

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Kristi F. Curtis, Circuit Court Judge

NATHANIEL A. HUNTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001611

APPENDIX

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)
5 vs.) 2014-GS-32-3687
) 2014-GS-32-3688
6 Nathaniel Antron Hunter,) 2014-GS-32-3689
) 2014-GS-32-3692
7 Defendant.)

8

9

April 24th - 28th, 2017
Lexington, South Carolina

10 B E F O R E:

11 The Honorable Thomas W. Cooper, Judge; and a Jury.

12

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

14 Laura Suzanne Mayes, Assistant Deputy Solicitor
15 Robert E. McNair, III, Assistant Solicitor
16 On behalf of the State of South Carolina

17

18 Jason S. Chehoski, Esquire
19 Jael D. Gilreath, Esquire
20 Dayne C. Phillips, Esquire
21 On behalf of the Defendant

22

Stacy S. Johnson
Circuit Court Reporter

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1 (Whereupon, the following proceedings were held
2 April 24, 2017, beginning at 9:32 AM.)

3 (Defendant's Exhibit Numbers 1 through 13 were marked
4 for identification.)

5 (Court's Exhibit Number 1 was marked for
6 identification.)

7 **BAILIFF:** All rise.

8 **THE COURT:** Thank you, folks. Please be seated.

9 Ladies and gentlemen of the jury, we're prepared now
10 to go to the matter of jury selection for the first case
11 for trial.

12 Madam Solicitor, you can call your case.

13 **MS. MAYES:** May it please the Court?

14 **THE COURT:** Yes, ma'am.

15 **MS. MAYES:** Your Honor, before you is the State of
16 South Carolina versus Nathaniel Hunter. Mr. Hunter is
17 charged as follows. Indictment Number 2014-GS-32-3689,
18 indictment for attempted murder. Indictment Number
19 2014-GS-32-3687, indictment for burglary first degree.
20 Indictment Number 2014-GS-32-3688, indictment for criminal
21 sexual conduct with a minor in the third degree.
22 Indictment Number 2014-GS-32-3692, indictment for
23 possession of a weapon during a violent crime.

24 Your Honor, the State is ready for trial in this
25 case.

1 **THE COURT:** All right. Thank you. If you will hand
2 up the indictments, please.

3 **MS. MAYES:** (Hanging.)

4 **THE COURT:** Ladies and gentlemen, as you've heard the
5 State has called the case of the State versus Nathaniel
6 Antron Hunter. Mr. Hunter has been indicted by the grand
7 jury of Lexington County and charged in Indictment 3689
8 for attempted murder. That indictment says that Mr. Hunter
9 did in Lexington County, on or about April the 13th, 2014,
10 willfully and unlawfully commit the offense of attempted
11 murder; being a person who, with the intent to kill, did
12 attempt to kill another person with malice aforethought,
13 either express or implied, specifically while armed with a
14 deadly weapon, did shoot and injure one Larenda Simon in
15 violation of the law.

16 The second indictment, Number 3687, charges burglary
17 in the first degree. That indictment accuses Mr. Hunter
18 here in Lexington County, on or about April the 13th,
19 2014, of knowingly and willfully, entering a dwelling,
20 specifically [REDACTED] Comanche Apartments, Unit [REDACTED], being
21 the dwelling of Larenda Simon, without her consent, did
22 attempt to commit a crime while there and that while there
23 you were armed with a deadly weapon and you caused physical
24 injure to a person who was not a participant in the crime
25 and you used or threatened the use of a dangerous weapon

1 and displayed what appeared to be a firearm, resulting in
2 gunshot wounds and physical injury to the resident in
3 violation of the law, and the offense occurred during the
4 nighttime.

5 Indictment Number 3688 charges criminal sexual conduct
6 with a minor in the third degree. That indictment says
7 that Mr. Hunter did, being over the age of fourteen, in
8 Lexington County, on or about April the 13th of 2014,
9 willfully and lewdly commit or attempt to commit a lewd
10 and lascivious act upon the body of a child under the age
11 of sixteen, with the intent of arousing or appealing or
12 gratifying his lusts or passions or those of the child.
13 The alleged victim, MINOR, date of birth was
14 of 2007, in violation of the law.

15 Indictment 3692 charges possession of a weapon during
16 the commission of a violent crime and accuses Mr. Hunter
17 here in Lexington County, on or about April the 13th of
18 2014, knowingly and willfully possessing a firearm during
19 the commission of a violent crime or the attempt to commit
20 a violent crime, specifically possessing and visibly
21 displaying a firearm during the commission of the crime of
22 burglary in the first degree, the commission of the crime
23 of attempted murder of Larenda Simon and/or during the
24 commission of any other violent crime which occurred at
25 Comanche Apartments in violation of the law.

1 Now, ladies and gentlemen, the indictments which I
2 have just read to you are not proof of the charges that
3 they contain, they're not evidence of anything. They are
4 charging papers, legal documents, that tell you or me or
5 anybody else who reads these indictments what this case is
6 all about. To the charges contained in this indictment,
7 Mr. Hunter has entered pleas of not guilty and has asked
8 for a jury trial at your hand.

9 Mr. Hunter, would you please stand and face the jury
10 behind you.

11 (Whereupon, the Defendant stands.)

12 **THE COURT:** Thank you. You can be seated.

13 Ladies and gentlemen, I first need to know if any of
14 you-all are related by blood or connected by marriage to
15 Mr. Nathaniel Antron Hunter or if you are a friend of his
16 or a business associate of his or a causal acquaintance of
17 his or a person who has any direct or indirect contact with
18 Mr. Hunter. If so, please stand. Thank you.

19 The named victims in the indictment are Larenda Simon
20 and **MINOR**, who resided at the time this occurred in
21 the Comanche Apartment **MINOR**. I need to know now if any of
22 you-all are related by blood or connected by marriage to
23 either Ms. Larenda Simon or Ms. **MINOR** or are you
24 friends of theirs, business associates of theirs, casual
25 acquaintances of theirs or people who have any direct or

1 indirect contact with either of those alleged victims. If
2 so, please stand. Thank you.

3 Potential victims who may testify in the trial of
4 this case, and I'm going to read a list of -- potential
5 witnesses I should say, if I used -- potential witnesses
6 who may testify in the trial of this case, and I'm going
7 to read a lengthy list to you. All of these folks may not
8 testify, but they're all potential witnesses and so I need
9 to know your connection with any of these folks.

10 So I'm gonna go over this list. I will pause
11 momentarily as we go through the list because it is rather
12 lengthy and you might have some difficulty remembering all
13 these names if I wait until the end to ask you about them.
14 And I'm gonna want to know the same things about these
15 potential witnesses as I asked you about the principals in
16 this case; that is the Defendant and the alleged victims.
17 I want to know if you're kin to them by blood or by
18 marriage or if you're friends of theirs or business
19 associates of theirs or people who have any direct or
20 indirect contact with them. I'll ask you that question.

21 Potential witnesses who may testify in the trial of
22 this case from the West Columbia Police Department, Shawn
23 Ludwig, L-U-D-W-I-G, Investigator Thomas Griffin,
24 Investigator Scott Neel, Chris Yarborough, Scott Libertini,
25 Doug Hook, Captain Bruce Wade, Investigator Phillip

1 Morrell, M-O-R-R-E-L-L, Page McCraw, Jan Ottenbacher,
2 O-T-T-E-N-B-A-C-H-E-R, Colleen Belk, all from the West
3 Columbia Police Department.

4 Are any of you-all related by blood or connected by
5 marriage to any of those potential witnesses or friends,
6 business associates, casual acquaintances or people who
7 have any direct or indirect contact with any of those
8 potential witnesses? If so, please stand. Thank you.

9 Other potential witnesses who may testify, James
10 Sullivan from Lexington, Gavin Walmsley, W-A-L-M-S-L-E-Y,
11 from the Richland County Sheriff's Office, Chris Hall
12 with the Lexington County EMS, Christopher Bernard from
13 Lexington EMS, Leah Bonneville, who's a registered nurse.
14 Tiffany Green from West Columbia. Amond, A-M-O-N-D, Ford
15 from West Columbia. Tanisha Taylor from Columbia. Crystal
16 Owens. Laurie Harris Caldwell from Lexington. Micah Swain
17 from Columbia. John Gresham from Ballentine. And Jill
18 Sparks, who is the custodian of records for the Sprint
19 Corporation.

20 Any of you related by blood, connected by marriage to
21 any of those witness? Friends, casual acquaintances,
22 business associates or otherwise of any of those potential
23 witnesses? If so, please stand.

24 (Juror stands.)

25 **THE COURT:** Yes, sir. Your name and number.

1 **POTENTIAL JUROR:** 161, Christopher Oswald.

2 **THE COURT:** All right. Let me get you located,
3 Mr. Oswald, on the list. All right. Mr. Oswald, who is
4 your association with, please, sir?

5 **POTENTIAL JUROR:** Chris Hall and his partner. We work
6 together with Lexington Fire Service. They work for EMS
7 and both of us work together hand in hand.

8 **THE COURT:** Mr. Hall --

9 **POTENTIAL JUROR:** Both are Lexington County EMS
10 personnel.

11 **THE COURT:** Sir?

12 **POTENTIAL JUROR:** Both of them are Lexington County
13 EMS personnel.

14 **THE COURT:** Okay. And Christopher Bernard was the
15 other one?

16 **POTENTIAL JUROR:** Yes, sir. I believe so.

17 **THE COURT:** And what is your relationship to those
18 folks?

19 **POTENTIAL JUROR:** We work hand in hand together with
20 me being fire service and them being Lexington County EMS.

21 **THE COURT:** You work with --

22 **POTENTIAL JUROR:** I work with Lexington County Fire
23 Service, yes, sir.

24 **THE COURT:** Okay. Is your connection with those folks
25 limited to that professional association, in that you-all

1 do sort of the same things, you work with the fire service
2 and they're with EMS?

3 **POTENTIAL JUROR:** Yes, sir.

4 **THE COURT:** Does the association that you've just
5 described to me, Mr. Oswald, would that make it difficult
6 for you to be fair and impartial as a juror in the trial of
7 a case in which they may testify?

8 **POTENTIAL JUROR:** I don't think so.

9 **THE COURT:** Sir?

10 **POTENTIAL JUROR:** No, sir.

11 **THE COURT:** Would you be able to set aside that
12 association and decide this case based on the evidence that
13 you would hear in court without regard to that association?

14 **POTENTIAL JUROR:** Yes, sir.

15 **THE COURT:** Would you do that, please, sir?

16 **POTENTIAL JUROR:** Yes, sir.

17 **THE COURT:** Thank you, Mr. Oswald.

18 Other potential witnesses who may testify are Wayne
19 Kleckley, Lieutenant Cain Mayrant, M-A-Y-R-A-N-T. He's
20 with the Lexington County Sheriff's Office. Amy Stephens
21 with SLED. Jackie Davis with SLED. Robert McIntyre with
22 the West Columbia Police Department. The custodian of
23 records at the detention center, Alvin S. Glenn. And then
24 from SLED, Sam Heftaglu, H-E-F-T-A-G-L-U-E, from SLED.
25 Also from SLED Lieutenant Rhonda Fields, Theresa Hines,

1 Thomas Darnell, Chad Smith, Ashley Bell, Verona Gibson
2 Herrera, Mary Ann Boehm, B-O-E-H-M. And Mike Phillips with
3 the Lexington County Sheriff's Office.

4 **MR. McNAIR:** Your Honor, it's Mike Phipps.

5 **THE COURT:** Phipps. You're right. I'm sorry. Mike
6 Phipps. I got all the way to the end of the list before I
7 made a mistake. Mike Phipps is the name from the sheriff's
8 office.

9 Any of you related by blood or connected by marriage
10 to any of those potential witnesses? Friends, casual
11 acquaintances, business associates or people who have any
12 direct or incorrect contact with any of those potential
13 witnesses. If so, please stand.

14 Thank you. Other potential witnesses who may be
15 testifying in this trial are Stacy Wade from West Columbia.
16 Mike Burbee from SLED. Conzavella Simon, that's
17 C-O-N-Z-A-V-E-L-L-A, Simon. Jason Sabo, S-A-B-O, from
18 Kneece Investigations. Chris Watkins from Watkins Digital
19 Forensics Investigations, and Kyle Taylor from Southeast
20 Investigating Services.

21 Is anybody related by blood or connected by marriage
22 to any of those potential witnesses? Friends, casual
23 acquaintances, business associates or people who have any
24 direct or indirect contact with any of those potential
25 witnesses. If so, please stand. Thank you.

1 The lawyers who will be involved in the trial of this
2 case on behalf of the State, the case will be presented by
3 Deputy Solicitor Susan Mayes and Assistant Solicitor
4 Robbie McNair from the Eleventh Judicial Circuit
5 Solicitor's Office. The Defendant, Mr. Hunter, is
6 represented by Mr. Jason Chehoski and Ms. Jael Gilreath
7 from the Eleventh Circuit Public Defender's Officer, and
8 by Mr. Dayne Phillips of the Michael Jeffcoat firm here in
9 Lexington.

10 I need to know now if any of you have any connection
11 with any of these lawyers, are you related to them by blood
12 or by marriage, are you friends of theirs or business
13 associates of theirs, casual acquaintances of theirs, have
14 you ever been represented by any of them or have you ever
15 been sued by any of them? If so, please stand.

16 (Juror stands.)

17 **THE COURT:** Yes, ma'am, your name and number, please?

18 **POTENTIAL JUROR:** Linda Zink, 225.

19 **THE COURT:** Number what?

20 **POTENTIAL JUROR:** 225.

21 **THE COURT:** All right. Thank you, ma'am. Ms. Zink,
22 who is your association with, please, ma'am?

23 **POTENTIAL JUROR:** I'm affiliated with Mr. Jason
24 Chehoski. I've known him through the public defender's
25 office through my job.

1 **THE COURT:** All right. Would the affiliation that
2 you have just described, Ms. Zink, make it difficult for
3 you to be fair and impartial as a juror in the trial of a
4 case in which he represents one of the sides?

5 **JUROR:** No, sir.

6 **THE COURT:** Could you set aside that association and
7 decide this case based on the evidence that you will hear
8 in court?

9 **POTENTIAL JUROR:** Yes, sir.

10 **THE COURT:** Will you do that, please, ma'am?

11 **POTENTIAL JUROR:** Yes, sir.

12 **THE COURT:** Thank you.

13 **MS. MAYES:** May it please the Court?

14 **THE COURT:** Yes, ma'am.

15 **MS. MAYES:** Your Honor, in addition to Ms. Zink having
16 affiliations with the public defender's office, she also
17 does with the solicitor's office and I just want to
18 disclose she's also communicated with our office in regard
19 to her work with the bonding company.

20 **THE COURT:** Thank you, ma'am.

21 Ms. Zink, it appears then that there are affiliations
22 with both sides in this case, both the public defender's
23 office on the defense side, as well as the prosecution
24 side or the State's side. Would your association with the
25 solicitor's office make it difficult for you to be fair

1 and impartial as a juror in the trial of this case?

2 **POTENTIAL JUROR:** No, sir.

3 **THE COURT:** Could you set aside that association and
4 decide this case based on the evidence that you would hear
5 in court with regard to that association?

6 **POTENTIAL JUROR:** Yes, sir.

7 **THE COURT:** Will you do that, please, ma'am?

8 **POTENTIAL JUROR:** Yes, sir.

9 **THE COURT:** Thank you.

10 Ladies and gentlemen, I now need to know if you know
11 anything about this case. I read the indictments to you,
12 as I've said, not because they are proof of anything, but
13 simply to tell you what this case is all about because I
14 need to know if you know anything about this case. If you
15 have seen or heard or read anything about this case or if
16 you have any knowledge about this case from any source,
17 would you please stand. Thank you.

18 (Juror stands.)

19 **THE COURT:** Yes, ma'am. Your name and number, please,
20 ma'am.

21 **POTENTIAL JUROR:** 221.

22 **THE COURT:** 221. Ms. Young, is it?

23 **POTENTIAL JUROR:** Yes.

24 **THE COURT:** All right. Ms. Young, would you approach,
25 please, ma'am, and talk with me at the sidebar?

1 (Potential juror approaches.)

2 (Proceedings held at sidebar out of the hearing of the
3 jury panel.)

4 **THE COURT:** Ms. Young, tell me what you know about
5 this case.

6 **POTENTIAL JUROR:** I don't know if this the same young
7 man, I don't know the -- I don't know the full name, but
8 I have a friend who's name is Nate Hunter, too. I don't
9 know if it's his son or not, but I thought I'd ask.

10 **THE COURT:** You have a son -- a friend whose name is
11 Nathaniel Hunter?

12 **POTENTIAL JUROR:** Yes, and his son was in trouble. I
13 don't know if it's the same one or not.

14 **THE COURT:** All right.

15 **POTENTIAL JUROR:** I don't know what's going on, but I
16 know it's something.

17 **THE COURT:** Do you know his son?

18 **POTENTIAL JUROR:** No.

19 **THE COURT:** How close is -- the Nathaniel Hunter that
20 you know, how close is he to you?

21 **POTENTIAL JUROR:** He has a child from my aunt.

22 **THE COURT:** If it turns out -- and we don't know right
23 now, but if it turns out, if it develops in trial and you
24 find out that the man on trial here is the son of your
25 friend who has a child with your aunt, would that make it

1 difficult for you to be fair and impartial as a juror in
2 this trial?

3 **POTENTIAL JUROR:** No.

4 **THE COURT:** Could you set aside that association and
5 decide this case based on the evidence that you hear in
6 court?

7 **POTENTIAL JUROR:** Yes.

8 **THE COURT:** So it won't matter to you whether he is
9 actually the person -- the son of your friend or not?

10 **POTENTIAL JUROR:** I doubt it. It would make me
11 nervous, but --

12 **THE COURT:** Ma'am?

13 **POTENTIAL JUROR:** I can be fair and impartial, but
14 it --

15 **THE COURT:** That's what I want to know. The question
16 that I really want to know, it boils down to this. If
17 you're asked to serve as juror in the trial of this case,
18 would you be able to make a decision based on the evidence
19 that you will hear in this courtroom and not on whether or
20 not the Defendant is the son of your friend?

21 **POTENTIAL JUROR:** Yes, sir.

22 **THE COURT:** Can you do that?

23 **POTENTIAL JUROR:** Yes, sir.

24 **THE COURT:** Will you do that?

25 **POTENTIAL JUROR:** Yes, sir.

1 **THE COURT:** Thank you, ma'am.

2 (Whereupon, the following proceedings were held in
3 open court.)

4 **THE COURT:** Ladies and gentlemen, you have told me
5 that you don't know anything about this particular case,
6 that you have not seen or heard or read anything about this
7 case, but you do understand what the case is all about.
8 You understand the charges; that is the allegations. I'll
9 tell you at this moment they are only allegations, they're
10 only charges. You know that Mr. Hunter is charged with
11 attempted murder, with burglary in the first degree, with
12 criminal sexual conduct with a minor in the third degree
13 and with possession of a weapon during the commission of a
14 violent crime. So I need to know if any of you in your own
15 lives or in the lives of your immediate family members,
16 that is members of your household, have ever had any
17 connection with crimes of this sort. These are crimes of
18 personal violence obviously, they're crimes against a
19 person, that's the reason we call them that, and so if you
20 or any of your immediate family members have ever had
21 involvement with crimes of personal violence, attempted
22 murder, criminal sexual conduct, burglary in the first
23 degree, those are simply examples, there are others,
24 murder, manslaughter, armed robbery, those are examples of
25 other crimes of personal violence, and I need to know if

1 you or any members of your immediate family have ever had
2 any connection with crimes of that sort either as a victim,
3 that is the person against whom the crime was committed, or
4 the defendant, that is the person charged with committing
5 the crime, or as a witness to the crime. So the question
6 applies not only to you, it applies to any members of your
7 household, any members of your immediate family and the
8 involvement with the crime could have been, as I said,
9 either a victim or a defendant or a witness. Now if that
10 applies to any of you, I want you to stand right now and
11 identify yourselves and then I'm gonna bring you down
12 privately at the sidebar. I say privately, in the presence
13 of the lawyers and myself, and inquire further about your
14 situation if that applies to anyone. If you or any members
15 of your household have ever been involved in a crime of
16 personal violence as a victim, a defendant or a witness,
17 please stand.

18 (Jurors stand.)

19 **THE COURT:** Okay. And if I could just get your name
20 and your number, first of all. We'll start with you. You,
21 sir.

22 **POTENTIAL JUROR:** 165, Phillip Perry.

23 **THE COURT:** All right, sir. Mr. Perry. Thank you.
24 Yes, sir. Well, I'll take you since you're there.

25 **POTENTIAL JUROR:** Angela Crim, Number 50.

1 **THE COURT:** Number 50. Ms. Crim, thank you.

2 Yes, sir.

3 **POTENTIAL JUROR:** 134, Andrew Mallory.

4 **THE COURT:** Mr. Mallory, thank you.

5 Yes, ma'am.

6 **POTENTIAL JUROR:** 200, Traci Stinecipher.

7 **THE COURT:** Ms. Stinecipher, thank you.

8 **POTENTIAL JUROR:** 142, Diana McGee.

9 **THE COURT:** You said 142?

10 **POTENTIAL JUROR:** Yes, sir.

11 **THE COURT:** Thank you, Ms. McGee.

12 Yes, ma'am.

13 **POTENTIAL JUROR:** 155, Heather Nurse.

14 **THE COURT:** Ms. Nurse, thank you.

15 All right. Now, folks, those of you who just stood,
16 if you will form a line, please, in the center aisle and
17 we'll bring you down one at a time and talk to you about
18 your situation.

19 **BAILIFF:** 200, Your Honor.

20 **THE COURT:** Thank you, sir.

21 Ms. Stinecipher, if you will stand a little bit closer
22 so that she can hear. Make sure she can hear you.

23 Was it you or a family member who was involved?

24 **POTENTIAL JUROR:** A family member.

25 **THE COURT:** And what was the relation to you?

1 **POTENTIAL JUROR:** My husband.

2 **THE COURT:** And what was his involvement?

3 **POTENTIAL JUROR:** Well, his sister was murdered by her
4 husband. We weren't married at the time.

5 **THE COURT:** Okay. Where did that occur and when?

6 **POTENTIAL JUROR:** It occurred in -- I think it's
7 Lexington County. Piedmont Road is the name of the --

8 **THE COURT:** That's okay. The county's all I needed to
9 know. And about when? How long ago?

10 **POTENTIAL JUROR:** '99, I believe it was.

11 **THE COURT:** '99. Was the husband prosecuted here?

12 **POTENTIAL JUROR:** Yes.

13 **THE COURT:** And what was the outcome of that
14 prosecution?

15 **POTENTIAL JUROR:** He's in jail for the rest of his
16 life.

17 **THE COURT:** Okay. You and your husband were not
18 married as you said at the time?

19 **POTENTIAL JUROR:** No.

20 **THE COURT:** But you knew each other?

21 **POTENTIAL JUROR:** I knew him, but I did not know his
22 sister.

23 **THE COURT:** I see. Okay. Would that association as
24 you have described it, Ms. Stinecipher, make it difficult
25 for you to be fair and impartial as a juror in this case?

1 Understanding the allegations are attempted murder and the
2 other allegations, would your situation through your
3 husband make it difficult for you to be fair and impartial
4 as a juror in this trial?

5 **POTENTIAL JUROR:** No, sir.

6 **THE COURT:** Would you be able to set aside that
7 association, that experience, and decide this case based on
8 the evidence you that hear in court?

9 **POTENTIAL JUROR:** Yes, sir.

10 **THE COURT:** Would you do that, please, ma'am?

11 **POTENTIAL JUROR:** Yes.

12 **THE COURT:** Thank you. You can go back and have a
13 seat.

14 **BAILIFF:** 134, Your Honor.

15 **THE COURT:** Mr. Mallory, was it you or a family member
16 that was involved?

17 **POTENTIAL JUROR:** It was me.

18 **THE COURT:** And what was your involvement?

19 **POTENTIAL JUROR:** I was the victim of a strong arm
20 robbery about four years ago, maybe five.

21 **THE COURT:** Where did that occur? What county?

22 **POTENTIAL JUROR:** Columbia.

23 **THE COURT:** All right. Was anybody ever caught and
24 convicted as a result of that?

25 **POTENTIAL JUROR:** No. No, sir.

1 **THE COURT:** Nobody was ever caught?

2 **POTENTIAL JUROR:** Not that I'm aware of.

3 **THE COURT:** Okay. Well, you would have known it if
4 they were. Were you injured in that encounter?

5 **POTENTIAL JUROR:** Not physically, no, sir.

6 **THE COURT:** I see. Do you still have some emotional
7 scars that you carry as a result of that?

8 **POTENTIAL JUROR:** Yes, sir.

9 **THE COURT:** All right. Did you ever have to undergo
10 any counseling or anything like that as a result of that?

11 **POTENTIAL JUROR:** No, sir.

12 **THE COURT:** Okay. Would your experience as a victim
13 of a crime of personal violence, Mr. Mallory, make it
14 difficult for you to be fair and impartial in a trial of
15 this sort?

16 **POTENTIAL JUROR:** I think I can be fair and impartial.

17 **THE COURT:** You think you can be fair and impartial?

18 **POTENTIAL JUROR:** Yes, sir.

19 **THE COURT:** Would you be willing to set aside your
20 experience and decide this case based on the evidence that
21 you will hear in court without regard to your own
22 experience?

23 **POTENTIAL JUROR:** I'm sorry, can you repeat that?

24 **THE COURT:** Would you be willing to make your decision
25 as a juror in this trial on the basis of the evidence that

1 you would hear in this court in this trial and not on the
2 basis of your experience?

3 **POTENTIAL JUROR:** Yes, sir.

4 **THE COURT:** And will you do that, please, sir?

5 **POTENTIAL JUROR:** Yes, sir.

6 **THE COURT:** Thank you, Mr. Mallory. You can have a
7 seat.

8 **BAILIFF:** Number 50, Your Honor.

9 **THE COURT:** Ms. Crim.

10 **POTENTIAL JUROR:** Yes, sir.

11 **THE COURT:** If you'll speak so that she can hear you,
12 please.

13 Was it you or a family member who was involved?

14 **POTENTIAL JUROR:** Me.

15 **THE COURT:** And what was your involvement?

16 **POTENTIAL JUROR:** Sexual assault.

17 **THE COURT:** How long ago did that occur?

18 **POTENTIAL JUROR:** Well, I'm fifty-three and that
19 happened when I was five.

20 **THE COURT:** I see. What county did that occur in?

21 **POTENTIAL JUROR:** Aiken County.

22 **THE COURT:** Was anybody caught and convicted as a
23 result of that?

24 **POTENTIAL JUROR:** No, they didn't speak of that back
25 then.

1 **THE COURT:** Was it a family situation?

2 **POTENTIAL JUROR:** No.

3 **THE COURT:** Did you ever have to seek counseling as a
4 result of that?

5 **POTENTIAL JUROR:** I'm in counseling now.

6 **THE COURT:** You are? You're still in?

7 **POTENTIAL JUROR:** (Nods head.)

8 **THE COURT:** You understand that one of the charges in
9 this case is a criminal sexual conduct with a minor in the
10 third degree?

11 **POTENTIAL JUROR:** Uh-huh.

12 **THE COURT:** Similar perhaps to your situation. I
13 don't know exactly what those charges were, but it could be
14 similar. Would your experience as a victim in that case
15 make it difficult for you to be fair and impartial?

16 **POTENTIAL JUROR:** Yes, it would.

17 **THE COURT:** I can understand that and we don't want to
18 have -- cause you to have to relive what happened all those
19 years ago. I'm gonna stand you aside as a juror in this
20 case, Ms. Crim. Please make sure that you don't discuss
21 your situation with anybody else who might be a potential
22 juror in this case, okay?

23 **POTENTIAL JUROR:** Yes, sir.

24 **THE COURT:** Thank you, ma'am. You go back and have a
25 seat, but don't leave us just yet, okay?

1 **POTENTIAL JUROR:** Okay.

2 **THE COURT:** There might be other cases.

3 Juror Number 60 is excused.

4 **BAILIFF:** 165, Your Honor.

5 **THE COURT:** Mr. Perry?

6 **POTENTIAL JUROR:** Yes, sir.

7 **THE COURT:** Was it you or a family member who was
8 involved?

9 **POTENTIAL JUROR:** It was a family member.

10 **THE COURT:** And what was the relation to you, please,
11 sir?

12 **POTENTIAL JUROR:** It was my father.

13 **THE COURT:** And what was his involvement?

14 **POTENTIAL JUROR:** He was -- he's a pharmacist and he
15 was robbed at gunpoint about the early 1980's, so I was a
16 young child when it happened. He wasn't injured or
17 anything, but he was robbed at his pharmacy.

18 **THE COURT:** Okay. Was anybody ever caught and
19 prosecuted?

20 **POTENTIAL JUROR:** I believe so, sir.

21 **THE COURT:** Did it happen in Lexington County or
22 Richland County or do you remember?

23 **POTENTIAL JUROR:** Lexington County.

24 **THE COURT:** It was? Okay. You were a child at that
25 point in time?

1 **POTENTIAL JUROR:** Yes, sir.

2 **THE COURT:** Did you have any involvement in the case
3 itself, like being a witness or anything like that?

4 **POTENTIAL JUROR:** No, sir, not at all.

5 **THE COURT:** Okay. Did your father carry any
6 emotional scars that you could tell that impacted his --
7 his relationship with you, for example, or his family from
8 that point on?

9 **POTENTIAL JUROR:** No, sir.

10 **THE COURT:** Would you be able as a juror to set aside
11 your father's experience and those vicariously through him
12 and decide this case based on the evidence that you would
13 hear in this trial and not on the basis of your father's
14 experience as a victim?

15 **POTENTIAL JUROR:** Yes, sir, I would.

16 **THE COURT:** Would you do that, please, sir?

17 **POTENTIAL JUROR:** Yes, sir.

18 **THE COURT:** Thank you. You can go back and have a
19 seat.

20 **BAILIFF:** 142, Your Honor.

21 **THE COURT:** Ms. McGee, if you'll speak so that she can
22 hear you, please, ma'am.

23 **POTENTIAL JUROR:** Okay.

24 **THE COURT:** Was you it you or a family member who was
25 involved?

1 **POTENTIAL JUROR:** A family member.

2 **THE COURT:** And what was the relationship to you?

3 **POTENTIAL JUROR:** Spouse. It was a boyfriend at the
4 time, now it's a spouse.

5 **THE COURT:** Okay. And what was his involvement?

6 **POTENTIAL JUROR:** He was charged with assault for
7 shooting my father, but the case was dismissed for lack of
8 evidence.

9 **THE COURT:** Okay. So it was a charge -- allegations
10 against -- what he did against your father; is that right?

11 **POTENTIAL JUROR:** Right.

12 **THE COURT:** That was when you were boyfriend and
13 girlfriend?

14 **POTENTIAL JUROR:** Correct.

15 **THE COURT:** And now you're husband and wife?

16 **POTENTIAL JUROR:** Yes.

17 **THE COURT:** So I take it that everybody's made up as
18 a result of all that pretty much?

19 **POTENTIAL JUROR:** Correct.

20 **THE COURT:** Okay. Would your status sort of in
21 between those two, a father on one hand and a husband on
22 another, as a victim, would your experience in that regard
23 make it difficult for you to be fair and impartial as a
24 juror in this case?

25 **POTENTIAL JUROR:** No, I can do it.

1 **THE COURT:** Could you set aside those experiences and
2 decide this case based on what you hear in court?

3 **POTENTIAL JUROR:** Yes.

4 **THE COURT:** And would you do that, please, ma'am?

5 **POTENTIAL JUROR:** Yes.

6 **THE COURT:** Thank you, Ms. McGee. Please go back and
7 have a seat.

8 **BAILIFF:** 155, Your Honor.

9 **POTENTIAL JUROR:** Hello.

10 **THE COURT:** Hey, Ms. Nurse. If you'll speak so that
11 she can hear you, please, ma'am.

12 **POTENTIAL JUROR:** Yes.

13 **THE COURT:** Was it you or a family member who was
14 involved?

15 **POTENTIAL JUROR:** It was a family member. My
16 daughter.

17 **THE COURT:** Your daughter. And what was her
18 involvement?

19 **POTENTIAL JUROR:** She was molested when she was three.

20 **THE COURT:** And how old is she now?

21 **POTENTIAL JUROR:** She's now seven.

22 **THE COURT:** Was anybody caught and prosecuted as a
23 result of that?

24 **POTENTIAL JUROR:** Yeah, the little boy that was in
25 question ended up going to some sort of facility for the

1 offense.

2 **THE COURT:** All right. How old was he at the time?

3 **POTENTIAL JUROR:** I think he was like nine -- or, no,
4 he was in his early teens, like eleven or twelve.

5 **THE COURT:** Okay. And he was processed through the
6 juvenile justice department?

7 **POTENTIAL JUROR:** Uh-huh.

8 **THE COURT:** And that happened in Lexington County?

9 **POTENTIAL JUROR:** No, it happened up in Maine.

10 **THE COURT:** In Maine?

11 **POTENTIAL JUROR:** Uh-huh.

12 **THE COURT:** How's your daughter now?

13 **POTENTIAL JUROR:** She doesn't really talk about it and
14 she's --

15 **THE COURT:** That's good.

16 **POTENTIAL JUROR:** -- she doesn't remember anything.

17 **THE COURT:** Is she still going through counseling?

18 **POTENTIAL JUROR:** Unh-unh, no. She seemed fine at the
19 time and she talked to people and seems like she's okay.

20 **THE COURT:** You understand that one of the allegations
21 in this particular case is a charge of criminal sexual
22 conduct with a minor in the third degree?

23 **POTENTIAL JUROR:** Uh-huh.

24 **THE COURT:** Perhaps not unlike your daughter's case.

25 **POTENTIAL JUROR:** Uh-huh.

1 **THE COURT:** If you're selected as a juror in the trial
2 of this case, could you decide this case based on the
3 evidence you'd hear in this trial without regard to your
4 daughter's situation?

5 **POTENTIAL JUROR:** I'm afraid that I might be a little
6 impartial in this case only because obviously I'm not happy
7 with those kind of issues.

8 **THE COURT:** I understand. You said you're afraid you
9 might be impartial. I take it you mean that you might
10 partial?

11 **POTENTIAL JUROR:** Yes. Sorry.

12 **THE COURT:** I understand and we can appreciate that.
13 We're gonna stand you aside, Ms. Nurse. We don't want you
14 to have to go back and relive those unpleasant times, all
15 right, ma'am, so you'll be set aside. Please don't discuss
16 your situation with any of the other jurors, okay?

17 **POTENTIAL JUROR:** All right.

18 **THE COURT:** Thank you, ma'am. You can go back to your
19 seat.

20 (Whereupon, the following proceedings were held in
21 open court.)

22 **THE COURT:** Ladies and gentlemen, have any of you or
23 members of your immediate family ever been employed by any
24 law enforcement agency, Federal, state, county or municipal
25 law enforcement agency or police department, like SLED,

1 the highway patrol, the sheriff's department, probation
2 department? Any law enforcement agency. If you or a
3 family member have ever been employed in that regard, would
4 you please stand.

5 (Jurors stand.)

6 **THE COURT:** Okay. I simply need your name and your
7 juror number. We'll start on the aisle, please, ma'am.

8 **POTENTIAL JUROR:** Allison Alderman, Number 3.

9 **THE COURT:** Number 3. Thank you, Ms. Alderman. Okay.
10 You can sit down, ma'am. Yes, sir?

11 **POTENTIAL JUROR:** 193.

12 **THE COURT:** 193. Thank you, sir. Who's next?

13 **POTENTIAL JUROR:** 121, David Lawson.

14 **THE COURT:** 121?

15 **POTENTIAL JUROR:** Yes, sir.

16 **THE COURT:** Okay. Thank you, sir. You can be seated.
17 Yes, ma'am, on the aisle in the green.

18 **POTENTIAL JUROR:** 191, Stacey Shull.

19 **THE COURT:** 91?

20 **POTENTIAL JUROR:** 191.

21 **THE COURT:** Ms. Shull, thank you, ma'am. You can be
22 seated. Yes, ma'am?

23 **POTENTIAL JUROR:** Number 11, Sonia Barton.

24 **THE COURT:** Thank you, Ms. Barton. Yes, sir?

25 **POTENTIAL JUROR:** Number 103, Erick Jeffcoat.

1 **THE COURT:** Did you say 103?

2 **POTENTIAL JUROR:** Yes, sir.

3 **THE COURT:** Thank you, sir. Yes, sir?

4 **POTENTIAL JUROR:** 75, John Gasque.

5 **THE COURT:** Thank you, Mr. Gasque.

6 Ladies and gentlemen, those of you who just stood in
7 response indicating that a family member or a close friend
8 has been employed by a Federal agency or state agency or
9 law enforcement agency, I need to know if that background
10 in your family would make it difficult for you to serve
11 fairly and impartially as a juror in the trial of this
12 case. If it would impact your ability to serve fairly and
13 impartially, please stand. Thank you.

14 Have any of you or any members of your immediate
15 family ever been employed by any prosecuting agency; that
16 is, the U.S. attorney's office, the attorney general's
17 office of the state, the solicitor's office or the district
18 attorney's office or the city attorney's office or the
19 public defender's office or a defense attorney's office
20 in private practice? If so, would you please stand.

21 (Jurors stand.)

22 **THE COURT:** Yes, ma'am. Your name again? I'm sorry.

23 **POTENTIAL JUROR:** Sonia Barton, Number 11.

24 **THE COURT:** Ms. Barton. Okay. Thank you, ma'am. And
25 Mr. Gasque, is it?

1 **POTENTIAL JUROR:** Yes, sir.

2 **THE COURT:** Thank you, Mr. Gasque. Number 75.

3 Are any of you or any members of your immediate family
4 members or contributors to or supporters of any law
5 enforcement support agency or victims' rights organization
6 such as MADD, SADD, CAV, CADRI or the like? If so, please
7 stand. Thank you.

8 Ladies and gentlemen, understanding what the charges
9 are in this particular case, the nature of the charges
10 themselves and the allegations in this particular case, is
11 there anything in your own personal background or your own
12 religious beliefs or political beliefs or moral beliefs
13 that would make it difficult for you to be fair and
14 impartial as a juror in a trial dealing with the
15 allegations that you have heard read from this indictment
16 -- or these indictments? If you do have anything in your
17 own background of that nature that you feel would impact
18 your ability to be fair and impartial, would you please
19 stand. Thank you.

20 Ladies and gentlemen, have any of you formed in
21 your own mind or expressed to anyone else any opinion
22 that you might have as to the guilt or the innocence of
23 Mr. Nathaniel Antron Hunter? If you have formed or
24 expressed any such opinion, would you please stand.

25 Are any of you aware in your own mind or are you

1 conscious of any bias or prejudice that you might have
2 for or against this Defendant or for against the State?
3 If you are aware, would you please stand.

4 Can all of you then give both the State and this
5 Defendant a fair and impartial trial? If you cannot,
6 would you please stand.

7 (Juror stands.)

8 **THE CLERK:** She's already been set aside.

9 **THE COURT:** Yes, ma'am, I think we've already stood
10 you aside.

11 **POTENTIAL JUROR:** Okay.

12 **THE COURT:** Ms. Mayes, other than previously posed are
13 there any additional questions from the State?

14 **MS. MAYES:** None from the State, Your Honor.

15 **THE COURT:** Thank you. Mr. Phillips, I tried -- I've
16 got yours now. Other than previously posed, are there any
17 additional questions from the defense?

18 **MR. PHILLIPS:** None additional other than the ones
19 marked as Court's Exhibit Number 1 and Defense Exhibit
20 Number 4.

21 **THE COURT:** All right. And I understand that you have
22 made those -- you've already made those an exhibit; have
23 you not?

24 **MR. PHILLIPS:** Yes, Your Honor. And I would reserve
25 the right to be able to explain that in further detail

1 after the selection.

2 **THE COURT:** If you need -- if you need any further
3 discovery or time, we can deal with that out of the
4 presence of the jury.

5 **MR. PHILLIPS:** Thank you.

6 **THE COURT:** All right. Madam Clerk, if you'll give us
7 a jury. The strikes will be five for the State and ten for
8 the defense. We will select two alternates. As to each
9 alternate, the strikes will be one for the State and two
10 for the defense.

11 **THE CLERK:** Yes, sir.

12 **THE COURT:** Ladies and gentlemen, the process now
13 that's gonna go on that you can't see because it's
14 happening in a computer up here, those of you who have
15 been stood aside, your names have been taken out of the
16 list. Those who are still in the hopper, so to speak,
17 your name's are gonna be fed into this computer and
18 electronically and at random names are going to be
19 selected and put on a list and that will form the potential
20 jury list and from that list we will call the names in the
21 order in which they are there and you will be asked to
22 follow the instructions that the clerk will give you and
23 then we'll go through that process to either seat you or
24 excuse you until we have the required number of jurors in
25 this case.

1 We used to have a real archaic way of doing this,
2 selecting these names out of receptacles, round receptacles
3 and the names would be put in there, sometimes on a slip
4 of paper or sometimes in a capsule and they would be spun
5 around so that it would be a completely blind draw. As a
6 matter of fact, for many years the law required that the
7 draw be made by a blind person or a person seven years of
8 age or younger. Now we choose a blind computer and it does
9 the same process. It's not nearly as colorful or archaic.

10 **THE CLERK:** Are you ready to proceed, Your Honor?

11 **THE COURT:** All right. Ladies and gentlemen of the
12 jury, if your name is called will you please stand in place
13 right where you are and remain standing until the clerk
14 instructs you to either sit down or come forward, okay?

15 Madam Clerk.

16 **THE CLERK:** Yes, sir, Your Honor. Number 211, John
17 Walpole.

18 **MS. MAYES:** 211?

19 **THE CLERK:** Yes, ma'am.

20 (Whereupon, John Walpole, a white male, stands.)

