest, and who had either alibis or on
14 video.

15 Q Alright.

16 A But I think when, you know, obviously, when a lady finds a
17 dead body, they look at all the surveillance video, and there
18 were other cars that had pulled up into the parking lot, there
19 are several businesses in that parking lot, but there were
20 other cars that had pulled up about that same time and the
21 officers had identified them and had spoken to them ---

22 Q Alright.

23 A --- and found, I guess, that they had...

24 Q Do you recall the interaction between the Judge and the
25 jury regarding jurors nodding off?

1 A I remember one time Judge Hocker admonished, it was kind
2 of directed at one juror, but he had kind of admonished the
3 jury panel it was an important case, to pay attention, that he
4 had seen somebody nodding his head.

5 Q Did you think that that was a grounds for a mistrial?

6 A No.

7 Q Can you tell us about the evidence seized from the search
8 of the vehicle?

9 A I don't remember if anything was admitted at trial from
10 the vehicle, so I can't ---

11 Q Alright.

12 A I remember he was arrested in his vehicle some period
13 thereafter, but the, I don't know what was admitted from the
14 car, I don't remember anything being admitted from the vehicle
15 in the trial.

16 Q Alright. Thank you. Did Mr. Ruff request a bond hearing?

17 A I'd be surprised if we didn't talk about bond, but I don't
18 remember any bond hearings. It was an LWOP case, so if it came
19 up, I would have indicated that, you know, at least for a year,
20 it's very unlikely that the Court would grant bond.

21 Q Alright. I think that's all the questions I have for you
22 at this time. Please answer any questions that Ms. McMahan
23 has.

24 THE COURT: Ms. McMahan, your witness.

25 **CROSS EXAMINATION**

1 BY MS. MCMAHAN:

2 Q Now, you said that you probably met with him at Alvin S.
3 Glenn and brought him all the paper stuff and not the video.
4 Do you remember when you would have shown him the video?

5 A I refreshed my recollection, and I did, I had his mother
6 over several times, and we showed video and I know I had stills
7 from video. The, I can't remember when Kenny would have first
8 been able to watch the video of it. I may have had a laptop at
9 Alvin S. Glenn, but I don't think so because Alvin S. Glenn has
10 a little bit stricter policies about bringing stuff.

11 Q Would you have made an effort to show him the video prior
12 to trial?

13 A Oh, yeah, he saw the video many times because we talked
14 about the clothing the person was wearing, who it looked like,
15 who it could have been. We watched the video many, several,
16 several times where it was clear, and, you know, multiple
17 videos, a lot of videos.

18 Q I apologize for being so close to you ---

19 A That's alright.

20 Q I don't have my glasses on right now, so I can't see very
21 well, so I'm trying to get close enough to see you.

22 A That's okay.

23 Q Okay. Earlier you said you wouldn't be surprised if he
24 had asked to relieve you as trial counsel, and I wrote down is
25 it because you said it was a big and emotional case?

1 A Kenny temperamentally can be hot or cold. And I like
2 Kenny, I've seen him curse out the prosecutors in person during
3 plea negotiations, so he's temperamental. The, overall, I
4 liked him and thought I had a pretty good understanding with
5 him, but I wouldn't be surprised if Kenny had talked about
6 hiring somebody or doing something else particularly as we came
7 close to trial. But the, you know, and, of course, I had known
8 him from the first time, two times prior to this charge, so you
9 know, Kenny can be hot, temperamental, volatile, but, you know,
10 he can also be very easy going too, so I'd be amazed if he
11 didn't ---

12 Q At least try to relieve you?

13 A Yeah, talked about it.

14 Q Is it often that your clients will try to relieve you just
15 based off of personality conflicts?

16 A If a client actually says, you know, he wants a new
17 attorney, I almost always put them up in front of a Judge as a
18 pretrial motion and just turn the floor over to them. Judge,
19 my client has a motion about relieving, but the, I mean, it's
20 been my habit for years to put the client up before a trial if
21 he ever says he wants to fire me or wants a continuance for
22 reasons that I don't agree with, I mean, for years and years
23 and certainly at this time would have ---

24 Q If you were relieved for some reason and another
25 attorney appointed, are there other attorneys that got

1 pulled into cases within Newberry County?

2 A Sure.

3 Q Are those mainly for conflicts or just ---

4 A Would have been, if I had been relieved, he probably would
5 have gotten, probably Russ Brown at that time would have been
6 the conflict attorney ---

7 Q Okay.

8 A --- from Columbia. But, yeah, if I had to be relieved, he
9 probably would have gotten through the 608 appointment system.

10 Q And then you said, plea offers, you didn't recall any, and
11 he was obviously given LWOP for that conspiracy to commit
12 armed robbery in 2006 that you alluded to earlier. But you
13 said probably the plea would have been straight up to murder,
14 do you recall if that offer would have been murder with LWOP
15 taken off the table ---

16 A Right.

17 Q --- straight up?

18 A Right. I do not remember the offer, but I do, I did read
19 over some of the original LWOP notices, and I do have some
20 memory of it. I think the offer was murder without LWOP
21 straight up.

22 Q And do you recall if you ever communicated that to Mr.
23 Ruff?

24 A I'm sure I would have.

25 Q So you never would have alluded to, you know, you

1 probably aren't interested because you'll be old and
2 gray?

3 A Well, I would have explained to him murder carries a 30-
4 year mandatory minimum. I don't take the position when I'm
5 talking to clients, almost rarely do I take the position about
6 taking a plea like that or not. I would just convey the offer,
7 convey the risk, what it means, but I don't say I need you to
8 take the plea, or I need you not to take the plea.

9 Q Do you remember during your conversations with him
10 indicating you wanted to try to get some plea deals out of this
11 or was his position always from the beginning I didn't do it, I
12 wasn't there?

13 A Well, I mean, I don't take those as absolutely
14 inconsistent, I would have done both. Even if I'm going to
15 trial, in the very beginning I'm talking about plea offers ---

16 Q Okay.

17 A --- right from the beginning, too. So I mean, and even if
18 my client, Ashley McMahan, said, I'm not pleading guilty to
19 nothing, I would still talk to the prosecutors and say you
20 know, are there plea options available and I would go back to
21 my client and say, you know, I know you're not interested, but
22 here's the plea offer, you know, here's what it means to you.
23 But ---

24 Q And under state case law you're required to tell somebody
25 about a plea offer even if they don't want it?

1 A Well, I mean, even if it wasn't state law, I think it
2 would be improper not to convey a plea offer.

3 Q Okay.

4 A Even if my client said, I'm absolutely going to trial, I
5 would still convey, you know, here's what's on the table and I
6 would still tell them, you know, what the danger of being
7 convicted or ---

8 Q So you referenced the fact that you had gotten a phone
9 call, I guess, from SCCID that there was an individual at Alvin
10 S. Glenn on a Newberry charge that wanted to talk to their
11 attorney?

12 A I got an email from the assistant public defender ---

13 Q Oh, okay.

14 A --- saying he was in jail at Alvin S. Glenn and was
15 requesting an attorney, that was December of 2015.

16 Q Oh, so that would have been a Richland Public
17 Defender?

18 A Right.

19 Q Okay. And then, so that would have been at least, what,
20 four months after he was arrested? He was arrested in
21 August.

22 A I think August 20th, give or take, so about, my first
23 notation is an email from Richland County Public Defender
24 saying he was there asking for an attorney. So that's truly
25 probably when I would have opened up the case.

1 Q Okay. So typically, how do you get your clients, is it
2 somebody goes over to the jail and sees who's arrested and asks
3 who needs an attorney kind of thing?