21 **THE CLERK:** What say for the State?

22 **MS. MAYES:** Please present the juror.

23 **THE CLERK:** What say for the defense?

24 **MR. PHILLIPS:** Please seat the juror.

25 **THE CLERK:** Come forward and have a seat in the jury

1 box, sir.

2 Number 6, Donald Anderson.

3 (Whereupon, Donald Anderson, a white male, stands.)

4 **THE CLERK:** What say for the State?

5 **MS. MAYES:** Please present the juror.

6 **THE CLERK:** What say for the defense?

7 **MR. PHILLIPS:** Please excuse Mr. Anderson.

8 **THE CLERK:** Have a seat, sir.

9 Number 2, Lisa Addy.

10 (Whereupon, Lisa Addy, a white female, stands.)

11 **THE CLERK:** What say for the State?

12 **MS. MAYES:** Please present the juror.

13 **THE CLERK:** What say for the defense?

14 **MR. PHILLIPS:** Please excuse Ms. Addy.

15 **THE CLERK:** Have a seat, ma'am.

16 Number 212, William Warren.

17 (Whereupon, William Warren, a white male, stands.)

18 **THE CLERK:** What say for the State?

19 **MS. MAYES:** Please present the juror.

20 **THE CLERK:** What say for the defense?

21 **MR. PHILLIPS:** Please seat sit Mr. Warren. Please
22 seat.

23 **THE CLERK:** Come forward and have a seat in the jury
24 box, sir.

25 Number 3, Allison Alderman.

1 (Whereupon, Allison Alderman, a white female, stands.)

2 **THE CLERK:** What say for the State?

3 **MS. MAYES:** Please present the juror.

4 **THE CLERK:** What say for the defense?

5 **MR. PHILLIPS:** Please excuse Ms. Alderman.

6 **THE CLERK:** Have a seat, please, ma'am.

7 Number 13, Kimberly Benson.

8 (Whereupon, Kimberly Benson, a white female, stands.)

9 **THE CLERK:** What say for the State?

10 **MS. MAYES:** Please present the juror.

11 **THE CLERK:** What say for the defense?

12 **MR. PHILLIPS:** Please excuse Ms. Benson.

13 **THE CLERK:** Have a seat, please, ma'am.

14 Number 134, Andrew Mallory.

15 (Whereupon, Andrew Mallory, a white male, stands.)

16 **THE CLERK:** What say for the State?

17 **MS. MAYES:** Please present the juror.

18 **THE CLERK:** What say for the defense?

19 **MR. PHILLIPS:** Please seat Mr. Mallory.

20 **THE CLERK:** Come forward and have a seat in the jury

21 box, sir.

22 Number 131, William Loof.

23 (Whereupon, William Loof, a white male, stands.)

24 **THE CLERK:** What say for the State?

25 **MS. MAYES:** Please present the juror.

1 **THE CLERK:** What say for the defense?

2 **MR. PHILLIPS:** Please excuse Mr. Loof.

3 **THE CLERK:** Have a seat, please, sir.

4 121, David Lawson.

5 (Whereupon, David Lawson, a white male, stands.)

6 **THE CLERK:** What say for the State?

7 **MS. MAYES:** Please present the juror.

8 **THE CLERK:** What say for the defense?

9 **MR. PHILLIPS:** Please seat Mr. Lawson.

10 **THE CLERK:** Come forward and have a seat in the jury
11 box, please, sir.

12 Number 42, Casey Cooper.

13 (Whereupon, Casey Cooper, a white male, stands.)

14 **THE CLERK:** What say for the State?

15 **MS. MAYES:** Please excuse the juror from the trial of
16 this case.

17 **THE CLERK:** Have a seat, please, sir.

18 78, Stanley Goff.

19 (Whereupon, Stanley Goff, a white male, stands.)

20 **THE CLERK:** What say for the State?

21 **MS. MAYES:** That number again, Madam Clerk?

22 **THE CLERK:** 78.

23 **MS. MAYES:** Please present the juror.

24 **THE CLERK:** What say for the defense?

25 **MR. PHILLIPS:** Please excuse Mr. Goff.

1 **THE CLERK:** Have a seat, please, sir.
2 Number 116, Frederick Krause.
3 (Whereupon, Frederick Krause, a white male, stands.)
4 **THE CLERK:** What say for the State?
5 **MS. MAYES:** Please present the juror.
6 **THE CLERK:** What say for the defense?
7 **MR. PHILLIPS:** Please seat Mr. Krause.
8 **THE CLERK:** Come forward and have a seat in the jury
9 box, sir.
10 136, Rene Martin.
11 (Whereupon, Rene Martin, a white female, stands.)
12 **THE CLERK:** What say for the State?
13 **MS. MAYES:** Please present the juror.
14 **THE CLERK:** What say for the defense?
15 **MR. PHILLIPS:** Please seat Ms. Martin.
16 **THE CLERK:** Come forward and have a seat in the jury
17 box, please, ma'am.
18 135, Christian Mann.
19 (Whereupon, Christian Mann, a white male, stands.)
20 **THE CLERK:** What say for say the State?
21 **MS. MAYES:** Please present the juror.
22 **THE CLERK:** What say for the defense?
23 **MR. PHILLIPS:** Please seat Mr. Mann.
24 **THE CLERK:** Come forward and have a seat in the jury
25 box, sir.

1 Number 120, Robert Lane.

2 (Whereupon, Robert Lane, a white male, stands.)

3 **THE CLERK:** What say for the State?

4 **MS. MAYES:** Have please present the juror.

5 **THE CLERK:** What say for the defense?

6 **MR. PHILLIPS:** Please seat Mr. Lane.

7 **THE CLERK:** Come forward and have a seat in the jury
8 box, sir.

9 Number 111, Austin Keane.

10 (Whereupon, Austin Keane, a white male, stands.)

11 **THE CLERK:** What say for the State?

12 **MS. MAYES:** Please present the juror.

13 **THE CLERK:** What say for the defense?

14 **MR. PHILLIPS:** Please seat Mr. Keane.

15 **THE CLERK:** Come forward and have a seat in the jury
16 box please, sir.

17 102, Richard Jackson.

18 (Whereupon, Richard Jackson, a white male, stands.)

19 **THE CLERK:** What say for the State?

20 **MS. MAYES:** Please present the juror.

21 **THE CLERK:** What say for the defense?

22 **MR. PHILLIPS:** Please excuse Mr. Jackson.

23 **THE CLERK:** Have a seat, please, sir.

24 193, Andrew Skaggs.

25 (Whereupon, Andrew Skaggs, a white male, stands.)

1 **THE CLERK:** What say for the State?

2 **MS. MAYES:** Please present the juror.

3 **THE CLERK:** What say for the defense?

4 **MR. PHILLIPS:** Please seat Mr. Skaggs.

5 **THE CLERK:** Come forward and have a seat in the jury
6 box, sir.

7 137, Timothy Martin.

8 (Whereupon, Timothy Martin, a black male, stands.)

9 **THE CLERK:** What say for the State?

10 **MS. MAYES:** Please excuse the juror from the trial of
11 this case.

12 **THE CLERK:** Have a seat, please, sir.

13 205, David Tindal.

14 (Whereupon, David Tindal, a white male, stands.)

15 **THE CLERK:** What say for the State?

16 **MS. MAYES:** Please present the juror.

17 **THE CLERK:** What say for the defense?

18 **MR. PHILLIPS:** Please excuse Mr. Tindal.

19 **THE CLERK:** Have a seat, please, sir.

20 Number 156, Linda O'Neill.

21 (Whereupon, Linda O'Neill, a white female, stands.)

22 **THE CLERK:** What say for the State?

23 **MS. MAYES:** Please present the juror.

24 **THE CLERK:** What say for the defense?

25 **MR. PHILLIPS:** Please excuse Ms. O'Neill.

1 **THE CLERK:** Have a seat, please, ma'am.

2 **THE COURT:** The State has exercised two strikes, the
3 defense has exercised nine strikes.

4 **THE CLERK:** Number 189, Patricia Shahbahrami-Gates.

5 (Whereupon, Patricia Shahbahrami-Gates, a white
6 female, stands.)

7 **THE CLERK:** What say for the State?

8 **MS. MAYES:** Please present the juror.

9 **THE CLERK:** What say for the defense?

10 **MR. PHILLIPS:** Please seat Ms. Shahbahrami-Gates.

11 **THE CLERK:** Come forward and have a seat in the jury
12 box, ma'am.

13 Number 221, Harriet Young.

14 (Whereupon, Harriet Young, a black female, stands.)

15 **THE CLERK:** What say for the State?

16 **MS. MAYES:** Please excuse the juror from the trial of
17 this case.

18 **THE CLERK:** Have a seat, please, ma'am.

19 77, Stormy Girdler.

20 (Stormy Girdler, a white male, stands.)

21 **THE CLERK:** What say for the State?

22 **MS. MAYES:** That number again, Madam Clerk?

23 **THE CLERK:** 77.

24 **MS. MAYES:** Please present the juror.

25 **THE CLERK:** What say for the defense?

1 **MR. PHILLIPS:** Please excuse Mr. Girdler.

2 **THE CLERK:** Have a seat, please, sir.

3 Number 90, Stephanie Hemingway.

4 (Whereupon, Stephanie Hemingway, a white female,
5 stands.)

6 **THE CLERK:** What say for the State?

7 **MS. MAYES:** Please present the juror.

8 **THE CLERK:** What say for the defense?

9 **MR. PHILLIPS:** Please seat the juror.

10 **THE CLERK:** Come forward and have a seat in the jury
11 box, ma'am.

12 Continue with alternates, Your Honor?

13 **THE COURT:** Yes, ma'am. Continue with alternates.

14 **THE CLERK:** Number 106, Shelli Johnson.

15 (Whereupon, Shelli Johnson, a black female, stands.)

16 **THE CLERK:** What say for the State?

17 **MS. MAYES:** Please present the juror.

18 **THE CLERK:** What say for the defense?

19 **MR. PHILLIPS:** Please seat the juror.

20 **THE CLERK:** Come forward and have a seat in the jury
21 box, ma'am. That's alternate one, Your Honor.

22 **THE COURT:** Yes, ma'am.

23 **THE CLERK:** Number 114, Travis Kinder.

24 (Whereupon, Travis Kinder, a white male, stands.)

25 **THE CLERK:** What say for the State?

1 **MS. MAYES:** Please present the juror.

2 **THE CLERK:** What say for the defense?

3 **MR. PHILLIPS:** Please seat the juror.

4 **THE CLERK:** Come forward and have a seat in the jury
5 box, sir. That's alternate two, Your Honor.

6 **THE COURT:** Thank you.

7 Ms. Mayes, are there any matters of law regarding the
8 jury selection process from the State?

9 **MS. MAYES:** None from the State, Your Honor.

10 **THE COURT:** Thank you.

11 Mr. Phillips, from the defense?

12 **MR. PHILLIPS:** Just a moment, Your Honor.

13 **THE COURT:** Yes, sir.

14 **MR. PHILLIPS:** We do have a motion, Your Honor.

15 **THE COURT:** All right. Thank you.

16 Ladies and gentlemen, I'm gonna ask you to step to
17 your jury room for just a few moments. If you'll follow
18 the bailiff, he's gonna take you into the jury room while
19 we continue with some matters that we need to deal with
20 outside your presence. You can get acquainted with each
21 other, but obviously you don't know anything about this
22 case. This is -- I'll be telling the jurors from time to
23 time don't discuss this case until the end of the trial.
24 You don't know anything about it yet, so you can't talk
25 about it. So talk about anything else, but not about the

1 case. Thank you. Step into the jury room I'll get you
2 back out as soon as we complete this.

3 (Whereupon, the jury retires to the jury room at
4 12:00 PM.)

5 **THE COURT:** Ladies and gentlemen, those of you who are
6 seated outside in the audience, I'm gonna have to ask you
7 to step out in the hall for a few minutes. I need to deal
8 with some matters of law outside of your presence here in
9 the courtroom. We'll get you out shortly to continue.
10 Please don't leave, don't run away from us yet. We may
11 need you when you get back in, so step out into the hall,
12 refresh yourselves. It will take us a few minutes to do
13 what we need to do in here.

14 (Whereupon, the jury panel was excused at 12:02 PM.)

15 **THE COURT:** All right. Mr. Phillips, I'll be glad to
16 hear your motion.

17 **MR. PHILLIPS:** Thank you, Your Honor. The Defendant
18 would request a hearing pursuant to Batson v. Kentucky
19 based on Juror Number 137 and 221 being struck by the
20 State. Juror Number 137 is a black male, Juror 221 is a
21 black female.

22 **THE COURT:** All right.

23 **MR. PHILLIPS:** And there was a black female seated,
24 but she was not on the panel, she's an alternate. Juror
25 Number 106.

1 **THE COURT:** All right. Thank you.

2 All right, Ms. Mayes. If you'll give me the racially
3 neutral reasons for the strikes exercised against Juror
4 Number 137 and 221.

5 **MS. MAYES:** Yes, sir, Your Honor. As to 137, he has
6 a recent conviction for criminal domestic violence and
7 that was 2016. So, Your Honor, that's going to involve
8 several different factors. Again, with it being a
9 domestic violence offense, it's going to be a crime
10 against a female. It's also a crime for which he was
11 convicted. It was a crime that was very recent in nature
12 because it just occurred last year and in a case like this
13 we're going to excuse anyone who has a crime against a
14 person.

15 **THE COURT:** And I take it by your statement that
16 there were no white males with similar convictions or a
17 similar record that were seated?

18 **MS. MAYES:** That is correct, Your Honor. Juror
19 Number 42 was a white male. That was the first strike
20 that was exercised by the State and Juror Number 42 I just
21 want to note for the record, being a white male, he also
22 had convictions on his record that included at least two
23 convictions for DUI. He had a recent arrest for leaving
24 the scene of an accident. He also had convictions for
25 public disorderly conduct and at least one arrest for

1 receiving stolen goods. So, Your Honor, with that amount
2 of involvement with law enforcement, we did not find him a
3 suitable juror and I note that because he was a white male.
4 Now there was one juror, a white male, who was seated. He
5 is Juror Number 135. He had a driving under suspension.
6 It looks like it was an arrest with no disposition
7 thirteen years ago. The date on that was 2004 and, again,
8 that's no disposition. It does not appear that that was
9 DUI-related because it was a standalone DUS charge and,
10 again, that's no conviction. So there was certainly a
11 distinction there and that's not crime against a person,
12 it would be simply a traffic crime in nature.

13 Your Honor, as for Juror 221, she was the black
14 female. She had approached the bench during voir dire
15 and indicated that she believed she knew the Defendant's
16 father and that she knew that his son was in trouble. She
17 gave the name Nate Hunter. Our understanding is that the
18 Defendant's father is, in fact, also Nathaniel or Nate
19 Hunter. And in addition to that, Your Honor, she stated
20 that it would make her nervous. I believe she stated that
21 twice. Ultimately she came around to saying that she could
22 be fair, but she certainly indicated that she has that
23 relationship there and had heard some things about the
24 case. Your Honor, for that reason, her being affiliated
25 with the Defendant's family, we exercised a strike in that

1 regard.

2 **THE COURT:** All right. Thank you. Mr. Phillips.

3 **MR. PHILLIPS:** Thank you, Your Honor. As to Juror
4 Number 137, the defense would request that the State's
5 list of convictions be put as a Court's exhibit to
6 preserve the issue for appellate review if it deems
7 necessary. That way the defense can review it to make
8 sure that there's no similarly situated jurors who have
9 been seated with convictions.

10 **THE COURT:** All right. We can have that marked as a
11 Court's exhibit to preserve the record. Thank you. As to
12 Ms. Young, anything as to her?

13 **MR. PHILLIPS:** No, Your Honor.

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

15 All right. Thank you. The State has exercised
16 racially neutral reasons for exercising each of the two
17 strikes against African Americans. I need not recite the
18 standard of Purkett vs. Elem and the cases which have come
19 down and have given us guidance to go by. Clearly these
20 were racially neutral reasons and independent of race. As
21 a matter of fact, the other strike that was exercised
22 against Juror Number 42, Casey Cooper, also was a
23 conviction, shows that both races were treated in the same
24 way in the exercise of strikes. The Batson challenge is
25 respectfully denied.

1 **MR. PHILLIPS:** And, Your Honor, if I may, at this
2 moment I can actually put on the record the supplemental
3 voir dire to preserve on the record.

4 **THE COURT:** Okay.

5 **MR. PHILLIPS:** The Defendant respectfully requested
6 supplemental voir dire examination to preserve the
7 Defendant's right to an impartial jury and fair trial
8 pursuant to the Fifth, Sixth and Fourteenth amendments to
9 the United States Constitution and South Carolina --
10 Article 1, Section 3 of the South Carolina Constitution
11 and pursuant to Estelle v. Williams and Cage v. Louisiana.
12 The purpose of the supplemental attorney-conducted voir
13 dire is to expose any known or unknown bias, with respect
14 to the unknown being the emphasis here, or prejudice
15 against prospective jurors that they would have against the
16 Defendant and preserve the issue for appellate review.
17 Specifically as for our Batson motion, Your Honor,
18 one of the issues that was in Court's Exhibit Number 1,
19 Defendant's Exhibit Number 4 and the supplemental voir
20 dire, one of the issues we raised was that adequate voir
21 dire would -- or supplemental voir dire would aid the
22 parties in complying with the requirements of Batson v.
23 Kentucky and its progeny, essentially that our United
24 States Supreme Court has case law discussing adequate voir
25 dire. Had we had this adequate voir dire we'd have been

1 able to properly challenge this Batson motion and possibly
2 could be able to argue more sufficiently and effectively
3 as to the reasons why it was mere pretext and because of
4 that the Batson motion was denied. Going hand in hand
5 between that motion for supplemental voir dire and this
6 Batson motion I think highlights and enhances the prejudice
7 of why these questions need to be asked. I know for the
8 record appellate purposes-wise I have to specifically state
9 -- I know Your Honor agreed to -- on Page 6 of the motion
10 agreed to ask questions 1 through 6, but hasn't asked 7
11 through 15, asked 16 and 17, did not ask 18 through 22, did
12 a combination of 23 through -- or 23 and then 25 through
13 28, did not ask 24, did not ask 29 through 34. With that
14 being said, Your Honor, we would rest on the motion and
15 appreciate the Court's indulgence.

16 **THE COURT:** All right. Thank you. As to the matter
17 of possible pretextual reasons given for the strikes, of
18 course, the record of Mr. Martin's conviction for a recent
19 CDV, of course, would be evidence that there was not a
20 pretextual reason and as to Ms. Young, of course, I think
21 we're all aware of her colloquy at sidebar which surely
22 indicated that she possibly had a close connection with
23 the father of this Defendant. As a matter of fact, the
24 Nate Hunter that she knew who had a son who had gotten in
25 trouble with the law was the -- had a child by her aunt,

1 as I recall. Ms. Young's colloquy alone at sidebar would
2 rise above any pretextual reason from there. I guess the
3 only thing that additional voir dire might have revealed
4 is to whether or not there were other folks similarly
5 situated of a different race in this particular case. I
6 note your objection, of course, and feel that the expanded
7 voir dire which I gave far beyond that which is required
8 in cases of this sort was sufficient to ensure that
9 Mr. Hunter's selection of the jury was done in accordance
10 to his constitutional rights.

11 All right. Let's see. I believe -- I'm trying to
12 decide whether to get this jury out. Bring that outside
13 jury in, first of all. That would be the best thing so
14 we can get this jury dealt with quicker.

15 (Whereupon, the jury panel entered the courtroom at
16 12:13 PM.)

17 **THE COURT:** Folks, thank you very much for your
18 patience this morning and into the afternoon. I got you
19 back in so that I can tell you you can go. But I needed
20 to tell you on the record because I need to remind you of
21 a couple of things. I had to send you out to deal with
22 some matters of law regarding the jury selection process
23 that did not involve you, but we needed to deal with that
24 with an empty courtroom simply to keep your potential
25 involvement as a juror in this case from being tainted if

1 you were asked to serve, but you're not asked to serve as
2 a juror in the trial of this case, so I'm gonna let you
3 go.

4 I want to ask you to call that number that you were
5 given earlier today after 6:00 tonight to get further
6 instructions and you will follow the instructions given to
7 you by the recording. There's no point in calling before
8 six. We probably won't have a message on there before six
9 and you can call any time after six. It's a recording.
10 You can't argue with it or talk back to it. It's not
11 gonna listen to a thing you've got to say. So just call
12 in after six throughout the course of this week until you
13 get further instructions from that machine.

14 I thank you for your involvement and if your
15 involvement as jurors this week does not go beyond what
16 you have been through here today, I thank you for your
17 patience during that process. Even though you did not get
18 to sit on this jury and you will not get to hear a single
19 word of testimony offered in the course of this trial,
20 your involvement in the jury selection process itself is a
21 very important part of what we do here today and we thank
22 you for submitting yourself to that important part.

23 I'm gonna let you go now with my gratitude and the
24 gratitude of all of us here for your patience throughout
25 the day. If I don't get a chance to see you again, thank

1 you for coming and good luck to you the rest of the week.

2 Thank you.

3 (Whereupon, the jury panel was excused at 12:16 PM.)

4 **THE COURT:** All right. If you will bring in that
5 other jury, please, sir.

6 (Whereupon, the jury returns the courtroom at
7 12:16 PM.)

8 **THE COURT:** Ladies and gentlemen, y'all have now been
9 selected as jurors for the trial of this case. We're
10 gonna start the trial of this case in the morning. We
11 would normally start at 9:30, but I'm gonna ask you to be
12 in the jury room tomorrow at 10:00. We may have some
13 preliminary matters in the morning that we need to take
14 care of before we start this trial and I don't want to
15 delay you or have you cooped up in that jury room while
16 we're having to deal with matters out here.

17 So please be back in the jury room where you just
18 left at 10:00 tomorrow. Before we start the trial
19 tomorrow, I'm gonna give you some instructions about your
20 duties as jurors and some restrictions that will be placed
21 on you as jurors throughout the trial of this case. But
22 to keep you between now and then from doing some things
23 that you're not supposed to do innocently and inadvertently
24 because you didn't know you were weren't supposed to do it,
25 let met tell you now that you're not allowed to talk about

1 this case at any time during the trial of this case even
2 among yourselves until the trial is over, until it has been
3 delivered into your hands for your deliberations. From
4 that point on you can take as much time as you want to deal
5 with it and talk about it, but not until then.

6 And you also can't talk with anybody else about this
7 case. You can't try to find out anything on your own about
8 this case. Google is a wonderful thing to tell you almost
9 anything that you'd want to know about anything in the
10 world and you might find something if you went onto Google
11 about this case. I don't know if you would or not, but
12 don't do it. Don't do it at any time throughout the trial
13 of this case. Everything that we have done this morning
14 since y'all got here at 9:30 until this very moment,
15 everything that we have done, has been designed to ensure
16 that when we have fourteen folks like you over in that jury
17 box we're gonna have folks who didn't have any connection
18 with this case, who did not know anything about this case,
19 who didn't have any preconceived ideas about this case, who
20 didn't have anything in your own background and your own
21 beliefs that would impact your ability to be fair and
22 impartial, who didn't know these people, who didn't know
23 the lawyers, who didn't know the witnesses. All of those
24 things that we have been going through all this day, and
25 you with us, you as well have been an important part of it,

1 have been designed to assure us that now we have fourteen
2 people in the room who don't have anything -- connection
3 with this case that would keep them from being fair and
4 impartial and from this point on you fourteen people are
5 the only fourteen people in the world who may have a voice
6 in the outcome of this case. And for that reason you're
7 not allowed to talk with anybody else about it or try to
8 find out anything on your own about it.

9 Everything that you need to know about this case in
10 order to render a verdict, indeed, everything that you're
11 allowed to know about this case in order to render a
12 verdict, you will learn from this courtroom, from this
13 witness chair and from the documents and the items that
14 will be introduced into evidence. If you go outside of
15 that evidence and try to find out something on your own
16 about this case in a forum that is not protected by the
17 rules of law and by the rules of evidence, you will have
18 upset this whole process, and I know that you don't want to
19 do that and I know that you wouldn't, and so I ask that you
20 make certain that you don't do that.

21 I'll see you in the morning at 10:00. Have a good
22 evening.

23 **BAILIFF:** Follow me, please.

24 (Whereupon, the jury was excused for the day at
25 2:20 PM.)

1 **THE COURT:** Folks in this case, I want to stand in
2 recess until 12:45. We'll start dealing with motions then.
3 I want the Court to be in recess until 12:30. If we can
4 get Melanie Graham and Robert Mills, I think they've got a
5 case that they want to plea. If they can be here at 12:30,
6 we can take care of that plea if y'all can get word to
7 them, if that's okay, if it still suits them to do it then.
8 If not, I'll try to squeeze it in later in the day. I know
9 that Robert was involved in Richland County this morning,
10 but if he's back by 12:30, we'll do his plea, and we'll
11 resume the motions in this case at 12:45.

12 Does everybody understand that? We'll be recess until
13 then. Thank you.

14 Wait a minute. Forget everything I said. 1:30 for
15 the plea and 1:45 -- I'll tell you what. You know --

16 **MR. PHILLIPS:** Your Honor, it is possible to go on the
17 record real quick?

18 **THE COURT:** Sure.

19 **MR. PHILLIPS:** Just to clarify, asking for the prior
20 convictions to be listed as a Court's exhibit from the
21 State, the State's impression was that they only have to
22 put that specific juror's prior conviction. My request
23 was for all the jurors that were seated so we can have
24 it preserved for the argument that it wasn't similarly
25 situated.

1 **THE COURT:** I understood that none of the other jurors
2 seated had any prior record. Is that right?

3 **MR. McNAIR:** That's correct, Your Honor.

4 **THE COURT:** Okay. And I take -- if there is a record,
5 of course, let's have it. If there's not, I'll take the
6 assurance by these two officers of the court that there is
7 no other record sufficient to preserve.

8 **MR. PHILLIPS:** Thank you, Your Honor.

9 **THE COURT:** Thank you. Now let me try it again. 1:45
10 and 1:30.

11 (Whereupon, a luncheon recess was taken.)

12 (Court's Exhibit Number 2 was marked for
13 identification.)

14 **BAILIFF:** All rise. Court is now in session.

15 **THE COURT:** Thank you. Thank you, folks. Please be
16 seated. Good afternoon.

17 **MR. PHILLIPS:** Good afternoon.

18 **THE COURT:** All right, folks. I've got the list of
19 pre-trial motions before me at this point in time and so
20 I'll be -- Mr. Phillips, I've got your schedule of motions
21 here in front of me and motions attached to it, so I can
22 take these in any order that you want to go in.

23 **MR. PHILLIPS:** Thank you, Your Honor. Jael Gilreath
24 has the first motion.

25 **THE COURT:** Yes, ma'am, Ms. Gilreath.

1 **MS. GILREATH:** Your Honor, the first motion I'd make
2 is just a motion to sequester witnesses. I think that's
3 a fairly standard motion in a lot of trials like this just
4 to avoid the possibility that there would be any changing
5 of stories or anything along those lines, that each
6 witness's story is their own, so we would move to sequester
7 the witnesses, Your Honor.

8 **THE COURT:** Do you have any objection to that,
9 Ms. Mayes?

10 **MS. MAYES:** Your Honor, we have no objection as
11 long as it is mutual. We have the chief investigating
12 officer, Thomas Griffin. We have the solicitor's office
13 investigator, James Sullivan, and then we have the
14 victims of the crime who would be excluded per statute
15 from the sequestration order. Other than that, we can
16 have all others witnesses step out. That would include
17 Ms. Ottenbacher.

18 **THE COURT:** Okay. The sequestration order will be
19 reciprocal and it will go into effect immediately
20 following the opening statement, okay?

21 All right.

22 **MR. GILREATH:** Thank you, Your Honor. My second
23 motion would be to request that the solicitor's office
24 certify under oath that compliance has been made with all
25 Brady, Rule 5 and all other rules of discovery prior to

1 proceeding with any other pre-trial motions.

2 **THE COURT:** All right. As officers of the court, I'm
3 not gonna require them to take an oath beyond that. Their
4 license to practice is probably a greater threat than
5 perjury would be, so I'll take their statements in that
6 regard.

7 Ms. Mayes?

8 **MS. MAYES:** Yes, sir, Your Honor. This has been an
9 on-going discovery. There has been extensive discovery
10 in this case dating back to 2014. If I had to estimate,
11 I would say over a thousand pages of discovery has been
12 provided. In addition to that, that's not only the SLED
13 lab reports, but that's the actual bench notes and
14 worksheets for each of the analysts in this case for
15 latent prints, ballistics, DNA and evidence processing or
16 serology. So all of that has been provided.

17 Your Honor, as recently as this morning the evidence
18 custodian, Jan Ottenbacher, brought with her the most
19 updated form of chain of custody from internally at the
20 West Columbia Police Department just documenting everything
21 in evidence there and when or where it had been moved. We
22 previously provided that with the updated version and I
23 believe that both parties have gone over to West Columbia
24 Police Department and actually examined that evidence. My
25 understanding is the defense did that within the last

1 two weeks and also during previous hearings we stated that
2 it would be available for any of their experts to review as
3 well, including latent prints or ballistics experts. I'm
4 not sure whether or not that's occurred, but that's
5 certainly been available.

6 In addition to that, Your Honor, the phone that's in
7 evidence in this case, we had an extraction done by the
8 Lexington County Sheriff's Department. That extraction
9 report was given to the defense, but on top of that I
10 believe they've had their own independent examiner go over
11 twice and did his own independent extraction from that.

12 Your Honor, the only other thing I can think of at
13 this point would be we may -- at a later point in time may
14 take up a motion concerning any type of third-party guilt.
15 If it does appear that that there's any third-party guilt
16 that the defense may raise, our understanding is that one
17 of the people who was initially looked at in this case is
18 a Michael Thomas. Our understanding is that he was
19 actually incarcerated at the time of this offense and
20 that's something that I believe we can produce some
21 paperwork on to verify, but it certainly is available
22 based on information from the Department of Corrections
23 that indicates he's actually been incarcerated and in
24 custody since April 10th of 2013, which means he was
25 incarcerated at the time this crime was committed. So

1 that's the only other thing I think that we haven't given
2 paperwork on, but I'm disclosing it at this time. I don't
3 think that's gonna become an issue because I don't think
4 that there's anything -- any basis here to pursue a
5 third-party guilt argument, but if that becomes an issue
6 we could certainly provide any paperwork documenting
7 Mr. Thomas was incarcerated.

8 **THE COURT:** All right. Thank you.

9 Ms. Gilreath, any response to that?

10 **MS. GILREATH:** Your Honor, not at this time. I don't
11 think that at this point we'd be requesting anything as it
12 relates to Michael Thomas in terms of his incarceration
13 records or anything along those lines, so.

14 **THE COURT:** Okay. All right.

15 **MS. GILREATH:** Your Honor, the following motion would
16 be the motion that I provided a copy of this morning. I've
17 also made it a Court's exhibit. It is our motion for a
18 continuance.

19 **THE COURT:** All right.

20 **MS. GILREATH:** Your Honor, just a little bit of
21 procedural history that's relevant specific to this motion.
22 The first time that this case was noticed for trial was
23 actually December 21st of 2016. Mr. Hunter was arrested on
24 April 17th of 2014. He's been continuously incarcerated
25 ever since. At the point where -- the first time that I'm

1 aware of a trial was ever set was December 21, 2016. It
2 was scheduled for April 10th of 2014. Between that time
3 and February 22nd of 2017, it appears that there wasn't
4 really a whole lot of discovery that was exchanged during
5 that time. It was kind of a fairly dead period in terms
6 of things being turned over. As far as everyone knew,
7 things were planning to proceed on April the 10th. As of
8 somewhere around April the 22nd of 2017, Solicitor Mayes
9 had notify Mr. Chehoski, who is the lead counsel on this
10 case, that the trial would be rescheduled for the week of
11 May the 8th. From what I understand from Mr. Chehoski, no
12 specific reason was provided for this. It was simply just
13 indicated that it was going to be moved to May 8th.
14 Mr. Chehoski had already, I think, obtained protection for
15 that week. He already had a trip scheduled for out of
16 town. At that point they agreed upon this week, Your
17 Honor. And as I said, at that point from the time it was
18 originally noticed until the date that they agreed upon
19 this week, that had been a fairly quiet period in terms of
20 any sort of exchange of discovery. So at that point there
21 was no reason to request any kind of continuance. As far
22 as defense counsel knew, everything had been -- had been
23 provided. At some point after -- between -- basically
24 between February 23rd when the new trial date of April 24th
25 was proposed, starting on March the 2nd that's when all

1 this new discovery started being received. It included
2 the new reports for the cell phone, which included the
3 extraction report that was mentioned by Solicitor Mayes a
4 few minutes ago.

5 Between March the 2nd and April the 5th there were
6 several new things that were received, including the phone
7 extraction report, including ballistic reports that had
8 never been seen before for analyses that been done on
9 projectiles and things that were -- had been in the custody
10 of the State since April of 2014. So on April the 6th
11 there was a motion that was filed for a continuance. That
12 was scheduled to be heard in front of Judge Griffith on
13 April the 12th. That -- at that hearing Judge Griffith
14 denied the motion. I think it was largely based on that --
15 the biggest thing that had been turned over for which the
16 defense did not yet have an expert or had much of an
17 opportunity to review was the ballistics. We were in the
18 process -- we had an expert that was working on getting our
19 own phone extraction, an independent review of that, and
20 so Judge Griffith denied it at that time and it kind of
21 appeared from the hearing that Judge Griffith felt there
22 wasn't really all that much new discovery that had been
23 provided, so there wasn't enough basis for the continuance
24 motion.

25 Your Honor, at the point where that hearing ended

1 before Mr. Chehoski actually even left the podium, he was
2 provided at that point with a new batch of discovery. I
3 believe that new batch on April the 12th was fifty-two
4 pages long. Following that, on April the 14th we received
5 an additional four pages. After that, on the 17th, 18th,
6 19th, two batches on the 21st, and then as recently as
7 receiving something last night I think around 7:00 PM,
8 we've been receiving new batches of discovery.

9 So, Your Honor, our argument at this point is that
10 not only is this a renewal of our original motion for
11 continuance based on all the new discovery that was
12 provided between February the 23rd and that April the 12th
13 date, now we've got about eight batches of entirely new
14 discovery that had been received that we've been doing
15 everything we can to investigate, but obviously there's a
16 lot there and, of course, we're trying to prepare for
17 trial.

18 Your Honor, we believe that with the trial originally
19 being scheduled and being noticed for a particular date,
20 which it was noticed by the solicitor's office here in
21 Lexington County, we're still a solicitor-controlled docket
22 despite the Court's holding in State v. Langford, the
23 solicitor's office scheduled it for trial. They then
24 unilaterally changed the date. Now they did come to an
25 agreement with defense counsel as to a new date when that

1 original date they scheduled it for did not work, but then
2 at the point where defense counsel needed a continuance on
3 the basis of all this new discovery being provided by the
4 State, the State was not willing to agree to a continuance.
5 Your Honor, we believe that if it had been them needing the
6 additional time they likely would have just gone ahead and
7 changed the scheduling date without having a hearing in
8 front of a judge based on the fact that that's what they
9 did the first time.

10 So, Your Honor, we believe that this trial has been
11 -- the date of this trial has been unconstitutionally
12 scheduled and rescheduled. Under State v. Langford we
13 believe that this is a violation of the separation of
14 powers. We believe that based on the substantial advantage
15 to the State of knowing in advance when they're gonna set
16 it for, knowing whether they may or may not have additional
17 discovery, having the vast resources of law enforcement
18 and all the investigatory resources that are typically not
19 available to the defense, they're able to change the
20 scheduling unilaterally when they need more time, Your
21 Honor, I would argue that that creates a substantial
22 disadvantage to the Defendant, to Mr. Hunter in this case,
23 and that going forward today would violate his due process
24 right as a result of that. With the limited resources that
25 defendants typically have to begin with, much less dealing

1 with a client who's subject to having to obtain orders for
2 funding and things of that nature to obtain experts, of
3 course, that creates an additional delay that isn't
4 necessarily present for all defendants, but is certainly
5 for public defender defendants at times. Your Honor, we
6 would argue that that puts Mr. Hunter at a substantial
7 disadvantage if this trial goes forward today.

8 Additionally, Your Honor, with all of the new
9 discovery that's been provided it still appears that
10 there may be some things that we either do not have or
11 perhaps contain -- things that we have are missing segments
12 of. The things that I would point to, Your Honor, we
13 believe that there may be some additional evidence under
14 Brady and Kyle v. Whitley, and potentially even Rule 5.
15 As recent as today, Your Honor, with the new and updated
16 chain of custody and property room report that we were
17 provided, our attention was drawn to -- it's Page 33 of the
18 report, Your Honor, and it indicates that there was a set
19 of finger and palm prints of Mr. Hunter that was received
20 from the sheriff's department on March the 21st of 2017.
21 Now it appears that this was actually checked in there,
22 and from what I understand from Ms. Ottenbacher it wasn't
23 actually checked out to go to SLED, but in discussing where
24 this came from it sounds like there may have been some
25 additional attempts more recently than what even we have

1 to compare other fingerprints, palm prints that Mr. Hunter
2 may have in the system to those found at the scene. My
3 understanding is that nothing came back, but we believe
4 that that's exculpatory and if there is some sort of report
5 or notes or anything showing where those attempts were made
6 and they were not identified back to Mr. Hunter, that would
7 be something exculpatory that we would be entitled to
8 review in preparing his defense.

9 Your Honor, the thing that we received last night
10 around 7:00 was a diagram that I believe purports to show
11 the incident location. It's marked on there not to scale.
12 We would argue that receiving it last night at 7:00 PM
13 doesn't give us sufficient time to do any sort of
14 investigating to determine if, although it's marked not to
15 scale, it's in some way misleading in terms of what it
16 might show about the incident location and what could have
17 happened there.

18 One of the -- let's see. There were phone reports
19 that were supplied. We originally had the extraction
20 report, which by their own contents page of the extraction
21 report indicates that a substantial amount of information
22 was actually left out of the report. There's an extraction
23 from the phone that contains everything. The report that
24 we received on the index page shows that there's actually
25 a lot of data, phone calls, text messages and things like

1 that, that weren't actually included in the State's report.
2 We've been having our expert work to try to determine what
3 all was left out. It's difficult to say because with these
4 extractions you have to determine whether the extraction
5 contains the exact same information, but one of our
6 questions that we've been trying to have our expert
7 determine is what all was left out of those reports. We
8 received some additional reports that the State created
9 that are highlighted and contain updates to phone numbers,
10 inclusions of information that did not come from the
11 extraction report, these that they updated, I think, to
12 show who these phone numbers belong to, things like that,
13 and with just having those for a few days is simply not
14 enough time for us to investigate to determine whether
15 these would potentially be admissible or something that
16 would be proper to show in front of the jury depending on
17 what was removed, what was added. It just simply isn't
18 enough time.

19 Your Honor, there's some additional things that we
20 received. There were new statements, a couple from people
21 that we had not -- that the only way we'd ever heard of
22 these people were there's an evidence log or a crime scene
23 log showing who came on-scene. Within the past week we've
24 been notified that a couple of those people for whom we've
25 never received any other reports, any other statements, any

1 indication that they took any statements, these are EMS
2 workers, and now we're being told that they actually are
3 saying that, you know, there were statements made on-scene
4 that they intend to testify to, as well as some other
5 statements made by witnesses that this is the first time
6 we've ever heard of it. Of course, getting this within the
7 past week is just simply not enough time for us to exercise
8 our duty in investigating and presenting a full and
9 complete defense under Strickland and cases like Elmore and
10 Nix and cases like that that impose upon counsel a duty to
11 fully investigate, prepare a full and complete defense to
12 ensure that Mr. Hunter has the most fair and adequately
13 represented trial as possible and, Your Honor, I believe
14 that going forward today would put Mr. Hunter at a
15 substantial disadvantage, violate his due process rights,
16 his rights to compulsory process and to prepare and present
17 a full and complete defense. And, Your Honor, I also
18 believe it would render us as his counsel per se
19 ineffective due to our inability to investigate this new
20 information.

21 **THE COURT:** All right. Well, a couple of things.
22 First of all, I think as to -- as to April the 12th, I'm
23 bound by Judge Griffith's ruling on any prior discovery
24 that you had received and I think -- but I am free, of
25 course, to deal with what you've received since that time

1 and to determine whether or not the lateness in that
2 reporting, the scope of it, the content of it, what you
3 might have to do in response to it and those other things
4 that all flow out of discovered discovery, would be --
5 would be appropriate to -- to grant a continuance. In
6 other words, I think what you told me was that on that
7 day Mr. Chehoski -- I believe it was Mr. Chehoski got
8 fifty-two pages of new material and then some more came in
9 and you mentioned eight batches of new discovery. I'm not
10 sure what the -- how many pages that represented and how
11 much of it really would require an additional evaluation.
12 The palm print, the fingerprint that you mentioned, I'd
13 like to hear a little bit more about that and what that's
14 all about. I think that could be something that needs
15 examining a little more closely.

16 Ms. Mayes, first of all, tell me about the on-going
17 saga of this -- of this discovery. I'm confident that
18 you're turning it over as soon as you got it, but under
19 Kyle versus Whitley, of course, as we know the
20 responsibility is with the State regardless of whether
21 the investigating officers were holding it or sitting on
22 it for whatever reason. So how about addressing that
23 issue, why the delay and then what it is that has been
24 delayed and let me try to put myself in a position to
25 try to weigh the prejudicial impact of all that coming

1 in so late and the limited time that Ms. Gilreath and
2 Mr. Phillips and Mr. Chehoski have had to investigate it.

3 **MS. MAYES:** Yes, Your Honor. The fifty-two pages
4 that were referred to at the time of the hearing was an
5 updated chain of custody from SLED. So we had previously
6 provided both the chain of custody from SLED, that's their
7 internal chain that shows where every item goes from the
8 time that it's logged in until it reaches the lab, and
9 also we have provided the West Columbia Police Department
10 internal chain of custody which documents all items that
11 have been stored in evidence. The reason those change and
12 are subject to being updated is because if an item is
13 returned back to the West Columbia Police Department, for
14 example, then there's gonna be an updated chain. So the
15 chain that was provided on April 12th was basically the
16 same chain that we had previously provided, but it did
17 account for the evidence that had been sent back to the
18 West Columbia Police Department on --

19 **THE COURT:** This is evidence that had already been
20 turned over to the defense at some point in the past and
21 it's just showing it continuing to be moved back and forth
22 for whatever reason; is that right?

23 **MS. MAYES:** Yes, sir, Your Honor. It would have been
24 included either on the original chain of custody from SLED
25 that we had provided or in the bench notes that were

1 provided. And then any updated information I believe with
2 Larenda Simon, who's the victim in this case. They had
3 done an initial analysis of her prints back in 2014, but
4 they wanted a better quality set of prints on her, so some
5 new prints were taken in 2017 and submitted and they
6 generated a report back in March in that regard. So all
7 of that evidence was then ultimately returned back to the
8 West Columbia Police Department. My understanding is that
9 all of the evidence is there now and has been there since
10 the time that defense counsel went and viewed that
11 evidence. So that -- that was on April 12th, Your Honor,
12 and that was fifty-two pages which accounted for the SLED
13 chain of custody. And, again, the SLED chain of custody
14 had been previously provided. It just was not the most
15 updated version accounting for the current whereabouts of
16 all evidence.

17 Then on April 13th, there was a towing receipt for a
18 rental car that Mr. Hunter was driving at the time of his
19 arrest. Also a document from A-1 Wrecker Service. I
20 believe that's just documenting that that vehicle was
21 towed. And then Michael Swain says that there was a DL
22 run on him or there was a document reflecting a DL
23 regarding a Michael Swain. He's actually the rental car
24 company owner or operator. So those dealt with a vehicle
25 that was towed following Mr. Hunter's arrest.

1 On April 14th, that is when they had requested
2 updated lab and bench notes from the State Law Enforcement
3 Division. I believe the first set of bench notes and lab
4 materials were provided back in November of 2016 and that
5 was a very thorough, detailed -- that's about a thousand
6 pages altogether that deals with notes from the DNA
7 analyst, the evidence processing analyst, as well the
8 latent print analyst and the firearms analyst. We had
9 received a request from Mr. Chehoski for updated
10 information regarding prints and firearms and we provided
11 that in the form of a CD on April 14th.

12 **THE COURT:** Updated information, is this new
13 information that they never had seen before or is it --

14 **MS. MAYES:** It would have been the corresponding
15 information that went with the reports. There was a SLED
16 lab report on ballistics dated March of 2017 and a SLED
17 latent prints report also dated March of 2017 and that's
18 the one that determined -- that's the one where they were
19 looking at the victim's prints. And, Your Honor, the lab
20 notes were contained on that CD that was provided on
21 April 14th. So in a nutshell, those lab notes and bench
22 notes corresponded with the two most recent SLED reports
23 that were issued in March of 2017.

24 **THE COURT:** Okay. How much of that information --
25 the new information, the updated information, dealt with

1 either exculpatory or inculpatory evidence regarding the
2 Defendant itself?

3 **MS. MAYES:** Well, Your Honor, as for the ballistics,
4 we do not have a gun in this case so it's not a situation
5 where we can actually match either the projectiles or the
6 casings to a weapon, but it would be inculpatory because it
7 does link him to a Glock and we do have photographs of the
8 Defendant with a Glock, so I would consider that to be
9 inculpatory. That would be the March 2017 ballistics
10 report.

11 The March 2017 latent prints results, Your Honor,
12 that was dealing with the victim's prints and whether or
13 not they could determine whether or not any of the prints
14 at the location were hers and they were not.

15 **THE COURT:** Okay.

16 **MS. MAYES:** Now as for the Defendant's prints, Your
17 Honor, that dates back to 2014. In 2014, the analyst,
18 who is Tom Darnell, he looked at some prints on file for
19 Nathaniel Hunter and was not able -- in his opinion
20 Nathaniel Hunter was eliminated from one of the prints
21 and there was another print, which he did not consider the
22 prints he had from AFIS to be of sufficient quality to
23 reach a determination one way or the other. So he's not
24 saying that it's not him, he's not saying that it is him.
25 He's saying that the prints in AFIS are of insufficient

1 quality, and that dates back to 2014. The prints that
2 Ms. Gilreath referred to just a few moments ago, Your
3 Honor, the prints that are in evidence, those are among
4 the same prints that Tom Darnell, the SLED agent has pulled
5 and looked at through AFIS. He doesn't have to receive
6 them from the West Columbia Police Department because he
7 has access to AFIS and can pull them there. It is not
8 actually noted in his March 2017 report, but he did look
9 at the most recent AFIS prints from this arrest, the ones
10 that have actually been on file since 2014 and, again,
11 they were of insufficient quality for him to reach a
12 determination one way or another to rule him in or rule
13 him out. He just says the prints are of insufficient
14 quality. Agent Darnell is actually gonna be here this
15 afternoon. He should be here any moment in case any
16 additional follow-up is needed on that.

17 Your Honor, as to the April 17th discovery, that's a
18 -- what we call a CAD sheet. That goes with the 9-1-1
19 call. They've had the 9-1-1 call since 2014, but that's
20 the CAD sheet that confirms the time that the call came in
21 and that the first unit was dispatched.

22 In addition to that, Your Honor, we provided the
23 criminal history on all of our lay witnesses, if any.
24 When we went over and looked at evidence ourselves within
25 the last month, we took photos of the outside of some of

1 the bags which note who it was taken from, so we turned
2 that over. Those, I believe, were two photographs showing
3 two bags of evidence. One moment.

4 **THE COURT:** These were the bags that the evidence
5 were in?

6 **MS. MAYES:** Yes, Your Honor. It's the external -- the
7 external bags. Your Honor, also the CV of qualifications
8 for Agent Smith and Agent Darnell at the State Law
9 Enforcement Division. Then there was a one-page property
10 release form which just shows evidence returned to
11 Nathaniel Hunter or at least to a family member on his
12 behalf. I believe it was two gold rings and maybe
13 something else. That just documents what items were
14 actually taken from him and then turned over to a family
15 member apparently after he signed a property release.

16 And in addition to that, Your Honor, the document that
17 Ms. Gilreath is referring to is -- that we have previously
18 provided, that is demonstrative evidence. That's not
19 intended for evidence. It's intended for us to use to
20 basically be a demonstrative aid for use with witnesses.
21 That is a diagram of the interior of the apartment. And
22 also the phone chart that she referred to, that is an
23 exhibit that we created off of the phone records, but it
24 shows the dates and times that certain calls were made and
25 who those calls were placed to.

1 Other than that, Your Honor, the certified conviction
2 of Mr. Hunter for his burglary tools, although I believe
3 that was already -- I'm not sure if it was the certified
4 version or not, but there was previously notations in the
5 SLED file about his certified conviction for burglary tools
6 because that is what put him into the CODIS for the DNA
7 database, which led to -- it was a hit -- it was a hit
8 through CODIS and the DNA database that led to him being
9 developed as a suspect in this case. They actually had an
10 item of evidence from the crime scene that when DNA was
11 developed from that stocking cap and put into CODIS, it
12 came back as a hit to Nathaniel Hunter and so that's what
13 led to him being developed as a suspect in this case.

14 **THE COURT:** All right. Thank you.

15 Ms. Gilreath, did Ms. Mayes leave anything out of the
16 evidence that was disclosed after April the 12th?

17 **MR. GILCHRIST:** Well, Your Honor, the -- of that
18 fifty-two pages that was disclosed on April 12th after the
19 end of the continuance hearing that we had in front of
20 Judge Griffith, some of that was the chain -- updated chain
21 of custody.

22 Additionally, Your Honor, there were a number of pages
23 of handwritten notes that included both diagrams, as well
24 as several pages of mostly single-spaced handwritten notes
25 by one of the investigators. That was the first time that

1 we had seen any of that. There are a number of things that
2 could be impacted there between various names of different
3 individuals and some of that relates to Mr. Hunter, some
4 of it relates to other witnesses. In any case, that's --
5 it looks like it's from pages 10 of that fifty-two --
6 actually pages 6 through 17 are these handwritten -- are
7 exclusively these handwritten notes that include the
8 diagrams, and that was the first time we had seen those.
9 There's also a couple of search warrants in here that were
10 included. The handwritten notes contain by far the most
11 that we were interested in investigating that we had not
12 had access to prior to that date. So from the 12th when
13 we received that fifty-two pages, that -- that was the --
14 the main thing that was -- I guess I would say the most
15 new that we had just never seen before period. From --
16 let's see here.

17 From the 13th, that's correct, it was the towing
18 receipts that we hadn't had previously that did identify
19 Mr. Swain. The updated lab and bench notes. Of course,
20 these are -- we're talking about latent prints that are
21 being run being or that are being checked in March of 2017.
22 I understand there were some that were checked back in
23 2014, but it was actually, I think, news to me. And I can
24 check with my co-counsel if they knew something that I
25 didn't, but as to the -- where it mentioned -- where she

1 mentioned that it wasn't in the report -- in Mr. Darnell's
2 report, but that he did look at additional prints from
3 Mr. Hunter relating to this arrest, we haven't had anything
4 that tells that that happened, that there was a comparison.
5 All we have is this one individual page from the chain of
6 custody showing that some prints -- one set of prints that
7 were his, that some were taken on March 21st and logged
8 into West Columbia. We didn't have an explanation of how,
9 why, whether anything was run relating to that. So this
10 is -- I mean, today is the first time that we're hearing
11 that there was an additional attempt done to compare his
12 prints and other prints besides the ones that we do have
13 reports for and the reports we have do indicate that there
14 are prints that they can't -- I guess neither confirm or
15 deny that it's him because it's insufficient for
16 comparison, but --

17 **THE COURT:** Right.

18 **MS. GILREATH:** -- I mean, today is the first time
19 we're hearing about that in terms of that report that he
20 would have had there.

21 The -- let's see. As far as, again, with the exhibits
22 for the call records, they're not just sort of, you know,
23 copy and pasted or identical images from this extraction
24 report. There's highlighting that's done and most
25 importantly they're taking and then looking up phone

1 numbers and adding in names that are with phone numbers
2 that are otherwise in the extraction report largely without
3 any names to them, things like that. And, of course, one
4 of the things we want to make sure is that, you know, we're
5 -- we're clear about exactly what is going to be in this
6 exhibit they're going to be showing, that it's not
7 something that's gonna be confusing or unduly prejudicial
8 to the jury. And so, of course, trying to compare that
9 with both what they have and what our expert is working on
10 in such a short period of time, that is something that
11 takes a period of time, particularly when we're trying to
12 also investigate all of these other things that have been
13 provided over the course of the past just about two weeks.

14 **THE COURT:** All right.

15 **MS. GILREATH:** Your Honor, I think the last thing I
16 may not have addressed and I do believe I -- I may have
17 included it as an attachment, it's an e-mail dated
18 April 21, 2017, at 4:44 PM. This was a Friday afternoon
19 -- just this past Friday afternoon.

20 **THE COURT:** Right.

21 **MS. GILREATH:** As you can see, there are several
22 statements in here that we're told are being made. Prior
23 to this Mr. Hall and Mr. Bernard, the only time their names
24 have ever been seen is in this crime scene log that they
25 did at some point come to the scene and leave. We've never

1 been informed prior to this that they had seen anything
2 happen in terms of these projectiles falling or statements
3 being made and it appears based on the way that they're
4 presenting that that she thought she was going to die and
5 then giving a description, that they're going to attempt to
6 get that in. And then, additionally, this statement from
7 Captain Wade where he recalls this new information about
8 the phone being off during the timeframe of the event on
9 4-13-14. That was something completely new to us.
10 Although they recorded pretty much all the other
11 witnesses's statements, Mr. Hunter's statement was not
12 actually recorded, so this isn't something where we can
13 just kind of flip back to a recording and see if it was
14 there. I mean, it requires us to do additional
15 investigation in terms of the phone and things like that
16 for potential impeachment purposes, so all of that was
17 completely new information to us as well.

18 **THE COURT:** How would you check to see if his phone
19 was, in fact, off?

20 **MS. GILREATH:** Your Honor, I mean, there's searches
21 and data that can be pulled from these phones dating back
22 that far from experts that would be able to give us an
23 opinion as to whether there was any activity going on or
24 whether it appeared that the phone was off and our expert
25 has been working around the clock between that and

1 comparing the phone records and the other things and
2 preparing that information for us as it relates to all
3 these things that we've been getting over the past couple
4 of weeks. That's stuff that we've been working on, but it
5 just simply takes time when you only have one expert that
6 you're able to retain who's working on it and trying to
7 deal with all of the phone stuff at one time.

8 **THE COURT:** Right. Ms. Mayes, I gathered from your
9 response -- your initial response that much of this
10 information was updated information that was just now being
11 generated because it was just now being generated. In
12 other words, they were just working on these updated chains
13 of custody and things of that nature.

14 The phone record -- the information that the phone
15 was turned off during this period of time, which was either
16 an oversight or for some other reason was not revealed
17 before in some of that other information, was there any
18 consistent reason for some of this information being turned
19 over to you so late by the investigating officers? I
20 appreciate the fact that these things, regardless of how
21 old they are and this is a nearly three-year-old case,
22 that nobody, especially the investigating agencies, really
23 get ramped up until the specter of the trial is looming,
24 but is there any reason why some of this information that
25 was in the files of the investigators officers since 2014

1 was so late being turned over to you-all?

2 **MS. MAYES:** Your Honor, I can't speak as for the
3 statement from Captain Wade. I know that I never actually
4 sat down with Captain Wade before to go over this case.
5 The two chief investigating officers were Investigator
6 Griffin and Investigator Neel, who we had met with before.
7 Apparently Captain Wade sat in for portions of the
8 interviews and that statement was made during the course
9 of one of the interviews.

10 But if I can backtrack for a moment, for the search
11 warrant that was executed in 2014 for not only all of the
12 cell records for the Defendant, but also all of the cell
13 tower information and location or GPS data affiliated with
14 those cell towers, so all of that information was turned
15 over in 2014 which do document through the phone records
16 that there were no in-going or outgoing calls or in-going
17 or outgoing text messages during the timeframe of the
18 offense, and I would estimate that to be anywhere from
19 2 AM and 4 AM in the early morning hours of April 13, 2014.
20 So they've had both in-going and outgoing phone and text
21 data, as well as a letter, an official letter, from Sprint
22 saying that no cell tower information could be obtained for
23 that timeframe because the phone -- and I'm paraphrasing,
24 but because there was no phone activity in order for it
25 to be picked up by a cell tower. Investigator Griffin

1 actually testified at one of the pre-trial hearings that
2 we had in this case, it was one of the Schmerber hearings,
3 and he was questioned about that at that time or at least
4 we had stated on the record, there were previous discovery
5 hearings, that we believe the phone was off because there's
6 no corresponding cell tower location data for the phone
7 at the timeframe of this event, as well as no record of
8 in-going or outgoing calls.

9 So that's the technical evidence that we have
10 associated with his phone use and all of that has been
11 provided since 2014. That was all pretty much confirmed
12 as well by the phone extraction that we have in this case
13 and that their own expert did. There's no indication of
14 activity whatsoever in the timeframe of the actual crime.
15 No in-going or outgoing calls or texts during that
16 timeframe. And there is some Internet use that occurs
17 prior to, I believe, 12:30 midnight or thirty minutes after
18 midnight, somewhere in that -- in that range leading up to
19 about 12:30 AM, but then after that nothing during the
20 timeframe of the offense. So I suppose what we can do
21 there would be the information from Captain Wade, that
22 that was something verbally stated by the Defendant as well
23 when he was confronted by officers in this case about cell
24 tower information that he stated that his phone was off.

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

1 Ms. Gilreath, it's your motion. I'll give you the
2 last word.

3 **MS. GILREATH:** Your Honor, just to respond to what
4 she had just mentioned, the records that they obtained back
5 in 2014, they did obtain some records from Sprint. I will
6 say that the search warrant that they executed was fairly
7 narrow and included only calls and text messages at that
8 time and the cell tower data was really for a very specific
9 time period and largely relating to those outgoing and
10 incoming phone calls and text messages. When they did
11 their search on the phone back in 2014, I believe the only
12 thing they were really able to pull information off of was
13 the SD card, which is -- of course, it's a removal memory
14 device that goes from phone to phone --

15 **THE COURT:** Right.

16 **MS. GILREATH:** -- and it's my understanding they were
17 able to pull information off of that, but it wasn't until
18 March of 2017 that they actually did the full extraction,
19 which, of course, shows very different things and a number
20 of other kinds of activity. I think that from what they
21 have from Sprint with it only showing the incoming and
22 outgoing phone calls, we understand what they're getting
23 at with that, is that at this point it's kind of far
24 removed and I don't think Sprint would be retaining more
25 information beyond that at this point, however, based on

1 the ability now to look at these extraction reports that
2 it does give us an ability to look at other types of data
3 and activity that could have been going on with the phone
4 and, of course, comparing to see whether any of those
5 things may have made it onto the extraction report that
6 wouldn't otherwise be on the Sprint report or that wouldn't
7 have been on this SD card because the memory on the phone
8 is going to contain different and usually more things than
9 the SD card, the removable memory piece. So I would just
10 argue that's a little bit different situation and overall,
11 Your Honor, I would just argue that the totality of the
12 circumstances given that we have the hearing on the 12th
13 where we're telling Judge Griffith, you know, here's this
14 new information that we've been getting, we're asking for
15 a continuance to continue investigating it, that's not
16 granted and then on top of what we're already trying to
17 rush to get done prior to today's date we're being handed
18 all of this new information. Even with something like an
19 updated chain of custody or property receipt, we still
20 have to go back and investigate and compare and things
21 like that, but, again, with that fifty-two pages, the
22 bigger -- my bigger concern with that were all these pages
23 of handwritten notes that contain information that we
24 haven't ever seen before. So when you compile all of
25 this on top of each other I'm just arguing that under

1 the totality of the circumstances that we would need
2 additional time in order to fulfill our ethical duties
3 to Mr. Hunter to ensure that his due process rights are
4 protected.

5 **THE COURT:** Are the handwritten notes that you're
6 referring to, are they investigative notes?

7 **MS. GILREATH:** They are, Your Honor.

8 **THE COURT:** Would you be entitled to that in any event
9 if they were not exculpatory under Rule 5(a)(2)?

10 **MS. GILREATH:** Well, Your Honor, I mean, I believe
11 that we would in terms of -- if this is information that
12 they are intending to present, Your Honor, I believe that
13 there is potential exculpatory information in here that
14 we have a duty to investigate and so that's -- that's my
15 primary argument as to those handwritten notes.

16 **THE COURT:** And so there is -- there is exculpatory
17 information in those notes is what you're saying?

18 **MS. GILREATH:** We believe there's potentially
19 exculpatory information that we're in the process of
20 investigating and that's why we're requesting additional
21 time to confirm or deny whether any of this information
22 would be exculpatory.

23 **THE COURT:** All right. Thank you.

24 **MS. MAYES:** Those would be the notes of Charles
25 Bramlett, Your Honor. He is deceased. He was at the crime

1 scene on the night of this event, he did collect some
2 evidence. We originally turned over the investigative
3 notes of Investigator Griffin and somehow, I'm not sure who
4 at the department, was able to get their hands on Sergeant
5 Bramlett's notes as well, and we turned those over actually
6 because there was a request for any notes that he may have.

7 **THE COURT:** Okay.

8 **MS. GILREATH:** Your Honor, I would argue we would have
9 a heightened duty to investigate at that point considering
10 we would not have him to cross-examine on the stand as it
11 pertain to these notes that we never had at any point when
12 we had the case while he was alive.

13 **THE COURT:** Right. And, of course, that's the subject
14 of another motion that you have, as I understand, but I
15 guess -- I'm not sure what you can do because we don't know
16 what the notes say. As you say, he's not -- he's not here
17 to be cross-examined on those notes and I'm not exactly
18 sure where -- where would you go, I guess, to check the
19 points that the notes raise to see if you could confirm or
20 disprove those things. I suppose you could do that just as
21 you could do for any other notes that you get. Of course,
22 I'm concerned about the fact that -- that some of this
23 information has been turned over at the eleventh hour. I
24 recognize though, as Ms. Mayes has outlined here, that much
25 of this information builds on evidence that has been turned

1 over in the past, the cell phone records, for example, and
2 the extraction notes which confirm those according to what
3 Ms. Mayes has told me rather than introduce anything else.
4 Clearly the extraction would tell you more than the cell
5 phone records would tell you, but you-all have had some
6 time and had people working on that as well as I understand
7 it.

8 I cannot find that the reasons given for the
9 additional disclosures between the hearing on April the
10 12th and today's date are sufficient to warrant a
11 continuance in this case given the nature of that
12 information and the somewhat cumulative effect of some of
13 this such as the handwritten notes, the chain of custody.
14 I suppose anything that's given to you at the eleventh
15 hour, even introduced to you during trial itself, there's
16 something else that can be done with it. But that is not
17 to say that the introduction of that information is in and
18 of itself prejudicial or that Mr. -- the Defendant in this
19 case, that being Mr. Hunter, is being denied a fair trial
20 as a result of these late disclosures. The motion for
21 continuance in that respect is respectfully denied.
22 You-all have been working on this case for some time and
23 working hard on it and working late on it, and I appreciate
24 all that, but -- but nothing has been revealed to me that
25 seems to indicate that there is out there some stone left

1 yet unturned or some evidentiary item that is -- that is
2 critical to the defense in this particular case that they
3 have not -- that you-all have not fairly had a chance to
4 examine and to analyze. The motion for continuance is,
5 therefore, respectfully denied.

6 **MS. GILREATH:** Your Honor, can I make an additional
7 request for a ruling on the Langford issue that was raised
8 given that the case was originally scheduled for trial,
9 then changed unilaterally by the State?

10 **THE COURT:** That's a good point, Ms. Gilreath. And,
11 frankly, I think Mr. Hunter's got a much better case than
12 Mr. Langford had when it comes to the delay; that the --
13 the denial of your motion for continuance in regard to
14 Langford gives you-all a much better chance under these
15 circumstances for reversal based on my denial of your
16 motion than Mr. Langford had.

17 Anybody who reads Mr. Langford realizes that that
18 was just a case that they happened to take up and it lent
19 itself to that particular constitutional issue of whether
20 or not the separation of powers were being violated by the
21 fact that the solicitor had sole control of the docket.
22 The facts as I see them in this particular case in regard
23 to Mr. Hunter are somewhat stronger as a result of these
24 delays than Mr. Langford's were, so I don't know what else
25 to tell you other than that. All of us who have read

1 Langford and have tried to understand it and have tried to
2 understand the underlying facts as they relate to the
3 holding in that particular case realizing -- realizes, I
4 think, that -- that the connection is at points somewhat
5 tenuous in Langford. Beyond that I say no further. I
6 recognize as I'm apparently criticizing the Langford
7 decision that the decision that I'm criticizing is gonna
8 be -- this record is gonna be reviewed by some of those
9 same folks. Beyond that I don't know anything that I need
10 to add to that. I think that -- as I say, I don't need to
11 clutter up this record any more than I already have in that
12 regard. I've addressed the reasons for my ruling on the
13 information disclosed since April the 12th and I think I've
14 adequately addressed those in so far as that's concerned.
15 I won't go behind those decisions. I've simply addressed
16 these issues that were presented to me today in that
17 regard. That's the best I can do, Ms. Gilreath.

18 **MS. GILREATH:** Thank you, Your Honor.

19 **THE COURT:** All right.

20 **MS. MAYES:** Briefly, Your Honor, on that matter of
21 the change of date, that was due to another murder case
22 that was continued. That was the Walker case that was
23 originally set for January. I believe it got continued
24 and knocked back to a later date and as a result other
25 cases on our schedule also got knocked back, including a

1 murder case that I had that I had to move to April 10th
2 and that then moved this case back two weeks to April 24th.

3 **THE COURT:** Okay. As I understand it, it was
4 originally scheduled to be tried on April the 10th of 2017,
5 there was no objection to that, it is being tried two weeks
6 later than that original date, it's been moved back and
7 forth, but I don't see any prejudice in that beyond the --
8 the move back and forth was done to accommodate apparently
9 both sides, the defense on one hand and the State on the
10 other.

11 Mr. Chehoski, what's next?

12 **MR. CHEHOSKI:** Thank you, Your Honor. At this point,
13 the defense is moving to suppress both the DNA evidence
14 as part of and in total all of the evidence that's been
15 collected and stored and processed by Sergeant Bramlett of
16 the West Columbia Police Department. We are -- the basis
17 for this motion is that it's in violation of the Fifth and
18 Sixth Amendment -- Fourth, Fifth, Sixth and Fourteenth
19 Amendment of the United States Constitution and Article 1,
20 Section 3 and 14 of the South Carolina Constitution.
21 Essentially his due process rights, Your Honor -- his due
22 process rights and his right of confrontation of witnesses
23 called to testify against him.

24 A little bit of background, Your Honor. As you're
25 aware now, Mr. Hunter was arrested on December 17th and the

1 public defender was appointed on December the 18th --

2 **THE COURT:** April.

3 **MR. CHEHOSKI:** I'm sorry, April the 17th and April the
4 18th of 2014 --

5 **THE COURT:** Right.

6 **MR. CHEHOSKI:** -- respectively. December 2, 2014,
7 a hearing was conducted pursuant to Schmerber where
8 Investigator Bramlett testified. As you're aware,
9 Your Honor, the purpose of the Schmerber hearing is to
10 determine if there's probable cause to believe the suspect
11 has committed a crime, whether or not there's a clear
12 indication that relevant material evidence will be found
13 and the method that is used to secure that evidence is safe
14 and reliable.

15 Your Honor, at that time Mr. Phillips was lead counsel
16 for Mr. Hunter. I was in private practice at that time and
17 not practicing criminal law --

18 **THE COURT:** Right.

19 **MR. CHEHOSKI:** -- and so the basis -- he had an
20 opportunity to cross-examine him, but only in a limited
21 way limited to that hearing. If I may approach, Your
22 Honor, I'm gonna hand up a copy of -- hand up a copy of the
23 transcript of the hearing.

24 **THE COURT:** Thank you.

25 **MR. CHEHOSKI:** Your Honor, at the beginning of the

1 hearing Mr. Phillips moved for a continuance. That will
2 be referenced on Page 4. The basis of the continuance is
3 that the previous month, I believe in October, he had
4 filed a supplemental discovery request requesting, among
5 other items, the DNA evidence and all materials related
6 to that, cell phone evidence and all materials related to
7 that as well, in an effort to fully prepare for the
8 hearing.

9 As you can see on Page 5, Judge Russo indicated that
10 the purpose of the hearing was, quote, just a Schmerber
11 hearing, and so despite Mr. Phillips's effort to get the
12 hearing continued to allow himself a full opportunity
13 to prepare, allow him -- give himself a meaningful
14 opportunity to cross-examine all of the witnesses and
15 present a complete defense as is indicated under the
16 previously mentioned constitutional amendments and
17 State v. May, Your Honor, Mr. Phillips went ahead with
18 the hearing pursuant to Judge Russo's ruling.

19 **THE COURT:** Right.

20 **MR. CHEHOSKI:** Subsequently, Your Honor, after that
21 on -- well, let me keep going here. At that hearing,
22 Your Honor, Mr. Phillips did not have the opportunity to
23 cross-examine Sergeant Bramlett regarding what was -- what
24 else was collected. He only was able to testify to a
25 couple of items; a hoodie that had a cap inside of it and

1 a black nylon cloth that was collected outside at the
2 scene.

3 **THE COURT:** Right.

4 **MR. CHEHOSKI:** Your Honor, he did not have the
5 opportunity to go into anything else that was collected,
6 what procedures were followed in collecting such
7 information, whether or not there was any contamination
8 regarding other lay witnesses, other personnel, service
9 animals that may have been present at the scene, or, in
10 addition, to test Sergeant Bramlett's recollection at the
11 scene to determine whether or not that was, in fact, the
12 way that everything was perceived and the way it was.

13 So, Your Honor, just by the limited scope of the
14 hearing he had no opportunity to follow -- to see if those
15 procedures were followed in line with the constitution of
16 both the United States and South Carolina, with State law,
17 with case law and with West Columbia Police Department
18 guidelines, and so being that first critical link in the
19 chain of custody he had no opportunity to determine that
20 and explore those as he would at a -- as he would be able
21 to at a full trial or hearing, Your Honor, since all of
22 those matters are outside the scope of the hearing that
23 was in place.

24 Further, Your Honor, there was -- a month later on
25 January 5th I want to say of 2015, the State turned over

1 further discovery involving -- pursuant to Mr. Phillips's
2 motion pursuant to some of the DNA. In that -- in that
3 discovery that was provided there were reports that were
4 written by agents that detailed their interaction with
5 West Columbia Police Department in reference to the items
6 that they were testing for the presence of DNA. One of
7 those reports detailed a conversation that they had with
8 Sergeant Bramlett that was stating that the cap that was
9 tested and ultimately was found with -- with Mr. Hunter's
10 DNA was found inside the pocket of the hooded sweatshirt,
11 which is inconsistent with what he testified to at the
12 hearing.

13 Now being that this information was provided a
14 month after and despite Mr. Phillips's efforts to get a
15 continuance was denied, then he was -- Mr. Phillips was
16 essentially denied the opportunity for an effective
17 cross-examination effectively -- and have a meaningful
18 cross-examination and the ability to present a complete
19 defense.

20 **THE COURT:** What did Mr. Bramlett -- where did
21 Mr. Bramlett say the cap was actually located?

22 **MR. CHEHOSKI:** I believe, Your Honor, that is Page 51.

23 **THE COURT:** Okay. And this says there was a hoodie
24 found in the bathroom and inside there was a cap.

25 **MR. CHEHOSKI:** Right. Your Honor, I think it might

1 be 52 or 53. I'm not --

2 **THE COURT:** What did the conversation with West
3 Columbia Police Department indicate was the location of
4 it?

5 **MR. CHEHOSKI:** Your Honor, that's -- well, that's --
6 I think the key point is that Sergeant Bramlett is the
7 person who collected it and --

8 **THE COURT:** Right.

9 **MR. CHEHOSKI:** It's on Page 52, Your Honor, lines 7
10 and 8. Inside a section of the hoodie. As the reports
11 indicate that Mr. -- that Sergeant Bramlett told SLED that
12 it was found inside a pocket of the hoodie, therefore,
13 we're arguing that Mr. Phillips was essentially denied
14 opportunity to -- to pursue that line of questioning under
15 South Carolina Rules 613(b) and 801(b)(2) saying that, you
16 know, this would be a prior inconsistent statement, Your
17 Honor.

18 **THE COURT:** Okay.

19 **MR. CHEHOSKI:** Finally, Your Honor, there's also
20 -- we're arguing that Sergeant -- that this evidence needs
21 to be suppressed from Sergeant Bramlett due to a lack of
22 completeness. This comprises both the -- both the lack of
23 discovery and the limited scope of the hearing, Your Honor,
24 citing State versus Sanders, which can be found at 356 SC
25 214, a 2003 court of appeals case, also found at 588 S.E.2d

1 142. In that case, the Appellant Sanders made a similar
2 argument regarding prior testimony of a jailhouse informer
3 that was -- the jailhouse informer had testified at a
4 previous trial and then was subsequently unavailable and
5 was contesting whether or not it should be admitted at the
6 retrial. Your Honor, obviously in that case you're having
7 a full-blown trial in front of the jury where the jury has
8 the opportunity to see and hear the witness and assess
9 their credibility and, therefore, the defense was entitled
10 to a meaningful opportunity to cross-examination since that
11 discovery was fully provided and that they -- and there was
12 no limit to the scope of their cross-examination because it
13 was a full-blown trial and so all matters were fair game.

14 In this case, we don't have that. What we have is a
15 limited hearing just to determine probable cause where the
16 judge is specifically saying that it's only a Schmerber
17 hearing and if Mr. Phillips had gone into it he probably
18 would have been shut down or -- and also he didn't have
19 full discovery where he could have pursued lines of
20 inconsistent statements at that point.

21 So we're arguing, Your Honor, that there was no
22 meaningful opportunity to cross-examine Sergeant Bramlett.
23 Therefore, since there's no opportunity and a lack of
24 completeness his testimony and all evidence -- his
25 testimony and all evidence connected to that, including

1 the DNA, should not be allowed in evidence.

2 **THE COURT:** I'm looking at the transcript, of course,
3 for the first time right now. It looked like while
4 Mr. Phillips was examining Mr. Bramlett that there was
5 some colloquy beginning on Page 53. It started out the
6 location of the hoodie itself on the floor of the bathroom
7 and then he gets into the report itself and what it said.
8 There was a black nylon cloth that was there on the ground
9 and the tracking dog picked it up. And then Mr. Bramlett
10 goes on to say about the -- inside the house was where the
11 hoodie and the cap was and then the question -- and then
12 this cloth that's inside the hoodie is marked separately
13 as well. At that point in time there's some conversation
14 about the cloth and the officer had testified that -- at
15 some point in time that the cap was inside the hoodie
16 itself. I can't -- I realize that this was a Schmerber
17 hearing. I don't see the Court cutting anybody off in the
18 scope of their examination in that very brief page that I
19 read there in any event.

20 **MR. CHEHOSKI:** Correct, Your Honor. If I may?

21 **THE COURT:** Sure. Because you've been here longer
22 and I haven't read it.

23 **MR. CHEHOSKI:** First of all, the cloth that you're
24 mentioning is a separate piece of evidence, the cloth that
25 was found outside the -- outside the residence --

1 **THE COURT:** Right.

2 **MR. CHEHOSKI:** -- and was not -- I don't think it's
3 at issue in -- or it's at issue to the extent that it's
4 collected by Bramlett, but I don't think that the State's
5 gonna show that that cloth was worn by Mr. Hunter.

6 **THE COURT:** Right.

7 **MR. CHEHOSKI:** My point as to the limited nature is
8 all the other items that Mr. Phillips could have gone into
9 regarding what Mr. Bramlett did at the scene -- or, I'm
10 sorry, regarding what Mr. Bramlett was able -- collected
11 at the scene, the procedures that he followed, whether or
12 not there was any contamination at the scene, whether by
13 those people. Again, that's where -- that's where the
14 limited cross comes in and everything that he did testify
15 to due to the limited nature of that cross.

16 **THE COURT:** Right.

17 **MR. CHEHOSKI:** Further, Your Honor, I think that
18 Mr. Phillips was also constricted in his cross-examination
19 of the DNA analyst, Mary Ann, and I believe it's pronounced
20 Boehm. Please correct me if I'm wrong. Again, because --
21 and also there is a limited cross-examination in that.

22 **THE COURT:** Okay. Is that -- and I haven't read the
23 early part of this dealing with Ms. Boehm's testimony in
24 any event, but I see the point that you're making. And I
25 want to hear what Ms. Mayes has got to say in response and

1 then I'm gonna come back to you, Mr. Chehoski, and let you
2 have the last word.

3 **MR. CHEHOSKI:** Yes, sir.

4 **THE COURT:** Is there anything else you want to say on
5 this motion before I hear from her?

6 **MR. CHEHOSKI:** No, Your Honor.

7 **THE COURT:** All right. Ms. Mayes.

8 **MS. MAYES:** Yes, sir, Your Honor. Your Honor, I'm
9 gonna submit to the Court a copy of United States versus
10 Evans and this is a case where testimony from a
11 co-defendant was admissible even though the co-defendant
12 was unavailable and that also dealt with a pre-trial
13 hearing. And, Your Honor, the State's position is that
14 this is exactly the scenario that Rule 804(b)(1) was
15 intended to cover. Sergeant's Bramlett's death was
16 completely unexpected by everyone, all of his co-workers.
17 Also present that night with him -- along with him was
18 Sergeant -- or Investigator Scott Neel, who is present for
19 this trial and these proceedings, Your Honor. He did
20 observe Sergeant Bramlett collecting evidence throughout
21 the crime scene as they went along, but the testimony
22 from Sergeant Bramlett in that Schmerber hearing about
23 what he recovered and the fact that he recovered that
24 item together and then packaged it together is certainly
25 critical in this case, Your Honor, because that is the

1 item that was submitted to the State Law Enforcement
2 Division when the perpetrator of this crime was unknown.
3 After the victim was shot, the perpetrator fled and they
4 had no suspects, no real leads, they were just grasping at
5 straws to even try and develop any persons of interest and
6 when they submitted that article of clothing which had been
7 pulled from him during the assault and submitted to SLED,
8 it took about three days, but SLED was able to develop a
9 match or a hit through their CODIS database and that, in
10 fact, is how he was developed as a suspect. They alerted
11 West Columbia Police Department that Nathaniel Hunter would
12 be the suspect, that the DNA was a match and for them to go
13 ahead and then submit new samples on Nathaniel Hunter,
14 which was the purpose of the hearing -- of the Schmerber
15 hearing that we had in the case.

16 In addition, Your Honor, I'll state that Mr. Phillips,
17 who is counsel in this trial currently along with
18 Ms. Gilreath and Mr. Chehoski, he was the one who actually
19 conducted that cross-examination of Sergeant Bramlett. At
20 that point in time for purposes of the Schmerber hearing
21 we're really establishing probable cause as to whether
22 there was sufficient reason to collect the Defendant's
23 DNA, to collect a new buccal swab from him, so that came
24 down to two key points. Number one, that a cap was
25 collected at the crime scene and then, number two, that

1 that cap once submitted to the State Law Enforcement
2 Division a DNA profile was developed from that cap was a
3 match to Nathaniel Hunter in the CODIS system.

4 So those are the two key points. I mean, that cap
5 was absolutely central to the cross-examination during
6 that Schmerber hearing and along with that went the
7 opportunity and motive for Mr. Phillips to follow-up
8 further on the collection procedures and everything of
9 that nature that relates back to that cap being submitted
10 for analysis and Mr. Hunter being developed as the suspect.
11 And so, Your Honor, of all things in Mr. Bramlett's
12 testimony that is the key portion that is relevant and
13 probative in this case and that is that he found that
14 hoodie in that condition with the cap inside of it and then
15 he collected it and packaged it as one item and then
16 submitted it to State Law Enforcement Division. He was
17 certainly subject to cross-examine on that item and how it
18 was found and how it was packaged for purposes of that
19 Schmerber hearing, it was probative at that point in time
20 and related directly to the ultimate CODIS hit.

21 So, Your Honor, we believe that that was fully
22 explored and explored to the extent it could be in how he
23 found it and how he packaged it and how he submitted it
24 and the fact that it was submitted together as one item
25 and so, Your Honor, we do believe that this is the exact

1 scenario that Rule 804(b)(1) was intended to cover, the
2 death of Sergeant Bramlett, and his prior sworn testimony
3 subject to cross-examination in full on the discovery of
4 that cap on that critical item of evidence that lead to
5 Nathaniel Hunter being developed as a suspect and the need
6 for his buccal swab at the date of the Schmerber hearing.

7 **THE COURT:** All right. Thank you.

8 **MR. CHEHOSKI:** First of all, Your Honor, understanding
9 that this case is not controlling on this Court. It's a
10 Federal case. It's not from the Fourth Circuit. Second,
11 neither Investigator Griffin nor Investigator Neel know
12 where the exact location where the cap was found is. And,
13 third, there's -- distinguished in that case it looks like
14 there was a thirty-seven-year delay from it. I would go
15 further, Your Honor, going into my second -- my second
16 point why Sergeant Bramlett's testimony should be excluded
17 is that there was -- being it was only a probable cause
18 hearing and Mr. Phillips did not have -- did not have
19 complete discovery to enable himself to have a meaningful
20 cross-examination and further explore the prior
21 inconsistent statements between Mr. Bramlett's testimony
22 and this conversation he had with agents at SLED.

23 **THE COURT:** All right. Isn't the real question the
24 fact that the hoodie -- as Ms. Mayes has said, the hoodie
25 and the cap were found together, packaged together and

1 analyzed together, isn't that the real -- the real crux
2 of all this rather than dogs being there and other people
3 being there and things of that nature?

4 **MR. CHEHOSKI:** As far as the DNA, Your Honor -- as
5 far as the DNA itself is concerned, yes, but also I think
6 that there's -- but if that's the crux of the issue, I
7 think that kind of bolsters my argument in the fact that
8 Mr. Phillips did not have a meaningful opportunity of
9 cross-examination given that there was impeachment evidence
10 that had been requested, had not yet been received and that
11 Mr. Phillips had moved to continue the hearing in order to
12 receive it and was thus denied that opportunity.

13 Your Honor, also if it please the Court we would like
14 to make the transcript -- the transcript of this hearing a
15 Court's exhibit. I have a clean copy. I think the one I
16 handed up has been highlighted. I have a clean copy that I
17 can provide the Court.

18 **THE COURT:** Okay. That will be fine.

19 **MS. MAYES:** I think we actually have a clean copy
20 with the signature of the court reporter, Steve Le Blanc.
21 We can make it a Court's exhibit, Your Honor.

22 (Court's Exhibit Number 3 was marked for
23 identification.)

24 **THE COURT:** I note that Mr. Phillips requested the
25 continuance. He had two things marked as exhibits.

1 First of all, a supplemental discovery motion regarding
2 specifically the DNA and all of the evidence related to
3 the DNA evidence in this case and the testing procedure,
4 as well as the cell tower information regarding the cell
5 phone, which was a matter of some contention raised again.
6 The only evidence in this case, as Mr. Phillips said, is
7 the DNA evidence that links him. There's a concern about
8 the CODIS hit having the information, the DNA information,
9 and his desire to be able to consult with the DNA expert.
10 He cross-examined the SLED person who testified in that
11 regard. I'm trying to see if there's some concern about
12 some inconsistency and, frankly, the -- the only
13 inconsistency that I see just from reading this, and y'all
14 have read it and know a lot more than I do, is whether the
15 cap was found in the -- in the hood of the hoodie or in the
16 pocket of the hoodie. Is that the only inconsistency that
17 I see?