4 A For in jail clients at that time, particularly, my
5 investigator was at the jail once or twice a week and we just
6 took the policy and I still do that anybody who can't get out
7 of jail on a bond is pretty much automatically falling under
8 the public defender screening, whether they put in an
9 application or not. You know, I will go to see people and they
10 actually have to kind of fire me or not, say I don't want you,
11 but everybody who can't make bond on criminal charges I will go
12 see ---

13 Q Okay.

14 A --- or get a notation, or my investigator at the time
15 would have called and, you know, anybody that wants to see the
16 public defender, come on up.

17 Q Okay.

18 A The, now, Kenny would have been in max at that point which
19 is a little bit different because it wouldn't have been general
20 population, but still, they, you know, anybody in max who wants
21 to speak to a public defender, you know, they can call them
22 out. Or the jail has also a fairly efficient mail system to my
23 office where people, the inmates will write on the grievance
24 notes for the inhouse jail, and they would pass them forward to
25 the jail administrator and they would send them to me ---

1 Q Okay.

2 A --- you know, so and so wants to speak to you, so and so
3 wants to plead, whatever. Kenny was different because Kenny
4 was placed almost immediately at Alvin S. Glenn, so he would
5 not have been somebody we would have come in contact with at
6 the jail ---

7 Q Okay.

8 A --- and so we would have first picked up on him from the
9 email from Richland County.

10 Q So the clerk, and I'm just trying to understand this, so
11 the clerk wouldn't just give you a list of all the people that
12 were arrested at that time, you, typically it's just whoever
13 you guys have contacted at the jail who you know already
14 qualify because he can't make bond?

15 A I do get a list of, you know, theoretically, everybody
16 that's been arrested, but you know, people are screened out
17 from being charged or dismissed or remanded or hire a private
18 attorney ---

19 Q So y'all just don't go through the list of people, you're
20 waiting for them to come to you with the \$40.00 or if they're
21 in jail?

22 A Not of, if they're out of jail, it's a little bit
23 different, but if they're in jail, we find them, we ask them if
24 they want a lawyer.

25 Q Okay.

1 A We don't make them apply, we just say, you know, you're in
2 jail, you can't make bond, do you need an attorney.

3 Q Yeah.

4 A If he says I'm hiring somebody I'll say alright, but if
5 you can't hire somebody, you know, let me know.

6 Q Okay. To let you or your investigator or through the mail
7 system ---

8 A Yeah. You know, so that's the, it's works also different
9 ways, too, you know, sometimes family members come in and call
10 us ---

11 Q Yeah.

12 A --- sometimes people are brought over for bond hearings or
13 other type hearings, and they speak to the attorneys at Court.
14 But the general philosophy or the way it was done is when we're
15 at the jail ---

16 Q You start walking ---

17 A Well, we don't start walking around, but we tell the CO's,
18 you know, tell the people if they want to speak to a public
19 defender, put their name on the list, we're here. And the same
20 thing in max, you know, anybody wants to speak to the public
21 defender, you can, or they notify us through jail mail, or
22 their mom calls us or somebody applies for them.

23 Q So the problem with Mr. Ruff is after eight days, he was
24 sent to Alvin S. Glenn?

25 A He, before he applied, he was sent to Alvin S. Glenn,

1 but there was no application or request for an attorney ---

2 Q Okay.

3 A --- prior to the public defender in Richland ---

4 Q Okay.

5 A --- saying he's a Newberry case.

6 Q And then was the salon video, was it a full video of the
7 whole incident or was it like screen shots?

8 A There are, well, there were two videos, there are really
9 three videos affecting the salon. One is the across the street
10 video that is actually not the salon video, but probably the
11 convenient store ---

12 Q Okay.

13 A --- that is pointed at the salon that, so there's a video
14 from the outside of the salon, then there is a video of the
15 front door of the salon facing outside which I said is a glass
16 door and there are glass windows. And then there is a video of
17 the back room where the man was actually killed, and in this
18 case, the man who killed the store owner disconnected the video
19 camera system and took it, put it in his bag, took it with him,
20 walked through a little wooded path into the apartment complex
21 behind the store which is a hundred yards or so.

22 Q Is this the Tremont Apartment?

23 A The Tremont Apartments, but the man who killed the store
24 owner took the, disconnected the video system in the store,
25 took it to the Tremont Apartment system, smashed it up with

1 some kind of hammer or hard tool or threw it down, but he broke
2 it and then threw it into the dumpster. And the police found
3 it and sent it to Quantico FBI and the FBI managed to save the
4 portions of the video. And I can't remember if the back video
5 was stills or, I think, they may have just been able to save
6 some stills.

7 Q But it wasn't like a full, you press play, there's a whole
8 video? But parts of it ---

9 A I think the one at the front part of the store was a
10 video.

11 Q Okay. But that was from like Kunkle or somebody else?

12 A Well, there was a video from Kunkle facing it, I think
13 there was a video that, I can't remember if the video of the
14 front door was video or stills because I remember, you know,
15 they actually introduced pictures of the stills. Maybe, I do
16 recall kind of vaguely now, I think the video in the back they
17 were only able to save individual pictures of it, not the
18 actual video. But I'm not a hundred percent sure, but the
19 computer had been damaged pretty ---

20 Q Pretty heavily?

21 A --- heavily, so I mean, I know Quantico couldn't save all
22 of it, but they did save more than we needed.

23 Q What was the deal with the 22 shell casings that were
24 alluded to by, I think it was Stumbo in his opening that might
25 have been taken from his house?

1 A I can't, I think maybe that was a similar caliber, I don't
2 think they connected that bullet to the actual killing, but I
3 think they indicated that was a similar caliber spent shell.

4 Q Do you remember if there was any evidence of that that was
5 admitted during the trial, or was that just alluded to in the
6 opening?

7 A Well, if he did it in opening, I'm sure he put it in or
8 tried to or moved to. But the, I don't remember the arguments
9 before the introduction of that spent caliber. I do vaguely
10 remember it, how it came into trial, I don't know off the top
11 of my head.

12 Q And you said, earlier you alluded to that you had an
13 investigator or assistant, I missed the answer about the
14 investigator, was that someone that was working for you?

15 A That would have been an employee of mine.

16 Q Okay. Was this the same thing as the assistant?

17 A Yeah, that would be an assistant.

18 Q Those are the same people that you were referencing?

19 A Yeah.

20 Q Okay. Was that somebody an employee of the law firm or of
21 the public defender's office?

22 A Public defender's office.

23 Q And then ---

24 A Well, it would have been mine, I would have paid for it,
25 so I mean, I'm one in the same. I've got a contract, you know,

1 and payment, so I mean, theoretically, I would have paid her as
2 an individual lawyer, not as a public defender in the system.
3 And I don't think we were under the unified system at that time
4 anyway, I think we were just county contracts, but I pay her.
5 In 2015, I don't think ---

6 Q Or maybe right at the beginning of it?

7 A That's in the general ---

8 Q Yeah.

9 A --- frame of it, but still, I can't remember, but still I
10 would have gotten just a payment to me, and I would have paid
11 her, and I would have had to have a 1099 ---

12 Q Okay. I got you.

13 A --- so it wouldn't have been an employee of the public
14 defender system.

15 Q Do you remember in trial motions you did actually move to
16 have a motion in limine regarding the search of the truck? It
17 was just before the jury was pulled.

18 A I apologize, I don't remember the motion in limine.

19 Q Well, you moved on page 98 and made a reference that you
20 still had one more outstanding pretrial motion and that was for
21 the search regarding the truck. Ultimately, that motion was
22 never heard. Do you remember why you didn't bring it back up
23 or...

24 A Off the top of my head, I don't think anything was
25 introduced from the truck at trial. I mean, if I thought

1 something substantive was coming in, I'm sure I would have
2 moved to suppress it. I really don't remember crucial damaging
3 evidence, I mean, the videos was, you know, the heart of this
4 case.

5 Q At some point in your closing, you reference the hands of
6 a killer, I think you heard Mr. Ruff testify to that. Do you
7 remember anything about that?