18 **MR. CHEHOSKI:** In the transcript, yes, Your Honor. My
19 argument is that there's an inconsistency that was not yet
20 known to Mr. Phillips at the time. It came about a month
21 later when more discovery was provided and the prior
22 inconsistent statement was learned.

23 **THE COURT:** Right. All right. Thank you. I don't
24 find that that inconsistency if, indeed, it exists -- I
25 don't know what he told the officers, you-all do know.

1 Whether it was found in the cap of the hoodie or the pocket
2 of the hoodie could be a matter of the nuance and -- and
3 other than the fact that there is a possible inconsistency
4 of those two locations, I don't know how that changes the
5 DNA, the fact that they were found together, packaged
6 together and analyzed together and resulted in the result
7 which, of course, occurred. I don't find that that
8 inconsistency, as I've said, if, in fact, it does exist at
9 all, is sufficient to raise a question as to the results of
10 the DNA testing so as to create an unfair prejudice or an
11 unfair trial to violate Mr. Hunter's constitutional rights.

12 The motion to exclude the testimony of the deputy on
13 that basis is respectfully denied. I find that the
14 804(b)(1) is sufficient to allow that to come into evidence
15 as an exception to the hearsay rule. It is not excluded by
16 the hearsay rule in any event. The motion is respectfully
17 denied.

18 **MR. CHEHOSKI:** Thank you, Your Honor. And, for the
19 record, we have marked the transcript as Court's Exhibit
20 Number 3.

21 **THE COURT:** Thank you. And here's your copy back,
22 Mr. Chehoski.

23 **MR. CHEHOSKI:** May I approach?

24 **THE COURT:** Yes, sir.

25 **MR. CHEHOSKI:** Thank you.

1 **MS. MAYES:** Along those same lines, Your Honor, I see
2 that one of the motions that they have would be to prohibit
3 the word "CODIS". We've had this come up before in another
4 trial and the way we handled it was to just refer to it as
5 the DNA database. There will be testimony that the DNA
6 database is maintained at SLED, that law enforcement has
7 access to it, but there's no reference to it being an
8 actual offender database. The word "CODIS" is simply a
9 DNA database.

10 **THE COURT:** Okay. Is that -- that's Number 12 on
11 your list, ladies and gentlemen. Does that satisfy your
12 concern about the word "CODIS"?

13 **MR. CHEHOSKI:** Yes, Your Honor. Well, CODIS and SCIS,
14 which is the State DNA database. The DNA database based on
15 my understanding of case law would not be found as error.

16 **THE COURT:** Okay. All right. The truth of the matter
17 is that nobody on that jury, including the trial court, is
18 gonna know what CODIS stands for anyway, but a DNA database
19 seems to be a clearer explanation of what it actually is.

20 **MR. CHEHOSKI:** And, Your Honor, if I may, also I
21 think there was -- we brought up the issue of limited
22 cross-examination in that hearing of Mary Ann Boehm.

23 **THE COURT:** Yes.

24 **MR. CHEHOSKI:** We'd request a ruling on that matter as
25 well as far as -- again, as far as the DNA -- as far as the

1 suppression motion.

2 **THE COURT:** And I take it that's to Mr. Bramlett's
3 testimony; is that right? They're linked together?

4 **MR. CHEHOSKI:** Yes.

5 **THE COURT:** All right. Then I'll deny that motion.
6 Frankly, I did not read her portion of the testimony, but
7 I assume since it was linked to Mr. Bramlett's testimony
8 my ruling on the admissibility of his statement would also
9 cover your concern about Ms. Boehm's testimony as well.

10 **MR. CHEHOSKI:** Thank you, Your Honor.

11 **THE COURT:** So that addresses Number 6 as well; is
12 that right?

13 **MR. CHEHOSKI:** Yes, sir.

14 **THE COURT:** All right.

15 **MS. MAYES:** And just to clarify, Ms. Boehm is -- she's
16 a witness in the case and she's testifying.

17 **THE COURT:** Okay. Well, then that's --

18 **MS. MAYES:** Yes, sir, Your Honor. We would only be
19 admitting testimony -- former testimony of Sergeant
20 Bramlett.

21 **THE COURT:** Okay.

22 All right, folks. Before we get to the Denno issues,
23 let's take about fifteen minutes and start back at 3:30, if
24 that's okay?

25 **MS. MAYES:** Yes, sir.

1 **MR. PHILLIPS:** Thank you, Your Honor.

2 **THE COURT:** Thank you.

3 (Recess taken.)

4 **BAILIFF:** All rise. Court is now in session.

5 **THE COURT:** Thank you, folks. Y'all can be seated.

6 Are both sides ready to proceed to the Denno hearing?

7 **MS. MAYES:** Yes, sir, Your Honor.

8 **MR. PHILLIPS:** Yes, Your Honor.

9 **THE COURT:** Ms. Mayes.

10 **MS. MAYES:** The State calls Investigator Thomas
11 Griffin.

12 (Whereupon, Thomas Griffin was duly sworn by the Clerk
13 of Court.)

14 **THE CLERK:** Once you're seated, state your full name,
15 spelling your last please.

16 **THE WITNESS:** My name is Thomas Wessinger Griffin,
17 G-R-I-F-F-I-N.

18 THOMAS GRIFFIN,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION (In-Camera)

21 BY MS. MAYES:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. Can you give us some information concerning your
25 background and training and what led you to become an

1 investigator?

2 A. Yes, ma'am. I've been with West Columbia Police
3 Department since February of 2008. I became a detective.
4 I've been a detective now for four years. I've been
5 through the basic detective's course, as well as multiple
6 trainings since then, and I've worked cases ranging from
7 homicide, attempted murders, down to CSC's, to armed
8 robberies.

9 **MS. MAYES:** If we may just turn that off. There's
10 some feedback.

11 **THE CLERK:** Just speak up.

12 **THE WITNESS:** Yes, ma'am. I'll try.

13 BY MS. MAYES:

14 Q. Would you take us through your involvement in the case
15 of Nathaniel Hunter and what led you to eventually conduct
16 an interview with him on or about April 17, 2014?

17 A. Yes, ma'am. I was initially called to the scene,
18 which is [REDACTED] Comanche Trail, Apartment [REDACTED], [REDACTED].
19 That's in the city limits of West Columbia. I was called
20 in reference to a home invasion and a shooting that
21 occurred there. I was contacted by Captain Wade. The
22 victim at the time was identified to me as Larenda Simon.
23 I was instructed to go to the hospital where I was to make
24 contact with her. I arrived at the hospital. I did make
25 contact with Ms. Simon. She had suffered a series of

1 gunshot wounds. I made contact with her there in the
2 emergency room. While there with Ms. Simon, due to the
3 nature of her offenses -- while there with Ms. Simon, due
4 to the nature of her offenses we went ahead and took a
5 recorded statement from her because we did not know one way
6 or the other if she would survive or not the surgery that
7 was upcoming. After speaking to Ms. Simon and getting a
8 statement from her, I then returned to the scene where I
9 believe Investigator Bramlett, Investigator Neel and
10 Captain Wade were. They continued to process the scene,
11 Investigator Bramlett and Investigator Neel.

12 You know, from the beginning stages of the
13 investigation we didn't have much to go on as to who it
14 could have been or who it might have been, so we did not
15 receive a name on this incident until the 17th of April.
16 The 17th of April is when we were notified by SLED that
17 through the DNA database at SLED that a match had been
18 found to be that of Nathaniel Hunter coming from the nylon
19 hoodie or the nylon cap that was found inside the hoodie by
20 Investigator Bramlett and Investigator Neel.

21 Once that was confirmed to be a potential suspect, we
22 then coordinated with SLED in an effort to figure out who
23 Nathaniel Hunter was. We were able to identify him through
24 DMV services, as well as his locations. Due to the DNA
25 hit, as well as the seriousness of the crimes and offenses,

1 warrants were obtained for Mr. Hunter. Ms. Simon did
2 inform us that she had no knowledge of Mr. Hunter prior to
3 any of this, as well as her daughter, Brianna.

4 Q. All right. And just to stop you there, in other
5 words, the victim was not familiar with Nathaniel Hunter?

6 A. She was not. No, ma'am.

7 Q. This was a stranger home invasion?

8 A. Correct.

9 Q. And his name was supplied to the West Columbia Police
10 Department by the State Law Enforcement Division?

11 A. Correct.

12 Q. And on April 17, 2014, do you have a time for when
13 your department began coordinating with the State Law
14 Enforcement Division to actually locate the whereabouts of
15 Nathaniel Hunter?

16 A. It looks like it was about 4:30 in the afternoon when
17 I made contact with the SLED Fusion Center and the fugitive
18 task force there.

19 Q. All right. And would this have been after you
20 received confirmation of the DNA hit pursuant to CODIS?

21 A. It would have been. I believe we received that around
22 10 AM that morning.

23 Q. All right. And what measures were utilized to located
24 the suspect?

25 A. A lot of methods are utilized, but this one in

1 particular that we used was his cell phone location.

2 Q. All right.

3 A. We were able to obtain a number for him and then that
4 number was utilized for this.

5 Q. All right. And ultimately can you tell us whether or
6 not a warrant was obtained that same day?

7 A. A warrant was obtained that day for his arrest, yes,
8 ma'am.

9 Q. All right. And who actually obtained the warrant?

10 A. I'd have to look that up. I obtained the warrant,
11 yes. Yes, it was I.

12 Q. So when you began coordinating with the State Law
13 Enforcement Division to locate him, it was for the purpose
14 of what?

15 A. To arrest Mr. Hunter.

16 Q. To serve the arrest warrants?

17 A. Correct.

18 Q. And this would have included an arrest warrant for
19 attempted murder?

20 A. Yes, ma'am.

21 Q. What about burglary first degree?

22 A. Yes, ma'am.

23 Q. What about criminal sexual conduct with a minor in the
24 third degree?

25 A. Yes, ma'am.

1 Q. And possession of a weapon during a violent crime?

2 A. Yes, ma'am.

3 Q. Can you tell us approximately what time a location for
4 Mr. Hunter was obtained by SLED Fusion or tracking systems?

5 A. It was around 5:00 PM that afternoon.

6 Q. And what happened next?

7 A. They -- he was shown in the Columbia area. I'm not a
8 hundred percent familiar with SLED's procedures when it
9 comes to tracking, but in the Columbia area they were able
10 to narrow it down to his location and the location that
11 they were able to narrow it down to was Bethel Bishop
12 Apartments in Columbia, which is [REDACTED] Ripplemeyer Avenue in
13 Columbia, so that's the area that we went to.

14 Q. All right. And what happened next?

15 A. The -- the agents that were tracking the phone were
16 able to narrow it down to Nathaniel Hunter operating a
17 white in color Nissan Versa. As they were giving us that
18 information, we see the white in color Nissan Versa being
19 driven by who we believe to be Nathaniel Hunter given his
20 stature, size and his hair, at which point myself, along
21 with SLED agents who were part of the fugitive task force
22 they turned around to commence a traffic stop on him.

23 Now he wasn't -- the traffic stop wasn't initiated
24 immediately because they were waiting for other units to
25 arrive as well given the seriousness of the offense and

1 the possibility of him having a weapon. Once they did
2 have enough units there, the blue lights and sirens were
3 activated at which point Mr. Hunter fled from officers.

4 Q. Approximately where were you when the blue lights were
5 activated?

6 A. I know we were at I-277.

7 Q. All right.

8 A. Highway 277, and I don't know exactly know the cross
9 street. I know it's 277 heading into Columbia.

10 Q. All right. And were you also in a law enforcement
11 vehicle following chase?

12 A. I was. Yes, ma'am.

13 Q. And ultimately where was he apprehended?

14 A. He was apprehended at -- the chase went for about
15 approximately three miles. Mr. Hunter went through several
16 red lights and continued to speed to avoid apprehension.
17 He did come to a stop at 2548 North Main Street, which is
18 located in the city of Columbia, where he was apprehended.

19 Q. At that point in time was he placed under arrest?

20 A. He was.

21 Q. Where was he taken following his arrest in Richland
22 County?

23 A. Following his arrest, he was taken directly to the
24 West Columbia Police Department.

25 Q. And can you tell us whether or not in addition to a

1 State Law Enforcement Division officer was there also a
2 Richland County officer present?

3 A. There was. Yes, ma'am.

4 Q. Was a Richland County officer actually involved in the
5 pursuit?

6 A. They were.

7 Q. And apprehension?

8 A. Yes, ma'am.

9 Q. What occurred once Mr. Hunter was taken into custody
10 to the West Columbia Police Department?

11 A. Once he was taken into custody to the West Columbia
12 Police Department, myself and Captain Wade attempted to
13 interview the suspect.

14 Q. And that was at approximately what time?

15 A. 6:25 in the evening.

16 Q. Do you have with you a copy of -- or actually the
17 original Miranda of rights form that would have been read
18 to Mr. Hunter?

19 A. Yes, ma'am.

20 Q. And is the one you have the actual original?

21 A. This is the original, yes, ma'am, from the 17th.

22 Q. All right. I'm gonna ask you to start at the top of
23 that document and tell us, first of all, what the date and
24 time is as noted on the document and whose signature is on
25 the document.

1 A. The top of the statement begins with Miranda Rights
2 Warning in capital letters, which is underlined. The next
3 line will say date. The date indicated on there is
4 4-17-2014. The next line, the time. It's at 6:29 PM. The
5 next line is the case number and it's Case Number 1407629.
6 The next portion of the Miranda form is when you go to the
7 particulars of who was actually filling it out. It's as
8 follows, I, then a blank space where Mr. Hunter filled in
9 his name, Nathaniel Hunter, live at, where he put in his
10 address, [REDACTED] I believe it's Belle Claire Drive. He does
11 not indicate what city and state. Next he indicates -- it
12 says my phone number. He completes that his phone number
13 is 803-319-[REDACTED]. The next portion where it indicates, it
14 says my date of birth. Mr. Hunter completes [REDACTED]-83. And
15 my Social Security number, which Mr. Hunter indicates is
16 [REDACTED]. The next question -- or the next portion he
17 completes it says I have finished the blank grade.
18 Mr. Hunter filled in the -- the number 12 grade in school.
19 And I can or cannot read, Mr. Hunter circled that he can
20 read and initialled above it stating that he could.

21 Q. All right. So let me stop you right there. And you
22 recognize this document because it contains your own
23 signature as well?

24 A. It does. Yes, ma'am.

25 Q. Where is your signature located on the document?

1 A. At the bottom of the document.

2 **MS. MAYES:** Your Honor, at this time we would have
3 this marked as Court's Exhibit 1 or I believe there is a
4 Court's 1. This would be 3 then, I believe?

5 **THE COURT:** Court's 3?

6 **THE COURT REPORTER:** No. It would be 4.

7 **THE COURT:** 4. Okay.

8 **MR. PHILLIPS:** Of course, it's subject to the motion
9 in limine.

10 **THE COURT:** Sure. That's right. Okay. This is a
11 Court's exhibit, so.

12 (Court's Exhibit Number 4 was marked for
13 identification.)

14 BY MS. MAYES:

15 Q. Now do you also have with you, Investigator Griffin,
16 an exact duplicate of that form?

17 A. I do. Yes, ma'am.

18 Q. And I'm gonna ask you whether you can state for the
19 record the exact rights or warnings that were provided to
20 Mr. Hunter and between yourself and -- who else was
21 present?

22 A. At that time it was Captain Wade.

23 Q. Who would have actually been reading these rights to
24 Mr. Hunter?

25 A. He would have been. Yes, ma'am.

1 Q. Okay. Can you state exactly what was read to
2 Mr. Hunter?

3 A. Yes, ma'am. When we go over these with the
4 individuals that we're questioning, we do read them line
5 for line prior to them filling out anything. What was
6 read to Mr. Hunter is, the Constitution requires me to
7 inform you you have the right to remain silent. Anything
8 you say can and will be used in court as evidence against
9 you. You're entitled to talk to a lawyer now and to have
10 him present now or at any time during questioning. If you
11 cannot afford a lawyer, one will be appointed for you
12 without cost. Do you understand these rights? Indicate
13 yes or no. If you decide to answer questions now without
14 a lawyer present, you will still have the right to stop
15 answering questions at any time. You also have the right
16 to stop answering questions at any time until you talk to
17 a lawyer.

18 Those are labeled one through six. After reading
19 those to him, Mr. Hunter did initial by one through six
20 stating that he understood those. When asked do you
21 understand these rights, he did indicate by circling yes
22 and putting his initials above that. Also after stating
23 that he could have a lawyer present, he did sign stating he
24 understood that.

25 The next line is the Waiver of Miranda Rights. It

1 says, I'm willing to make a statement and answer questions.
2 I understand and know what I'm doing. No promises or
3 threats have been made to me. No pressure or coercion of
4 any kind has been used against me. That was also signed
5 and dated by Mr. Hunter.

6 Q. All right. And that would be Nathaniel Hunter on what
7 date?

8 A. On 4-17-2014.

9 Q. And does that contain your signature as a witness?

10 A. It does. Yes, ma'am.

11 Q. And also that of Captain Wade as a witness?

12 A. Yes, ma'am.

13 Q. Having been present for that interview, Investigator
14 Griffin, and for the reading of the Miranda rights and his
15 acknowledgment of understanding the Miranda rights, can
16 you tell us whether or not it appeared that he freely and
17 voluntarily waived those rights?

18 A. He did.

19 Q. At any point in time did he appear to be under the
20 influence of alcohol or drugs and incapable of
21 understanding his rights?

22 A. No, ma'am.

23 Q. Was he able to respond to any questions that you had
24 or interact with you and communicate with you freely?

25 A. He was.

1 Q. Were you able to understand his responses?

2 A. Yes, ma'am.

3 Q. His speech was -- can you tell us whether or not his
4 speech was coherent?

5 A. His speech was coherent. We could understand what he
6 was saying.

7 Q. Did he ever at any time indicate that he wanted an
8 attorney present?

9 A. He did not. No, ma'am.

10 Q. Was he threatened in any way in order to participate
11 in the interview?

12 A. No, ma'am.

13 Q. Were any promises made to Mr. Hunter in order to have
14 him participate in the interview?

15 A. No, ma'am, there weren't.

16 Q. Did you threaten him in any way to have him
17 participate in the interview?

18 A. No, ma'am.

19 Q. Did he at any point in time ask for the interview to
20 stop so that he could have an attorney?

21 A. No, ma'am.

22 Q. Based on all of these factors, Investigator Griffin,
23 can you tell us whether or not he appeared to freely and
24 voluntarily participate in the interview?

25 A. He did.

1 Q. Now following the waiver of rights and his signature
2 on that document, did you actually pose questions to him?

3 A. We did. Yes, ma'am.

4 Q. And that was for what purpose?

5 A. To obtain information that he had about the crime.

6 Q. Do you have with you any notes that document your
7 conversation and interview with Mr. Hunter on that date,
8 the date of 4-17-14?

9 A. I do. Yes, ma'am.

10 Q. And approximately what time would the interview have
11 taken place following the waiver of those rights?

12 A. After the waiver of rights, it would have taken place
13 immediately.

14 Q. Okay. I want to refer you to your notes, particularly
15 the notes that you have entered into your investigative
16 summary noted at 6:25 PM. Can you tell us whether or not
17 you made notations and entered this within a fair amount of
18 time of the actual interview?

19 A. I'm sorry, could you repeat that question?

20 Q. Yes. Can you tell us whether or not the information
21 contained your summary of the interview would have been
22 noted and entered within a fair amount of time from the
23 interview?

24 A. It would have been. Yes, ma'am.

25 Q. It would have been fresh in your memory at that time?

1 A. It would have been. Yes, ma'am.

2 Q. I'm gonna ask you to refer directly to your notes and
3 start with your entry at 6:25 --

4 A. Yes, ma'am. It says --

5 Q. -- regarding your interview with Nathaniel Hunter.

6 A. It says, I and Captain Wade conducted an interview
7 with the suspect, speaking of Mr. Hunter. He was advised
8 of his Miranda rights. He completed and signed the form
9 stating that he was waiving those rights to speak with us.
10 When confronted to how -- when confronted as to how his DNA
11 was at the scene of the crime, the suspect stated that he
12 had given some clothes away to a thrift store. He further
13 stated that he had given away jeans, hoodies and shirts.
14 When asked about the cut on his forehead, which was covered
15 with a band-aid, he stated that he received the cut from
16 his cousin, Tanisha Taylor. He stated that he and Tanisha
17 were play fighting "when she scratched my head". The
18 suspect continued to state that he was not at the
19 apartment.

20 Q. All right. So I want to back up a little bit. When
21 you noted that he had given some clothes away to a thrift
22 store, do you know if he made any other statements in that
23 regard --

24 A. No, ma'am.

25 Q. -- as to what happened to his clothing or who he would

1 have given them to?

2 A. I believe he also stated that -- he was just trying to
3 explain that he had given them away in some sort of way or
4 fashion. One of them was a thrift store and I believe he
5 also said a crackhead.

6 Q. All right. And specifically you mentioned a band-aid.
7 What, if anything, was significant about that band-aid?
8 What did you observe in that regard concerning Mr. Hunter?

9 A. The band-aid was definitely -- it stood out because
10 the cuts were fresh, as in within the same timeline from
11 when this incident occurred as to when he was apprehended.
12 So they were in the healing process and they weren't fresh
13 cuts, but they were very readily apparent.

14 **THE COURT:** Where was the band-aid located?

15 **THE WITNESS:** They were located on the left side of
16 his forehead, I believe, Your Honor.

17 **THE COURT:** Thank you.

18 BY MS. MAYES:

19 Q. And were you aware as to whether or not the victim in
20 this case had -- since had engaged in a struggle with the
21 intruder?

22 A. I knew there was a struggle, yes, ma'am. A pretty
23 intense struggle.

24 Q. All right. And were photographs taken of those
25 injuries?

1 A. Photos were taken. Yes, ma'am.

2 Q. And specifically the band-aid?

3 A. Specifically the band-aid. Yes, ma'am.

4 Q. And at any point in time did you ask him to remove the
5 band-aid for additional photographs of the abrasions or
6 cuts underneath the band-aid?

7 A. We did.

8 Q. And all of those were made a part of evidence?

9 A. Yes, they were. Yes, ma'am.

10 Q. Following this interaction with Mr. Hunter on
11 April 17, 2014, can you tell us whether or not he remained
12 in custody?

13 A. He did. He went direct directly to the Lexington
14 County Detention Center after that.

15 Q. Okay. So he had been served with the arrest warrants,
16 placed into custody and was now in the detention center,
17 correct?

18 A. Yes, ma'am.

19 Q. So moving forward, what was your next date of
20 interaction with Mr. Hunter?

21 A. The next time I had contact with Mr. Hunter, I believe
22 it was on the 21st of April. It was.

23 Q. All right. Now going back to the 17th, at any point
24 in time had he requested an attorney?

25 A. No, ma'am, he did not.

1 Q. At any point in time had he indicated that he had an
2 attorney?

3 A. No, ma'am.

4 Q. What can you tell us about your interaction with
5 Mr. Hunter on the date of April 21st and at what time?

6 A. It happened on the 21st of April, 2014, at 10:25 that
7 morning. Again, prior to speaking to Mr. Hunter he was
8 advised of his Miranda rights with the exact same form,
9 which he, again, completed, signed and waived.

10 Q. All right. And do you have with you a copy of that
11 Miranda form?

12 A. I have the original of that form.

13 Q. All right. And the purpose of this interview would
14 have been what?

15 A. Given the information that he had given us previously,
16 that being the scratch that he received to his head, his
17 clothing and then finding out later on that some of the
18 stuff he told us was not true, we were questioning him,
19 confronting him, about those -- those new facts that were
20 discovered.

21 Q. All right. And so just -- just to clarify, because in
22 that he indicated who he had gotten into a confrontation or
23 a struggle with, did you have the opportunity to locate
24 that individual and interview her?

25 A. We did. Yes, ma'am.

1 Q. Did she confirm any of the information he had provided
2 about a struggle?

3 A. No, ma'am. She denied it completely stating that that
4 is not how he received those wounds.

5 Q. Okay. And did you also have interaction with
6 Mr. Hunter on that date?

7 A. Would that be the 21st?

8 Q. Correct.

9 A. Yes, ma'am, we did.

10 Q. Do you have with you information concerning the date
11 and time of that?

12 A. Yes, ma'am. It's the exact same form that I showed
13 earlier just with different stuff completed. The date for
14 that one was 4-21-2014. The time was 10:28 AM. The case
15 number would have remained the same, which was 1407629.

16 Q. All right. And where did you go to have contact with
17 Mr. Hunter?

18 A. The Lexington County Detention Center.

19 Q. All right. And where was he taken?

20 A. Mr. Hunter was brought from Lexington County Detention
21 Center to the West Columbia Police Department for an
22 interview.

23 Q. Now just to clarify, was there a series of facts and
24 information that you intended to follow up with Mr. Hunter
25 on?

1 A. Yes, ma'am, there was.

2 Q. So there were multiple questions that you had for
3 him --

4 A. Yes.

5 Q. -- regarding various aspects of the investigation?

6 A. Yes, ma'am.

7 Q. Where was he taken once he arrived at the West
8 Columbia Police Department?

9 A. To our interview room.

10 Q. And in the interview room, can you tell us who was
11 present?

12 A. It was myself, Investigator Neel and I believe
13 Investigator Wade came in later on -- I'm sorry, Captain
14 Wade.

15 Q. All right. So yourself and Investigator Scott Neel?

16 A. Yes, ma'am.

17 Q. Can you tell us whether or not his Miranda rights were
18 provided at that time?

19 A. They were.

20 Q. And who provided the rights?

21 A. They were provided by Investigator Neel.

22 Q. And do you have with you an original copy of those
23 Miranda rights?

24 A. I do. I have the original. Yes, ma'am.

25 Q. Were you a witness of them being read to him?

1 A. I was. I was present.

2 Q. I'm gonna ask you to start at the top of that form and
3 take us through those events.

4 A. It begins with the Miranda rights. It states Miranda
5 Rights Warnings, which is underlined. The next line is
6 date, which is 4-21-14. The time is 10:28 AM. The case
7 number is 1407629. Then begins with I, it's a blank spot
8 where Mr. Hunter completed Nate Hunter. After that he
9 completed [REDACTED] Belle Claire Drive, Columbia, South Carolina,
10 29203. My phone number is, he completed 803-318-[REDACTED]. My
11 date of birth is, he completed [REDACTED]-83. And my Social
12 Security number is, he completed [REDACTED]. I have
13 finished the blank grade. He completed the twelfth grade
14 in school. And I can or cannot read, he circled that he
15 could.

16 Next it states the Constitution requires me to inform
17 that you have the right to remain silent. Anything you say
18 can and will be used in court as evidence against you.
19 You're entitled to talk to lawyer now and to have him or
20 her present now or at any time during questioning. If you
21 cannot afford a lawyer, one will be appointed for you
22 without cost. Do you understand these rights? Circle yes
23 or no. Mr. Hunter circled yes and that he did understand
24 the rights and put his initials above that circle. If you
25 decide to answer questions now without a lawyer present,

1 you will still have the right to stop answering questions
2 at any time. You also have the right to stop answering
3 questions at any time until you talk with a lawyer.

4 Mr. Hunter stated that he understood all those by putting
5 initials by one through six, as well as signing.

6 The next line is the Waiver of Miranda Rights. It
7 says I'm willing to make a statement and answer questions.
8 I understand and know what I am doing. No promises or
9 threats have been made to me and no pressure or coercion
10 of any kind has been used against me. It been signed by
11 Investigator Neel and it's signed by Mr. Hunter with a date
12 of 4-21-2014.

13 Q. All right. And did you witness that entire process?

14 A. I did. Yes, ma'am.

15 **MS. MAYES:** Okay. Your Honor, this will be State's
16 Exhibit 5 as a Court's exhibit, I believe.

17 **THE COURT:** Court's 5.

18 (Court's Exhibit Number 5 was marked for
19 identification.)

20 BY MS. MAYES:

21 Q. And, Investigator Griffin, can you tell us whether or
22 not that appears to be a fair and accurate representation
23 of the original?

24 A. Yes, ma'am, it does.

25 Q. It's the same document?

1 A. It is.

2 Q. Now referring to that and your memory of the events
3 that transpired during the second interview on April 21st,
4 can you tell us whether or not Mr. Hunter was threatened in
5 any way to participate in an interview?

6 A. No, ma'am, he was not.

7 Q. Did he appear to understand the rights that were read
8 to him?

9 A. He did.

10 Q. Did he appear to have any type of medical condition
11 that would preclude him from understanding or communicating
12 with you?

13 A. No, ma'am.

14 Q. Was his speech coherent on this date?

15 A. It was.

16 Q. Did he at any point in time ask for an attorney?

17 A. He did not.

18 Q. Did he agree to answer your questions and continue
19 without an attorney?

20 A. He agreed to speak with us, yes, ma'am, without an
21 attorney.

22 Q. Did you promise him anything in exchange for making
23 the statement?

24 A. No, ma'am, we didn't.

25 Q. Do you coerce him in any way in order to obtain a

1 statement?

2 A. No, ma'am.

3 Q. Were any threats made to him?

4 A. No, ma'am.

5 Q. Did it appear to the best of your knowledge that his
6 interview with you on this date, the 21st of April, was
7 freely and voluntarily given?

8 A. It was.

9 Q. On this particular date, what, if any, statements did
10 he make?

11 A. I know it was just verbal statements only that he
12 made to officers after being advised of his rights.
13 During of the course of the interview, Mr. Hunter wanted to
14 bargain with the investigators and wanted certain charges
15 dropped. Nathaniel never once denied committing the crime
16 or questioned investigators about the DNA evidence.
17 Investigators showed him the SLED confirmation sheet where
18 the DNA collected matched him and he stated there was no
19 reason for him to confess, that it would not help him if
20 he told the truth. Investigators continued to tell
21 Mr. Hunter that it would be better for him if he did take
22 responsibility and told the truth. Mr. Hunter continued
23 to bargain and asked for charges to be dropped. He asked
24 about a deal cut for the man in the Gabbiee Swainson case
25 and that's what he wanted to do, but he couldn't do that

1 right now. He stated he needed time to think before he
2 told the truth.

3 Q. All right. And let me stop you right there. You say
4 that he wanted charges to be dropped?

5 A. Yes, ma'am.

6 Q. And you used the term "bargain". What was he saying
7 or doing to indicate that he would be willing to talk
8 further if he could get a bargain and get charges dropped?

9 A. Stating that, ma'am. He was saying that, you know,
10 he would -- it seemed essentially he would confess or tell
11 the truth should some charges be dropped because I know
12 initially there were a good bit of charges.

13 Q. All right. And when you supplied him or confronted
14 him with what you called the SLED confirmation sheet,
15 you're referring to the notification of the CODIS hit?

16 A. Correct. Yes, ma'am.

17 Q. And his response to that was what?

18 A. He stated that there was no reason for him to confess,
19 that it would not help him if he told the truth.

20 Q. And who brought up the mention of the Gabbiee Swainson
21 case?

22 A. Mr. Hunter.

23 Q. And he brought that up in regards to an attempt to
24 have some type of bargain?

25 A. Yes, ma'am.

1 Q. And specifically what type of deal did he want in
2 relation to the analogy with the Gabbiee Swainson case?

3 A. My understanding is it was either the charges being
4 dropped or someone that he -- that may have helped him out
5 or whatnot that charges would be dropped for them as well.

6 Q. In the Gabbiee Swainson case?

7 A. As in the Gabbiee Swainson case. Yes, ma'am.

8 Q. And who was the first to bring up that example or that
9 particular case?

10 A. That was Mr. Hunter himself.

11 Q. And that is in reference to a murder investigation in
12 Richland County?

13 A. It is.

14 Q. That had been covered by the press?

15 A. Yes, ma'am, it had been.

16 Q. What happened next?

17 A. Next after saying -- he stated that he needed time to
18 think before he told the truth and making no headway
19 Captain Wade went into the interview room and talked to
20 Mr. Hunter.

21 Q. And were you present for that or was Captain Wade
22 alone?

23 A. It was Captain Wade -- it was either Captain Wade
24 alone or with Investigator Neel. I wasn't present for that
25 portion.

1 Q. All right.

2 MS. MAYES: I beg the Court's indulgence.

3 THE COURT: Yes, ma'am.

4 MS. MAYES: Nothing further from this witness at that
5 time, Your Honor.

6 THE COURT: Okay. Cross-examination, Mr. Phillips.

7 MR. PHILLIPS: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION (In-Camera)

10 BY MR. PHILLIPS:

11 Q. Good afternoon, Mr. Griffin. How are you?

12 A. Good. How about you?

13 Q. Doing well. So at the time you had been a detective
14 about a year and -- about three years?

15 A. That would be correct. Yes, sir.

16 Q. And through that, you first went to the hospital that
17 day, it was several days before you arrested or were part
18 of the team that arrested Nathaniel Hunter; is that
19 correct?

20 A. My first involvement was at the hospital. Yes, sir.

21 Q. All right. And you recorded Ms. Larenda Simon's
22 statement; is that right?

23 A. Her statement was recorded due to going into surgery
24 immediately following that and we did not know whether or
25 not she would survive at that time.

1 Q. Okay. And what did you record that statement with?

2 A. An audio recorder.

3 Q. All right. Was that one that you have personally or
4 one that was given to you through --

5 A. It's issued by the department.

6 Q. All right. So you record that statement with that
7 recorder?

8 A. Correct.

9 Q. Then several days later when Mr. Hunter is arrested
10 you have him where?

11 A. At the West Columbia Police Department.

12 Q. All right. And it's a specific interrogation room?

13 A. There is.

14 Q. And how big is this room?

15 A. It's approximately a ten by five or six room.

16 Q. Could you describe that room for me?

17 A. When you go into the room, there's a chair -- well,
18 when you go in the room, there's a glass two-way mirror to
19 your right, there's a chair right there as well with a desk
20 where the investigator sits and another chair. So the
21 suspect would sit here, you have the desk, an investigator
22 and an investigator. The door is closest to the suspect.

23 Q. Right. So the suspect's back would be to the door?

24 A. No. No, sir. Their back is facing the wall. Where
25 their feet are facing, the door is directly to the left and

1 the investigator they're speaking to is directly to the
2 right.

3 Q. And there's two investigator chairs in the room?

4 A. Yes.

5 Q. How many investigators were in that room on the 17th?

6 A. At that time, two.

7 Q. And that was you and Captain Wade?

8 A. It was myself and Captain Wade, yes, sir.

9 Q. And how long were you in that room?

10 A. I would say approximately an hour.

11 Q. Okay. And during that time, was there any indication
12 regarding his request to stop the questioning?

13 A. No, sir.

14 Q. All right. He never requested an attorney?

15 A. No, sir, he did not.

16 Q. He never invoked his right to silence?

17 A. He never did. No, sir.

18 Q. And specifically what did you tell him about making
19 the statement other than the advisement of rights forms you
20 testified about?

21 A. I'm sorry, can you say that again?

22 Q. You testified that you went through the advisement of
23 rights form, the Miranda warnings.

24 A. Yes, sir.

25 Q. Other than that, what did you ask him about prior to

1 that form? Prior to giving him that form, what questions
2 did you ask him?

3 A. It's just the basic questions that are on the list.

4 Q. Right. So --

5 A. Right.

6 Q. So not on that form, what questions did you ask him
7 before you gave him that form?

8 A. If he wanted to speak to us.

9 Q. All right. And that was it? That was the only
10 question asked?

11 A. Uh-huh.

12 Q. So at which point -- did you speak to him prior to
13 going into that room or was the first time you spoke to
14 him in the interrogation room?

15 A. I was on-scene when he was apprehended, so there may
16 have been some dialog between him and myself that I don't
17 recall.

18 Q. All right. So you have no recollection as to what the
19 dialog would have been?

20 A. Prior to getting into that room, no, sir.

21 Q. All right. Were you in the car with him when he was
22 arrested?

23 A. No, sir. He was arrested in another vehicle.

24 Q. Okay. So he was transported to West Columbia in an
25 entirely different vehicle?

1 A. I'm actually unsure as to what -- who transported him
2 to West Columbia.

3 Q. But it wasn't you?

4 A. It wasn't me. Not to my knowledge. Not me recalling.

5 Q. All right. And if you did ask him any questions
6 on-scene, you don't remember?

7 A. No, sir.

8 Q. Okay.

9 A. I don't believe I did because I wouldn't ask any
10 questions short of getting Miranda in place.

11 Q. All right. So the first question you asked him once
12 you made it to the interrogation room was do you want to
13 speak to us; is that right?

14 A. Yes, sir.

15 Q. Okay. And his answer was?

16 A. Yes, he'd speak to us.

17 Q. All right. And you went through the advisement form?

18 A. Yes.

19 Q. You said you interviewed him approximately an hour; is
20 that right?

21 A. Yes, sir.

22 Q. In that room, is there any type of recording device?

23 A. No, sir, there's not.

24 Q. So there's no video surveillance camera that's
25 incorporated in that room?

1 A. I believe there may be a live feed video, but not a
2 recording of any sort.

3 Q. So it's your testimony that the West Columbia Police
4 Department doesn't have the ability to record out of the
5 interrogation room?

6 A. Right, short of an audio recorder of some type.

7 Q. Okay. And did you have your audio recorder?

8 A. I did not. No, sir.

9 Q. All right. And you did not record this statement?

10 A. The statement being used -- had he provided a
11 statement or a confession, a recorded statement may have
12 very well been made or recorded, but a conversation leading
13 up to the statement would not be recorded typically.

14 Q. The advisement of constitutional rights would not be?

15 A. Not unless we were to actually do a statement. If we
16 got to the point where he did confess and he told us about
17 it, we would conduct a statement, a recorded statement, and
18 on that recorded statement we would, again, advise of his
19 rights through the statement -- or, I'm sorry, through the
20 recording.

21 Q. You weren't the one who read the Miranda rights; is
22 that correct?

23 A. On the 17th? No, that would have been Captain Wade.

24 Q. So you were just present when those were read to him?

25 A. Yes.

1 Q. And he appeared to understand everything that was
2 said?

3 A. He did.

4 Q. And there was just the two officers in the room during
5 the 17th?

6 A. Yes.

7 Q. Going to the 21st, were you aware -- or you are aware
8 as a detective that in South Carolina even in a crime
9 where you're facing life imprisonment and the magistrate
10 can't set bond, they do appear before a magistrate within
11 twenty-four hours?

12 A. I believe they do. Yes, sir.

13 Q. And it would appear on the 21st that would be more
14 than twenty-four hours after the 17th?

15 A. Are you talking about -- yeah, the 17th to the 21st,
16 that would be more than twenty-four hours, yes, sir.

17 Q. So as far as him being approved for a public defender,
18 you had not looked into that as to whether he'd been
19 approved to have a lawyer?

20 A. No, sir, we would have no knowledge of that.

21 Q. So as far as his right to counsel being attached, you
22 were unaware on the 21st that he had been approved for a
23 public defender and at that point he would have had a
24 lawyer?

25 A. I would have no knowledge of that.

1 Q. All right. And you didn't look into it?

2 A. No, sir.

3 Q. All right. Going to the 21st since you were following
4 up, one of things we wanted to make sure we nail down is
5 the timeline. At which point did you speak with Tanisha
6 Taylor and at which point did you speak with Nathaniel
7 Hunter?

8 A. I have on my notes that we spoke to Tanisha Taylor on
9 the 21st of April and as of 12:15 that afternoon.

10 Q. And what time did you speak with Nathaniel Hunter?

11 A. It has us speaking with Mr. Hunter at 10:25 that
12 morning. So looking at these notes, it looks like it was
13 before we spoke to Ms. Taylor.

14 Q. All right. And when you went in that day, you said
15 there was three officers, two additional investigators?

16 A. I'm sorry?

17 Q. There were two additional officers other than you,
18 Investigator Neel and Captain Wade?

19 A. No, sir, it was just Investigator Neel and myself.
20 Captain Wade came in later on the 21st.

21 Q. Okay. Initially it was just two?

22 A. Correct.

23 Q. And then three later?

24 A. Not three. I left the room, Captain Wade came in, so
25 it was Captain Wade and Investigator Neel.

1 Q. Okay. Thank you. And at that point you had not
2 brought your audio recording devices?

3 A. No, sir.

4 Q. And when you went to interview him that morning, you
5 asked him specific questions regarding having -- how he got
6 the cut on his head; is that correct?

7 A. No, sir, I believe the cut was discussed on the 17th.
8 Yes, sir, the cut was discussed on the 17th when he was
9 apprehended. He stated that his -- that Tanisha and he
10 were play fighting and she scratched him on the head. That
11 was the 17th at 6:25 PM.

12 Q. And with his advisement of rights at that point, this
13 is the same room that he was in on the 17th?

14 A. I believe so.

15 Q. And how long was he --

16 A. Which day are we speaking of right now?

17 Q. The 21st. I apologize.

18 A. Okay.

19 Q. And that was the same room as on the 17th?

20 A. I believe so. Yes, sir.

21 Q. All right. How many interrogation rooms does West
22 Columbia have?

23 A. We have two.

24 Q. Okay. Are they vastly different in size?

25 A. They're approximately the same size. The setup

1 remains the same as well. There's the desk -- or the chair
2 and the three desks -- or the desk and the three chairs.
3 Just one has a window and one does not.

4 Q. Okay. So the only difference is a window?

5 A. Right. One you can see into the squad room and the
6 other one you can't see anything except for the two-way
7 mirror.

8 Q. Okay. Thank you. And how long was the interrogation
9 on the 21st?

10 A. I'd say about the same. Approximately an hour. I
11 don't know.

12 Q. You were there for the entire time?

13 A. I was -- I was there for the initial portion of it
14 and once Captain Wade and Investigator Neel was in there,
15 I would have been standing outside the room.

16 Q. As far as the -- you said he was asking for a Gabbiee
17 Swainson deal and you said that was something that he
18 brought up and it was not you or Neel or Captain Wade?

19 A. Correct, that was something Mr. Hunter brought up.

20 Q. And that was while you were in the room?

21 A. Yes.

22 Q. Okay. It's not something you heard from when Neel and
23 Wade were in the room?

24 A. No, sir. That was discussed when Investigator Neel
25 and myself were in there and I believe it was discussed

1 again when Captain Wade and Investigator Neel went in the
2 second time.

3 Q. All right. And nobody, not you, not Neel, not Wade
4 recorded this interview?

5 A. No, sir. Because, again, we only tape recorded
6 statements, usually not just discussions or talks,
7 conversations.

8 Q. In either of these interrogations was he handcuffed?

9 A. I believe in the first one he may have had leg chains
10 on. The only reason I recall that is because I know there
11 was a photo when we took the photo of the scratch he does
12 have leg irons on in that. As far as the second one, I
13 don't believe he would have had anything on because he
14 would have already been in his jumpsuit from the county.

15 Q. And just two little follow-up questions. He didn't
16 appear to be under the influence of any drugs or alcohol
17 at the time?

18 A. No, sir, he did not.

19 Q. And at that point, at least while you were in the room
20 for either the 17th or the 21st, no threats or coercive
21 techniques were used?

22 A. No, sir, they never were.

23 **MR. PHILLIPS:** No further questions, Your Honor.

24 **THE COURT:** Redirect, Ms. Mayes?

25 **MS. MAYES:** Just briefly, Your Honor.

1 REDIRECT EXAMINATION (In-Camera)

2 BY MS. MAYES:

3 Q. On the 21st when he was brought to the West Columbia
4 Police Department, can you tell us whether or not it's
5 routine in such cases to follow up with a Defendant who
6 initially agreed to give you -- or at least initially
7 agreed to an interview?

8 A. Yes, ma'am, especially when there's new findings
9 because we had three days to go from the case to that
10 point, so we would have had more information.

11 Q. All right. And did that include also search warrants
12 and a search for cell tower information and things of that
13 nature?

14 A. It would have, yes, ma'am.

15 Q. Now moving forward to the 21st, had he ever indicated
16 in the interview on the 17th that he had an attorney or
17 wanted an attorney?

18 A. No, ma'am, he never spoke of an attorney.

19 Q. Or that he would be applying for a public defender or
20 calling an attorney to represent him?

21 A. No, ma'am, he never mentioned an attorney.

22 Q. Had you or your department received any type of letter
23 representation from an attorney?

24 A. No, ma'am.

25 Q. Or a phone call that indicates that he was represented

1 by an attorney?

2 A. No, ma'am.

3 Q. And when he arrived at the West Columbia Police
4 Department, did he at any point in time convey to you that
5 he had applied for a public defender or made any other
6 attempts to potentially get legal representation?

7 A. No, ma'am, especially because we went over the Miranda
8 rights form again.

9 Q. And during the course of those rights and the
10 follow-up communications, did he at any point in time ask
11 for an attorney?

12 A. He never did. No, ma'am.

13 Q. Did he make any requests other than that he wanted a
14 bargain or a deal before he would, as you noted, tell the
15 truth?

16 A. In the last interview he did make those requests, yes,
17 ma'am.

18 Q. Those were his only requests?

19 A. Those were his only requests that I recall, yes,
20 ma'am.

21 **MS. MAYES:** Nothing further.

22 **THE COURT:** Thank you. Any follow-up on those points,
23 Mr. Phillips?

24 **MR. PHILLIPS:** No further questions.

25 **THE COURT:** Investigator, you can step down.

1 **THE WITNESS:** Thank you, Your Honor.

2 | (Witness excused.)

3 | **THE COURT:** Mr. McNair.

4 **MR. McNAIR:** Your Honor, the State calls Investigator
5 Scott Neel.

6 (Whereupon, Scott Neel was duly sworn by the Clerk of
7 Court.)

8 **THE CLERK:** Once you're seated, state your full name,
9 spelling your last, please.

10 **THE WITNESS:** My name is Scott Neel. My last name is
11 spelled N-E-E-L.

12 | SCOTT NEEL,

13 | having been duly sworn, testified as follows:

14 DIRECT EXAMINATION (In-Camera)

15 BY MR. MCNAIR:

16 Q. Investigator Neel, can you give us a little bit of
17 your background in law enforcement?

18 A. I've been in law enforcement just over ten years now.
19 I spent eight years employed at the West Columbia Police
20 Department and I have been employed with the Aiken County
21 Sheriff's Office now for just over two years.

22 Q. Were you employed with the West Columbia Police
23 Department back in April of 2014?

24 A. Yes, sir, I was.

25 Q. And what was your position at that time?

1 A. I was an investigator.

2 Q. On April 13th of 2014, were you one of the
3 investigators assigned to this case?

4 A. Yes, sir.

5 Q. And during the course of your investigation, did you
6 have the opportunity to meet with Mr. Hunter?

7 A. Yes, sir, I did.

8 Q. And when was that?

9 A. That would have been on April the 21st.

10 Q. Was he under arrest and in custody at that point?

11 A. Yes, sir.

12 Q. Where did that interview take place?

13 A. At the West Columbia Police Department.

14 Q. Who was present for that interview?

15 A. Initially it started off as myself and Investigator
16 Griffin and then Captain Wade also interviewed him by
17 himself.

18 Q. All right. And prior to speaking to him on that date,
19 was he Mirandized?

20 A. Yes, sir.

21 Q. And how do you typically Mirandize folks?

22 A. We have a standard form that we use.

23 **THE COURT:** Here they are.

24 BY MR. MCNAIR:

25 Q. I'm gonna show you Court's Exhibit Number 5. Do you

1 recognize that form?

2 A. Yes, sir, I do.

3 Q. Is that the form you used to Mirandize Mr. Hunter on
4 April 21st?

5 A. Yes, sir.

6 Q. All right. And how is that form presented to him?

7 A. It's a standard form that we use. The heading says
8 Miranda Rights Warning. It includes the date, the time and
9 the case number. The second part of it he would indicate
10 his name as Nate Hunter, his address, phone number, date
11 of birth, Social Security number. It also asks him the
12 highest grade that they've completed in school and asks
13 them whether they can or cannot read or write. On this
14 particular form, Mr. Hunter indicated that he had finished
15 the twelfth grade and he circled that he could read.

16 After the personal identifying information, it spells
17 out the Miranda rights. The first one says you have the
18 right to remain silent. Number two, anything you say can
19 and will be used in court as evidence against you. Number
20 three, you are entitled to talk to a lawyer now and to have
21 him or her present now or at any time during questioning.
22 Number four, if you cannot afford a lawyer one will be
23 appointed for you without cost. Number five asks you if
24 you've understood the previous rights and it asks you to
25 circle yes or no. Number six says if you decide to answer

1 questions now without a lawyer present, you will still have
2 the right to stop -- still have the right to stop answering
3 questions at any time. You also have the right to stop
4 answering questions at any time until you talk to a lawyer.

5 Q. Let me ask you right there. Are those rights read to
6 him or are they just read by him in your presence?

7 A. Typically they're read by the investigator.

8 Q. Okay. And did you read those rights to Mr. Hunter?

9 A. Yes, sir.

10 Q. And the marks beside those rights, whose initials are
11 those?

12 A. Mr. Hunter's.

13 Q. Were those made by Mr. Hunter?

14 A. Yes, sir.

15 Q. And the signature at the bottom of that, is that
16 Mr. Hunter's signature?

17 A. Yes, sir.

18 Q. All right. So did he acknowledge that he understood
19 all of his rights?

20 A. Yes, sir, he did.

21 Q. Did he appear to have any trouble understanding his
22 rights?

23 A. No, sir.

24 Q. Did he appear to be under the influence of anything
25 that would have prevented him from understanding his

1 rights?

2 A. No, sir.

3 Q. Did y'all threaten him in any manner to speak to you?

4 A. No, sir, not at all.

5 Q. Did you force him in any manner to speak to you?

6 A. No, sir.

7 Q. Did you promise him anything in exchange for speaking
8 to you?

9 A. No, sir.

10 Q. To the best of your knowledge, did he knowingly waive
11 his Miranda rights?

12 A. Yes, sir, he did.

13 Q. All right. Now did you take notes at the time of your
14 interview with Mr. Hunter?

15 A. Yes, sir, I did.

16 Q. All right. Do you have a copy of those notes with
17 you?

18 A. Yes, sir.

19 Q. Will you please read what Mr. Hunter said on that
20 date?

21 A. After waiving his rights, he did tell us that he
22 wanted a bargain, he wanted certain charges dropped.
23 He never really once denied committing the crime. He
24 questioned us about any DNA evidence that we may have in
25 our investigation. I showed him during the course of the

1 interview a confirmation sheet that we would have received
2 from SLED indicating that there was a DNA match located
3 from the crime scene that matched Mr. Hunter's DNA. He
4 continued to want to bargain during the course of the
5 interview. He -- I did at one point tell him that in my
6 opinion it would be best for him if he took responsibility
7 and told us the truth and was honest with us about what
8 happened. He continued to want to make what he kept
9 calling a deal and he began to refer to a previous -- or
10 unrelated case, I think Gabbiee Swainson, which, I guess,
11 some type of deal was made in that case.

12 Q. All right. And in regards to wanting a deal, is that
13 something he brought up on his own accord?

14 A. Yes, sir, it was.

15 Q. All right. And y'all didn't promise him any type of
16 deal, did you?

17 A. No, sir.

18 Q. All right. You said at some point during the
19 interview Captain Wade came in as well?

20 A. Yes, sir.

21 Q. And you weren't present for that?

22 A. No, sir.

23 Q. You weren't present for Captain Wade's --

24 A. Whenever myself and Investigator Griffin, we finished
25 our interview, Captain Wade continued the interview by

1 himself with just the two of them present.

2 Q. Okay. So any notes you have regarding Captain Wade's
3 interview would be based on information Captain Wade told
4 you after the interview?

5 A. Correct.

6 Q. All right. Approximately how long did this interview
7 last?

8 A. I would say approximately an hour.

9 Q. During that time was he ever denied water or bathroom
10 breaks or anything like that?

11 A. No, sir.

12 Q. At any point during the interview, did he ever say he
13 wished to remain sealant?

14 A. No, sir.

15 Q. Did he ever request an attorney?

16 A. No, sir.

17 Q. All right.

18 **MR. McNAIR:** Nothing further, Your Honor.

19 **THE COURT:** Thank you. Cross-examine, Mr. Phillips?

20 **MR. PHILLIPS:** Thank you, Your Honor.

21 CROSS-EXAMINATION (In-Camera)

22 BY MR. PHILLIPS:

23 Q. Good afternoon.

24 A. Good afternoon, sir.

25 Q. Do you have an issued audio recording device?

1 A. I did at the time, yes, sir.

2 Q. And you decided -- or you made the conscious decision
3 not to use it?

4 A. Yes, sir.

5 Q. All right. Why did you make that conscious decision?

6 A. Typically when you interview someone, it's a
7 conversation that you're having with someone, you don't
8 normally audio record that. The only time you would
9 record it is if you're getting a formal statement from
10 someone and at that point we weren't obtaining a formal
11 statement.

12 Q. Okay. So you would believe that this wasn't a formal
13 statement?

14 A. It was an interview.

15 Q. All right. So you would have led him to believe that
16 this was informal, not any statement provided to police
17 that could be used against him in court?

18 A. No, sir. You know, obviously it explains in the
19 Miranda rights that anything you say can be used in court
20 against him. Typically we either obtain a written
21 statement or an audio statement depending upon the
22 circumstances in the particular case. At this point in
23 time, we were simply asking Mr. Hunter questions in order
24 to elicit information about his knowledge of the crime.

25 Q. And at that time how long had you been an

1 investigator?

2 A. I would say maybe -- maybe six years.

3 Q. And were you aware that in South Carolina you have a
4 right to appear before a bond judge within twenty-four
5 hours?

6 A. Yes, sir.

7 Q. All right. And at that time certain people who are
8 declared indigent are appointed counsel. Were you aware of
9 that?

10 A. Yes, sir.

11 Q. And at this point knowing that it had been four days
12 later, from the 17th to the 21st of his arrest, did you
13 check to see whether he had been appointed counsel?

14 A. No, sir.

15 Q. In those interview rooms -- for the 21st, the one
16 that you were in on, which interview room was it; do you
17 remember?

18 A. I believe it was an interview room. It's basically
19 an eight by eight square room adjacent to what we referred
20 to as our squad room, which is kind of where everyone --
21 the center point.

22 Q. Would it be fair to say they're similar, the two
23 rooms?

24 A. Yes, sir, they're similar.

25 Q. Okay. And do those rooms have the ability to audio or

1 video record, like a camera in the corner?

2 A. As I recall, at this point we were in the process of
3 making that -- I'm not sure at that point it was actually
4 operational, but we were in the process of making it
5 operational, yes, sir.

6 Q. So at that point, just to quickly go over the
7 highlights, you had read -- you were there -- who read the
8 Miranda rights on the 21st?

9 A. I did.

10 Q. It was you?

11 A. Yes, sir.

12 Q. Okay. And at that point it started off with
13 Investigator Griffin and then after an hour you had the
14 exchange where Captain Wade came in and Griffin left; is
15 that right?

16 A. I believe the whole process took roughly an hour. I
17 don't believe we spoke with him for an hour and then
18 Captain Wade. I believe it was more --

19 Q. So if your notes kind of reflected at about an hour
20 that's when they switched, would that be about right in
21 your notes?

22 A. Yes, sir. Okay. Yes, sir.

23 Q. So your notes would probably be a little bit more
24 accurate than your memory now?

25 A. Yes, sir.

1 Q. With that -- again, as far as the people in the room,
2 did he ever say that he wanted an attorney?

3 A. No, sir.

4 Q. Did he ever say that he was invoking his right to
5 remain silent or I'm remaining silent?

6 A. No, sir.

7 Q. Did he ever say anything to make you believe that he
8 was under the influence or couldn't understand what was
9 being said to him?

10 A. No, sir.

11 Q. Was there anything that was said that was either
12 threatening or coercive towards him?

13 A. No, sir.

14 Q. So at that point when he's brought -- who brings him
15 from Lexington County Detention Center to the West Columbia
16 Police Department?

17 A. Typically it's a patrol officer.

18 Q. But it wasn't you?

19 A. No, sir.

20 Q. All right. And as far as your knowledge, it wasn't
21 Captain Wade or --

22 A. No, sir.

23 Q. -- Investigator Griffin?

24 A. If it is somebody with investigations, it's typically
25 somebody unrelated to the -- to the case.

1 Q. So the first time you speak to him he's already
2 sitting in the interrogation room?

3 A. Yes, sir.

4 Q. And what's the first thing said to him? What
5 questions are asked prior to that Miranda rights warning
6 being given to him?

7 A. Maybe something to the effect of how are you or, you
8 know, do you need anything or something to that effect, but
9 other than that there's no other questions that are asked
10 other than maybe do you want to speak with us, do you want
11 to answer any questions. If he indicates yes, we would go
12 straight into advising him of his Miranda rights.

13 **MR. PHILLIPS:** No further questions, Your Honor.

14 **THE COURT:** Thank you. Redirect, Ms. Mayes? Excuse
15 me. I'm sorry. Mr. McNair.

16 **MR. McNAIR:** Yes, sir. Your Honor.

17 REDIRECT EXAMINATION (In-Camera)

18 BY MR. McNAIR:

19 Q. Investigator Neel, when you met with the Defendant,
20 he was charged with attempted murder, burg first, armed
21 robbery, CSC with a minor, possession of a weapon during a
22 -- during a violent crime and kidnapping, correct?

23 A. Yes, sir.

24 Q. Is it fair to say he understood the formality of the
25 situation?

1 A. I believe so, yes, sir.

2 Q. He understood the severity of the situation he was in?

3 A. In my opinion, yes, sir.

4 **MR. McNAIR:** Okay. Thank you.

5 **MS. MAYES:** The State calls Captain Bruce Wade.

6 **THE COURT:** You can step down, Investigator. Thank
7 you.

8 **THE WITNESS:** Thank you.

9 (Witness excused.)

10 **THE COURT:** Captain Wade come forward and be sworn.

11 (Whereupon, Bruce Wade was duly sworn by the Clerk of
12 Court.)

13 **THE CLERK:** Have a seat please, sir. Once you're
14 seated, state your full name, spelling your last, please.

15 **THE WITNESS:** My name is Bruce Wade, W-A-D-E.

16 BRUCE WADE,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION (In-Camera)

19 BY MS. MAYES:

20 Q. All right. And, Captain Wade, how long have you with
21 the West Columbia Police Department?

22 A. About eleventh and a half years.

23 Q. All right. And during the course of that time, have
24 you had the opportunity to interview suspects in crimes,
25 including defendants who have already been charged with a

1 crime?

2 A. Yes, ma'am.

3 Q. And did you have the opportunity to be at the crime
4 scene on the night of this incident, April 13th of 2014?

5 A. Yes, ma'am.

6 Q. And as captain, were you aware of the on-going
7 investigation that was being conducted by investigators
8 Scott Neel and Thomas Griffin?

9 A. Yes, ma'am.

10 Q. And as a result, did you have the opportunity to sit
11 in on various portions of interviews that were conducted
12 with Mr. Hunter?

13 A. Yes, ma'am.

14 Q. I want to start with the interview that would have
15 been conducted on April 17th of 2014. I'm gonna show you
16 this document, Court's Exhibit 4. Do you recognize
17 anything about that document?

18 A. Yes, ma'am. I signed the bottom of it.

19 Q. All right. And can you tell us whether or not it's
20 routine for you to sign a document once you have advised
21 someone of their Miranda rights?

22 A. Yes, ma'am, that's correct.

23 Q. And who actually did the advisement of rights to
24 Mr. Hunter on the date of April 17th?

25 A. I did.

1 Q. And can you tell us whether or not having been through
2 those rights previously by Investigator Griffin, did he
3 appear to understand those rights?

4 A. Yes, ma'am.

5 Q. Was he threatened by yourself or Investigator Griffin
6 in order to participate in this interview?

7 A. No, ma'am.

8 Q. Was he promised anything in exchange?

9 A. No, ma'am.

10 Q. Was he coerced?

11 A. No, ma'am.

12 Q. Did he ask for an attorney at any point in time prior
13 to the interview or during the course of the interview?

14 A. No, ma'am.

15 Q. Did he agree or appear to agree to speak with you and
16 Investigator Griffin freely and voluntarily?

17 A. Yes, ma'am.

18 Q. Now at this point in time, April 17th, can you tell
19 us whether or not measures were being taken by the West
20 Columbia Police Department to ultimately locate phone
21 records possibly associated with the Defendant's phone,
22 and that would include cell tower-type information?

23 A. Yes, ma'am.

24 Q. At any point in time during the interview, did you
25 confront Mr. Hunter about that?

1 A. I did.

2 Q. In what regard?

3 A. I had a conversation with Mr. Hunter when he said --
4 he had made a comment about he had gave some clothing away
5 to a crackhead and to Good -- well, to a thrift store and
6 I explained to him, I said, look, you're an adult. I said
7 when adults are caught, they usually man up. I said --
8 and I explained to him, I said, they've got your DNA on
9 the scene. I said, you've got the cuts and scratches and
10 bruises on your face. I said, we have sent down for your
11 cell tower records, your cell phone records, and they're
12 gonna come back and put you on the scene. I said, so I
13 don't know why you're denying this, and at that time he
14 told me no, my cell phone was cut off that night.

15 Q. All right. So he indicated to you verbally that his
16 cell phone was off that night referring to the incident
17 date?

18 A. Yes.

19 Q. And also I want to ask you about the statement that
20 you recall him making as to giving clothing away. Can you
21 tell us what sources he stated he gave clothing to?

22 A. He said -- at one point he said he gave it to a
23 crackhead and then at another point he said he gave it to
24 a thrift store.

25 Q. All right. Following that interview on April 17th,

1 did you have the occasion to take part at any point in the
2 interview that was conducted on April 21st?

3 A. I did.

4 Q. In what regard?

5 A. It's a -- it's actually a TV monitor set up in my
6 office where I can watch an interview if I wanted to and
7 I watched Investigator Griffin and Investigator Neel
8 interview Mr. Hunter and he gave them several stories and
9 pretty much what they got wrote in here when they did their
10 testimony, but once they came out it's not unusual for me
11 to go in and see if I can get somebody to confess and I did
12 go into the interview room and talk to him, but he didn't
13 confess to me. He made the comment about he was waiting
14 on -- waiting to make a deal. He was gonna do like the
15 Gabbiee Swainson case, the guy in that case, how he waited
16 it out until the end and got a deal and his -- I want to
17 say so his daughter didn't get charged in the case.

18 Q. All right. Referring to the offender in the Gabbiee
19 Swainson case?

20 A. Yes.

21 Q. And who was the first to bring up the mention of the
22 Gabbiee Swainson case?

23 A. Mr. Hunter.

24 Q. And can you tell us whether or not that was in regard
25 -- in regards to wanting some type of deal or bargain in

1 exchange for making a statement?

2 A. Yes, that's correct.

3 **MS. MAYES:** Nothing further.

4 **THE COURT:** Thank you. Mr. Phillips.

5 **MR. PHILLIPS:** Thank you, Your Honor.

6 CROSS-EXAMINATION (In-Camera)

7 BY MR. PHILLIPS:

8 Q. Good afternoon, Mr. Wade.

9 A. Good afternoon.

10 Q. Do you have a West Columbia Police Department issued
11 recording device?

12 A. No, sir.

13 Q. But you do have a live feed into your office of the
14 interrogation room?

15 A. That's correct.

16 Q. And is it the conscious decision of the West Columbia
17 Police Department not to record interviews?

18 A. That's correct. We don't record interviews.

19 Q. All right. In making the reports in this case as the
20 supervising officer, what reports did you make?

21 A. None.

22 Q. No reports?

23 A. No, sir.

24 Q. And with that, the first time that the information
25 had been provided about the cell phone being cut off was

1 provided to the solicitor's office on what date?

2 A. I want to say it might have been last Tuesday.

3 Q. And this critical piece of evidence regarding the
4 statement did not find its way into either Investigator
5 Neel or Investigator Griffin's statements; is that right?

6 A. That's correct.

7 Q. And as their supervisor you review those statements?

8 A. That's correct.

9 Q. And as the person who had the statement being told to
10 him, you didn't try to supplement that report?

11 A. No, sir.

12 Q. And it has only become relevant as of last Tuesday?

13 A. I wouldn't say that's the only time it became
14 relevant. When I go into an interview -- I don't take
15 notes when I go into an interview. Normally it's the
16 investigator sitting next to me or the investigator
17 watching the TV that's taking notes. I'm not a good
18 notetaker and I don't take notes when I go into an
19 interview room. I usually lead the interview.

20 Q. How many interviews do you think you've been in or
21 watched live feeds of since then, over the last three
22 years?

23 A. In the last three years?

24 Q. Yeah.

25 A. At least three hundred.

1 Q. At least three hundred?

2 A. That would be my guess.

3 Q. And that's not just participated in, but also watched
4 live?

5 A. Correct.

6 Q. At least three hundred?

7 A. (Nods head.)

8 Q. And for all three hundred of those you didn't record
9 the interview?

10 A. No, sir.

11 Q. Was there a recording done in any of those interviews?

12 A. Not to my knowledge.

13 Q. In those interrogation rooms, is there an audio or
14 video recording device?

15 A. Not in the interview rooms. We don't -- we don't have
16 interrogation rooms, we have interview rooms, but no -- no
17 recording device is in there. Just live feed only.

18 Q. Okay. So live feed only. That's the thing. There's
19 no recording?

20 A. No. No, sir.

21 Q. Okay. And the live feed only goes to your office?

22 A. At that particular time it was only going to my
23 office. Since they have put one in the investigations
24 room.

25 Q. Okay. But still now there's no recordings made, just

1 live?

2 A. We do not have audio recordings of statements, no.

3 Q. What about video recordings?

4 A. I mean -- I'm sorry, video recordings. We don't have
5 video recordings of statements, no, sir. Audio recording
6 is hit or miss, but I tell them I don't like them audio
7 recording statements. I prefer it to be handwritten.

8 Q. And why don't you like audio recordings?

9 A. If it's handwritten, it is what it is. I don't want
10 -- I don't want anything to be misinterpreted in an audio
11 recorded statement, but if it's handwritten that's exactly
12 what it is, handwritten from that person.

13 Q. And in this case, did you have Nathaniel Hunter give
14 a handwritten statement?

15 A. He didn't give us one. He didn't give us enough
16 information for us to take one from him. He told me he
17 wasn't there.

18 **MR. PHILLIPS:** No further questions, Your Honor.

19 **THE COURT:** Thank you. Redirect, Ms. Mayes?

20 **MS. MAYES:** Nothing further, Your Honor.

21 **THE COURT:** Thank you, Captain Wade. You may step
22 down.

23 **THE WITNESS:** Thank you.

24 (Witness excused.)

25 **THE COURT:** Ms. Mayes.

1 **MS. MAYES:** Yes, sir, Your Honor. As Court's exhibits
2 Number 4 and Number 5 indicate, Mr. Hunter did acknowledge
3 his rights and sign each of those forms. Certainly from
4 the standpoint of him being in custody he waived any -- he
5 waived those rights in order to speak with law enforcement
6 and also waived any right to an attorney, as that was
7 advised of him as well. At no point during the interview
8 did he request an attorney or ask for the interview to
9 stop and, Your Honor, the requirement of it being freely
10 and voluntarily given and that there was a waiver of his
11 Miranda rights I believe has been -- the showing there has
12 been met in regards to his signature on both of the waiver
13 forms and his acknowledgment of each right as it goes.

14 **THE COURT:** Mr. Phillips, I didn't mean to cut you
15 off and go straight to final argument. I was gonna ask
16 you if you had any evidence that you wished to offer on --

17 **MR. PHILLIPS:** If I may, my client said he -- pursuant
18 to Simmons versus United States may be testifying as to the
19 limited purpose for a suppression hearing. He said he was
20 thinking about it. Can I confirm whether or not he wishes
21 to testify?

22 **THE COURT:** That's fine.

23 (Pause in proceedings.)

24 **MR. PHILLIPS:** Your Honor, he would like to testify
25 for the limited purpose of the suppression hearing.

1 **THE COURT:** All right. Mr. Hunter, come forward,
2 please, and be sworn.

3 (Whereupon, Nathaniel Hunter was duly sworn by the
4 Clerk of Court.)

5 **THE CLERK:** Have a seat. Once you're seated, state
6 your full name, spelling your last, please.

7 **THE WITNESS:** My name is Nathaniel Hunter,
8 H-U-N-T-E-R.

9 **THE COURT:** Mr. Hunter, if you will pull that
10 microphone a little bit closer to you, if you don't mind.

11 **BAILIFF:** I believe it's off.

12 **THE COURT:** It's off? Okay. Is it on now?

13 **MR. PHILLIPS:** Thank you, Your Honor.

14 **THE COURT:** All right.

15 NATHANIEL HUNTER,
16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION (In-Camera)

18 BY MR. PHILLIPS:

19 Q. All right. Mr. Hunter, going to the date of your
20 arrest on April 17th when you are pulled over at that time,
21 was any questions asked of you?

22 A. No, sir.

23 Q. All right. While you were transported to the West
24 Columbia Police Department, was any questions asked of you?

25 A. No, sir.

1 Q. The first time a question of was asked to you was
2 inside the interrogation room at the West Columbia Police
3 Department?

4 A. Yes, sir.

5 Q. And you met with on April 17th Investigator Griffin
6 and Captain Bruce Wade?

7 A. Yes, sir. To my knowledge, I recall meeting with
8 Bruce Wade, but I don't recall meeting with Thomas Griffin.

9 Q. So it was Captain Bruce Wade who read you to the
10 Miranda rights form?

11 A. Yes, sir.

12 Q. Did he ask you any questions prior to reading that
13 form?

14 A. No, sir.

15 Q. All right. So when he came in, what's the first
16 question that he asked you?

17 A. I believe it was to like how are you doing today,
18 something to that nature.

19 Q. And then he asked you -- he basically read the Miranda
20 rights form?

21 A. Yes, sir.

22 Q. And at that point you said you wanted to make a
23 statement. Do you agree with the testimony as far as that
24 at that point you were voluntarily giving a statement?

25 A. That I would voluntarily participate in an interview,

1 but not give any statements like concerning the crime.

2 Q. All right. So during this interview, did you ever
3 feel threatened by anything that was said to you by either
4 Investigator Griffin or Captain Bruce Wade?

5 A. Yes, sir. Bruce Wade.

6 Q. Specifically, what did he say that was threatening to
7 you?

8 A. He basically -- was basically pointing his finger in
9 my face telling me -- asking me did my family ever tell me
10 not to come across that bridge into Lexington County and
11 commit crimes and basically told me that I was gonna do a
12 whole lot of time because I committed this crime and I just
13 denied it and told him I didn't do anything and he got
14 angry and aggressive.

15 Q. Did you ever admit that you committed the crime?

16 A. No, sir.

17 Q. At that point did you ever feel -- or excuse me --
18 did you ever request to have a lawyer present during the
19 interview?

20 A. No, sir.

21 Q. Did you ever say that you wanted to remain silent or
22 to cease questioning?

23 A. No, sir.

24 Q. So any of the -- which part of your statements that
25 you provided to police do you dispute?

1 A. When he said that he asked me about my cell phone and
2 he said that they was gonna ping my location and I was at
3 a scene of a crime and he said -- and I told him that my
4 phone was off. I never made no such statement to that
5 nature. I just told him if that's what you have to do and
6 you want to ping my phone, then that's what you do, but I
7 never told him not one time that my phone was off at the
8 time of the crime.

9 Q. Are there any other statements that you disagree with
10 that you didn't make?

11 A. Yes, sir. On the 21st, I believe it was, that morning
12 on April 21st where they stated that I told them about a
13 deal, requesting a deal, that was not true. They brought
14 up that case and asked me can they -- do I want to make a
15 deal and can they help -- and help me out if I just told
16 the truth and I told them my truth is not their truth, I'm
17 not gonna admit to a crime that I didn't do, that's not
18 what I'm gonna do, so he got angry and aggressive again.

19 Q. So to clarify, you said that you did not make the
20 statement that your phone was off?

21 A. No, sir.

22 Q. And that any statements about you wanting a deal or
23 specifically talking about Gabbie Swainson did not come
24 from you?

25 A. No, sir.

1 Q. It was directed at you about whether you wanted a
2 deal?

3 A. Yes, sir.

4 Q. Were any promises made to you at that time?

5 A. No, sir, no promises except that he just pointed his
6 finger and told me you're gonna get twenty years or better.
7 You go in front of that jury with that hair and you're
8 black in Lexington County and they're gonna convict you,
9 I've got your DNA to prove it, and I told him, well, I
10 can't admit to a crime I didn't do. I'm just not gonna do
11 it.

12 Q. Did they have you handcuffed at that time?

13 A. I'm not sure. I may have had one cuff on. I'm --
14 I'm not sure.

15 Q. And at that point did you ever ask them to use the
16 restroom or ask them for any water?

17 A. No, sir.

18 Q. So at this point what you're saying is that your main
19 purpose for testifying during this hearing was simply to
20 refute the statement that you didn't make?

21 A. To clarify, yes, sir.

22 **MR. PHILLIPS:** No further questions, Your Honor.

23 **THE COURT:** Thank you. Cross-examination,
24 Ms. Mayes?

25 **MS. MAYES:** Yes, sir, Your Honor.

1 CROSS-EXAMINATION (In-Camera)

2 BY MS. MAYES:

3 Q. Now, Mr. Hunter, at that point in time you were part
4 of a work study program at Midlands Tech, correct?

5 A. Not at that particular time, no. I was off a -- I was
6 off a semester. I took a semester off.

7 Q. Well, does that mean that you had actually been
8 admitted to Midlands Tech at some point of time as a
9 student?

10 A. Yes, ma'am.

11 Q. All right. So you had been admitted to college, so
12 there's no doubt that you had the ability to communicate,
13 to read and to write, correct?

14 A. Yes, ma'am.

15 Q. And these Miranda forms, which are Court's Exhibit 4
16 and Court's Exhibits 5, whose signature is that?

17 A. Mine.

18 Q. And whose signature is that at the bottom --

19 A. Mine.

20 Q. -- where it states no promises or threats have been
21 made to me, no pressure or coercion of any kind has been
22 used against me?

23 A. Mine.

24 Q. I'm gonna show you the next one, which is dated the
25 21st.

1 A. Uh-huh.

2 Q. Whose signature is on that document?

3 A. Mine.

4 Q. Whose initials are along the way not only on this
5 document, but the preceding document?

6 A. Mine.

7 Q. And whose signature is at the bottom indicating that
8 no threats or promises or coercion or pressure have been
9 made?

10 A. Mine. That's at the beginning of the interview. The
11 coercion was after.

12 Q. All right. So you're saying that you voluntarily
13 waived your rights and signed those forms --

14 A. Yes, ma'am.

15 Q. -- and then after you signed the forms you state that
16 something that you term coercion was used, correct?

17 A. Aggressiveness, coercion. Whatever words you want to
18 -- whatever you --

19 Q. You mean -- by aggressiveness and coercion, you mean
20 that Captain Wade said to you I've got your DNA and I can
21 put you at the scene, correct?

22 A. Yes, ma'am.

23 Q. You consider that aggression and coercion?

24 A. Raising your voice and pointing your finger in my
25 face, yes, that is aggression.

1 Q. He's confronting you with the facts of the case, isn't
2 he?

3 A. I don't know if they were facts or not.

4 Q. They showed you a document that your DNA was recovered
5 from evidence found at the scene, correct?

6 A. Correct, but that doesn't mean that's evidence.

7 Police have the ability to lie. You can lie -- law
8 enforcement can lie to you as much as they want to. They
9 don't have to tell the truth just to get a statement or a
10 confession from you.

11 Q. All right. So is it your testimony that the document
12 that was shown to you from the State Law Enforcement
13 Division must have been a lie?

14 A. No, I didn't refute it. I just told them I didn't
15 have anything to do with it.

16 Q. All right. You didn't refute it. Now regarding your
17 background and your involvement with law enforcement to
18 know exactly what your rights are and what your -- what
19 your rights are when you're being interviewed by law
20 enforcement, you've had multiple arrests, haven't you?

21 A. Yes.

22 Q. This wasn't your first and only interaction with law
23 enforcement?

24 A. No.

25 Q. Let's start in 2002 when you had an arrest and

1 conviction for possession of burglary tools, correct?

2 A. Yes, ma'am.

3 Q. And then in 2004, you had an arrest for criminal
4 domestic violence, correct?

5 A. Yes, ma'am.

6 Q. Also in 2004 you had an arrest on a drug charge. I
7 believe it was distribution or possession with intent to
8 distribute a controlled substance?

9 A. Yes, ma'am.

10 Q. Then in 2006 also a criminal domestic violence?

11 A. Yes, ma'am.

12 Q. In 2007, you had the arrest for the crimes that you
13 were out on bond for, murder?

14 **MR. PHILLIPS:** Your Honor, I think at this point we've
15 gone way far beyond the scope.

16 **THE COURT:** Well, if she's attempting to do that to
17 attack his credibility, I will allow that, but I think that
18 point has been made for the record.

19 **MR. MAYE:** I can lay a foundation further.

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

21 BY MS. MAYES:

22 Q. Regarding your involvement with law enforcement, you
23 had had involvement with law enforcement in 2007, correct?

24 A. Yes.

25 Q. In fact, you were out on bond for those crimes,

1 correct?

2 A. Yes, ma'am.

3 Q. And then after that as recently as 2011 you were on
4 probation, correct?

5 A. Yes, ma'am.

6 Q. And that involved interaction with a probation agent?

7 A. Yes, ma'am.

8 Q. You'd appeared in court before for you to be on
9 probation, correct?

10 A. Yes, ma'am.

11 Q. And then in 2013, I believe you had an arrest for
12 indecent exposure?

13 A. Yes, ma'am.

14 Q. So that's a year before, a year before this crime
15 would have been committed and you had these interviews
16 with law enforcement and waived your Miranda rights?

17 A. I don't recall having interviews in those cases.

18 Q. You had interviews in 2007 on that murder charge?

19 A. Okay.

20 Q. Do you admit that or deny that?

21 A. I admit that.

22 **MS. MAYES:** I beg the Court's indulgence.

23 **THE COURT:** All right.

24 BY MS. MAYES:

25 Q. So to summarize, Mr. Hunter, your signature is on

1 both of these documents and your testimony just moments ago
2 was that you freely and voluntarily signed these documents
3 and agreed to an interview but during the course of the
4 interview you didn't like the attitude of Captain Wade,
5 correct?

6 A. Correct.

7 **MS. MAYES:** Nothing further.

8 **THE COURT:** Thank you. Mr. Phillips, redirect?

9 REDIRECT EXAMINATION (In-Camera)

10 BY MR. PHILLIPS:

11 Q. Everything you testified to at the hearing was on your
12 own free will?

13 A. Yes, sir.

14 Q. And it's honest?

15 A. Yes, sir.

16 Q. And that's as it was stated to the officers?

17 A. Yes, sir.

18 Q. So when they say you've made statements that you now
19 dispute, that's you being honest that what you testified to
20 here today is the truth?

21 A. Yes, sir.

22 Q. It's outside the scope, but it's been ten years since
23 you were charged with that 2007 murder; is that correct?

24 A. Yes, sir.

25 Q. And it's still pending?

1 A. Yes, sir.

2 Q. And your attorney has told you the reason it's still
3 pending ten years later is because they don't have a shred
4 of evidence?

5 A. Yes, sir.

6 Q. And that was even indicated to the bond judge when we
7 had a bond hearing?

8 A. Yes, sir.

9 Q. Because it's ten years later and somehow it's not
10 dismissed?

11 A. The case is too weak, yes, sir.

12 **THE COURT:** All right. Thank you.

13 Mr. Hunter, you can step down.

14 (Witness excused.)

15 **THE COURT:** Mr. Phillips, any further evidence or
16 testimony on the Denno issue for the case?

17 **MR. PHILLIPS:** No, Your Honor.

18 **THE COURT:** All right. I've heard from Ms. Mayes
19 already in argument, so Mr. Phillips, I'll be glad to hear
20 from you.

21 **MR. PHILLIPS:** Thank you, Your Honor. The Defendant
22 respectfully moves to suppress all statements made to any
23 Government agent and any evidence seized as a result of
24 those statements that were obtained in violation of the
25 Fourth, Fifth, Sixth and Fourteenth amendments to the

1 United States Constitution and Article 1, Sections 3, 10
2 and 14 of the South Carolina Constitution.

3 This is a motion that's been presented to Your Honor
4 about making factual determinations on the record. It's
5 listed as Defense Exhibit Number 6. Your Honor has a copy
6 and the State has been provided a copy of all motions that
7 we presented in our pre-trial motions.

8 **THE COURT:** Right.

9 **MR. PHILLIPS:** Through the in-camera hearing certainly
10 I think it was established that he was in custody, he was
11 interrogated, there was custodial statements that were
12 made, he was advised of his Miranda warnings and those
13 were gone through in full detail, and that at that point
14 certainly Your Honor can make the determination of whether
15 they were adequately given. We certainly would stand on
16 the fact that he did not dispute what was read to him or
17 what he signed based on that, whether his waiver of that
18 right was knowing and intelligent, and then based on his
19 own testimony that at one point of the interrogation it
20 changed from being a voluntary statement or voluntary
21 interview until into a coercive interrogation where he
22 felt that he was being pressured by law enforcement.
23 Specifically, what we believe is our strongest motion in
24 this hearing would be as to the April 21st statement, Your
25 Honor. We believe once the bond judge appointed the

1 public defender's office the right to counsel had attached.
2 Although I believe the case law says that the right to
3 counsel does not attach at a bond hearing, I believe once
4 the attorney has been appointed the right to counsel has
5 been attached and those officers at that time needed to
6 go to the public defender's office and needed to get
7 permission from his appointed counsel at that time before
8 questioning him on the 21st. I think at that point you
9 can make the argument about the right to counsel had
10 attached and that he had not made a knowing waiver based
11 on that and that he had not provided voluntary statements
12 based on the totality of the circumstances.

13 The only other follow-up -- I have two follow-up
14 issues, Your Honor. One would be are there any statements
15 that Your Honor believes would be admissible for
16 impeachment purposes and then one that's semi-unrelated to
17 the hearing regarding the Gabbie Swainson. Certainly if
18 Your Honor finds that that statement is admissible, we
19 would certainly -- based on the testimony, we're arguing
20 that it be suppressed as to the April 21st interview, but
21 we also would say given the intense publicity of that
22 case and the fact that the State would intend to -- based
23 on their questions to highlight the fact that it was a
24 highly publicized murder case that was local would just
25 further inflame the passions of the jury and would not be

1 admissible under Rule 403 and certainly the probative value
2 would be substantially outweighed by the danger of unfair
3 prejudice to the Defendant, so that would be a secondary
4 argument that we would make. So based on those findings
5 that's the defense's motions, Your Honor.

6 **THE COURT:** All right. Thank you.

7 **MR. PHILLIPS:** Thank you.

8 **THE COURT:** I don't think there's any argument
9 that Mr. Hunter was clearly in custody at the time the
10 questions were asked, that these were custodial
11 interrogations, that he was properly Mirandized, that he
12 was given his rights and he waived his rights. I do not
13 find that -- that the State has an obligation four days
14 after the initial investigation in which they asked if he
15 had an attorney and he said no and the second interview on
16 the 21st, even though four days later, that the State was
17 under an obligation to go beyond the warnings on the
18 Miranda form to inquire further of anyone else other than
19 Mr. Hunter himself about his involvement with counsel.
20 There's nothing to indicate that even he knew that he had
21 a lawyer at that point in time. And I've, of course, been
22 around long enough to know that it's not unusual for people
23 to get well into the process before they get a lawyer
24 appointed to them even though they apply and -- and so I
25 don't find that -- that the State had an obligation to

1 check into whether or not he had been appointed a lawyer.
2 He was advised of his right to a lawyer and of his right
3 to remain silent and all the other rights that the Miranda
4 form says that he has and he voluntarily waived those
5 rights, so I don't see any violation there.