8 A There was a screen shot admitted into evidence of the
9 killer holding the gun against the man's head right before he
10 pulls the trigger, and they had made a, kind of large picture
11 of the last still shot right before the man was killed with the
12 gun being held against his head, and I think probably our point
13 was that you could, and it may have been backwards or not, but
14 the man it looked like had a tattoo on his hand and Kenny
15 didn't ---

16 Q Or vice versa?

17 A --- or vice versa, but I think that argument would have
18 been, look at the man's hand, that's the hand of the killer.
19 And there's either a tattoo on it or there's not a tattoo on it
20 and look at the hand of my client and it was the opposite. I
21 can't remember if Kenny had the tattoo, and the man didn't or
22 if the man had the tattoo and Kenny didn't. Now, of course,
23 they disputed it and said that, you know, it would have been
24 too dark to see clearly the hand and I think that they tried to
25 say you could see the outline of the tattoo or something.

1 Q Okay. The juror sleeping. Obviously, you had referenced
2 the fact that it happened earlier, and Judge Hocker admonished
3 them or sending them on their way, I think, for a break, or
4 lunch break or something. Do you recall Mr. Ruff nudging you
5 or pointing out again that there was another juror asleep
6 sometime during the trial?

7 A He may have, and I've got kind of a vague memory that
8 maybe he did, but I didn't notice anybody sleeping.

9 Q If you had noticed them sleeping again, would you think
10 that would have been a time to make a motion or to have a bench
11 conference or something like that?

12 A I don't know because I as a defense attorney, I'm
13 typically not overly opposed to a non into every detail jury
14 panel, and I get it wrong from looking at jury members, but
15 it's typically jurors that look bored or unhappy are slightly
16 more defense prone supportive. The, you know, I generally like
17 it when the jury at two or three days into trial looks like
18 they are just ready to get out and bored. But I don't know
19 that that was this case, and I just, I do remember the Judge
20 calling somebody down as a group, but it wasn't one individual.

21 MS. MCMAHAN: Court's indulgence, Your Honor. One
22 just follow up briefly.

23 Q When clients send letters to the clerk's office instead of
24 you directly, does the clerk's office notify you that there's
25 letters for you or...

1 A Usually, they certainly do now that it's kind of scanned
2 in the email system. Not always, but I guess if they knew it
3 was my client or something like that that they would forward it
4 to me.

5 Q Okay.

6 A And I have had clients that file like pro se motions that
7 I don't find out about for a while, but generally, if it's a
8 client they know or suspect I'm representing them they will ---

9 Q Would the solicitor's office do the same?

10 A No. The, even now I would just find out through the
11 discovery process ---

12 Q Because they don't necessarily always notify you that your
13 client is writing a letter?

14 A And particularly at that time, I would be, I do remember
15 more than once being surprised that my client had one, notified
16 the solicitor, and me going and saying why are you writing them
17 letters so, no, the solicitors were not always good about
18 telling me my client had contacted them. And they would refer
19 to like an admission or this is a potential confession if we go
20 to trial type, but it would come through the discovery
21 process.

22 Q Okay. So you said you got notified in December after he
23 got arrested on August of 2015 by the PD's office down in
24 Richland County?

25 A Right.

1 Q Do you recall how long after the PD's office told you that
2 he wanted to meet with a public defender that you were able to
3 get down there to talk to him?

4 A The, I don't remember the first day I would have gone to
5 Alvin S. Glenn. I do show that I put in a discovery request
6 about the same time I got the email from the Richland County
7 Public Defender, and then I don't have any notes on it. I do
8 remember going to Alvin S. Glenn more than once, because I
9 remember actually walking into some of the holding cells that
10 were kind of very un-Newberry, intimidating. And I know his
11 mother was coming as kind of a regular talking about discovery
12 as of June ---

13 Q Okay.

14 A So ---

15 Q So would you have waited to get discovery to go meet with
16 him in person the first time?

17 A Probably, I wouldn't, I requested to get discovery right
18 off the bat, and I've got an email in my file showing that the
19 solicitor had given me copies in December fairly quickly. But
20 I would probably wanted something to have, incident reports,
21 and I do remember taking him, it's pretty early.

22 Q Would you have ever set up any phone calls or anything?

23 A No. I get phone calls from jail all the time, but the, I
24 don't remember Kenny ever calling me from the jail, or I didn't
25 set up anything from Richland specifically.

1 Q Do you recall getting any letters from him where he's
2 asking you ---

3 A No, I don't remember. If it was in the file, I wouldn't
4 be surprised at all if he asked me to be relieved.

5 Q So if I had some letters from Kenny that he had filed with
6 the clerk where he's asking to be relieved, you wouldn't be
7 shocked by that?

8 A I would be really more surprised that they weren't in the
9 file.

10 Q And do you recall any specific conversations that you two
11 may have had about him wanting to relieve you or, during this
12 whole process?

13 A No. Off the top of my head, no. Again, Kenny, you know,
14 can be very pleasant at times and then he can be very kind of,
15 and obviously, it's a murder case, so I understand it, but you
16 know, he can be very blunt at times too. So I'd be very, very
17 surprised if Kenny hadn't, you know, in very blunt terms said,
18 you know, I want to hire somebody else.

19 MS. MCMAHAN: One more minute, Your Honor. I have no
20 further questions.

21 MR. JONES: Nothing further from the State.

22 THE COURT: Thank you, Mr. Verner, you can step down.

23 MS. MCMAHAN: Does the State rest?

24 MR. JONES: No. The State would call very briefly
25 Solicitor David Stumbo.

1 CLERK: Raise your right hand. Do you swear or
2 affirm the testimony you're about to give the Court is the
3 truth?

4 SOLICITOR STUMBO: I do.

5 CLERK: You may have a seat.

6 **DIRECT EXAMINATION**

7 BY MR. JONES:

8 Q Thank you for being here, Solicitor.

9 A Sure.

10 Q Just very briefly, do you recall the plea offer process if
11 any that went on in this case?

12 A I do. I think I mentioned this at sentencing, I read the
13 sentencing portion of the transcript this morning. I did
14 consider because of the heinousness of the crime, for a minute
15 we did consider seeking the death penalty on this case. We
16 ultimately decided not to after meeting with the, Mr. Fasio's
17 family and detailing for them all that would be involved with a
18 death penalty trial, but we considered that. So that being
19 said, we knew we had to qualify a defense to notice him for
20 LWOP which we did. My recollection is that the only offer,
21 plea resolution that we would even consider would have been
22 withdrawing the LWOP motion, I think we indicated to Mr.
23 Verner, and he probably could verify this, but we were still
24 going to ask the Court for a life sentence based on how
25 horrific this was, how innocent Mr. Fasio was in the facts of

1 the case. We were still going to ask for a life sentence
2 either way, but we would have withdrawn the LWOP motion to give
3 Mr. Verner the opportunity to ask for something less than life.
4 But honestly, I don't see Judge Hocker or any other judge in
5 this state give him much less than life, you know, on the plea
6 based on the prior record and the facts of the case. So I
7 think that was accurately described by Mr. Verner a moment ago,
8 essentially, he understood the same thing according to his
9 testimony today.

10 Q Alright. Thank you. Do you recall the, turning over the
11 discovery pursuant to Rule 5 to Mr. Verner?

12 A We did. He had all the videos in plenty of time, and I
13 did remember hearing earlier, I think he couldn't recall
14 whether the video evidence that came back from Quantico of the
15 inside of Leslie's Hair Salon was still shots or video footage,
16 it was video footage. Now, we took some still shots from that
17 to present in the Courtroom, but it was, ultimately the FBI was
18 able to recover the full video from the inside of Leslie's Hair
19 Salon when this happened.

20 Q And would you agree that the heart of the case was the
21 video evidence?

22 A It was, and we turned over all of that to Mr. Verner. And
23 I do recall and was reminded of this in reading the transcript
24 in preparation for today, Walter Bentley who is formerly of our
25 office, now is actually retired and doing some contract work

1 for the public defender's office, Mr. Bentley actually
2 testified in the case. And his testimony was primarily, you
3 know, we had taken all of these videos and kind of laid them on
4 top of each other in a demonstrative exhibit to the jury.
5 There was a discrepancy in these timestamps, and I think one of
6 the things we wanted to make sure that the jury understood was
7 that surveillance videos, kind of like your cell phone, it's
8 connected all the time to a satellite or a cell phone service.
9 If you pull your cell phone out right now, it's connected to a
10 tower, it's giving you the exact time to the second. Some
11 surveillance video is just like that, it's connected to the
12 internet, and it is exact at all times. Some of the
13 surveillance we had in this case was connected to an internet
14 network, but I believe the hard drive in Leslie's Hair Salon, I
15 want to say maybe Brother's, the convenience store up the
16 street, and then you had Kunkle which was the oil company video
17 from across the street, there were some discrepancies because
18 some of those surveillance systems weren't connected to the
19 internet. They were just ones you have to manually, like your
20 old DVD player, VCR, coffee maker, set the time on it. So one
21 of the reasons why we laid all that on top of each other is we
22 wanted the jury to understand that there were legitimate
23 reasons for the discrepancies and they were easily resolved
24 with watching different videos and when different people walked
25 by or when different cars drove up Main Street in Newberry,

1 they were captured on two different systems with discrepancies,
2 but you could tell it was the same car. That's how we were
3 able to determine whether this one is the accurate time, but
4 this one is 12 seconds off, one of them is like two hours off,
5 but we were able to really lay that out to the jury with all
6 these videos and give them an accurate picture of the times.
7 So we didn't really, and I think Mr. Verner mentioned this in
8 his testimony earlier that that was not a huge weakness, so to
9 speak, in the case once that was described. So yes, the video
10 evidence was extremely strong, the physical evidence was, too,
11 Mr. Jones, we had Kenny Ruff's DNA on a t-shirt inside the same
12 bag that we pulled out the damaged DVD player or the
13 surveillance from the crime scene. His shirt with his DNA with
14 gunshot residue, so there was good physical evidence too, but
15 as Mr. Verner pointed out the video, surveillance video was
16 extremely strong in this case. Now, the witness ID, and I
17 think Mr. Verner did a great job at trial kind of pointing out
18 the weaknesses of some of the, of Whomp for example. Whomp is
19 just kind of a good ole Newberry guy, but, you know, there were
20 other strong pieces of evidence that complimented the video and
21 the physical evidence, but the video evidence was the heart of
22 the case.

23 Q Alright. Thank you. I believe that's all the questions I
24 have for you.

25 A You're welcome.

1 THE COURT: Ms. McMahan?

2 MS. MCMAHAN: Just a little bit. It's not very often
3 I get to cross examine a classmate.

4 SOLICITOR STUMBO: You've been waiting for this for a
5 long time.

6 MS. MCMAHAN: I know, since the Attorney General's
7 Office.

8 **CROSS EXAMINATION**

9 BY MS. MCMAHAN:

10 Q So I don't know how long you've been sitting here, but did
11 you hear the part about them not getting a statement, I guess,
12 that the Defendant's nephew had made from you guys until trial,
13 do you remember that?

14 A I don't recall when that statement came in, I really
15 don't, I can't speak definitively to that. I do know that Mr.
16 Verner had that statement and was aware that the nephew was
17 going to be a witness, but that was, that was a discussion in
18 the case of who, you know, again, that was kind of a collateral
19 matter, it was after the fact. I believe the nephew had taken
20 Mr. Ruff to Columbia Mall and back and he had changed clothes
21 that day and left his clothes there, so that was really the
22 testimony, so he wasn't an eye witness. But from my
23 recollection, the nephew's testimony, Mr. Verner was well aware
24 that he was going to testify.

25 Q But there was a written statement that was alluded

1 to during the trial that Mr. Verner did not have until it was
2 given to him the day of trial, do you recall that?

3 A I don't, that's, I don't have any definitive recollection
4 of when that was turned over. Our old case management system,
5 you know, our new case management system which we got actually
6 mid-2017, this case was tried in January, has a very good
7 electronic trail of discovery being handed over. And when the
8 defense attorneys open it up, the link in their email, it's
9 easy, I can tell the day and time to the second when the
10 defense attorney opens the file. The old case management
11 system, you know, didn't have that, I guess, newer technology.
12 But all that to say I don't recall at any time during the trial
13 or during the litigation in this case where we ambushed Mr.
14 Verner with any statement including this one.

15 Q With the DNA, did it actually show one or two individuals'
16 evidence?

17 A I don't know the details, I didn't, in preparation for
18 today, I didn't really read the DNA report again, Ashley, to be
19 honest with you. I do know that it was conclusive enough to
20 show Mr. Ruff's DNA on that t-shirt. And the SLED agent
21 testified at trial that his DNA was on the shirt, I can't
22 remember the exact number the SLED agent gave, or the SLED
23 analyst gave, but it was something ---

24 Q Was it the victim's shirt?

25 A --- very close ---

1 Q Was it the victim's shirt or was it ---

2 A No. My recollection is it was a white t-shirt is what I
3 remember, and it had his DNA on it.

4 Q Do you remember where the white t-shirt was found?

5 A It was found in a white trash bag that came out of that
6 dumpster.

7 Q Where the surveillance video machine came from?

8 A That's my recollection, maybe I'm off there again. My
9 recollection was there was a t-shirt that came out of, out of
10 the white bag.

11 Q And then mister ---

12 A I don't think the killer took the time to take the
13 victim's t-shirt off, but I do remember there being a piece of
14 clothing, so, but again, this is five years ago. In my
15 preparation for today, yeah, that, my recollection is there was
16 a shirt, a white t-shirt with Kenney Ruff's DNA with GSR on it,
17 that was a very important piece of evidence in this case.

18 Q Well, I guess also one of the issues Mr. Verner brought up
19 during the trial was the fact that Mr. Ruff, the whole time was
20 like, GSR me, GSR me, and that I guess never got done?

21 A Well, right. Somebody who's asking for that to me is a
22 red flag, I mean, he'd had plenty of time to wash his hands,
23 that's not a, and again, he wasn't arrested right after this
24 incident took place. So clothing, that would have been
25 contemporaneous with the incident, it was a lot more important

1 than his hands and the fact that he was cutting back flips
2 trying to get GSR on his hands tells me something, along with
3 him changing his clothes, how many times that day? A lot.

4 Q What was the issue with the 22 casing that was found at
5 his house related to ---

6 A I don't remember how that was presented, I think you said
7 earlier that I said in my opening, I didn't do the opening,
8 Dale did, I did the closing.

9 Q My apologies for being confused.

10 A I was, again, those, the transcript's pretty thick, I've
11 read a little bit of it before Thanksgiving break last week,
12 and I came into my office about 7:30 this morning and read as
13 much of it as I could, but I can't tell you that I read it word
14 for word. So I can't remember how we presented the shell
15 casing, but my recollection, though, is that the casing was
16 found in his room or somewhere at his mother's house ---

17 Q Okay.

18 A --- where he was staying. It was just the same caliber as
19 the bullet that killed Mr. Fasio, it wasn't, and it was an
20 unfired 22 casing and maybe a fired casing, but it would have
21 been, you know, I think that my recollection is that our theory
22 was that it was a revolver and there was a casing found at the
23 scene ---

24 Q Was there ---

25 A --- it was a single shot.

1 Q Was there a weapon ever found?

2 A No.

3 Q So there wasn't a weapon to compare it to?

4 A Correct.

5 Q Also ---

6 A So all we could say is there was a 22 bullet that killed
7 Mr. Fasio and then the 22, you know, spent casings or unfired
8 22 bullets at his house. And we thought that was persuasive
9 evidence but not any kind of, you know ---

10 Q Would you say that ---

11 A --- a smoking gun.

12 Q Sorry. Would you say that 22s and 9 millimeters are
13 fairly common ---

14 A No question. And we had, in my recollection, we didn't
15 present that at trial as oh, this is the reason why you should
16 convict Kenny Ruff ---

17 Q Okay.

18 A --- the reason you should convict Kenny Ruff is the DNA,
19 the GSR, the video, the multiple eyewitnesses including his
20 sister that said that's him on the video. And there was, this
21 was an extremely strong case for guilt against Mr. Ruff.