6 I find that the State has met its burden of proving
7 by the preponderance of the evidence that -- that he was
8 properly Mirandized, that he understood his rights, that
9 he was not forced or threatened. I do not find that the
10 statements by Captain Wade that we've got evidence on you
11 and things of that nature amounts to coercion or to
12 harassment such as to render a statement involuntary. The
13 type of statements that we have case law to support as
14 being coercive are those where there is actually threats
15 of violence or direct or implied promises of improper
16 influence were used or that the State has said it would
17 not seek a life penalty or a death sentence or things of
18 that nature, having family members threatened with other
19 crimes and things of that nature, those are the sorts of
20 things that our courts have said render a statement
21 involuntary. If the police admonish someone to tell the
22 truth, even if they make misrepresentations as Mr. Hunter
23 is obviously aware, those harassing representations do not
24 render the statement involuntary. So I find that the
25 statements were voluntary given. The State has met its

1 burden of proving that by the preponderance of the
2 evidence. Of course, the jury will have to determine
3 ultimately whether the State has proven those same things
4 beyond a reasonable doubt.

5 Now the -- there are a couple of things, however, that
6 -- that raised red flags with me. Investigator Mitchell
7 {sic} and Investigator Neel said that he never denied --
8 that he never denied his guilt. I trust that that's not
9 somewhere that you're gonna go when they're testifying
10 themselves. That seems to be -- unless you can show me
11 some law that says that's not burden shifting --

12 **MS. MAYS:** But that would be excluded, Your Honor.
13 I believe they were reading the entire summary --

14 **THE COURT:** They were.

15 **MS. MAYES:** -- and so that was part of it. That
16 would be excluded.

17 **THE COURT:** Well, make sure then.

18 **MR. PHILLIPS:** That would be a Doyle violation; is
19 that correct?

20 **THE COURT:** What's that?

21 **MR. PHILLIPS:** That's a Doyle violation?

22 **THE COURT:** It's burden shifting, that's right. Is
23 that Doyle?

24 **MR. PHILLIPS:** I believe so, Your Honor.

25 **THE COURT:** Okay. Doyle versus Alabama, is that it?

1 I'm not sure.

2 **MR. PHILLIPS:** I'll pull it up.

3 **THE COURT:** It's just burden shifting, so, and they're
4 not gonna do it, so it's much ado about nothing. I have a
5 concern that, frankly, occurred to me before Mr. Hunter
6 testified as to the parts of the statement that he agreed
7 that he had made and those that he denied that he'd made
8 and that is the timing of this information about the phone
9 being cut off. I want to know when that information was
10 first made available to the State, that is to the
11 prosecution, I want to know when it was first made
12 available to the defense and I want to know when in the
13 record that it first appeared. If y'all overnight can get
14 me some information and get me those dates --

15 **MS. MAYES:** I can respond to that now, Your Honor.
16 We met with Captain Wade on Wednesday and that's the first
17 that we heard of that. He advised us of that during the
18 course of his summation of what he recalled from the
19 interview. That is not information that we had previously
20 and I had not personally spoken with Captain Wade about it.
21 After we prepared our final witness list, I sent to the
22 defense on Friday a summary of any additional information
23 from witnesses. That included not just that statement, but
24 the statements of EMS as well and, Your Honor, as a result
25 that was the first documentation that we had of that

1 statement and that would have been last week. If that
2 causes the Court concern, I have no objection to not using
3 that statement from Captain Wade, that reference to the
4 phone being off.

5 **THE COURT:** All right. And that might ease my mind
6 because I wanted to know when the phone records themselves
7 were obtained that indicated that as well.

8 **MS. MAYES:** That would have been 2014, Your Honor.

9 **THE COURT:** Okay.

10 **MS. MAYES:** That would have been the letter from
11 Sprint in 2014 that indicated that the phone was off and
12 then also his -- that would have been the cell tower
13 records and then also the record of incoming and outgoing
14 calls also indicated that there was nothing in that period
15 and then, of course, we have the phone extraction that was
16 done in 2017 which confirms that. So we would offer, of
17 course, evidence and testimony in that regard, but as to
18 the statement made by Captain Wade, we have no objection to
19 withdrawing just that statement.

20 **THE COURT:** And that -- that was very probably gonna
21 be my ruling and remove any appellate issue. Thank you
22 very much.

23 All right. Now the Gabbiee Swainson thing. Of
24 course, I've heard of Gabbiee Swainson and, frankly, I
25 can't even remember, although I know about it. I'm not

1 sure how much the jury would know about it. Of course,
2 it's fair game obviously for the officers to testify as --
3 as they did; that he was looking for a bargain, that he was
4 hoping that the charges would be dropped or there would be
5 some leniency. They testified about that. How are we
6 gonna deal with the Gabbiee Swainson matter? Because,
7 first of all, across the river these folks might not even
8 know who Gabbiee Swainson is, so somebody would have to
9 tell them for it to have any relevance at all. How would
10 you deal with that, Ms. Mayes?

11 **MS. MAYES:** Your Honor, it would be -- actually we
12 discussed this with officers beforehand. That that would
13 be somewhat redacted so that they would say he brought up
14 an unrelated Richland County murder case and wanted a
15 similar deal. There would not be a reference to what case
16 that actually was.

17 **THE COURT:** Okay. That's a fair resolution of that.
18 Thank you, Ms. Mayes. I note your exception to it in any
19 event, Mr. Phillips, but that seems to be a fair way to
20 deal with it.

21 **MR. PHILLIPS:** All right. So the objection is
22 preserved?

23 **THE COURT:** Yes, ma'am -- yes, sir.

24 **MR. PHILLIPS:** Thank you, Your Honor.

25 **THE COURT:** Okay. All right, folks. I think we've

1 dealt then with that. Let me get back to my list and see
2 where we are.

3 The next is the motion for competency and we'll have
4 to conduct that tomorrow when the child is here. That's
5 Number 8 on the list; is that right?

6 **MR. PHILLIPS:** Yes, Your Honor.

7 **THE COURT:** Okay. And then there's the objection to
8 the State's motion to admit out of court statements and
9 things of that nature. I've got to look at that video.
10 I'll have to tell you-all the fight that I've been having
11 with my computer. It's got something called a BitLocker
12 on it and there's a number that you have to write down and
13 I got it from the Help Desk and let me tell you that to
14 write that number down is two complete lines from one
15 margin to the other. You won't believe it.

16 **MS. MAYES:** We can provide a computer, Your Honor.

17 **THE COURT:** Thank you very much. That would help.
18 I'm certain that they give me that number and I am the
19 only person on the face of the globe that has that because
20 they're more numbers than there are people in the world.
21 That will help me. Thank you.

22 All right. So I'll have to review that and reserve
23 ruling on that until tomorrow. Is that gonna give anybody
24 heartburn?

25 **MR. PHILLIPS:** No. No, Your Honor.

1 **MS. MAYES:** And, Your Honor, as to any witness that
2 has excited utterance testimony, the way that we normally
3 proceed in those type of situations is I would call a
4 witness and then we would be in the process of proffering
5 that testimony or laying that foundation and then we can --

6 **THE COURT:** And you're right. You have to lay the
7 foundation obviously for me to be able to rule. I think
8 though that -- that the -- the objection was to the --
9 this Objection Number 9 deals with the child witness. The
10 excited utterance would deal with the adult victim; is
11 that -- am I right on that?

12 **MS. MAYES:** Yes, sir, Your Honor.

13 **MR. PHILLIPS:** We'll certainly make that objection,
14 too, and go ahead and say that we can deal with those
15 issues as they come. Obviously, as Your Honor knows, with
16 excited utterance they've got -- whether they have a moment
17 of reflective thought.

18 **THE COURT:** That's right. It has to -- and I can't
19 really rule on it until the foundation has been laid, so
20 we'll -- as a good friend of mine says, we'll drive off of
21 that bridge when we get to it.

22 There's been an agreement, I think, to limit the
23 hearsay evidence to time and place. I think I understood
24 that right in chambers. Am I right in that?

25 **MS. MAYES:** Yes, sir, Your Honor. That should only

1 apply to the child's forensic interview.

2 **THE COURT:** That's right.

3 **MS. MAYES:** We're not aware of any statements that
4 the child made to other persons.

5 **THE COURT:** That's exactly right. I think Kromah
6 and Shumpert and all those say that.

7 The intent to admit prior bad acts and Lyle evidence,
8 I'll have to conduct an in-camera review of that before we
9 let that in. The motion to prohibit the use of the word
10 "CODIS". You-all are gonna say DNA database. I think
11 everybody's agreed to that. You agreed to eliminate the
12 word "forensic" and call it an investigative interview or
13 something like that.

14 **MS. MAYES:** Yes, sir, Your Honor.

15 **THE COURT:** Okay. And then there's a motion to
16 suppress cell phone data and records on the second page.
17 Number 14. Let me hear from you on that.

18 **MR. PHILLIPS:** And just a moment to kind of interject
19 in between that. Sorry, Your Honor.

20 **THE COURT:** All right.

21 **MR. PHILLIPS:** In the e-mail we received last Friday
22 on the 21st at 4:44 PM, the one we received about Bruce
23 Wade stating that the phone was off, in that same e-mail
24 we were provided for the first time a statement by EMS
25 provider Christopher Bernard stating that Ms. Simon told

1 him that the shooter was an unknown small guy while getting
2 medical treatment and, of course, that -- that she was
3 going to die, so that would be the biggest argument and one
4 of the biggest hearsay statements.

5 **THE COURT:** Okay. Well, once again, we'll have to see
6 what the res gestae of that was before I can rule on that.

7 Okay. Do I have a written motion on the cell phone
8 record data?

9 **MR. PHILLIPS:** No, Your Honor.

10 **THE COURT:** Okay. I'll be glad to hear that motion
11 now, folks. We've got to -- I want to clear the deck of
12 all these pre-trial motions that I can today. I realize
13 it's after the -- after the hour, but I've got this jury
14 coming in at 10:00 tomorrow morning and there are gonna
15 be other things we need to deal with in the morning. I'm
16 confident of that. So let's deal with this. I'll take
17 them in whatever order you want to present them.

18 **MS. GILREATH:** I just need a moment to get my stuff
19 together.

20 **THE COURT:** All right. Folks, let's take about ten
21 minutes for a quick bathroom break and start back at
22 twenty-five after the hour.

23 (Recess taken.)

24 **BAILIFF:** All rise.

25 **THE COURT:** Thank you, folks. Please be seated.

1 All right. We're at Motion Number 15 -- or Motion 14,
2 I'm sorry. Motion to suppress cell phone data and records.
3 Who's gonna argue that? Ms. Gilreath?

4 **MS. GILREATH:** And, Judge, we were just talking about
5 this. I don't know what the -- what the Court's position
6 is on it. I think this particular motion may take a little
7 while. We're gonna have to call Mr. Phipps to the stand,
8 the one who did the extraction report. There's a few
9 different things that we're gonna be arguing as relates to
10 the cell phone information, so I didn't know -- given what
11 time it was how late Your Honor wanted to --

12 **THE COURT:** Well, I don't know anything about the
13 motion because I don't have a copy of it, so I don't have
14 any way of telling how long it's gonna take. So tell me
15 what sort of information -- tell me what the basis of the
16 motion to suppress the cell phone records is in the first
17 place.

18 **MS. GILREATH:** Well, Your Honor, there's a few --
19 there's a few different issues overall and I mentioned this
20 extraction, of course, earlier on --

21 **THE COURT:** Right.

22 **MS. GILREATH:** -- and it's something that as far as
23 I'm aware wouldn't have been made a Court's exhibit or
24 anything like that at this point and I can certainly have
25 this page -- a copy of this page because the contents page

1 of the State's extraction report I think gives a pretty
2 good idea of at least the beginning point of our motion.

3 **THE COURT:** All right.

4 **MS. GILREATH:** Essentially, Your Honor, when they --
5 when they extract records from a phone the full extraction,
6 the total number of files on here, is a better reflection
7 of what's actually on the phone. The extraction report
8 as it is -- as it was provided to us has been very much
9 narrowed down without really any kind of indication other
10 than just the sort of raw numbers of what's been excluded,
11 where those things have been excluded from, so obviously
12 you could have -- just for an example, you could have
13 several text messages in a row and based on this there's no
14 way to see whether any text messages were taken out that
15 might be context for a conversation or whether web browser
16 search history may have been removed that would give
17 context for a photo or things along those lines, so that's
18 why I think that it's necessary to have Mr. Phipps testify
19 because I think that he can sort of narrow down for us how
20 the extraction report was obtained and perhaps if there's
21 a way to get some context for some of it, some of it might
22 not be quite as objectionable as what I'm thinking it is
23 based on what I have here and given the fact that -- I
24 mean, just for an example, data files, Your Honor, they've
25 limited the data files from -- the total number that appear

1 to have been obtained in the State's extraction was 5,291
2 and they've narrowed it down to 33.

3 **THE COURT:** I guess they just -- they probably --
4 they've given you whatever they intend to offer, right?

5 **MS. GILREATH:** That's my guess. The problem there is
6 that we don't know exactly what they took out or where.
7 Now we know what we've gotten from our extraction report to
8 some degree, but extractions can sort of vary from time to
9 time. When you do the extraction, the number of files that
10 come out can be different the way it's reported, the way
11 that it's translated. So, I mean, one of our problems here
12 is that I'm pretty sure there are a number of images, these
13 33 images I presume that they're going to be intending to
14 enter, they're photographs for the most part that contain
15 guns, but the data, the actual web browser data that would
16 show where these came from, when they were accessed, that
17 information is not in here.

18 **THE COURT:** When you say where they came from, do you
19 mean which phone or which tower? I'm sorry. This thing
20 keeps spitting back at me. When you say -- first of all,
21 are we talking about text messages or something like that
22 or what are we talking about?

23 **MS. GILREATH:** Well, and that's part of the thing.
24 I don't know how much of this report they're necessarily
25 intending to enter, but I know that there are 33 data

1 files that I feel pretty confident they're intending to
2 enter, so --

3 **THE COURT:** Can you -- I assume that sooner or later
4 somebody's gonna have to describe some of this to a jury
5 so it makes sense to a jury. Is that fair to say?

6 **MS. GILREATH:** I would assume.

7 **THE COURT:** And it ain't making any sense to me right
8 this minute, so unless somebody's gonna be able to explain
9 it to the jury better than it can be explained to me, it
10 ain't gonna make -- excuse my French -- it's not gonna have
11 any relevance at all. So when you talk about data files
12 -- I know this is the State's problem because it's their
13 evidence, but when you're talking about data files, can you
14 tell me are you just talking about the information that
15 shows a call from phone A to phone B, are you talking about
16 text messages, are you talking about Twitter? Just what
17 does a data file mean?

18 **MS. GILREATH:** Judge, if I may, if I can approach and
19 just --

20 **THE COURT:** For Lord's sake, yes. That's right.

21 **MS. GILREATH:** Judge, if you look there in that middle
22 box it says contents and you can see how it has -- I guess
23 it would be three columns. One column for the kind of
24 files we're talking about, one column for the number of
25 those kind of files that made it into the report and one

1 column for the total number of that kind of file that the
2 extraction where they took all the data from the phone for
3 that particular date range what was obtained. So as you
4 can see there's a pretty big difference between the numbers
5 on the right and the left. For, for example, the data
6 files that I was referencing, it was an easier one because
7 there's only 33, those are images. I mean, the way they
8 come out in the report is they're images, like small little
9 photographs. There's nothing attached to that that would
10 tell a juror or a layperson where that came from, what
11 website it was, when it was accessed, how long it was
12 accessed. There is some of that information that's in
13 there, but there's nothing to show exactly where it comes
14 from and also there's nothing to show whether -- with those
15 33 data files whether there might have been, you know,
16 other data files mixed in there that makes this look
17 different, whether those are the only data files on the
18 phone that appear that way, and I just think that there's
19 -- there's a 403 issue there for sure that -- I think
20 there's a degree that it's misleading, it's confusing, and
21 I think that the way that it's presented the probative
22 value of this is outweighed by the danger of unfair
23 prejudice.

24 **THE COURT:** Well, right this minute as I look at it,
25 it doesn't have probative value or prejudicial impact

1 because it doesn't mean a thing to me. What does anybody
2 attempt to prove by this document? What are you going to
3 -- is somebody gonna try to explain to the jury?

4 Ms. Mayes, can you help me with this?

5 **MS. MAYES:** Yes, sir, Your Honor. This phone
6 extraction is basically dealing with the timeframe of
7 this offense and the hours leading up to this offense, so
8 I believe the report that we have starts on the 12th of
9 April, 2014, and then proceeds on until he was arrested
10 and when he was arrested the phone was actually seized
11 from his person, so our report covered that time period.

12 Also recovered from the phone are photographs which
13 are the same photographs that were originally recovered
14 from the SD card of this phone back in 2014 and those are
15 photographs of the Defendant, Nathaniel Hunter, with two
16 firearms, one of which is a Glock, and that is ultimately
17 the weapon that was used in this case.

18 And then in addition to that, Your Honor, there's
19 going to be testimony about phone calls that Nathaniel
20 Hunter made to the State Law Enforcement Division and to
21 probation and parole attempting to get his DNA removed out
22 of the database and that was in the time period between
23 when the crime occurred and when he was apprehended, that
24 four-day period between the 13th and the 17th. And so
25 we've got testimony coming from both Crystal Owens of

1 probation and parole -- and she won't identify herself as
2 a probation and parole agent, but as a State employee, and
3 also Theresa Hines, affiliated with the database, that
4 Mr. Hunter called them and wanted his DNA removed during
5 that time period and the evidence was being analyzed and
6 the hit had not yet been brought to anyone's attention,
7 and that matches up with the actual phone extraction. The
8 phone extraction shows those same phone calls.

9 In addition to that, Your Honor, there were numerous
10 searches that he was doing on the phone, internet activity,
11 as Detective Phipps would testify. That is shown on the
12 phone extraction as he's researching the Most Wanted, he's
13 researching Crimestoppers and how to get his DNA out of the
14 database, as well as how long it takes for SLED to do DNA
15 testing.

16 **THE COURT:** So this is a phone log that ties into
17 photographs or telephone calls that were made to those
18 folks that you're talking about?

19 **MS. MAYES:** Yes, sir, Your Honor.

20 **THE COURT:** Now there's several different phone calls.
21 This is from several different phones. I take it all these
22 phones are identified with Mr. Hunter some way or another?

23 **MS. MAYES:** This one phone -- it's only one phone,
24 Your Honor, and this is the phone that the number ends in,
25 I believe, [REDACTED]. We will be able to match that up to him.

1 Not only was it found on his person at the time of his
2 arrest, but he also gave his phone number to a rental car
3 company or, I'm sorry, a Carolina Trader company I believe
4 just a few days before his arrest.

5 **THE COURT:** None of them on this particular sheet have
6 4055 as the ending digits, so I'm assuming that there are
7 others obviously that --

8 **MS. GILREATH:** Your Honor, that's just the very first
9 page that provides the -- kind of the table of contents
10 there. They do give the overview of the kinds of files
11 and it's sort of a mini representative of one of my main
12 objections to this in that if you look at the total number
13 of files for each column, for each kind of file, call logs,
14 the messages, the data files, you can see the total number
15 is much, much larger than the number that is under the
16 report column, and so one of our objections to this is that
17 as the report is in its current state with the phone calls
18 and messages and data images they've removed so much that
19 you're taking away any sort of context. Essentially, Your
20 Honor, I believe that they've narrowed it down to show what
21 they want the jury to see.

22 **THE COURT:** Of course.

23 **MS. GILREATH:** They're showing that there are some
24 pictures of guns and things like that, but they're not
25 showing whatever other normal things there are or things

1 that might give context or to provide explanation, so
2 that's one of our primary objections to the things on here.

3 **THE COURT:** What is the relevance gonna be of the
4 other five thousand entries if it doesn't -- it's not
5 exculpatory or inculpatory from their perspective. What
6 would the relevance be of a day in the life of Mr. Hunter's
7 cell phone to be?

8 **MS. GILREATH:** Well, Your Honor, I think that one of
9 the things that it appears that they are trying to do is
10 essentially make it look as though this is kind of all he
11 was doing. They have these photos and, Your Honor, she
12 mentioned that their extraction went from April the 12th
13 through April the, I believe, 17th when he was arrested,
14 but a number of these data files, those -- the little
15 images that we were talking about, the 33, they're not from
16 that -- that date range at all. There are a few that are
17 from that SD card, but there are some that were extracted
18 from the phone that are from prior to that and as you can
19 see they've removed the majority so it appears that they've
20 taken out -- so there could be other -- and this is one of
21 the things that I wanted to question Mr. Phipps about
22 because I was hoping he could explain it a little bit
23 better than what I could, but essentially that if there are
24 other -- there could be other photographs that would change
25 the nature or what these photos here could potentially

1 mean, there could be other things that were taken out.

2 So just for example, a lot of these data files if you
3 switch over to the timeline view where it should show you
4 here's the web -- here's when this website was accessed
5 where this photo came from, that's -- that's not in here,
6 that's been removed, so then we're just left with just this
7 picture and no context for where it came from or how it was
8 put on the phone and so it just -- it appears to me that
9 they've removed so much information, they've narrowed it
10 down so much to what they are trying to show, that I think
11 they're removing what could be exculpatory.

12 **THE COURT:** Well, they have -- they have sworn on a
13 blood oath before me and God and the court reporter that
14 they have not removed anything exculpatory from this
15 record. Now is the idea that this jury is gonna have to
16 look at five thousand different entries to decide whether
17 there's exculpatory stuff in there just to show that --
18 that not all of the pictures show him with a Glock or with
19 a firearm, not all of his cell phone calls were trying to
20 get his DNA out of a log? He might have called the church,
21 he might have called his parents. Is it gonna take all
22 those things in there to give some balance to this from
23 your-all's perspective?

24 **MS. GILREATH:** Your Honor, truthfully it's hard to
25 say. The only thing that they've provided as far as what

1 they have is this report. So to know exactly what could
2 have been taken out of what spot or what could be
3 intermingled, it could still narrow it down sufficiently
4 that there would be context and you would be able to see
5 kind of the whole picture for that snapshot of time that
6 they're looking at versus just sort of picking and choosing
7 without providing a representative here's what the picture
8 really is as opposed to -- it's almost sort of a rule of
9 completeness kind of issue because if you're going to show
10 this thing and this thing and this thing, you need to show
11 what connected to this explains what it is as opposed to
12 just providing it in a vacuum and suggesting that it might
13 be something that it is not.

14 **THE COURT:** All right. How many witnesses do you
15 intend to offer to prove the things that you were just
16 talking about, Ms. Gilreath?

17 **MS. GILREATH:** Your Honor, I would say two at most.
18 It is Mr. Phipps's extraction report and that could clear
19 up some of it. If that doesn't clear up as much as I'm
20 hoping it does, then Mr. Watkins on our list could be the
21 one that would be called solely just for the purposes of
22 helping to get to the bottom of this report.

23 **THE COURT:** And what were the names of those two
24 witnesses? Oh, they're on the list? They're probably on
25 your list that they've given already.

1 **MS. GILREATH:** Your Honor, Mr. Phipps is on the
2 State's list. Mr. Watkins is on our list.

3 **THE COURT:** Ms. Mayes, when do you intend to offer
4 the phone records into evidence in your trial -- in your
5 case?

6 **MS. MAYES:** I would estimate Thursday morning.

7 **THE COURT:** Thursday morning? Okay.

8 All right. Ms. Gilreath, I'm gonna give you this
9 back. We obviously don't have time to deal with this
10 today. We may not have time to deal with it tomorrow,
11 but at least I will be able to -- to program this into the
12 schedule.

13 Folks, Ms. Mayes has tried a bunch of cases before
14 me. I don't think I've had the pleasure of trying -- and
15 Mr. Phillips may have tried cases before me. There's one
16 thing that I try as hard as I can to avoid and that is
17 wasting the jury's time. I like to think I've got a fair
18 amount of patience, but one thing that causes me to lose
19 my patience is when we waste the jury's time and the way
20 we waste the jury's time is because I don't plan for it
21 right.

22 For example, had I known at a quarter till six that
23 I was looking at two witnesses on very complicated issues,
24 on motions that I didn't have a copy of, so I couldn't
25 really evaluate. I appreciate you-all sending me the

1 motions that you did send me late Friday because I was
2 able to read them last night and it helped today. It
3 really did. But I didn't have time to plan for this and
4 so I told the jury to be back at 10:00 tomorrow morning
5 just so, you know, in a dream world thinking that we could
6 take care of whatever we had to take care of between 9:30
7 and 10:00 tomorrow. If it's gonna have to take a half day
8 to do this, I'm not gonna do it when the jury is the jury
9 room, I'm gonna do it when the jury's at home, and so if I
10 have to send them home at 12:00 tomorrow or tell them to
11 come back at 1:00 on Wednesday, I can program that in.
12 That means we're gonna have to work late at night to get
13 this case over by the end of the week, but I don't mind
14 that as long as we get it done. I just need to know for my
15 planning how to keep from wasting that jury's time. Do you
16 see what I'm getting at? That's all in the world that
17 bothers me. I'll sit here with you-all in this courtroom
18 all day long arguing about phone messages and all this sort
19 of stuff as long as we're getting somewhere and as long as
20 -- as long as it's leading to something that's relevant.
21 That's -- that's my only concern. I'm not gonna keep the
22 folks here after 6:00 anymore, certainly not today, and
23 I'm not gonna waste the jury's time.

24 So let's start this trial tomorrow and I'll still be
25 here by 9:30 so that we can deal with whatever we --

1 smaller issues we can deal with before 10:00 when the jury
2 gets here and then as the trial unfolds you and I will put
3 our heads together during the course of the day tomorrow
4 and perhaps into Wednesday to see when it's gonna be a
5 good time given your witnesses and things of that nature
6 to set aside a couple of hours or however long it takes,
7 okay?

8 In the meantime, Ms. Gilreath, if you can -- if you
9 can -- it's probably not fair to you to ask you to be able
10 to educate me on technology because I don't -- I can't
11 even get my computer turned on in there, so you'd have an
12 uphill battle in that regard, but I would like at least to
13 see at least some of what you-all are talking about when
14 you talk about pictures. I understand a picture of a
15 Glock and a picture of whatever else, but it would help
16 me with my understanding of this if I knew some of what
17 those images contained. I understand now what the State
18 intends to prove or will try to prove, I guess, and how
19 they're gonna go about it and I can appreciate the fact
20 that you-all think that there might be some other things
21 that are probative that are being left out. Now if
22 they're not probative and if they're just -- just fluff,
23 then don't intend to spend a whole lot of time with it.
24 If it's probative on some issue, if it's exculpatory, then
25 we'll take the time and get it done.

1 **MR. McNAIR:** Your Honor, I have a copy of the data
2 files from our extraction report if you'd like to see that
3 to take with you.

4 **THE COURT:** I'll be glad to look at them. Before I
5 came here today, I thought extraction was something that
6 the dentist did to a wisdom tooth. Obviously it sounds
7 like it's about the same.

8 **MR. McNAIR:** I can't really explain them, but this is
9 what they are.

10 **THE COURT:** Okay.

11 **MR. McNAIR:** And Investigator Phipps will be the one
12 to explain what information you can deduce from those on
13 the same.

14 **THE COURT:** Okay. You-all can put Mr. Phipps and
15 Mr. Watkins on notice they've got their work cut out for
16 them if they can explain this to me.

17 **MR. McNAIR:** You Honor, and I will say as well that
18 we did make Investigator Phipps available last week for
19 their expert to consult with or for them to consult with
20 concerning any of this stuff.

21 **THE COURT:** Okay.

22 **MR. PHILLIPS:** And just to clarify, Your Honor, Jason
23 Chehoski and myself will certainly take responsibility.
24 Jael Gilreath came on this case much later and that's why
25 she doesn't have a written motion.

1 **THE COURT:** I didn't -- listen. And, Ms. Gilreath,
2 I don't mean to be jumping on you because I don't
3 understand this stuff. That's really not your fault,
4 it's my fault, but I guess if I'd known a little bit more
5 about it I wouldn't appear quite as dumb as I obviously
6 appear to be. That's probably my fault, too. No,
7 Ms. Gilreath, I realize you're the messenger.

8 And so I'll be here at 9:30 tomorrow, folks, and
9 we'll start at 10:00. If anything else comes up overnight,
10 you-all can meet with me in chambers at 9:30 tomorrow
11 morning.

12 **MS. MAYES:** Yes, sir, Your Honor. We'll have that
13 computer and DVD ready for you at 9:30. It's not to say
14 you need to watch it at that time, but we'll have that
15 available for you for whenever you choose to watch it.

16 **THE COURT:** I'll try to watch it during lunch hour
17 tomorrow, if that's okay?

18 **MS. MAYES:** Yes.

19 **THE COURT:** All right, folks. At 10:00 tomorrow the
20 jury will come in. I will appoint a foreperson, the jury
21 will be sworn, I'll make some brief introductory remarks
22 and then allow you-all opening statements and we'll start
23 the trial, okay?

24 **MR. PHILLIPS:** Thank you, Your Honor.

25 **MS. MAYES:** Thank you, Judge.

1 (Whereupon, the proceedings were concluded for
2 April 24, 2017, at 6:00 PM.)

3 (Whereupon, the following proceedings were held on
4 April 25, 2017, beginning at 9:49 AM.)

5 **BAILIFF:** All rise. Court is now in session.

6 **THE COURT:** Good morning. Folks, I got word
7 yesterday afternoon before I left for the day that there
8 was a pending motion I think regarding the testimony of
9 the victim. I'm not sure. I sent word back that I would
10 be here at 9:30 to hear the motion to get the jury in by
11 ten. I got word this morning that subsequent developments
12 or discussions or something had shortened the time for
13 that, but nobody came in and told me they were ready to
14 hear the motion, so instead of waiting on you-all, I was
15 gonna come out here and make sure that we're on the right
16 page.

17 Where are we in regard to any motions in that regard?
18 Mr. Phillips, I guess it's your motion. Or Mr. Chehoski?

19 **MR. PHILLIPS:** Yes, Your Honor. Where we left off
20 yesterday was the admissibility the cell phone records.

21 **THE COURT:** Right. We left off with the admissibility
22 of cell phone records and what I think I indicated was
23 that since they were not gonna be introduced until Thursday
24 that we would set aside time to do that at some point in
25 time between now and then, but then I got the impression

1 that there was another motion regarding the testimony of
2 the victim. Am I wrong about that?

3 **MR. PHILLIPS:** Mr. Chehoski can explain. I think it
4 was directed to him.

5 **THE COURT:** All right, Mr. Chehoski.

6 **MR. CHEHOSKI:** Your Honor, it's my understanding that
7 after -- after the pre-trial hearing yesterday in which
8 Mr. Hunter testified that the victim is now gonna be able
9 to identify through in-court identification of Mr. Hunter.
10 Doing some research of the case law, I came across State v.
11 Lewis, which is 363 South Carolina 37, and also at 609 SC
12 2nd 515. If I may approach?

13 **THE COURT:** Yes, sir, please.

14 **MR. CHEHOSKI:** Your Honor, on the third page of the
15 case I handed up to you, the last paragraph, the courts
16 are holding that a Neil v. Biggers hearing does not apply
17 to a first time in-court identification.

18 **THE COURT:** Right.

19 **MR. CHEHOSKI:** However, I feel in order to preserve
20 the record I have to ask for an in-camera hearing to
21 address the reliability of it. Even though it's a first
22 time in-court identification, I think that the environment
23 being that Mr. Hunter is sitting at defense table
24 surrounded by -- by counsel it is highly suggestive and
25 would taint the reliability of the in-court identification.

1 And so even though I think the case law is pretty on point
2 in order to preserve the record, I feel I have to at least
3 request a hearing on it.

4 **THE COURT:** I understand. Thank you, Mr. Chehoski.
5 Ms. Mayes?

6 **MS. MAYES:** Yes, sir, Your Honor.

7 Yesterday after the Defendant's testimony in the
8 Jackson v. Denno, the victim confided in the victim
9 advocate, who was seated beside her, that this was the
10 first time she was seeing his face full on and the first
11 time she was hearing his voice. She disclosed that she
12 recognized his voice, that she was sure it was the same
13 voice, that she recognized the eyes of the -- of the
14 assailant and that she was sure it was him. She had
15 previously indicated following a hearing about ten to
16 twelve days ago where she was only seeing him from the
17 side view as he entered the courtroom and then approached
18 -- approached towards the bench, that the physical stature
19 and height was the same or that there was nothing different
20 with the physical stature or height. This was the first
21 time she was seeing the full face and hearing the voice.
22 I believe she indicated the only thing that may be
23 different is that he may have gained a few pounds since
24 he's been incarcerated, which has also been confirmed by
25 Investigator Griffin in terms of appearance. But we did

1 disclose that yesterday following her disclosure to us.

2 In terms of the Neil v. Biggers, Your Honor, it's
3 definitely not State action in terms of any type of
4 suggestive lineup or identification procedure initiated
5 by law enforcement. It's a court proceeding that she has
6 a constitutional right to attend and take part in. We
7 leave it in the Court's discretion if you do feel that an
8 in-camera hearing is needed.

9 **THE COURT:** Let me look at the Lewis case and see
10 what it says. Mr. Chehoski, you're correct, I think, in
11 the analysis of the Lewis case. The Court is unequivocal
12 in its conclusion that Neil versus Biggers does not apply
13 to in-court identifications and that the remedy for any
14 alleged suggestings of an in-court identification is
15 cross-examination and argument. The exclusionary rule has
16 not been extended to in-court ID procedures that are
17 suggestive because of a trial setting and the conclusion
18 was expanded in the paragraph that you referred me to
19 earlier. Accordingly, we conclude that Neil versus
20 Biggers, that is a pretrial identification hearing, does
21 not apply to a first time in-court identification because
22 the judge is present and can adequately address relevant
23 problems, the jury is physically present to witness the
24 identification rather than merely hearing testimony about
25 it, and cross-examination offers defendants an adequate

1 safeguard or remedy against suggestive examinations,
2 therefore, the Court of Appeals properly concluded that
3 this trial court did not err.

4 I see nothing in this particular situation that we're
5 talking about given the similarity with the facts of the
6 case in Lewis and what we have here today; that is, the
7 victim in that particular case had looked at the -- at
8 the assailants and one of the victims identified the two in
9 court for the first time, so the record is preserved for
10 appellate review in that regard, but I can see nothing in
11 the facts that would cause me to deviate from the Court's
12 conclusion in the Lewis case.

13 **MR. CHEHOSKI:** Thank you, sir.

14 **THE COURT:** All right. Thank you. All right.

15 **MR. PHILLIPS:** As a secondary issue, her testimony
16 will naturally elicit the fact that he testified in a
17 pretrial hearing in which he has a right not to testify
18 in front of that jury.

19 **THE COURT:** Right.

20 **MR. PHILLIPS:** I guess we can address that issue at
21 the time, but just in due candor to the Court that will be
22 an issue that we'll have to address.

23 **THE COURT:** Well, of course, you can. It doesn't --
24 depending upon how much in detail either side wants to
25 go in eliciting the information that led to the in-court

1 identification. Of course, Mr. Hunter, as everybody
2 knows, the jury and everybody else, you've been here all
3 day yesterday, and for all that the jury knows the victim
4 could have been sitting back there behind that two-way
5 window and looking at him or could have observed him in
6 this courtroom at some -- at any point in time. I don't
7 think it's necessary to develop the nature of the hearing
8 or the fact that he was testifying to -- to get before this
9 jury the fact that she had seen him in court where he has
10 been the whole time. I'll allow -- you-all can develop
11 that, but I don't think that necessarily --

12 **MR. PHILLIPS:** So for clarification purposes, would
13 it be limited to the fact that she is identifying him
14 based on the eyes and the voice, but not identifying
15 specifically that he was testifying on the witness stand?

16 **MS. MAYES:** We could certainly work around that,
17 Your Honor.

18 **THE COURT:** Right.

19 **MS. MAYES:** I think we could -- I could phrase the
20 question did she -- was she present for court proceedings,
21 yes, and did those court proceedings involve hearing his
22 voice, yes.

23 **THE COURT:** Right.

24 **MS. MAYES:** In the context of more than just a word,
25 but did you hear his speaking voice in the course of

1 conversation, yes.

2 **THE COURT:** All right. That seems to clear it up,
3 I think. The jury, of course, has no idea about what went
4 on yesterday and I think that that would be a sufficient
5 way to sanitize it so it would be the fact that he was on
6 the stand and testifying does not come before this jury or
7 at least not through the State's presentation.

8 All right. We still have, as we talked about earlier,
9 the issue the cell phone records and I think we dealt with
10 that yesterday. I assume -- Ms. Gilreath, is your expert
11 still going over those things? Is he still looking at
12 those records?

13 **MS, GILREATH:** He is, Your Honor, but I think he's
14 provided enough. I think we can actually simplify this
15 to some degree and then depending on the Court's ruling
16 -- I think I was going a real long way around what could
17 actually be a very simple issue depending on the Court's
18 ruling on that and then what the State intends to
19 introduce --

20 **THE COURT:** Okay.

21 **MS. GILREATH:** -- it could bring us back to a little
22 bit more complicated, but I think we've kind of whittled
23 it down to a little bit of a simpler issue than what we
24 originally were looking at.

25 **THE COURT:** Okay. Still though I think probably we

1 should set aside some time to do that during the trial
2 and not try to do it this morning. Is that fair to say?

3 **MS. GILREATH:** That's fine, Your Honor.

4 **THE COURT:** What, do you-all still want to -- do you
5 want to put your heads together on that?

6 **MR. PHILLIPS:** The one issue we discussed is at this
7 point the jury hasn't been sworn. If the necessary -- if
8 the need becomes available that we have to call our expert
9 witness to refute it, we could possibly lose last argument,
10 which is obviously a strategic decision, and -- but now we
11 don't -- we don't lose that.

12 **MS. GILREATH:** Essentially during a hearing outside
13 the presence of the jury.

14 **THE COURT:** Right.

15 **MR. PHILLIPS:** So if Your Honor's willing to say that
16 during an in-camera hearing if our expert testifies that
17 doesn't waive last argument, then we have no objection to
18 that.

19 **THE COURT:** You know, that's -- that's a new case
20 that -- let's don't tell the Beatty folks out there, that
21 will confuse the issue even more if I put that in, but I
22 wouldn't think that an in-camera hearing any more than the
23 Jackson v. Denno issue yesterday would cause you to lose
24 your last argument.

25 **MR. PHILLIPS:** Thank you, Your Honor.

1 **MS. GILREATH:** Thank you, Your Honor.

2 **THE COURT:** All right.

3 All right, folks. Are we ready for the jury now?

4 **MS. MAYES:** We are, Your Honor. And then our first
5 witness will involve the playing of the 9-1-1 audiotape
6 and so it will take a few moments for Investigator Sullivan
7 to set up -- once it's actually marked in front of the
8 jury, it will take a few moments to actually set that up.
9 Or we could pre-mark it if there's no objection?

10 **THE COURT:** Let's go ahead and get those things
11 pre-marked. I talked about the photographs yesterday to
12 try to save some time in that regard. If you haven't had
13 time to do that yet, let's don't forget about that because
14 this case is gonna last long enough without having each
15 individual photograph marched across this courtroom three
16 or four times.

17 **MS. MAYES:** And, Your Honor, that entire box there
18 with Ms. Grigsby contains photographs that are available
19 for review and she is just going to keep track of them.
20 I believe we probably have about ten to fifteen that we
21 would pre-mark before the victim testifies, but we don't
22 expect that to happen until closer to lunch.

23 **THE COURT:** Okay. Good.

24 Have you got that 9-1-1- tape marked?

25 **THE COURT REPORTER:** I'm doing it now.

1 (State's Exhibit Number 1 was marked for
2 identification.)

3 **MS. MAYES:** If there's no objection to this exhibit,
4 Investigator Sullivan will go ahead and get it set up.

5 **THE COURT:** All right. Any objection?

6 **MR. PHILLIPS:** Is that the 9-1-1 call from
7 Ms. Green?

8 **MS. MAYES:** Yes.

9 **MR. PHILLIPS:** No objection.

10 **THE COURT:** Thank you.

11 (State's Exhibit Number 1, a 9-1-1 recording, was
12 admitted into evidence.)

13 **THE COURT:** Who will open for the State?

14 **MS. MAYES:** Mr. McNair.

15 **THE COURT:** And who will open for the defense?

16 **MR. PHILLIPS:** Myself, Your Honor. Dayne Phillips.

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

18 **MR. PHILLIPS:** And, Your Honor, a reminder of the
19 sequestration order.

20 **THE COURT:** The sequestration order will go into
21 effect immediately after the conclusion of the opening
22 statements, okay?

23 **THE COURT:** Okay.

24 **MS. MAYES:** Your Honor, the defense has indicated no
25 objection to this series of photos, which would be seven

1 in total, that will most likely be offered at least in
2 part through the next few witnesses.

3 **THE COURT:** Okay. The 9-1-1 is State's 1?

4 **THE COURT REPORTER:** Yes.

5 **THE COURT:** Okay. And the photos will be 2 through 8?

6 **MS. MAYES:** Yes, sir, Your Honor.

7 **MR. PHILLIPS:** And just one clarification.

8 **THE COURT REPORTER:** Hang on. Excuse me.

9 **MR. PHILLIPS:** I'm sorry.

10 (State's Exhibit Number 2 through 8 were marked for
11 identification.)

12 **THE COURT:** Mr. Phillips?