22 Q Were there any jail calls involved in this, any reported
23 calls or anything to Mr. Ruff and his sister?

24 A Not that I recall. I don't remember us putting any jail
25 calls into evidence.

1 Q There weren't, I was just wondering if you remember if
2 there were any jail calls that you had listened to?

3 A No.

4 Q And then Mr. Verner alluded to earlier that he doesn't
5 always get letters from you guys when somebody writes y'all.
6 If Mr. Ruff had written you guys and said, hey, I don't want
7 him as my attorney anymore, would that be something that you
8 would normally notify the defense attorney about?

9 A Yeah, any time, just general practice for us, any time we
10 get a letter from an inmate from the jail that we're
11 prosecuting, we make a copy of it, put it in our system and
12 hand it over to the defense attorney, generally. But if that
13 was done here, I don't know.

14 Q Okay. Fortunately, Mr. Stumbo, I have no further
15 questions for you on this case.

16 A Okay. Thank you, Ms. McMahan.

17 THE COURT: Anything further from this
18 witness?

19 MR. JONES: Nothing further from the State.

20 THE COURT: Thank you, Solicitor.

21 MR. STUMBO: Thank you, sir.

22 MR. JONES: Your Honor, the State rests now.

23 THE COURT: Any reply testimony?

24 MS. MCMAHAN: Yes, Your Honor. If I could just
25 recall my client briefly.

1 THE COURT: Yes, ma'am. Mr. Ruff, you're still under
2 oath.

3 **REPLY TESTIMONY**

4 BY MS. MCMAHAN:

5 Q Mr. Ruff, you heard the testimony from your prior attorney
6 and from Mr. Stumbo about plea offers. Did Mr. Verner ever
7 bring you a plea offer that said they're considering, they're
8 going to let you plead to murder straight up?

9 A No, ma'am.

10 Q He never said that to you?

11 A No, ma'am.

12 Q If you had known that the plea offer was murder straight
13 up, State still asking for life, but you would have an
14 opportunity to argue for less, would you have taken that?

15 A Yes, ma'am.

16 MS. MCMAHAN: I have nothing further.

17 THE COURT: Any cross?

18 MR. JONES: Nothing from the State, Your Honor.

19 THE COURT: Thank you, Mr. Ruff.

20 MS. MCMAHAN: Your Honor, at this time the Applicant
21 rests.

22 THE COURT: Alright. I'll hear a summation from each
23 side. The State will go first. Since the Applicant has the
24 burden of proof, I'll let the Applicant have the last word.
25 Mr. Jones?

1 MR. JONES: Alright. Thank you, Your Honor. The
2 State's position in this case is first of all viewing the
3 nature of the overwhelming evidence against Mr. Ruff which just
4 to sum up again, chiefly involves the videos placing him at the
5 scene, the videos placing him inside the salon where the murder
6 was committed. The subsequent discovery of the white bag in
7 the dumpster which had the hard drive from the salon security
8 system as well as the t-shirt with Mr. Ruff's DNA on it and the
9 gunshot residue. The State submits that in view of all this
10 and the other evidence at trial, any prejudice from some of the
11 minor alleged deficiencies in this case is totally, stands no
12 chance of obtaining a different outcome if those other issues
13 had been brought up to Mr. Ruff's satisfaction at trial.
14 However, it's still the State's position that there was no
15 deficiency in this matter. As to the issue of discovery and
16 meeting with Mr. Ruff, Mr. Verner testified that he met with
17 Mr. Ruff several times in preparation for the case and turned
18 over the discovery to him, discussed discovery with him, showed
19 him the videos, discussed defenses based on that discovery with
20 him all prior to trial. So the State would submit that there's
21 no deficiency demonstrated there. The State would also submit
22 that the issue of the juror in this case who was, the only
23 thing said by the juror in the transcript is that one of the
24 potential witnesses, Teresa Sanders, was her husband's second
25 cousin. And the Judge then asked her if she would be able to

1 participate impartially and appropriately as a juror and she
2 replied that she would. Mr. Verner used his strikes up prior
3 to her on other jurors so he would have had to dismiss her for
4 cause and the State submits there was no cause to excuse her
5 just because this Teresa Sanders was distantly related to her.
6 And Teresa Sanders, despite being a potential witness, was
7 never actually called as a witness. So again, there's no
8 prejudice there, Your Honor. Mr. Verner, in spite of the
9 significant evidence against Mr. Ruff, he admirably presented
10 the defense based on the slight discrepancies between the
11 clothing and the different videos and attempted to refute the
12 State's case that the individual shown in the different videos
13 were the same individual. He brought up the timestamps issue
14 and attempted to show that, showed that the videos were
15 unreliable, all these defenses, though they were ultimately
16 unsuccessful, they were not deficient. As to issues such as
17 the shell casings, even if there was some problem with the
18 introduction of the shell casings, which I have not heard any
19 indication or legal argument that there was, those are so minor
20 and cumulative to the overwhelming evidence in the record that
21 the State again submits there was no prejudice. Similar with
22 any information obtained from the search and seizure of the
23 vehicle, again, we've heard no argument that that was an
24 illegal search and it's similar to the statement given by Mr.
25 Ruff's nephew, again, no indication that there was any

1 impropriety in admitting that or that it had any effect on the
2 outcome of the case. That about does it, Your Honor, we submit
3 that the Applicant has not met his burden for a showing that
4 he's entitled to post conviction relief. Thank you.

5 THE COURT: Thank you, Mr. Jones. Ms. McMahan?

6 MS. MCMAHAN: Yes, Your Honor. I believe the issue
7 with the search and seizure on the nephew's car, unfortunately,
8 while Mr. Verner did bring it up pretrial that he would like to
9 have a motion, it was never followed through with. So we may
10 never know how that motion would have turned out, but
11 obviously, if that motion was granted at that time and
12 preserved for appeal, one, that would have been something that
13 could have been argued on appeal, but two, it may have adjusted
14 the outcome of this case just based on some of the things that
15 happened around the nephew's car. Secondly, the jurors falling
16 asleep, regardless of what Mr. Verner's testified to and his
17 general belief about jurors sleeping defense friendly, Mr. Ruff
18 had indicated that there were jurors falling asleep again. Mr.
19 Verner said he doesn't recall, but you know, again, his
20 philosophy, but it could also show that the jurors were not
21 necessarily paying attention, and had they paid attention long
22 enough to notice the discrepancies between the eyewitnesses and
23 the identification of the killer, the outcome of the trial may
24 have been different. Another big issue is failing to disclose
25 a plea offer, obviously, that comes under *Davie v. State*,

1 Lafler versus Cooper and Missouri v. Frye, those are two US
2 Supreme Court cases, that it was not given to him, it was not
3 told to him and Mr. Ruff indicated that had he known about it
4 at the time, he would have taken that plea offer instead of
5 going to trial. So we would have not even had a trial in that
6 situation had he known about that plea offer. As to the rest
7 of the issues that we've raised during this hearing, we just,
8 you know, one of them being, you know, addressing his hands as
9 the hands of a killer in the closing, obviously, could have
10 affected the jury. Issues related to the shell casing brought
11 up in opening, but not addressed during the trial, obviously,
12 you know, there's case law that says, you know, if you're going
13 to bring it up in opening, it's something that needs to be
14 brought up at trial. And obviously, the amount of times Mr.
15 Verner failed to meet with Mr. Ruff, we're just asking that you
16 grant this PCR and, obviously, request that you review the
17 record as a whole before making your decision.

18 THE COURT: Thank you, Ms. McMahan. Well, that's
19 what I want to do. This is a significant length of a
20 transcript, so I want to just take a little while and review
21 the transcript and the materials that have been submitted. So
22 I'll take this under advisement and I'll have my law clerk
23 email you a decision. Thank you, counsel.

24 (Whereupon the hearing ended at 11:46 am.)

25

1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5)
6 COUNTY OF NEWBERRY)7
8
9 I, the undersigned Lisa G. Amick, Official Court Reporter
10 for the Eighth Judicial Circuit of the State of South Carolina,
11 do hereby certify that the foregoing is a true, accurate, and
12 complete transcript of record of all proceedings had and
13 evidence introduced in the trial of the captioned case,
14 relative to appeal, in the County of Abbeville, South Carolina,
15 on the 28th day of November 2022.16 I do further certify that I am neither of kin, counsel,
17 nor interest to any party hereto.

18 February 22, 2024

19
20 Lisa G. Amick

21 Lisa G. Amick

22 Court Reporter
2324 My commission expires: June 30th, 2025
25

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

Kenny Octavis Ruff, #264816

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE EIGHTH JUDICIAL CIRCUIT

) Case No.: 2019-CP-36-00064

) **ORDER OF DISMISSAL**

FILED
NEWBERRY COUNTY
NOTED 13
ELIZABETH B. FORD
CLERK OF COURT

COPY

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed by Kenny Octavis Ruff ("Applicant") on February 11, 2019, and amended on November 27, 2022. The Court convened an evidentiary hearing into the matter on November 28, 2022, at the Abbeville County Courthouse. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Zachary W. Jones represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Assistant Public Defender Charles V. Verner ("Counsel"), also testified, as did Eighth Circuit Solicitor David M. Stumbo. After reviewing all records and evidence before the Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. During its November 2015

term, the Newberry County Grand Jury indicted Applicant for murder (2015-GS-36-0594), armed robbery (2015-GS-36-0595), and possession of a firearm during the commission of a violent crime (2015-GS-36-0596). Assistant Public Defender Charles V. Verner represented Applicant at trial. Solicitor David M. Stumbo and Assistant Solicitor Taylor W. Daniel of the Eighth Circuit Solicitor's Office prosecuted the case. On January 9, 2017, Applicant proceeded to trial before the Honorable Donald B. Hocker. The jury found Applicant guilty on all three counts. Judge Hocker sentenced Applicant to imprisonment for life without parole.

Subsequently, Applicant filed a timely notice of appeal. Chief Appellate Defender Robert M. Dudek of the Office of Appellate Defense perfected the appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. The Remittitur was sent on July 13, 2018.

Factual Summary

This case arises out of a murder and armed robbery that occurred at Leslie's Salon in Newberry on August 26th, 2015. The salon was owned by Robert Facio Ledesma ("Victim") and his wife. Surveillance cameras at Kunkle Oil, which was located near Leslie's salon, captured Applicant walking into Leslie's and leaving at 1:41 p.m. (R. pp. 207, 225, 227, 265, 279, 283, 287-289, 478-479, 498). In the video, Applicant is seen walking out of Leslie's with a white bag in his hands. (R. pp. 267, 385-387, 498). Victim's niece, Elitania Martinez, was going to bring her uncle lunch that day like she normally did on Wednesdays, but she was running late and arrived at Leslie's at 1:55 p.m. (R. pp. 182-183). Once she got there, she testified at trial that she walked through the salon and couldn't find her uncle. (R. p. 183). She then continued to search the salon and found him on the floor face down with blood coming from his head. (R. p. 183). She called 911, and police were dispatched and arrived at 2:02 p.m. (R. pp. 183, 187, 219, 302-303). Police

discovered Victim was unresponsive, and he was declared dead at the scene from a bullet wound to the back of his head. (R. pp. 188, 196, 248). The police conducted a search and found that the register drawers were open and contained no money except for some change. (R. pp. 192, 480-481). Blood located on the wall near Victim's body indicated that Victim was at a low position at the time he was shot. (R. p. 248). Leslie's salon had video camera surveillance, but the hard drive with the recordings was missing. (R. pp. 198, 246).

After investigating the scene, the police then tried to follow the trail that they believed the suspect took along Pike Circle. (R. pp. 203-205). They proceeded down the path and found a faceplate that belonged to the hard drive of the video cameras at Leslie's. (R. pp. 203-205, 382, 384). As they continued to walk, they ended up in Heritage Square where they noticed a security camera facing a dumpster. (R. pp. 211, 384-385). That camera recorded the Applicant there with a white bag at 1:46 p.m. (R. pp. 208, 385, 389, 649). After obtaining a search warrant, police searched through the dumpster and located a white bag that contained a landline phone that was taken from Leslie's and an iPad that belonged to the victim. (R. pp. 209-211, 390-394). Also in the bag was a black shirt that contained the Applicant's DNA on it and gunshot residue along the smashed hard drive that belonged to Leslie's video surveillance cameras. (R. pp. 209-211, 227, 390-393, 568, 582, 594, 603). A white cord that seemed to belong to the landline phone was located on the trail. (R. pp. 394-395). The hard drive was so badly smashed that the police were worried nothing could be recovered, but they proceeded to send the hard drive to the FBI, who were able to rebuild the system and recover the video from inside the salon. (R. pp. 393, 702-704). In that video, the suspect can be seen walking from Kunkle's Oil to the salon, wearing a black do-rag, black shirt, shoes with white stripes, and jeans with a lanyard hanging out of his left hip pocket and a cloth protruding from his right pocket. (R. pp. 509-513, 648, 704-708). The video depicts

the suspect entering the salon with a pistol and aiming it at Victim. (R. p. 510). The suspect can be seen marching the victim into the back and ordering him to unplug the hard drive for the cameras, at which point the video goes black. (R. pp. 509-511, 704-708, 715). The suspect's clothing in the salon video was consistent with the clothing Applicant was wearing in the Kunkle Oil video and a video from the Brothers BP station taken around 1:32 p.m. (R. pp. 512-513, 708-712).

At trial, Investigator Richard Mercer testified that he collected videos from other stores near Leslie's and was able to positively identify Applicant in the videos because he had known him for years prior to the crime. (R. pp. 270-271). He also stated that he noticed Applicant changed his clothes multiple times throughout the different videos, but that he had a do-rag on his head. (R. pp. 263, 270, 272, 282, 297, 522, 525-527). Walter Bentley testified at trial that he located two pictures on Applicant's Facebook showing Applicant wearing a wave cap or do-rag. (R. p. 663). Mercer further testified that he conducted a search of Applicant's home and found a small caliber shell casing, not an actual bullet, but a bullet that had been fired. (R. pp. 470-474). It was identified as a .22 caliber shell casing. (R. p. 473).

Emmanuel Richardson, nicknamed "Womp", testified at trial that he lives on Turner Street, the same street as Applicant, and that he's known him ever since he was born. (R. pp. 304-305). Richardson stated that he saw Applicant going into Leslie's salon on the day the crime occurred. (R. p. 307). On direct-examination, Richardson was asked what Applicant was wearing when he walking into the store, and he said, "he had a black shirt and a do-rag on his head. (R. p. 309, ll. 12-13). The Solicitor then asked him to identify the person he knows as Kenny Ruff, and Richardson identified Applicant. (R. pp. 311-312).