13 **MR. PHILLIPS:** My apologies, Your Honor. We forgot to
14 ask who took the photographs. We made the pretrial motion
15 regarding all evidence related to Charles Bramlett, who has
16 since deceased, as far as laying the foundation of who took
17 the photographs and accurately depict. It's my fault for
18 not asking when I said that we wouldn't object to it, but
19 we would be waiving that argument if he was the person who
20 took those photographs.

21 **THE COURT:** I will allow those to come in subject to
22 your objection to Mr. Bramlett's testimony being offered
23 or any evidence that results from his testimony? Is that
24 fair to say?

25 **MR. PHILLIPS:** Yes, Your Honor.

1 **THE COURT:** Okay. I think I've ruled on that already,
2 so that --

3 **MR. PHILLIPS:** Yes, sir. Thank you, Your Honor.

4 **THE COURT:** All right.

5 **MS. MAYES:** And, Your Honor, we do believe the
6 photographs can be independently established by other
7 witnesses as a fair and accurate representation of the
8 scene.

9 **THE COURT:** And certainly I'm sure you'll do that.

10 (State's Exhibit Number 2 through 8, photographs, were
11 admitted into evidence.)

12 **MS. MAYES:** One more matter briefly, Your Honor,
13 regarding the sequestration order. We have currently
14 sequestered the evidence custodian, but there is a large
15 amount of evidence, both physical evidence and forensic
16 evidence, and it may be beneficial to judicial economy to
17 have that person in here.

18 **THE COURT:** Yeah, the evidence custodian, of course,
19 is not the type of witness that we try to hide from the
20 testimony. In most instances the evidence custodian
21 testifies about his or her own knowledge of the custody
22 of the exhibits and things of that nature. I will not
23 require that the sequestration order apply against the
24 evidence custodian.

25 **MS. MAYES:** We'll go ahead and bring her in with the

1 evidence and have her seated here on this front row to
2 make the evidence available to both parties.

3 **THE COURT:** Okay. That will be good.

4 **MR. PHILLIPS:** And we would say that subject to
5 our objection based on evidence in this case and the
6 collection of it being an issue that we moved to suppress,
7 Your Honor.

8 **THE COURT:** I understand. I think there's a
9 difference between the collection of evidence and the
10 custodial nature of the evidence, but I will note your
11 objection in that regard.

12 **MR. PHILLIPS:** Thank you, Your Honor.

13 **THE COURT:** Thank you.

14 **THE COURT:** All right. Can we get -- while the
15 jury's coming in, can she come in? Is that gonna be a big
16 issue?

17 **MS. MAYES:** I believe she's just moments away.

18 **THE COURT:** Okay.

19 **MS. MAYES:** Or we can have her wait. Whichever you
20 prefer.

21 **THE COURT:** If she's here, I'll wait a minute on her,
22 if she's on the way. I didn't know how much of an exercise
23 it was gonna be to get all of the evidence in. If it's
24 real bulky and a whole lot of it, I'd just rather wait and
25 let the jury come in after she's here.

1 **MS. MAYES:** I believe they're in the process of moving
2 it over right now.

3 **THE COURT:** Okay.

4 **MS. MAYES:** We'll go ahead and proceed, Your Honor.
5 We're gonna ask her to wait until the jury's seated.

6 **MR. McNAIR:** She's right here.

7 **THE COURT:** Which is it?

8 **MR. McNAIR:** They're right here.

9 **THE COURT:** All right. Is the State ready to proceed?

10 **MS. MAYES:** Yes, Your Honor.

11 **THE COURT:** Is the defense ready?

12 **MR. PHILLIPS:** Yes, Your Honor.

13 **THE COURT:** Thank you. You may bring in the jury.

14 (Whereupon, the jury enters the courtroom at
15 10:12 AM.)

16 **THE COURT:** Mr. Warren, if you will sit in that first
17 seat right here. I'll tell you why in a minute. You've
18 probably figured it out.

19 Mr. Warren, I've asked you to occupy that chair, sir.
20 I want you to serve as the foreman of the jury. That means
21 you will be the jury's spokesperson here in court. When
22 the trial is over, you will be responsible for writing the
23 verdict of the jury, but I'll tell you more about that.
24 You don't have to worry about that now. All you need to
25 remember is you've got a reserved chair right there. You

1 will occupy that chair throughout the course of the trial.
2 Ms. Johnson and Mr. Kinder, as alternate jurors, you will
3 sit in those two chairs throughout the trial of this case
4 unless at some point I ask you to sit somewhere else. The
5 rest of you folks you've got general admission tickets.
6 You've just got to do the best you can when you come in
7 from time to time. I tell jurors though it's always a good
8 idea to do what you did this time, move all the way down
9 and don't leave an open chair behind you. There's not
10 enough room to do a whole lot of crossing over, so it's
11 always good to fill in the chairs as you come to them and
12 not leave an open chair beyond you for somebody to step on
13 your feet to get to.

14 Ladies and gentlemen, you're gonna be sworn in now as
15 jurors. I want you to pay particular attention to the oath
16 you're about to take. It is a time honored and an artfully
17 worded oath that explains to you very completely, but at
18 the same time very concisely what your responsibilities are
19 as jurors in this case. I will be reminding you during
20 this trial and, indeed, after this trial as to exactly what
21 you are sworn to do. So please listen to the clerk now as
22 she administers the oath.

23 Madam Clerk.

24 **THE CLERK:** Please stand and raise your right hand.

25 (Whereupon, the jury was duly sworn by the Clerk of

1 Court.)

2 **THE CLERK:** You may be seated.

3 **THE COURT:** Folks, let me take just a few minutes to
4 explain to you briefly what the process will be that we
5 will follow throughout the course of this trial and explain
6 to you what your responsibilities as jurors will be during
7 the course of this trial. In just a minute when I finish
8 talking to you, Mr. McNair, on behalf the State, is going
9 to stand before you and make a brief opening statement and
10 in that opening statement he is going to outline for you
11 in something of a preview fashion what this case is about
12 from the State's perspective, from the State's point of
13 view. He may also indicate to you some of what the State
14 intends to offer by way of proof in support of the
15 indictments the State has brought in this case that I read
16 to you yesterday. After Mr. McNair has finished the
17 opening statement on behalf of the State, the Defendant,
18 Mr. Hunter, has a right to make an opening statement, but
19 he is under no obligation to do that, and I'll tell you why
20 in just a moment.

21 After the opening statements have been made, then you
22 will begin to see and hear the presentation of evidence.
23 The State will present its evidence first. Evidence for
24 the most part will take the form of testimony of witnesses
25 who will take an oath and sit right here in this chair

1 between you and me and answer questions that the lawyers
2 from both sides will put to them. Evidence will also take
3 the form of photographs and diagrams and charts and things
4 of that nature that will come into evidence in a case of
5 this nature. As I said, the State will put in its evidence
6 and testimony first and after the State's put in its
7 evidence and testimony, Mr. Hunter has a right to offer
8 evidence and testimony, but he is under no obligation to do
9 that, and I'll tell you why in just a minute.

10 After all of the evidence and testimony has been
11 presented to you, then the lawyers will come back before
12 you and they will make their closing arguments, their final
13 statements they're sometimes called, and in those closing
14 arguments they're allowed to summarize the evidence that
15 you have seen and heard and to submit to you conclusions
16 that they think you should draw from that evidence and
17 after that has been done, then I will instruct you or
18 charge you as to what the law is and then you will be able
19 to go back in that jury room and start talking about this
20 case among yourselves, to discuss it, to deliberate and to
21 reach a verdict.

22 As I told you yesterday, and I'll remind you again
23 now, and every time before you leave this courtroom I'll
24 remind you again, that you're not allowed to discuss this
25 testimony among yourselves during the trial and you

1 certainly can't discuss it with anybody else for reasons
2 that I made plain to you yesterday and I need not repeat
3 it to you now. The reason you can't discuss it among
4 yourselves is this. It might seem logical to you, you
5 hear some testimony out here that's fresh in your mind
6 and you go back into the jury room for a break and you've
7 got questions and you want to ask each other about those
8 questions and try to get them resolved at that time. You
9 can't do it then because it might happen, I don't know
10 whether it will or not, but it might happen that later in
11 the trial of the case you hear some other evidence that's
12 different from what you've already heard, different from
13 what you've started to talk about, different from what
14 you've started to make up your mind about, but if you
15 start and discuss that earlier evidence you're not likely
16 to receive that later evidence with an open mind, and so
17 we ask you to keep an open mind throughout this entire
18 process. That's the reason you can't talk about it among
19 yourselves. When it's over, the trial is over, you can
20 talk about it as long as you want to, but not until then.

21 Now, ladies and gentlemen, I told you and you just
22 took an oath to well and truly try this case and decide
23 it on the basis of the evidence. Let me tell you that
24 the opening statements that you will hear are not evidence
25 and the closing statements that you'll hear, they're not

1 evidence and the questions that will be asked, they're
2 not evidence either. Now all of those things are
3 important to this process and we would not be able to
4 have a very orderly trial if we didn't have those things,
5 but they themselves are not evidence. The evidence is
6 not the question. The evidence is the answer that comes
7 from a witness right here who takes an oath to tell the
8 truth and whose answers are tested by the test of
9 cross-examination and direct examination, that's the
10 evidence, along with those items and those documents that
11 I mentioned to you a moment ago.

12 The reason that it's important that you understand
13 the distinction between what is evidence and what is not
14 evidence is this. When it comes to the matter of
15 evidence, ladies and gentlemen, you actually serve as
16 judges. Those badges that you wear say juror, but in
17 truth, as to the matter of evidence, those badges should
18 say judge because you're the judges of the evidence,
19 you're the judges of the facts. You have to determine the
20 facts of the case. I've got the easy job. All I've got
21 to do is to decide as a matter of law whether you can hear
22 somebody tell you something from this witness chair or not
23 or whether you can look at an item of evidence or not, but
24 once I decide that you can hear the testimony or look at
25 the evidence from that point on what you do with it is

1 entirely up to you. You've got to believe it -- you've
2 got the right to believe it or not to believe it. You've
3 got to the right to decide the weight and value. So you
4 have to decide the truth, the weight and the value of the
5 testimony that you will be hearing in this courtroom.
6 You're capable of doing that.

7 You have probably never served as a juror in your
8 life before, but the fact that you have gotten to this
9 point in your life to be whatever age you are, if you've
10 got a family, if you've got a job, and you've certainly
11 had experiences in life, all of those things that you have
12 in your individual lives and in your individual core of
13 experience, you bring them to bear on what you hear in
14 this courtroom and when you do that you'll be able to
15 decide what the facts of this case are. And once you've
16 decided what the facts of the case are, you will apply the
17 law that I will give you to those facts and those two
18 things will come together to result in a verdict which
19 will speak the truth of this particular case.

20 Now I told you a few moments ago that the Defendant
21 in this case does not have to offer evidence and testimony,
22 does not have to make an opening statement, and the reason
23 for that is this. As I told you yesterday, Mr. Hunter has
24 pled not guilty to the charges in these indictments and
25 under our law when somebody pleads not guilty to the

1 charges in criminal indictments that person is presumed
2 to be not guilty, presumed to be innocent, in fact, under
3 the law. When we say that somebody is presumed to be
4 innocent, that means that he does not have to prove his
5 innocence. He does not have to take this stand and try to
6 convince you that he did not do the things he's accused of
7 doing. He doesn't have to bring in a parade of witnesses
8 to sit in this chair and try to make you believe that he
9 did not do those things. He is presumed not to have done
10 those things. He is presumed to be innocent. And so the
11 burden of proof then rests on the State, not just in this
12 case but in every case in this court. The burden of proof
13 is on the State to prove to the satisfaction of each of
14 you that the Defendant is guilty of these charges beyond a
15 reasonable doubt. As I say, the Defendant has no
16 obligation to prove his innocence. The State has the
17 obligation of proving his guilt beyond a reasonable doubt.

18 Now when the trial is over, I'm gonna tell you in a
19 little bit greater detail what we mean by proof beyond a
20 reasonable doubt, but let me tell you right now for our
21 purposes at this early stage of the proceedings proof
22 beyond a reasonable doubt is proof that leaves you firmly
23 convinced of the Defendant's guilt. And so after you have
24 heard all of the evidence and testimony in this case and
25 the law that I'll instruct you if you go to that jury room

1 firmly convinced that the Defendant is guilty, the State
2 has met its burden of proof and would be entitled to a
3 verdict of guilty at your hands. But on the other hand
4 after hearing all of the evidence and testimony and the
5 law that I will instruct you if you go into that jury room
6 and still find that there's a real possibility that he's
7 not guilty, the State has not met its burden of proof and
8 the Defendant in that case would be entitled to a verdict
9 of not guilty.

10 So you're gonna be listening to the testimony and
11 looking at the evidence. It's gonna take a couple or
12 three days to get this case before you, I'll tell you that
13 right now that, because there's a lot to be shown to you
14 and lot to testify about and there are several charges, of
15 course, that the State has to deal with in this particular
16 case and so it's gonna take a while to get the evidence
17 and testimony before you. But when it's all in and when
18 you go back into that jury room and start your
19 deliberations, you're gonna talk about this case among
20 yourselves and you're gonna decide whether or not the
21 State has met its burden of proof and you'll indicate your
22 opinion as to whether or not the State has met its burden
23 of proof by writing a verdict that says we find the
24 Defendant guilty or we find the Defendant not guilty
25 according to your view of the evidence and the law that I

1 will instruct you on.

2 Thank you, folks, for your attention to these remarks
3 and please listen to the lawyers as they make their opening
4 statements.

5 Mr. McNair.

6 **MR. McNAIR:** Thank you, Your Honor. May it please
7 the Court?

8 **THE COURT:** Yes, sir.

9 **MR. McNAIR:** Ladies and gentlemen, this is a case
10 about a nightmare come true. On April 13, 2014, Larenda
11 Simon and her six-year-old daughter, **MINOR**, were asleep
12 in their own bed around 3 AM in the morning when Larenda
13 happened to open her eyes and at the foot of her bed was
14 a man with a mask and a gun. Larenda immediately started
15 pleading with the man please, we don't have anything, we
16 don't have anything, it's just me and my daughter. But he
17 wasn't there to steal their possessions, he was there for
18 them. He pointed his gun at Larenda, told her to get
19 undressed. She begged him can my daughter please go into
20 the other room because she knew what was about to happen.
21 He ordered her daughter to go into the closet in the
22 bedroom. As Larenda got undressed, she told him she was on
23 her menstrual cycle. He didn't believe her at first. When
24 he realized she was telling the truth, he asked her how old
25 her daughter was. She said please, she's only a baby. He

1 then did the unimaginable. He made MINOR come out of the
2 closet and get undressed.

3 As MINOR stood there naked, terrified, not even
4 understanding what was about to happen, what was going on,
5 he started pulling out his penis getting ready to ravage
6 her. At that point Larenda Simon made the decision that
7 she was not gonna let that happen, that she was not gonna
8 let him do that to her daughter and that she was gonna stop
9 him, that she was willing to lay down her own life to stop
10 him.

11 She jumped off the bed, lunged for him, grabbed the
12 gun. A shot went off in the bedroom going through her
13 hand. A life and death struggled then ensued. She was
14 able to force him out of the bedroom, force him into the
15 bathroom, pin him on the floor. They're still struggling
16 over the gun. He's popping off shot, after shot, after
17 shot, after shot. She's shot four times in the bathroom.
18 As she's full of bullet holes, bleeding, losing strength,
19 he's able to break free and stand up. She refuses to let
20 go of him though because she still thinks he's trying to
21 get to the bedroom to get her daughter.

22 During that struggle she's able to rip off a hoodie
23 that he was wearing and a stocking cap. He's then able to
24 get out of the bathroom. He starts heading towards the
25 unlocked sliding glass door that he came in through.

1 Larenda follows him out and pushes him out the door. She
2 doesn't have a phone to call 9-1-1 because he had taken
3 her phone when he first entered the bedroom. She's naked,
4 she's bleeding. Her daughter's naked. They have to go
5 outside frantically knocking on neighbors' doors hoping
6 somebody answers and calls 9-1-1. She finally makes it to
7 the apartment of Tiffany Green who lets her in and calls
8 9-1-1. She's transported to Palmetto Health, undergoes
9 emergency surgery, and she survives. She's here today to
10 testify.

11 West Columbia Police Department responds. They
12 collect that hoodie that she ripped off and that stocking
13 cap in the bathroom. They send it to SLED, SLED takes a
14 DNA swab of that cap, runs it through their DNA database
15 and it comes back as a match to Nathaniel Hunter. About
16 the same time SLED was processing that cap, West Columbia
17 Police Department receives notification that this guy
18 named Nathaniel Hunter has been calling SLED and other
19 state agencies asking how to get his DNA removed from the
20 database days after this incident. Frantically calling.

21 His DNA had been in that database since October of
22 2004. All of a sudden, days after this incident, he's
23 called repeatedly to try to get that DNA removed. Who
24 else would do that other than a man who knew he left his
25 DNA at the crime scene?

1 You're also going to hear in this trial from Tanisha
2 Taylor. She was the Defendant's cousin, roommate, who he
3 was living with at the time. Tanisha Taylor told the
4 police that he wasn't home that night, but that he came
5 in about 4:00 that morning and when he came in the first
6 thing he did was start doing laundry and go in the
7 bathroom to wash up. She also said he had cuts on his
8 head that he didn't have the night prior. She then
9 overhears him -- her daughter ask the Defendant what
10 happened. The Defendant tells her daughter some story
11 about oh, I was play fighting with your momma, but
12 Tanisha Taylor knows that's not correct, that was a lie.
13 She also told law enforcement that Mr. Hunter had a 40
14 caliber Glock that he kept at her place. Well, all of the
15 shell casings found at the scene, the five shell casings
16 and a projectile, was from a 40 caliber weapon.

17 Law enforcement eventually obtains his phone, his
18 cell phone, and they search his phone. And on that phone
19 are pictures of him holding that 40 caliber Glock. On
20 that phone are searches that occurred right after this
21 incident where he's looking --

22 **MR. PHILLIPS:** Your Honor, we have a matter of law.

23 **THE COURT:** Yes, sir. There's still some evidentiary
24 issues regarding the phone records and I would suggest that
25 we not go any deeper into those at this point in time.

1 Thank you. I note your objection. Thank you.

2 **MR. McNAIR:** Four days after this incident on the
3 17th whenever law enforcement locates the Defendant,
4 attempts to arrest him, he flees from the police. They
5 have a short vehicle chase and eventually catch him. Law
6 enforcement notices he has marks on his face at that time
7 indicative of a struggle. They then take them to the
8 police department to talk to him. They confront him with
9 the fact that his DNA is at the crime scene. His excuse
10 is that he gave his clothes to a crackhead or sold them
11 to a thrift store. He then tries to start bargaining with
12 investigators and ask them hey, if you give me a deal,
13 I'll tell you what happened.

14 But they didn't give him a deal. He's charged with
15 attempted murder, burglary in the first degree, criminal
16 sexual conduct with a minor in the third degree,
17 possession of a weapon during the commission of a violent
18 crime. We have to prove all of these crimes beyond a
19 reasonable doubt. That is a burden we welcome and we'll
20 meet that burden.

21 I want to talk to you now about reasonable doubt.
22 Everybody's heard that standard, but a lot of people
23 have misconceptions about what that really means. I
24 was listening to the radio the other day and I heard a
25 commentator say the State didn't prove their case beyond

1 a shadow of a doubt. That's not the standard. It doesn't
2 mean that we have to prove our case beyond all doubt or
3 any doubt. There are very few things in this world that
4 we can be certain about beyond -- with absolute certainty
5 and the law does not require that. The law requires that
6 after we present evidence to you that you are firmly
7 convinced of this Defendant's guilt and, if you are,
8 you've just taken an oath to find him guilty.

9 Ladies and gentlemen, I just ask that you have
10 realistic expectations during this trial. Somebody that
11 goes through a traumatic event like Larenda Simon
12 obviously is probably not gonna remember every single
13 little detail and certainly don't expect a six-year-old
14 child who went through this to remember everything.
15 That's not fair.

16 I'm about to sit down. All I ask is that through
17 this whole process use your common sense just like you
18 do in your everyday lives. Use your common sense to
19 determine what's reasonable and what's not, what's fact
20 and what's fiction, and determine what the truth is. At
21 the end of this trial we'll come back before you and
22 we'll ask you to return a verdict that speaks the truth
23 and find Mr. Hunter guilty.

24 **THE COURT:** Thank you, Mr. McNair.

25 Mr. Phillips.

1 **MR. PHILLIPS:** Thank you, Your Honor.

2 Good morning. As a husband and the father of a
3 little girl, there's nothing more terrifying than what's
4 happened to Ms. Simon and her daughter. Our purpose of
5 having this trial is in the defense of Nathaniel Hunter.
6 He has been accused of these horrendous crimes. Now
7 having said this, the reason we're here is because we are
8 going to aggressively attack the prosecution's arguments
9 and the police's testimony and this is not based on
10 pure conjecture as you will see from the evidence that's
11 presented on the witness stand.

12 The prosecution always has two options in giving an
13 opening statement to you. They can either tell you
14 everything, the good stuff and the bad stuff, or they can
15 tell you only what they want you to hear. Ladies and
16 gentlemen, let me be clear. There is a whole lot more to
17 this case than what's been presented before you and you
18 will be able to see it. We're not running from it. We
19 are here. We are the ones who did not plead guilty. We
20 are the ones who requested a jury trial. We are the ones
21 who put our faith in each of you.

22 Thankfully in this country we have the right to a
23 jury trial. We have those constitutional protections.
24 Nate, if you could please stand up for me. It is his
25 decision to be here. He has chosen through having faith

1 in this system, having faith that after you've seen all
2 of the evidence you will come to a different conclusion
3 than based on the story that you just heard. He has
4 denied committing this crime from day one and has not
5 wavered on it. Thank you, Nate.

6 The indictment in this case is the State versus
7 Nathaniel Hunter. You heard the solicitor read it out
8 aggressively at him. And you know why it stays the State
9 versus Nathaniel Hunter? It is because the State is also
10 on trial. You just heard from the judge that they have
11 the burden of proof. That when a citizen's accused of a
12 crime, they have to prove it. They have to do that with
13 evidence. Not through arguments, but through evidence
14 that's on the witness stand and that's presented to you.

15 This case is without a doubt an incredibly emotional
16 one. One that anybody who hears the facts of this case
17 cannot deny the pure emotions of this trial. The reason
18 the Government's also on trial, when you read that
19 indictment, the State versus Nathaniel Hunter, it's for a
20 good reason. It's to protect us. The Government has all
21 the power, all the resources, all the money to do what
22 they did in this case, what they've done in many other
23 cases. You can be accused of a crime, you can be arrested
24 and your only constitutional protection to try to clear
25 your name, to try to protect your freedom, is to request

1 a jury trial, to put your hands in the fate of twelve
2 strangers. Your hands, ladies and gentlemen.

3 Now when you received the jury summons, odds are you
4 didn't really want to come to court. That's just the fact
5 of the matter. Odds are you probably didn't want to serve
6 on this jury. Given the facts of when you heard what the
7 allegations were in the jury selection, most likely what
8 was going through your mind was I sure hope I don't have to
9 serve on that jury. Well, you are here. You have been
10 chosen. It wasn't random, it wasn't something that was
11 happenstance. We chose you for a specific purpose. Based
12 on the information provided, we believe that each of you
13 will take this case seriously, will realize that a man's
14 freedom is on trial. His whole life is on trial before
15 you and it couldn't be any more serious and obvious based
16 on the facts of the case. I can see that each one of you
17 is taking this case seriously. You have paid close
18 attention to both the prosecutor and myself. With that
19 being the case, Nathaniel Hunter chose the jury trial and
20 we chose you, and that is a very important part of the
21 process of why we are here today.

22 Now we've all watched the news and we've seen someone
23 who has been arrested of a horrible crime. Pretty much
24 if you turn on WIS any given night, you're gonna see some
25 type of crime that's horrible and that someone was

1 arrested for and many of us automatically assume that
2 person is guilty by hearing a news clip, a ten second
3 news clip, and that's just a natural reaction. But you
4 swore today not to do that to Mr. Hunter. You swore
5 before God an oath not to do that to Mr. Hunter. You
6 swore to listen to all of the evidence, to not accept
7 every argument you hear as true, but to be based off what
8 is presented. I can't stress that enough. It's what's
9 presented. Arguments and emotions can sway, but the
10 evidence will lead you to the right conclusion.

11 Now the presumption of innocence, it gets thrown
12 around a lot and it doesn't have a lot of meaning in and
13 of itself, but when you listen and you think about what
14 its purpose is there has been -- it's not just a phrase,
15 it's not just an idea. Many Americans have fought and
16 died through blood, sweat and tears to protect these
17 constitutional freedoms, and that is part of the oath that
18 you've given today. Simply put, you swore not to make
19 assumptions. You swore not to take the prosecution's
20 argument at a face value, that you were gonna hear the
21 evidence and you are going to ask the questions necessary
22 and listen to the answers as they are presented in making
23 the right decision in this case.

24 During this trial there are important questions that
25 must be answered and they go to three important parts;

1 credibility, responsibility and duty. Going directly to
2 Tanisha Taylor that the solicitor brought up was going to
3 confirm that he was washing his clothes -- or that he came
4 home at 4 AM and that he was washing his clothes. Listen
5 very carefully to her testimony, all right? Listen very
6 carefully. Opening statements are not for argument and
7 what I'm telling you is in these questions that must be
8 answered, listen to Tanisha Taylor's answers and see what
9 is the truth and see where she has been inconsistent.
10 Look as to what her answers are going to be.

11 Why did the police record all the interviews of
12 every witness in this case, but refused and made a
13 conscious decision not to record the interview with
14 Mr. Hunter? You didn't hear about that in the
15 prosecution's opening statement. All witnesses have an
16 audio recorded interview except for his. His statements
17 could all be proven if they were recorded because the
18 police are gonna get on that witness stand and say that
19 he made a lot of very damning statements regarding, as the
20 prosecution put it, deals. That could be unquestionable,
21 undisputed if it was recorded. Why when they have issued
22 audio recorders and they recorded every witness would
23 they not record his statement? And they will admit on
24 that witness that they made the conscious decision not to
25 record it.

1 As to the DNA, this is very specific. Where was
2 Mr. Hunter's DNA found? How was it found? What type of
3 DNA was it? Was there any other type of DNA that was
4 found in the place with his? Again, where was his DNA
5 found? What type of DNA was it? Was there any other DNA
6 found with it? That's very important.

7 Another important question. Why wasn't Mr. Hunter's
8 blood, hair or fingerprints found anywhere in that home?
9 During this trial you will see that they received. They
10 were able to pull some latent fingerprints. Why wasn't
11 Ms. Simon's blood or DNA found on anything in Tanisha
12 Taylor's apartment or his car? Whose DNA is in the hoodie
13 in this case? You will find that the hoodie found at the
14 crime scene is very important. Whose DNA is found in that
15 hoodie? Where was that DNA found? What is logically
16 wrong with where -- the DNA that they say is Mr. Hunter's,
17 what is logically wrong with that piece of evidence?
18 Again, that goes back to the questions of where it was
19 found, what type of evidence it was, how it was collected.
20 Why would the Government not search or why would they
21 limit their search on Mr. Nathaniel Hunter's cell phone
22 to a very small amount of time? Why wouldn't they open
23 it up to days, weeks before to see whether he had been by
24 that area before? You will see in this case that there
25 presumably is no connection between them. They had never

1 met before. Why would they limit it to just those hours
2 of that day and not see days or weeks before to see if he
3 had ever been by that area, that he had cased the joint
4 so to speak? Why wouldn't they do that? Why would they
5 make that limitation when they could prove their case?

6 Responsibility. Did the Government or the police
7 in this matter fulfill their obligation, their duty to
8 conduct a full investigation? In conducting a full
9 investigation, the reason this obligation, this oath as
10 an officer is important, is for two reasons. One, to
11 make sure you catch the right guy and, two, you bring
12 justice for the victim.

13 Talking about another nightmare. The Solicitor
14 referenced nightmares. Another nightmare in this country
15 is when an innocent person is arrested and convicted and
16 imprisoned.

17 **MS. MAYES:** Objection, Your Honor, reference to
18 sentencing.

19 **THE COURT:** I'll sustain that. The matter of
20 sentencing, ladies and gentlemen, is not the prerogative
21 of the jury, it's the prerogative of the Court. You're
22 not concerned with that matter. Thank you.

23 **MR. PHILLIPS:** Knowing that Ms. Simon told the police
24 that the voice sounded familiar and that she was receiving
25 services from Sister Care, a place that treats women, why

1 didn't they look for any other suspects that were familiar
2 to her? Why did they put on the blinders? The old story
3 of the farm boy asking his dad why does the mule wear the
4 blinders? Because I only want him to go where I want him
5 to see. I want him to go in the direction I want him to
6 see. Don't let the State put those blinders on you and
7 lead you in the direction that they want. Don't let them
8 tell you just one side of the story.

9 Why didn't the police check under Ms. Simon's
10 fingernails? You will hear during her emotional testimony
11 what a struggle it was. She was heroic. There's no doubt
12 about it. She was heroic in protecting herself and her
13 daughter. They didn't check under her fingernails for
14 DNA. Why? During this struggle, during this scratch that
15 they're gonna say came during this struggle on Mr. Hunter,
16 why didn't they check under her fingernails for his DNA?
17 It goes back to what DNA was found, where was it found,
18 how was it found, how was it collected, what type, was
19 there any other types of DNA found.

20 Why didn't the police investigate one of their
21 initial suspects, Detavian Smith? That was one of the
22 first names they received. You'll see that there's no
23 other further investigation in this case regarding
24 Detavian Smith. That was a name that was given to them by
25 another police department. Why didn't they investigate

1 this person?

2 Why didn't the police track Ms. Simon's cell phone?
3 Now there's some dispute I believe that we'll see whether
4 the phone was lost that night or whether it was taken by
5 the person that committed the crime. You'll see that the
6 police never even tried to track her cell phone, never
7 tried to pull the cell site location data. Let me
8 rephrase. The police officer tells Ms. Simon at the
9 hospital that he will track her phone, that they are
10 tracking her phone. You'll see through testimony that
11 that's what was said that they will do, but they never
12 tracked her cell phone, they never pulled her cell site
13 location data. Why? Why wouldn't they do that?

14 Last, but not least, duty. Have you fulfilled your
15 sworn duty before this Court? Did you assume guilt after
16 you heard the prosecution's opening statement? If you
17 did, please reflect back on the sworn oath that you took
18 before God and listen to the only evidence in this case.
19 This is your chance to restart if you did. I know it's
20 easy to do because it's such an emotional trial and at
21 the end of it did hold the Government to its burden of
22 proof beyond a reasonable doubt, firmly convinced based
23 on the answers to all those questions?

24 This trial is a journey of faith. Nate had faith in
25 your verdict before you were chosen. He's the one who

1 selected a jury trial. He's the one that didn't plead
2 guilty. He chose a jury trial. We chose each of you.
3 We know at the end of this case despite the Government's
4 request you will choose the right choice by rendering a
5 verdict of not guilty. Thank you.

6 **THE COURT:** Thank you, Mr. Phillips.

7 Ms. Mayes, you can call your first witness.

8 **MS. MAYES:** Yes, sir, Your Honor. The State calls
9 officer Shawn Ludwig.

10 **THE COURT:** Come forward please, Officer Ludwig, and
11 be sworn.

12 **MR. PHILLIPS:** Your Honor?

13 **THE COURT:** Yes, sir.

14 **MR. PHILLIPS:** We need to address a matter of law.

15 **THE COURT:** All right. Let's talk at sidebar.

16 (Proceedings held at the bench; not reported.)

17 **THE COURT:** Folks, excuse me. Sometimes when we talk
18 about matters of law, I go over and huddle just like I did
19 a minute ago to keep from having to send you out of the
20 courtroom, and that's just what did. Our discussion over
21 there does not involve your role, it does not involve you
22 at all. That's the reason we didn't involve you in the
23 discussion. We didn't mean to be rude by that. I always
24 tell jurors that if you're real curious about what we're
25 talking about over there behind your back, that if you're

1 real curious about that, when your role as a juror in
2 this case is over if you'll come to me and ask me what we
3 were whispering about and if I can remember what we were
4 whispering about, I'll tell you. Thank you.

5 You can swear the witness.

6 **MR. PHILLIPS:** Your Honor, our sequestration request.

7 **THE COURT:** That's right. Sequestration is -- it
8 should be reciprocal sequestration now in effect, okay?

9 (Whereupon, Shawn Ludwig was duly sworn by the Clerk
10 of Court.)

11 **THE CLERK:** Please be seated. State your full name
12 and spell your last name.

13 **THE WITNESS:** My name is Shawn McGill Ludwig, and the
14 last name is L-U-D-W-I-G.

15 SHAWN MCGILL LUDWIG,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. MAYES:

19 Q. All right. Good morning. And could you tell us a
20 little bit about yourself? Where are you currently
21 employed and in what capacity?

22 A. I'm currently employed at the Town of Lexington
23 Police Department as a patrol officer. I started at
24 West Columbia in 2007 as a dispatcher from 2007 to 2009
25 and then from 2009 to 2016 I was a patrol officer with the

1 City of West Columbia.

2 Q. All right. And during that period of time from
3 2009 to 2016 when you were with the City of West Columbia
4 as a patrol officer, were you still involved in taking
5 dispatch-type calls?

6 A. Yes, ma'am. At times our dispatchers would take
7 breaks and the patrol officers who were NCIC-certified
8 and dispatch-certified would go up there and relieve them
9 for lunch.

10 Q. All right. And when you were at the City of West
11 Columbia, and specifically I want to take you back to the
12 timeframe of the early morning hours of April 13, 2014,
13 can you tell us whether or not you would have been working
14 in the capacity as a dispatcher in that timeframe?

15 A. Yes, ma'am.

16 Q. And do you have with you any records or call sheets
17 relating to that date?

18 A. Yes, ma'am. I've got the CAD sheet from where I
19 covered shift that night on dispatch.

20 Q. All right. So let's talk a little bit about the
21 system that West Columbia had in place. If a 9-1-1 call
22 is made, tell us a little bit about how that 9-1-1 call is
23 preserved, specifically how the date and time of a 9-1-1
24 call is preserved.

25 A. As the 9-1-1 call comes in, as soon as the call comes

1 in it immediately starts recording as the call comes in.
2 Once I answer it, it generates a date and time of the
3 time that I answered the phone. It is then preserved on
4 a hard drive through the City of West Columbia, which at
5 that time a -- there were specifically individuals,
6 whether it be the major or the individual over the
7 dispatch center at the West Columbia Police Department
8 would be the only ones who could retrieve that file. Once
9 we answer the phone, the recordings cannot be altered in
10 any way, shape or form either by the call-taker or by the
11 individuals in charge of retrieving that -- the audio from
12 that 9-1-1.

13 Q. All right. And can you tell us whether or not there
14 was a call during the early morning hours of April 13,
15 2014, to respond to a location at [REDACTED] Comanche Trail?

16 A. Yes, ma'am, there was.

17 Q. And who was the dispatcher who took that call?

18 A. It was me.

19 Q. And just to clarify, that address of [REDACTED] Comanche
20 Trail, what type of residence or residential complex is
21 that?

22 A. It's an apartment complex.

23 Q. Okay. And do you know the common name of that
24 apartment complex?

25 **MR. CHEHOSKI:** Your Honor, I have an objection.

1 **THE COURT:** All right, sir. What's the objection?

2 **MR. CHEHOSKI:** Your Honor, we're objecting to the use
3 of the easel by Ms. Mayes. We believe that is an improper
4 creation of evidence.

5 **THE COURT:** The objection's overruled. Thank you.

6 **MR. CHEHOSKI:** Thank you, Your Honor.

7 A. The name of the complex would be Park Place
8 Apartments.

9 Q. All right. And specifically what time is noted for
10 the call having been received?

11 A. The call was received on 9-1-1 through -- at 3:08 AM,
12 the call card states 3:11, and the difference -- the
13 discrepancy in the two of those is the fact that whenever
14 we receive a phone call through 9-1-1 it generates a time;
15 however, whenever we put the call itself into the CAD
16 system or the call card, it will generate the time that I
17 enter that call into the system, which I generated the call
18 into the system at 3:11, so that's the difference in the
19 times.

20 Q. All right. So this is going to be the early morning
21 hours of April 13, 2014, and you said the call was actually
22 received at 3:08 AM and then you entered it into the system
23 at 3:11?

24 A. Correct.

25 Q. What were you actually doing at 3:08 up until 3:11?

1 A. I was dispatching units to the area of the incident
2 location at [REDACTED] Comanche Trail, giving them as much
3 information as I received from 9-1-1 and making phone calls
4 to the fire department as well to get the first responders
5 en route at the time.

6 Q. All right. So in addition to actually taking the
7 call, whose responsibility is it to then send out units
8 such as EMS and fire and other additional law enforcement?

9 A. It would have been my job to dispatch fire department
10 and the police department would have then notified the EMS
11 personnel to respond.

12 Q. All right. And have you had the opportunity, Officer
13 Ludwig, to review the actual recording of the 9-1-1 call
14 that occurred at 3:08 AM on the -- in the early morning
15 hours of April 13, 2014?

16 A. Yes, ma'am.

17 Q. Specifically as to the apartment complex at Comanche
18 Trail?

19 A. Yes, ma'am.

20 Q. And having listened to that recording, can you tell
21 us whether or not it's a fair and accurate representation
22 of the call?

23 A. It is.

24 **MS. MAYES:** Your Honor, I believe this item is
25 previously marked as State's Exhibit 1 in evidence. We

1 would request permission to publish.

2 **THE COURT:** You can publish it. It is in evidence
3 without objection.

4 BY MS. MAYES:

5 Q. Now there is a male voice on this recording, who is
6 the male voice?

7 A. It is myself.

8 Q. And do you know -- or do the records indicate who the
9 female voice is?

10 A. It would. I don't believe I got -- I believe it was
11 a Tiffany. I don't -- I didn't get the --

12 Q. That would be the 9-1-1 caller, correct?

13 A. Yes, ma'am.

14 Q. And she was requesting that units or EMS respond to
15 what location at apartment -- at the Park Place Apartments?

16 A. At Apartment [REDACTED]. That would be [REDACTED].

17 Q. Okay.

18 **MR. CHEHOSKI:** Your Honor?

19 **THE COURT:** Yes, sir.

20 **MR. CHEHOSKI:** I'd renew our objection and ask for a
21 matter of law, please.

22 **THE COURT:** Ladies and gentlemen, let me send you to
23 the jury room for just a moment, please. I've got a matter
24 of law that I need to take up outside of your presence.
25 Please do not discuss this case among yourselves while

1 you're in the jury room. Thank you.

2 (Whereupon, the jury retires to the jury room at
3 11:00 AM.)

4 **THE COURT:** Mr. Chehoski, what's the matter of law we
5 need to deal with?

6 **MR. CHEHOSKI:** Yes, Your Honor. I apologize for
7 having to disrupt the flow of the case to the jury, but I
8 feel that it's important that the -- again, this is an
9 artificial creation of evidence. It is -- out of judicial
10 economy, it's actually gonna drag the trial out.

11 **THE COURT:** No, what's dragging it out is arguing at
12 this point in time when I've told you at sidebar we would
13 take up this argument in full out of the presence of the
14 jury. This is not the creation of evidence. This is a
15 demonstrative exhibit that is not gonna go to the jury.
16 It is offered there -- as we all know, charts and diagrams
17 are routinely put up there. It is a result of the
18 witness's testimony being preserved in an orderly fashion
19 for their understanding. It is not an exhibit that is
20 created by -- or that comes out of the State's exhibit box
21 or anything of that nature. It is not going to go to the
22 jury. It is demonstrative evidence at the very most.

23 **MR. CHEHOSKI:** Yes.

24 **THE COURT:** Is there any reason why -- is that in
25 dispute? Is that an issue that's in dispute?

1 **MR. CHEHOSKI:** Your Honor, what it does though is
2 highlights the cumulative nature of the evidence and
3 enhances the prejudicial effect to Mr. Hunter. It also
4 is -- it also misleads the jury. It is incomplete. It's
5 what the -- between what the officer is testifying to
6 versus what's going on the board is much edited and,
7 therefore, misleading.

8 **THE COURT:** Of course, it's not -- it's not a
9 stenographic indication of everything that he's saying
10 and certainly there are things that he's saying that don't
11 show up on the exhibit, but tell me something, if you will.
12 Tell me anything that is on the board that is inconsistent
13 with his testimony.

14 **MR. CHEHOSKI:** Your Honor, it's really more for the
15 argument of completeness.

16 **THE COURT:** You're saying that in order for this to
17 be a legitimate item for this Court's consideration that
18 Ms. Mayes has to write down everything that he says in
19 order to satisfy the rule of completeness?

20 **MR. CHEHOSKI:** Your Honor, that's my argument, yes.

21 **THE COURT:** Have you ever in your life in all of your
22 practice ever seen a judge require a document of that
23 nature to be stenographic report of everything that the
24 witness was saying?

25 **MR. CHEHOSKI:** Your Honor --

1 **THE COURT:** Any -- just -- well, I don't want to cut
2 you off. I'm asking you is this something -- a novel
3 thing that you're asking me to do for the first time in
4 all of your practice or have you seen other judges who've
5 granted that request?

6 **MR. CHEHOSKI:** Your Honor, this is the first time
7 that I've asked it, but it's also one of the first times
8 I've seen it be challenged as well.