The only other person in the Kunkle Oil surveillance video who can be seen entering

Leslie's after Applicant leaves, apart from Victim's niece who ultimately discovered the body, was identified as Jose Galvez. (R. pp. 328-334, 498). He recalled August 26th and stated that he left his job to get a haircut at Leslie's. (R. pp. 328-329). He went into the store but saw nobody inside, so he went to La Princesa nearby to buy cards for his family before returning to Leslie's. (R. pp. 328-329). However, no one responded or came to him, so he left. (R. p. 333). A gunshot residue test was conducted on Galvez at 4:55 p.m. on the day of the murder, but no gunshot residue was found. (R. pp. 401-404, p. 563).

Later that same day, the police apprehended Applicant. (R. pp. 273-278). Applicant was then interviewed by Captain Goodman, and he admitted to being in Leslie's Salon but said he just wanted to check the place out. (R. pp. 485-489). Applicant also indicated that he had changed his clothes the day of the crime. (R. pp. 489, 491). Once he was in jail, he called his sister, and those conversations were recorded. (R. p. 423). Applicant's sister, Angela Ruff, testified at trial but initially didn't want to answer questions because she didn't want to be involved. (R. pp. 426, 435-436). However, Angela Ruff did confirm it was her voice and her brother, Kenny's on the tape. (R. pp. 426, 435-436). On the tape, Applicant said he was in Leslie's on the 26th and that he was with Dale Bailey and Machiavelli. (R. pp. 431-432, 497). Applicant also said that Dale "snatched" the footage. (R. pp. 437-438). On direct examination, Angela admitted that she was able to look at the videos and see that it was Applicant. (R. p. 439, ll. 6-10). Angela also said Applicant wears do-rags from time to time and that he indicated to her that Dale shot the man. (R. pp. 439-441). Following hearing this story, Captain Goodman looked at the videos again but did not see three men entering the salon as Applicant indicated. (R. pp. 507-508).

Aaryon Dowdy, an inmate at Alvin S. Glenn, who was in the Special Housing Unit with Applicant, also testified at trial. (R. p. 441). Dowdy explained that a mic, similar to an intercom

system, is on the wall in the rooms and that it's always on. (R. pp. 443, 454-456). He testified that he used this to communicate with Applicant while at the detention center. (R. pp. 444-445). While speaking to him, Applicant told Dowdy his side of the story. (R. p. 446). Dowdy testified that,

He told me that he entered a hair salon, to, with intentions to rob. And he told me that he took a Spanish guy in the back and the guy was begging for his life. He shot him in the side of his head. He told me that when the police arrived, that he, the guy was blue in the face. He said that the police didn't know how he died until the autopsy because the caliber of the gun, because his hole had closed up on him. He also stated that he left the salon with a white bag. He also told me that took at least \$1,200.00 and a black monitor.

(R. p. 446, ll. 7-16). Applicant also told Dowdy he used a .22 revolver and that after the shooting, he went to BP and Wal-mart. (R. pp. 446-447). Police confirmed Applicant went to Wal-Mart that afternoon through a receipt that was found in his home, surveillance cameras, and Applicant's own statement to police. (R. pp. 174, 284, 468, 514-516, 520, 524). Video surveillance in BP also confirmed he went there after the shooting. (R. pp. 520-521). Dowdy further testified that Applicant said he went to the mall to change clothes and that he gave the weapon to his nephew after the murder. (R. pp. 448-449). Following the investigation, Applicant was charged with murder, armed robbery and possession of a firearm during the commission of a violent crime.

Present Application

On February 11, 2019, Applicant filed his initial PCR application, raising numerous allegations, which the Court interprets as follows:

1. Ineffective Assistance of Counsel
 - a. Failure to permit Applicant to attend Applicant's preliminary hearing
 - b. Failure to investigate / prepare for trial
 - i. Failure to obtain private investigator
 - ii. Failure to investigate into incident where Applicant's "rule five" items were stolen by another inmate
 - iii. Failure to adequately communicate and visit client
 - iv. Failure to subpoena witnesses
 - c. Failure to prevent DNA evidence from being introduced the week of Applicant's trial

- d. Failure to object to jurors falling asleep during Applicant's trial
- e. Failure to prevent mother of a Newberry County Detention Center corrections officer from serving on the jury

2. Prosecutorial Misconduct

- a. Prosecutor utilized a witness to obtain information from Applicant's family

On November 27, 2022, Applicant amended his application to include the following allegations of ineffective assistance of counsel:

1. "Failure to disclose plea offer to Applicant."
2. "Failure to strike Dorothy Gladney as alternate after she stated Teresa Sanders was related to her family. See ROA Vol. I, page 81, lines 16-24; ROA Vol. I, page 96. lines 1-5."
3. "Did not adequately meet with Applicant prior to trial. Applicant tried to fire trial counsel but could not get the motion in front of a judge. Did not get opportunity to talk to Mr. Verner until almost 5 months after arrest."
4. "Did not move for a new trial after the judge admonished several jurors for falling asleep. ROA Vol. II, page 583, line 8 – page 584, line 2."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the Newberry County Clerk of Court regarding the subject convictions, Applicant's appellate records, and the original and amended applications for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Trial Counsel

Applicant's allegations of ineffective assistance of trial counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a

preponderance of the evidence. Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

As an initial matter, the Court notes the strength of the State's case against Applicant. Applicant was caught on video pointing a gun at Victim and marching him into a back room of the salon, where the Victim's body was discovered a short time later. Multiple witnesses (including Applicant's own sister) identified Applicant as the suspect, either from personal familiarity or from his distinctive clothing that matched the clothing in other videos taken immediately before the crime at the Brothers BP station and the Kunkle Oil company. Another surveillance video shows Applicant hiding a white bag in a dumpster shortly after the crime; inside the bag, police discovered a shirt with Applicant's DNA and gunshot residue on it as well as multiple items stolen from Leslie's salon, including the hard drive containing the video of the robbery. In a recorded phone call to his sister, Applicant admitted he was present at Victim's killing; Applicant blamed

the robbery and murder on a “Dale Bailey” even though the videos show Applicant entering the store alone. The totality of the evidence before the jury was extremely damning.

In some cases, overwhelming evidence of guilt will preclude a finding of prejudice. “A reasonable probability of a different result does not exist when there is overwhelming evidence of guilt.” *Hillerby v. State*, 431 S.C. 323, 333, 847 S.E.2d 500, 505 (Ct. App. 2020) (citing *Geter v. State*, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991)). For evidence to be “overwhelming,” such that it categorically precludes a finding of prejudice, the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of “a reasonable probability . . . the factfinder would have had a reasonable doubt” cannot possibly be met. *Smalls v. State*, 422 S.C. 174, 191, 810 S.E.2d 836, 845 (2018).

The Court finds the evidence in this case meets the standard articulated in *Smalls*. Although the video does not show the moment Applicant murdered Victim, it shows Applicant leading Victim to the place where his body was ultimately found before the video was unplugged. Applicant even told his sister that he was present at the murder, and his attempt to deflect the blame onto a third party was conclusively refuted by the video evidence. Further evidence of Applicant’s presence at the crime was the fact he hid items stolen from Victim inside a dumpster, along with a dark-colored shirt as seen in the video that had Applicant’s DNA and gunshot residue on it. Weighed against this overwhelming evidence of guilt, the Court finds none of the alleged deficiencies of Counsel are “sufficient to undermine confidence in the outcome” of Applicant’s trial. Therefore, the *Strickland* standard for proving prejudice cannot be met.

Because a showing of prejudice is required to succeed on an ineffective assistance claim, Applicant’s failure to prove prejudice is dispositive of this PCR action, and there is no need to

evaluate the deficiency prong of the ineffective assistance analysis. *See Strickland*, 466 U.S. at 697 (“If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice . . . that course should be followed.”). Nevertheless, for the sake of completeness, the Court will address Applicant’s specific allegations of ineffectiveness:

Preliminary hearing

Applicant alleges Counsel did not arrange for him to have a preliminary hearing. However, Applicant failed to produce any evidence at the evidentiary hearing to substantiate this claim. In addition, there is no constitutionally protected right to a preliminary hearing in South Carolina. *State v. Keenan*, 278 S.C. 361, 296 S.E.2d 676 (1982). Additionally, a preliminary hearing is not held if the defendant is indicted by a grand jury or waives presentment before the preliminary hearing occurs. Rule 2(b) SCRCrimP. In this case, Applicant was indicted on all charges by the grand jury, so he had no right to a preliminary hearing. Therefore, Applicant has failed to prove either deficiency or prejudice as to this allegation.

Failure to investigate or prepare for trial

i. Failure to obtain private investigator

Applicant alleges Counsel failed to hire a private investigator, who could have investigated the time stamps of the various surveillance videos and shown that they did not match up. At the evidentiary hearing, however, Counsel credibly testified that he *did* employ an investigator in preparing for Applicant’s trial. Furthermore, the issue of the discrepancies between the time stamps of videos taken from different areas was thoroughly explored at trial. (R. pp. 624-649). Applicant failed to introduce any other evidence at the evidentiary hearing that purportedly would have been discovered by a more thorough investigation. Therefore, he has failed to meet his burden of proof. *See, e.g., Taylor v. State*, 258 S.C. 369, 378, 188 S.E.2d 850, 854 (1972) (holding

a PCR applicant's allegation that his trial counsel failed to adequately investigate his case was unsupported where the applicant failed to point out any beneficial evidence which could have been discovered by further investigation).

ii. Failure to investigate theft of discovery by fellow inmate

Applicant alleges his discovery materials were stolen while he was in pre-trial detention by a fellow inmate, Aaryon Dowdy, who then testified against him at trial. Applicant complains Counsel did not act upon this information. The trial transcript, however, reveals that Counsel argued Dowdy's account of Applicant's jailhouse confession was not credible *because* Dowdy had seen Applicant's discovery materials and used the details therein to fabricate a more convincing lie. (R. pp. 807-809). Moreover, Dowdy was thoroughly impeached as a criminal and jailhouse snitch hoping for leniency in exchange for his testimony against Applicant, and his testimony was largely cumulative to the other damning testimony mentioned above. The Court finds Applicant has failed to prove Counsel was deficient as to this allegation or that Applicant suffered any prejudice as a result.

iii. Failure to adequately communicate and visit Applicant

Applicant alleges that Counsel did not meet or communicate with him sufficiently. Counsel, however, credibly testified that he met with Applicant several times in the weeks leading up to the trial and went over the discovery with him thoroughly. Therefore, the Court finds Applicant has failed to prove Counsel was deficient in this regard. Additionally, to prove prejudice from failure to review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by counsel's further review of the discovery. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836.

Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. *Id.* (citing *David v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). Here, Applicant did not present any new evidence or defenses that purportedly could have been discovered by additional meetings with Counsel or further review of the discovery. Accordingly, Applicant has not met his burden of proof as to this allegation.

iv. Failure to subpoena witnesses

Applicant alleges Counsel failed to subpoena witnesses, whose testimony he claims might have benefitted his case. However, Applicant did not present those witnesses or their testimony at the evidentiary hearing. Therefore, he has failed to meet his burden of proof. *See, e.g., Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279–80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call certain witnesses must produce those witnesses or their testimony at the PCR hearing).

Failure to challenge DNA evidence

Applicant alleges Counsel failed to prevent the DNA evidence from being introduced. However, Applicant has not presented any grounds for the suppression of the DNA evidence. Because Applicant has failed to show that the DNA evidence was improperly admitted, he has not met his burden of proving that Counsel was ineffective as to this allegation.

Jurors falling asleep

Applicant alleges, in both his initial and amended applications, that Counsel was ineffective for failing to take corrective action after the trial court upbraided certain jurors for

“nodding off” during trial. (R. pp. 583-584). The transcript reveals, however, that the trial court itself thoroughly warned those jurors to be attentive. Furthermore, at the conclusion of the trial, the court commended the jurors for being “extremely attentive,” notwithstanding “some folks kind of being sleepy-headed” at one point. (R. p. 852-853). Applicant suggests Counsel should have moved for a new trial, but the Court finds such an extreme remedy would likely not have been granted on the basis of what, based on the transcript, appears to have been a relatively minor lapse of attentiveness on the part of a few jurors. In addition, Counsel credibly testified at the evidentiary hearing that jurors who appear bored or unhappy during the presentation of the State’s case tend to be favorable to the defense. For these reasons, the Court finds Applicant has failed to prove that Counsel was deficient or that he was prejudiced as to this allegation.

Failure to strike jurors

In his initial application, Applicant alleges one of the jurors in his case “was the mother of a corrections officer in the Newberry County Detention Center” and “was also a family issue.” However, he does not name the juror in question, and the transcript does not reveal any connection between any of the jurors and Newberry County correctional officers. In his amended application, Applicant alleges Counsel should have moved to strike Dorothy Gladden, who admitted that her husband’s second cousin was Teresa Sanders, Applicant’s mother. (R. p. 81, 859). Gladden admitted she was related to Teresa Sanders (who did not testify during the evidentiary phase of the trial), and she informed the trial court that she could be fair and impartial. In addition, Gladden was merely an alternate, and she was not among the jurors who actually returned the guilty verdict. (R. p. 851-852). The Court finds Applicant has failed to prove that he was prejudiced by the seating of an alternate juror who was distantly related to him and who assured the court that she

could serve fairly and impartially. There is no evidence whatsoever that the seating of Ms. Gladden had any prejudicial effect at all.

Failure to disclose plea offer

Applicant alleges Counsel failed to communicate an offer for Applicant to plead “straight up” to murder, rather than proceed to trial facing a mandatory life sentence. Applicant claims he would have accepted such a plea if he had been offered one. However, both Counsel and Solicitor Stumbo credibly testified that they had no recollection of any such plea offer being made. On the contrary, they testified consistently that the State gave notice that it was seeking a mandatory life sentence from the very beginning. Solicitor Stumbo even testified that he considered seeking the death penalty. The Court finds Applicant has failed to prove, by a preponderance of the evidence, that any such plea offer was ever made.

Applicant’s attempts to relieve Counsel

Applicant alleges that he attempted to fire Counsel prior to trial. There is no indication of any such attempt in the record, and Counsel credibly testified he had no recollection of it. The Court finds Applicant has failed to prove this allegation by a preponderance of the evidence. Furthermore, a criminal defendant does not have the right to appointed counsel of his choice.

[A] defendant who is to be represented by appointed counsel because of his or her lack of financial resources is not entitled to have a particular attorney, one in whom the defendant reposes special confidence, or one who shares his or her view as to the best trial strategy to be employed in the defendant’s case, appointed to represent him or her. . . . Nor can the defendant effectively choose different counsel by requesting that his or her appointed counsel be removed and replaced by another.

21A Am. Jur. 2d *Criminal Law* § 1078.

Prosecutorial Misconduct

Applicant alleges, in his initial application, that the prosecution sent one of the State’s witnesses to his family to collect information from them. No evidence was introduced at the

evidentiary hearing to substantiate this allegation. Therefore, the Court finds Applicant has failed to meet his burden of proof as to this claim.

III. CONCLUSION

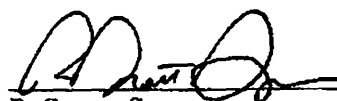
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 1 day of December, 2023.


 R. SCOTT SPROUSE
 Presiding Judge
 Eighth Judicial Circuit

Anderson, South Carolina