9 **THE COURT:** Well, quite frankly, it's the first time
10 I've ever seen it challenged as well. In the twenty-five
11 years as a trial judge and nineteen years as a trial
12 lawyer, I have never seen anyone request of a judge that
13 a document of this nature cannot be used unless it's a
14 stenographic report of everything that's said. And I
15 appreciate the record preservation that we're avowed in
16 this case and I understand that some cases are tried
17 before a jury, some cases are tried for the appellate
18 court, most cases are tried for both, but I want -- I
19 want to set the ground rules right this minute. I don't
20 send the jury out every time there's an objection to deal
21 with it and I'm not gonna do it in this case because we
22 obviously would never be able to finish it. I do just
23 what I did a minute ago. I tell you at sidebar that I
24 note your objection. I've got my notes down here. I've
25 got them highlighted to deal with it out of the presence

1 of the jury so that we won't have to have this sort of
2 interruption. If it's something that is so dramatic that
3 it's gonna lead to a mistrial or something of that nature,
4 I may decide to send them out, but if we're talking about
5 evidentiary objections, which are rudimentary, something
6 as basic as a demonstrative piece of evidence that is used
7 in every trial of this nature in the world, I'm not gonna
8 try to rewrite Whitmore's evidence rules before this jury
9 or out of the presence of this jury to get this thing done.
10 So that's the way we're gonna handle this and the record
11 will be preserved at the end of the day. If I'm wrong on
12 an issue like this, certainly the court can -- upstairs
13 can deal with it. And as I said, if it is something so
14 critical, so prejudicial that it is impairing your client's
15 constitutional rights of some nature and should lead to a
16 mistrial or a dismissal of these charges, I'll take that on
17 the record, but not in this way.

18 Bring us the jury.

19 **MR. CHEHOSKI:** Thank you, Your Honor.

20 **THE COURT:** You're welcome.

21 See if the jury is ready to come back in, please.

22 (Pause in proceedings.)

23 **THE COURT:** I just got a request wanting to know if
24 the jury could take notes. If the jury is gonna take
25 notes, I normally instruct them at the outset as to the

1 restrictions and limitations and they take notes only
2 during the testimony of the -- of the witnesses, not
3 during opening and closing statements. The testimony has
4 begun and I'm not inclined at this point in time to grant
5 that unless both sides will agree they can take notes. If
6 both sides agree, I'll let them take notes.

7 What says the State?

8 **MS. MAYES:** We leave that in the Court's discretion,
9 Your Honor.

10 **THE COURT:** What says the defense?

11 **MR. PHILLIPS:** I say we leave it in the Court's
12 discretion as well. Whatever the judge feels is fair.

13 **THE COURT:** Okay. In that case, I don't mind them
14 taking notes. Frankly, you know, if they ask to take
15 notes, I'll let them do it unless you-all have some
16 objection. If you say no, I'm no gonna let them do it.

17 **MR. CHEHOSKI:** Your Honor, as we've already argued,
18 it's in the Court's discretion and I'm sure it's the
19 Court's policy that they're not able to take those notes
20 anywhere outside of the courtroom or anything like that.

21 **THE COURT:** That's right. And certainly I'll do all
22 of that, Mr. Chehoski. And, once again, Mr. Chehoski, I
23 want to make sure that I'm not telling you that you can't
24 object.

25 **MR. CHEHOSKI:** Yes, sir.

1 **THE COURT:** I'm just saying that I'm not gonna send
2 the jury out to deal with every objection.

3 **MR. CHEHOSKI:** Understood, Your Honor.

4 **THE COURT:** All right. Thank you.

5 Bobby -- well, that's okay. I'll tell them when
6 they get in. I'll give them instructions. They can take
7 notes. The lawyers have left it up to me and have no
8 objection.

9 (Whereupon, the jury returns to the courtroom at
10 11:07 AM.)

11 **THE COURT:** Thank you, folks. During the break a
12 housekeeping matter arose that I should have taken care
13 of earlier this morning and that's whether or not you-all
14 would be allowed to take notes. If juries request to
15 take notes, and sometimes they do and they have the pads
16 here in this particular case, I normally give a limiting
17 instruction during my opening remarks, so let me take this
18 time unfortunately to interrupt the testimony of this
19 witness because you might want to take some notes from
20 this point on.

21 You're allowed to take notes, but there are certain
22 restrictions that apply to those notes. First of all,
23 remember that the notes are to be taken of the evidence
24 in the case, that is the testimony. Not the question, but
25 the answer itself. And don't paraphrase. Write down as

1 closely as you can what the witness is saying. Not your
2 impression of how you would say it, but how the witness
3 is saying it. You will leave the notes with you -- in
4 the courtroom when you go back, you won't have those back
5 there at least during the trial. As to whether you take
6 them back there after the fact, we'll deal with that in
7 closing remarks, but they are simply to serve as an aid to
8 your memory. They don't take the place of a court record
9 or anything like that, but to help you keep up with the
10 testimony as it unfolds and so you have a right like you
11 do in school to take notes. That's fine. You can do
12 that. Just be accurate in what you're doing and limit the
13 note-taking to the evidence itself. That is, not the
14 remarks of counsel, not necessarily the question, but the
15 answers to those questions, the evidence itself. That's
16 what the notes are -- they're designed to preserve, and
17 that is your understanding and memory in regard to the
18 evidence. And as I've said, those will be left here in
19 the courtroom when you go out from time to time. Just
20 leave them in the chairs or leave them at the rail and
21 they'll take them up, okay? Thank you.

22 **MS. MAYES:** Your Honor, may it please the Court,
23 State's Exhibit 1 is -- being the 9-1-1 call is currently
24 in evidence and the State requests permission to publish.

25 **THE COURT:** You can publish. Thank you.

1 (Whereupon, State's Exhibit Number 1, a 9-1-1 call,
2 was played in open court.)

3 **MS. MAYES:** Thank you. Nothing further of the witness
4 at this time, Your Honor.

5 **THE COURT:** Thank you. Ms. Chehoski, cross-examine?

6 **MR. CHEHOSKI:** Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. CHEHOSKI:

9 Q. Officer Ludwig, you gave two addresses in that call;
10 is that correct?

11 A. Yes, sir.

12 Q. Is that because there's two Park Place Apartments?

13 A. Park Place Apartments is -- it's two separate
14 locations. One of them is 800 North Lucas and the other
15 one is on Comanche Trail.

16 Q. And, again, the only reason for the difference of the
17 time between the 3:08 call and the 3:11 entry into the CAD
18 was you were having to dispatch vehicles?

19 A. Yes, sir.

20 Q. Making sure everybody got there?

21 A. Yes, sir.

22 Q. And then, of course, taking the call?

23 A. Yes, sir.

24 Q. And then after that you entered it into the record?

25 A. Putting everything in the CAD system, yes, sir.

1 **MR. CHEHOSKI:** One moment.

2 **THE COURT:** Yes, sir.

3 **MR. CHEHOSKI:** Nothing further.

4 **THE COURT:** Thank you. Redirect, Ms. Mayes?

5 **MS. MAYES:** Nothing further, Your Honor. We request
6 the witness be excused.

7 **MR. CHEHOSKI:** No objection to being excused, Your
8 Honor.

9 **THE COURT:** Thank you, sir. Without objection,
10 Officer Ludwig, you're excused.

11 (Witness excused.)

12 **MS. MAYES:** The State calls Tiffany Green.

13 **THE COURT:** Ms. Green, come forward, please, ma'am,
14 and be sworn.

15 (Whereupon, Tiffany Green was duly sworn by the Clerk
16 of Court.)

17 **THE CLERK:** Please be seated. State your full name,
18 spell your last name, and you'll have to speak up.

19 **THE WITNESS:** Tiffany Green.

20 TIFFANY GREEN,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. McNAIR:

24 Q. Spell your last name, please.

25 A. G-R-E-E-N.

- 1 Q. How are you doing today, Ms. Green?
- 2 A. Good.
- 3 Q. Ms. Green, will you tell the jury where you lived back
- 4 on April 13, 2014.
- 5 A. [REDACTED] Comanche Trail.
- 6 Q. What unit?
- 7 A. [REDACTED].
- 8 Q. Okay. Who lived there with you at that time?
- 9 A. Me and my two children.
- 10 Q. Did you know Larenda Simon at that time?
- 11 A. No.
- 12 Q. Did you know of her?
- 13 A. I know her from the bus stop, but I didn't know her
- 14 name or anything.
- 15 Q. All right. Did you know any of her children?
- 16 A. Yes, [REDACTED] MINOR .
- 17 Q. And how did you know [REDACTED] MINOR ?
- 18 A. Her and my little girl rode the bus together.
- 19 Q. Okay. From time to time would they play together?
- 20 A. Correct.
- 21 Q. Had [REDACTED] MINOR been to your apartment before?
- 22 A. Yes.
- 23 Q. Are you aware of where she lived?
- 24 A. Yes.
- 25 Q. Where was that?

1 A. Like three or four doors down.

2 Q. Does [REDACTED] sound correct?

3 A. Correct.

4 Q. Okay. Three or four doors down from you?

5 A. Yes.

6 Q. Let's talk about the early morning hours of April 13,
7 2014. What were you doing that morning?

8 A. Getting ready for work.

9 Q. What time did you wake up?

10 A. 3 AM.

11 Q. What happened after you woke up?

12 A. I went down the hallway towards the kitchen to get
13 something to drink and I heard someone banging on my screen
14 door.

15 Q. Did you recognize the person at your door?

16 A. No.

17 Q. What was that person doing?

18 A. Banging at the door, saying open the door.

19 Q. Could you tell whether they were clothed or not?

20 A. No, it was dark.

21 Q. How did the person appear to be standing at your door?

22 A. Terrified.

23 Q. All right. Did they say anything?

24 A. She said open the door. This is [REDACTED] 's mom --

25 **MR. CHEHOSKI:** Objection. Hearsay, Your Honor.

1 **THE COURT:** I think the res gestae for this -- it's
2 not offered for the truth of the matter asserted, I don't
3 think. It just shows what her response was gonna be.

4 **MR. CHEHOSKI:** Thank you, Your Honor.

5 BY MR. McNAIR:

6 Q. You testified that she appeared to be terrified?

7 A. Correct.

8 Q. Did she appear to be still under the stress of
9 whatever had just happened?

10 A. Right.

11 Q. What's her tone of voice?

12 A. Screaming.

13 Q. Screaming. And what does she say?

14 A. Open the door. Somebody tried to rape me and my
15 daughter.

16 Q. What did you do at that point?

17 A. Called 9-1-1.

18 Q. Did you end up letting that individual in your house?

19 A. After I got 9-1-1 on the phone.

20 Q. All right. What door did you let her in?

21 A. The main entrance into my home.

22 Q. Okay. And who was it? Did you identify who it was
23 at that point?

24 A. She came in first and then **MINOR** came in behind her.

25 Q. And when you say "she", you are now referring to

1 Larenda Simon?

2 A. Correct.

3 Q. And what was Ms. Simon wearing?

4 A. Nothing but a shirt.

5 Q. What about MINOR ?

6 A. She didn't have anything on.

7 Q. She was totally naked?

8 A. Correct.

9 Q. What did you do once they got inside your apartment?

10 A. I gave MINOR a robe and I put her in the back room
11 with my children and Larenda just collapsed on the floor.

12 Q. Okay.

13 A. I got her some water and I got a towel and started
14 applying pressure to her thigh.

15 Q. Okay. And why did you -- why did you take MINOR
16 back to the room where your kids were?

17 A. I didn't want her to see her mother.

18 Q. In that condition?

19 A. In that condition and the state she was.

20 Q. When Ms. Simon got into your apartment, you testified
21 she just collapsed?

22 A. Correct.

23 Q. What did her -- did you notice anything about her
24 condition or her injuries?

25 A. When she was on the floor, she was bleeding, but I

1 couldn't tell exactly where she was bleeding from other
2 than her thigh.

3 Q. I'm gonna show you what's been premarked as State's
4 Exhibit 6 and State's Exhibit 8. Will you look at those
5 and tell me -- can you identify those pictures?

6 A. That's my apartment.

7 Q. Okay. Is that the way your apartment looked on the
8 day that Ms. Simon arrived on April 13, 2014?

9 A. Correct.

10 **MR. McNAIR:** Your Honor, we'd move to enter State's 6
11 and State's 8.

12 **THE COURT:** Without objection I understand?

13 **MR. CHEHOSKI:** Your Honor, subject to our pre-trial
14 motions.

15 **THE COURT:** Exactly. You're exactly right. Thank
16 you. Subject to objections dealt with in pre-trial, 6 and
17 8 are in evidence.

18 (State's Exhibit Number 6 and State's Exhibit
19 Number 8, photographs, were admitted into evidence.)

20 BY MR. McNAIR:

21 Q. All right. Ms. Green, this is your living room; is
22 that correct?

23 A. Yes.

24 Q. And the door -- do you see the door you testified to
25 where you first saw Ms. Simon banging on?

1 **BAILIFF:** The easel is in the jury's way, please.

2 **MR. McNAIR:** I'm sorry. I apologize.

3 **THE COURT:** Thank you.

4 BY MR. McNAIR:

5 Q. Is this the sliding glass door that you were
6 testifying to earlier?

7 A. Yes.

8 Q. And that's where Ms. Simon was when you first saw her?

9 A. Yes.

10 Q. All right. When she came into your house, where did
11 she collapse?

12 A. On the back of the couch right there.

13 Q. All right. Where this black piece of clothing is?

14 A. Correct.

15 Q. Whose clothing is that?

16 A. Hers.

17 Q. All right. State's 8 again. This is a picture of
18 your living room and where is your -- do you see where your
19 front door is on this photo?

20 A. Yes.

21 Q. Is it right here in this left-hand corner?

22 A. Yes.

23 Q. All right. And that's the door that Ms. Simon and

24 **MINOR** ended up coming in?

25 A. Yes.

1 **MR. McNAIR:** Your Honor, permission for the evidence
2 custodian to unseal this?

3 **THE COURT:** All right. Go ahead. You can open it.

4 (State's Exhibit Number 9 was marked for
5 identification.)

6 BY MR. McNAIR:

7 Q. I'm gonna show you what's been marked as State's 9.
8 Do you recognize this item?

9 A. Yes.

10 Q. What is this item?

11 A. My little girl's robe that I put on MINOR when she
12 came into the house.

13 **MR. McNAIR:** All right. Your Honor, the State moves
14 State's 9 into evidence.

15 **THE COURT:** Any objection?

16 **MR. CHEHOSKI:** Your Honor, just, again, subject to our
17 prior objection in pretrial.

18 **THE COURT:** All right. Subject to prior objection
19 only. Thank you. It's in.

20 (State's Exhibit Number 9, bag containing robe, is
21 admitted into evidence.)

22 BY MR. McNAIR:

23 Q. This is the robe that you gave MINOR when she came
24 to your house naked?

25 A. Correct.

1 Q. Did you notice anything in particular about MINOR ?

2 Did you notice any blood on MINOR ?

3 A. No, not at -- not at that moment.

4 Q. Okay.

5 A. It was still dark outside and I was just trying to
6 get her away from her mother, so I really wasn't observing
7 her, but I did know she was unclothed and I didn't want
8 her, you know, naked around my children.

9 Q. All right. And once the police and EMS and all those
10 folks arrived at your apartment after you called 9-1-1 --

11 A. Yes.

12 Q. -- where did you go at that point?

13 A. I stood outside.

14 **MR. McNAIR:** Okay. I have no further questions.
15 Please answer any questions the defense team may have.

16 **THE COURT:** Mr. Chehoski, you can cross-examine.

17 **MR. CHEHOSKI:** Your Honor, we have no questions of
18 this witness.

19 **THE COURT:** Okay. Thank you. Ms. Green, you can step
20 down. Thank you, ma'am. Can she be excused?

21 **MR. CHEHOSKI:** No objection, Your Honor.

22 **THE COURT:** She can be excused without objection.
23 Thank you.

24 (Witness excused.)

25 **MR. McNAIR:** Your Honor, the State calls Chris Hall.

1 **THE COURT:** Who is this?

2 **MR. McNAIR:** It's Chris Hall, EMS.

3 **THE COURT:** Okay. Mr. Hall, come forward, please, and
4 be sworn.

5 (Whereupon, Chris Hall was duly sworn by the Clerk of
6 Court.)

7 **THE CLERK:** Please be seated. State your full name.

8 **THE WITNESS:** My name is Chris Hall.

9 CHRIS HALL,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. McNAIR:

13 Q. Mr. Hall, where do you work?

14 A. I work for Lexington County EMS.

15 Q. What is your position there?

16 A. I'm a paramedic.

17 Q. How long have you been a paramedic for them?

18 A. Since '03.

19 Q. 2003. On April 13, 2014, did you respond to Park
20 Place Apartments?

21 A. Yes, sir.

22 Q. What unit did you respond to?

23 A. What unit?

24 Q. What unit? What apartment?

25 A. I don't have that written down. Wait a minute. Yes,

1 I do. [REDACTED].

2 Q. [REDACTED]. Okay. Was anybody else on the truck with you
3 that night?

4 A. Yes, sir.

5 Q. Who was that?

6 A. My partner, Chris Bernard.

7 Q. All right. And what was that call in reference to
8 that y'all responded to?

9 A. We responded to a possible gunshot wound.

10 Q. What time did you get on the scene?

11 A. We received the call at 3:11 in the morning. We
12 arrived on-scene at 3:22 in the morning.

13 Q. All right. And did you make contact with the victim,
14 Ms. Simon, there?

15 A. Yes, ma'am -- I mean, yes, sir.

16 Q. And where was she when you first made contact with
17 her?

18 A. She was in the living room of the apartment laying
19 down. Well, she was slightly leaning back against a couch
20 kind of like on her right side --

21 (Telephonic interruption.)

22 **THE COURT:** I hope that's not a real emergency.

23 **THE WITNESS:** No.

24 **THE COURT:** Good. We want you to stay with us until
25 you finish testifying.

1 BY MR. McNAIR:

2 Q. All right. On State's Exhibit 6, is this the couch
3 you were referring to?

4 A. Yes, sir.

5 Q. All right. And where did that article of clothing
6 come from that's on the floor?

7 A. To my understanding, it came from the patient because
8 the patient was already -- her shirt, I'm guessing that's
9 what that is, was already cut off of her.

10 Q. Okay. And that's where she was laying?

11 A. Yes, sir.

12 Q. Okay. Now what condition was she in when you first
13 got there?

14 A. Breathing heavily, excited, speaking to my captain,
15 who was on-scene prior to me and Chris Bernard arriving
16 on-scene, and also talking to the officers. There were
17 quite a few questions going back and forth to the patient
18 from my captain and from the officers.

19 Q. She was alert?

20 A. Yes, sir.

21 Q. She was conscious?

22 A. Yes, sir.

23 Q. Able to communicate?

24 A. Yes, sir.

25 Q. What did her emotional condition appear to be at that

1 time?

2 A. Very excited, very afraid and --

3 Q. Afraid of what?

4 A. The situation, of being wounded, and as anyone would
5 be scared of the possible future of, you know, what's gonna
6 happen next.

7 Q. Death?

8 A. Obviously anyone in that situation would probably even
9 think of that, yes, sir.

10 Q. Now how were her vital signs?

11 A. Well, right then we started looking for wounds and so
12 doing a cursory check for vital signs we checked her pulse
13 and it was -- obviously would be racing. It was quite
14 fast.

15 Q. Tell me this.

16 A. We didn't get a blood pressure at that time.

17 Q. Well, in dealing with her, what was your main
18 concern?

19 A. Stopping any bleeding that we were -- that we
20 witnessed.

21 Q. All right. Were you aware whether or not there was
22 any internal bleeding at that point?

23 A. No, sir.

24 Q. All right. Is that a concern?

25 A. It is a concern, but it is not something that we can

1 actively deal with because we're not trained in that
2 capacity, sir.

3 Q. That's something for the ER to deal with, correct?

4 A. Yes, sir.

5 Q. All right. Now did you document any injuries you saw
6 on Ms. Simon?

7 A. My partner did all the documentation. He took the
8 lead on this call --

9 Q. Okay. All right.

10 A. -- but we did notice quite a few wounds on the
11 patient.

12 Q. But you're not the one who documented where those
13 wounds were?

14 A. No, sir, I was not.

15 Q. Okay. Now while y'all were treating her at [REDACTED], was
16 anything found on or around her body that you were aware
17 of?

18 A. Referring to personal items or are you referring to
19 anything else?

20 Q. Anything.

21 A. Okay. While we were rolling the patient around,
22 lifting limbs to see where wounds were, my captain made a
23 comment that he saw something fall to the ground.

24 **MS. GILREATH:** Objection, Your Honor. It's hearsay.

25 **THE WITNESS:** Hearsay. Okay.

1 **THE COURT:** It is hearsay, but, once again, it's not
2 offered for truth of the matter, it's simply a statement
3 indicating why somebody else did the next thing, in other
4 words, to show the witness's response rather than the truth
5 of the matter, so I'll let it in. It's not hearsay. Go
6 ahead.

7 BY MR. McNAIR:

8 Q. Well --

9 A. When that statement was made, I did look down and I
10 did see a -- what you would call a spent round, a slug.
11 I don't know what you would --

12 Q. A projectile?

13 A. A projectile on the floor near the patient.

14 Q. And do you know where that projectile came from or
15 where it fell out of?

16 A. At the time we were lifting up the patient's left
17 breast and that's when it was noticed.

18 Q. Okay. And did -- and that projectile fell on the
19 floor?

20 A. Yes, sir.

21 Q. Was that projectile marked while you were there?

22 A. No, sir. As far as I know, it wasn't.

23 Q. Okay. Did you move it at all?

24 A. No, sir.

25 Q. Y'all just left it right there on the floor?

1 A. Where it fell, yes, sir.

2 Q. All right. That was right where the victim had been
3 laying?

4 A. Yes, sir.

5 Q. So I guess after leaving [REDACTED], did y'all transport
6 her to the ER?

7 A. Yes, sir.

8 Q. Where did you transport her to?

9 A. We transported her to Richland County -- I mean,
10 Richland Memorial Hospital.

11 Q. Were you riding in the back of the ambulance with
12 her?

13 A. Yes, sir.

14 Q. What was her emotional condition at that point?

15 A. She was still excited, still very scared, but we were
16 able to slowly calm her down to reassure her that we were
17 doing all we could and we'd be getting to the hospital very
18 soon. During that time even though she was upset she was
19 calming down enough that we could get a clearer picture of
20 what went on.

21 Q. All right. And after you transported her to the
22 hospital, did you have any other dealings with her?

23 A. After dropping her off at the hospital, no, sir.

24 **MR. McNAIR:** Okay. No further questions. Please
25 answer any questions the defense may have.

1 **THE COURT:** All right. Ms. Gilreath, cross-examine?

2 **MS. GILREATH:** Your Honor, we have no questions for
3 this witness.

4 **THE COURT:** Thank you. Mr. Hall, you can step down.
5 Thank you, sir. Can Mr. Hall be excused?

6 **MS. GILREATH:** We have no objection to that, Your
7 Honor.

8 **THE COURT:** Thank you. Without objection Mr. Hall is
9 excused.

10 (Witness excused.)

11 **MS. MAYES:** The State calls Chris Yarborough.

12 **THE COURT:** Mr. Yarborough, come forward, please, and
13 be sworn.

14 (Whereupon, Chris Yarborough was duly sworn by the
15 Clerk of Court.)

16 **THE CLERK:** Please be seated. State your full name
17 and spell your last name.

18 **THE WITNESS:** Good morning, Your Honor. Thank you.
19 My full name is Christopher Wayne Yarborough. The spelling
20 of my last name, Y-A-R-B-O-R-O-U-G-H.

21 CHRISTOPHER WAYNE YARBOROUGH,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. MAYES:

25 Q. All right. And, Officer Yarborough, tell us a little

1 bit about yourself. Where are you currently employed?

2 A. I'm currently employed at West Columbia Police
3 Department.

4 Q. And in what capacity?

5 A. I'm a police officer.

6 Q. And how long have you been with the West Columbia
7 Police Department?

8 A. Come July it will be ten years.

9 Q. All right. Can you tell us whether or not you had
10 the opportunity to respond to the scene of a shooting on
11 April 13, 2014, at Comanche Place Apartments?

12 A. I did. Yes, ma'am.

13 Q. All right. Tell us what you recall -- what you recall
14 about that event from the time you arrived and then what
15 your responsibilities were there at the scene.

16 A. I received a 9-1-1 call in reference to a shooting.
17 At the time I was training an individual, a police officer.
18 Upon arrival I remember a set of apartments at Comanche,
19 going inside and seeing a bunch of blood and a victim
20 laying on the -- on the ground. Caution tape, roping off
21 the crime scene, as well as maintaining the crime scene
22 log.

23 Q. All right. So let me take you back a little bit.

24 What was the actual apartment number that you responded to
25 where you were able to visually observe the victim, Larenda

1 Simon?

2 A. If I can look back and --

3 Q. Sure. Absolutely.

4 A. She was [REDACTED]. Apartment [REDACTED].

5 Q. All right. So first you go to Apartment [REDACTED] and
6 check on the victim; is that correct?

7 A. That is correct. Yes, ma'am.

8 Q. And can you tell us whether you arrived before EMS or
9 was EMS already there working on her?

10 A. I believe I was there before EMS, yes, ma'am.

11 Q. All right. And then do you recall EMS arriving and
12 tendering aid to her?

13 A. Yes, ma'am.

14 Q. All right. And ultimately departing the scene with
15 her?

16 A. That is correct.

17 Q. All right. I'm gonna show you some photographs and
18 ask you whether or not you recognize them. This would be
19 State's 6 and 8 already in evidence and then I'm gonna ask
20 you about State's Exhibit Number 5.

21 A. Yes, ma'am. I remember these.

22 Q. All right. I'm also gonna ask you to take a look at
23 State's Exhibit 5 and first I'm gonna ask you whether or
24 not you recognize what is depicted in that photograph?

25 A. I do recognize it. Yes, ma'am.

1 Q. All right. Can you tell us whether or not that's a
2 fair and accurate representation of the Apartment [REDACTED] as
3 you recall it after the victim had been transported away
4 by EMS?

5 A. Yes, ma'am, it's accurate.

6 **MS. MAYES:** Your Honor, this would be State's
7 Exhibit 5 for evidence as well.

8 **THE COURT:** Subject to prior objections?

9 **MR. CHEHOSKI:** Correct, Your Honor.

10 **THE COURT:** In evidence.

11 (State's Exhibit Number 5, a photograph, was admitted
12 into evidence.)

13 BY MS. MAYES:

14 Q. I'm gonna ask you specifically about that photograph.
15 What, if anything, do you recognize in that photograph that
16 you created yourself?

17 A. I do recognize a piece of notebook -- a small piece of
18 notebook paper with the number one written on it.

19 Q. All right. And so that's sort of a makeshift placard?

20 A. Correct.

21 Q. All right. And what were you noting there at that
22 location?

23 A. There was a round, a bullet, that was actually there
24 and to preserve evidence I just decided to mark it before
25 it went missing.

1 Q. Okay. So here we're gonna look at State's Exhibit 8
2 and shown here is the placard that you're referring to?

3 A. Yes, ma'am.

4 Q. And then, again, in State's Exhibit 5, can you tell us
5 -- in this a closer up view, tell us what we're looking at
6 here and then also here?

7 A. The white piece of paper is the makeshift placard
8 marking evidence.

9 Q. All right. And, again, that placard is noting what
10 you described as a round?

11 A. That is correct. Yes, ma'am.

12 Q. And what had actually been physically at that location
13 just prior to your placing the placard there?

14 A. That was -- that was the victim that was there.

15 Q. All right. So that had been the actual location where
16 the victim was laying?

17 A. That is correct. Yes, ma'am.

18 Q. Now after your contact with [REDACTED], what action did you
19 take next there at the apartment complex at Comanche Trail?

20 A. Roped off so to speak with caution crime scene tape.

21 Q. All right. And, again, how many officers if you had
22 to estimate were at this crime scene in the early morning
23 hours?

24 A. Initially that was probably four.

25 Q. All right. And why is it necessary to, as you note,

1 mark off a crime scene and secure that location?

2 A. Assuring the fact that nobody else came into the
3 crime scene that had no business being there that's not
4 in the capacity of law enforcement or medical.

5 Q. So that's routine procedure?

6 A. That is correct. Yes, ma'am.

7 Q. I'm gonna show you a photograph and ask you whether
8 or not you recognize it?

9 A. I do recognize it. Yes, ma'am.

10 Q. Is that a fair and accurate representation of the
11 exterior crime scene as you noted?

12 A. That is correct. Yes, ma'am.

13 Q. And the crime scene tape?

14 A. Yes, ma'am.

15 Q. And who actually put that crime scene tape up?

16 A. I did.

17 **MS. MAYES:** Your Honor, this would be State's
18 Exhibit 10 evidence and I believe there's no objection.

19 **MR. CHEHOSKI:** Subject to prior objections, Your
20 Honor.

21 **THE COURT:** Subject to prior objections, that will be
22 Number 10 in evidence.

23 (State's Exhibit Number 10, a photograph, was marked
24 and admitted into evidence.)

25 BY MS. MAYES:

1 Q. Okay. Now in a situation like this where a shooting
2 occurs in the early morning hours, can you tell us whether
3 or not the police presence remains on until daylight hours
4 in order to investigate?

5 A. Yes, ma'am.

6 Q. Can you tell us whether or not that was done in this
7 case?

8 A. It was. Yes, ma'am.

9 Q. So the photo that we're looking at is a daytime photo?

10 A. Yes, ma'am.

11 Q. Why is it that the crime scene tape remains up that
12 long?

13 A. Still ensuring that nobody other than law enforcement
14 or medical capacity entered the crime scene.

15 Q. All right. And who does have access to enter the
16 crime scene, collect evidence and things of that nature?

17 A. Police officers and responding investigators.

18 Q. Was there any indication, Officer Yarborough, at any
19 point throughout your maintaining of that crime scene that
20 the scene had been tampered with in any way?

21 A. No, ma'am.

22 Q. Was there any indication that anyone had accessed
23 evidence or disturbed evidence in any way?

24 A. No, ma'am.

25 Q. Were crime scene -- was a crime scene investigative

1 unit actually at the location?

2 A. Yes, ma'am.

3 Q. And who was that CSI officer?

4 A. There was more than one, I believe. I don't remember
5 exactly the responding initial investigating officer there.

6 Q. All right. There was an investigative unit there?

7 A. Correct.

8 **MS. MAYES:** Nothing further of this witness, Your
9 Honor.

10 **THE COURT:** Thank you. Mr. Chehoski, cross-examine?

11 **MR. CHEHOSKI:** No questions of this witness, Your
12 Honor.

13 **THE COURT:** Thank you. Mr. Yarborough, you can step
14 down. Thank you.

15 **THE WITNESS:** Thank you, Your Honor.

16 (Witness excused.)

17 **MR. McNAIR:** Your Honor, the State calls Chris
18 Bernard.

19 **THE COURT:** Mr. Bernard, come forward, please, and
20 be sworn.

21 (Whereupon, Christopher T. Bernard was duly sworn by
22 the Clerk of Court.)

23 **THE CLERK:** Please be seated. State your full name
24 and spell your last name.

25 **THE WITNESS:** My name is Christopher T. Bernard,

1 B-E-R-N-A-R-D.

2 CHRISTOPHER T. BERNARD,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. McNAIR:

6 Q. Mr. Bernard, where do you work?

7 A. Lexington EMS.

8 Q. What is your title there?

9 A. Crew chief. Sergeant.

10 Q. All right. Are you a paramedic?

11 A. Yes, sir.

12 Q. How long have you been a paramedic?

13 A. I've been a paramedic for thirty-two years.

14 Q. Do you have any other prior experience in the field?

15 A. Twenty-six years with an EMS department in New York.

16 Q. All right. Any military experience in addition to
17 that?

18 A. About twenty years of military experience. Most of
19 that as a medical technician.

20 Q. All right. Now on April 13, 2014, did you respond to
21 Park Place Apartments?

22 A. Yes, sir.

23 Q. All right. Were you on the truck with Mr. Hall that
24 night?

25 A. Mr. Hall was my partner, yes.

1 Q. All right. What unit did y'all respond to?

2 A. Unit 7. Oh, the unit? The house number? I'll have
3 to refer to my notes. [REDACTED].

4 Q. All right. Did you make contact with the victim
5 there, Ms. Simon?

6 A. Yes, sir.

7 Q. Was what was going on with Ms. Simon when you first
8 got there?

9 A. Ms. Simon was already being treated by my supervisor,
10 Captain Craig Davis. Captain Davis had already exposed
11 the victim, whom he told me had sustained gunshot wounds,
12 so I evaluated to make sure that the patient was breathing
13 and not bleeding profusely and made an initial assessment
14 and we were on-scene about ten minutes before we started
15 heading to the hospital.

16 Q. All right. Did you evaluate Ms. Simon's injuries?

17 A. I did. She had penetrating wounds to four parts of
18 the chest and upper extremities.

19 Q. All right. Did you document where those injuries
20 were generally?

21 A. The injuries were -- we had a penetrating wound to
22 the upper right chest, two to the left chest, one to mid
23 axillary, which would be on the side, upper left quadrant
24 abdominal, and two to the arm, one in the upper arm and
25 one to the hand, so a total of seven penetrating wounds.

1 Q. Okay. Now was she alert and conscious?

2 A. She was the whole time when I saw her and when we
3 left.

4 Q. Was she in pain?

5 A. Obviously in pain and, you know, upset and very
6 concerned with -- actually she told me she thought she was
7 going to die.

8 **MR. PHILLIPS:** Objection. I need to approach, Your
9 Honor.

10 **THE COURT:** He is laying the foundation. She was
11 upset and that's been consistent with the testimony
12 throughout.

13 **MR. McNAIR:** I'll lay more of a foundation, Your
14 Honor. And Chris Hall already testified to her mental
15 state as well.

16 **THE COURT:** That's right. As a matter of fact,
17 everybody who's observed her has testified as to that. I
18 will let it in under 803.2.

19 BY MR. McNAIR:

20 Q. All right. When you first see Ms. Simon, she has --
21 she had seven gunshot wounds, correct?

22 A. Later we found out that it was gunshot wounds. I
23 don't know initially -- they were definitely penetration
24 wounds. It could be from a knife or a gunshot, but, yes,
25 penetration.

1 Q. Was she actively bleeding?

2 A. Actively bleeding minimally. There was not a lot of
3 blood on the ground, which indicates that there's possibly
4 internal bleeding.

5 Q. Is that a concern of yours?

6 A. Absolutely. That's a life-threatening concern.

7 Q. Is that something you can treat at the scene?

8 A. I can start treatment, but that requires emergency
9 surgery at the hospital.

10 Q. Okay. Now when you -- you spoke with Ms. Simon, you
11 testified she was in fear that she may die; is that
12 correct?

13 A. Yes, sir. She indicated that she thought she would
14 die and she asked me to say good-bye to her children.

15 Q. All right. Now did you ask her at the scene anything
16 about what had happened?

17 A. It's -- during the course of an initial investigation
18 or medical investigation, I have to find out the mechanism
19 of injury, so I'll ask the patient what happened.

20 Q. Is that important for you to know what happened in
21 order to know how to treat her and diagnose her injuries?

22 A. It's important to know the mechanism of injury
23 because each mechanism has different treatment modalities.
24 Penetrating injuries with suspected internal injuries
25 require emergency surgery, but rapid infusion of fluid.

1 If somebody is hit with a bludgeon or a club, you know,
2 there may be damage to internal organs, usually solid
3 organs like the liver or the lungs.

4 Q. All right. And during this whole time you're talking
5 to her, does she still appear to be terrified?

6 A. The whole time that we were with her she appeared to
7 be terrified and we tried -- my partner, Chris Hall, and
8 I tried to calm her saying she wasn't gonna die with us,
9 you know.

10 Q. But she feared impending death, correct?

11 A. She did.

12 Q. All right. And did she appear this whole time to
13 still be under the stress of whatever just happened?

14 A. Yes, she appeared to be under stress.

15 Q. Did she ever make any comment to you about what had
16 happened?

17 A. She told me --

18 **MR. PHILLIPS:** Subject to our prior objections, Your
19 Honor.

20 **THE COURT:** I understand. I think this comes under
21 -- I think this is a follow-up on the question about
22 the mechanism of the injury. Is that it essentially,
23 Mr. Bernard? Is that what you were getting at or is that
24 what --

25 **THE WITNESS:** Yes, Your Honor.

1 **THE COURT:** If that's the question, then the answer
2 is allowable under 803.4.

3 **MR. PHILLIPS:** May we approach, Your Honor?

4 **THE COURT:** Sure.

5 (Proceedings held at the bench; not reported.)

6 **THE COURT:** You can go ahead and answer the question,
7 Mr. Bernard.

8 BY MR. McNAIR:

9 Q. During the time you were with her as you testified
10 while she was terrified, did she ever make any comments
11 about who had done this or provide any description of that
12 person?

13 A. Yes, sir. I asked how did this happen and she said --

14 **MR. PHILLIPS:** Subject to prior objection.

15 **THE COURT:** Certainly. Go ahead.

16 A. She said that a little guy had tried to rape her and
17 that then gunshots started happening and she started -- and
18 was shot.

19 Q. Okay. Did you ultimately transport Ms. Simon to the
20 hospital?

21 A. Yes, sir. We went to Richland for the trauma center.

22 Q. All right. Did you have any further dealings with her
23 after that?

24 A. No. No, sir.

25 **MR. McNAIR:** No further questions. Please answer any

1 questions Mr. Phillips has.

2 **THE COURT:** Mr. Phillips, you may cross-examine.

3 **MR. PHILLIPS:** Thank you, Your Honor.

4 **THE COURT:** Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. PHILLIPS:

7 Q. Good morning.

8 A. Good morning.

9 Q. Could you go over your training again?

10 A. I've been a paramedic since 1985 after years as
11 an emergency medical technician, also training in the
12 military from 1994, and I just changed to a safety
13 position two years ago.

14 Q. And you have to write reports on a daily basis?

15 A. Yes, sir.

16 Q. And you were trained to write reports?

17 A. That is part of the training, yes.

18 Q. When they train you to write reports, they tell you
19 to do it as detailed as possible?

20 A. Yes.

21 Q. How many reports do you think you've written since
22 this happened?

23 A. I would just be estimating. Maybe four hundred.

24 Q. Maybe even more? A thousand?

25 A. Yes, a lot of reports. Actually it could be a

1 thousand.

2 Q. And you're trained to write those reports because
3 when you have a thousand more reports three years later
4 your memory might not be as good as it was three years
5 ago; is that right? Is that fair to say?

6 A. It could suffer, but I have a pretty good memory.

7 Q. But you wrote a report in this case?

8 A. I did. Yes, sir.

9 Q. And you did not include her identifying description
10 of the man?

11 A. Not in my report.

12 Q. Did you tell -- when did you meet with the solicitor's
13 office?

14 A. I believe the initial meeting was about three weeks
15 ago. I don't remember the exact date.

16 Q. Okay. How many times have you met with them since
17 three weeks ago?

18 A. Just one time prior to today.

19 Q. Okay. And you went over statements made during that?

20 A. I did go over the statements that were made, yes.

21 Q. All right. And did you tell them little and unknown
22 small man as the description?

23 A. I did use the word little because I remembered --

24 Q. I'm sorry. Let me rephrase it. Did you say unknown
25 small guy? That was my fault. Did you tell them it was

1 an unknown small guy, quote unquote?

2 A. I don't think -- I'm not sure if that was the exact
3 phraseology I used, but I definitely am sure that I said
4 little because that's what I remember the victim saying.

5 Q. Okay. So if the solicitor's office said three years
6 later something that's not in your report and your quote
7 to them was unknown small guy, that wouldn't be -- it
8 would be a little different than that?

9 A. I was asked if I remembered anything and I did recall
10 with a hundred percent remembrance of this. This is a
11 special case. It's not every day that I have a multiple
12 gunshot victim, so I paid a lot of attention and luckily I
13 was able to remember everything.

14 Q. And you didn't include that in your report --

15 A. No, sir.

16 Q. -- something that --

17 A. No, sir. I'm a paramedic and I believe that type
18 of information is important, but more for, you know,
19 investigation. I try to keep my reports germane to medical
20 assessments.

21 Q. In your training, do they address the fact when people
22 make those statements they be included in the reports for
23 law enforcement?

24 A. The judgment is up to me what information that I
25 feel is important to include and I try to keep the

1 information I include in my report germane to medical
2 treatment and not to assist or -- in an investigation,
3 a police investigation. I know that if I'm asked and I
4 can recall with, you know, a certainty, that I can say so.

5 Q. And the quote I had was unknown small guy. Did you
6 tell the solicitor's office that --

7 **MR. McNAIR:** Asked and answered, Your Honor.

8 **THE COURT:** Well, wait a minute. I haven't heard the
9 question yet.

10 BY MR. PHILLIPS:

11 Q. -- that she also told you he tried to rape her?

12 A. The victim told me that the person that did this tried
13 to rape her.

14 Q. Right. When you met with the solicitor's office, did
15 you include the phrase "tried to rape her"?

16 A. I believe I did, sir.

17 Q. All right. And if that was the case, they wouldn't
18 have taken notes of it?

19 A. I can't --

20 **MR. McNAIR:** Objection.

21 **THE COURT:** I sustain the objection as to what the
22 solicitor's office may have done, yes, sir. Thank you.

23 BY MR. PHILLIPS:

24 Q. So to be fair, the first time you remember at least
25 to put it down in writing to either law enforcement or the

1 solicitor's office -- sorry to kind of belabor the point --
2 was three years later at the solicitor's office that the
3 description was an un -- or a little guy who tried to rape
4 her? That phrase, the first time it was given to any law
5 enforcement or prosecutor, was three weeks ago three years
6 after it happened?

7 A. That's correct. I did not indicate that phrase in my
8 medical report.

9 **MR. PHILLIPS:** Thank you, Your Honor. No further
10 questions.

11 **THE COURT:** Mr. McNair, redirect?

12 REDIRECT EXAMINATION

13 BY MR. McNAIR:

14 Q. Mr. Bernard, when you're dealing with a patient
15 with multiple gunshot wounds, is your primary concern
16 documenting what that witness may say -- that person may
17 say?

18 A. It is a concern, but I wouldn't say it's a primary
19 concern. My primary concern is to save life and limb
20 and I have quite a bit of experience recognizing when
21 someone is heading towards danger, danger of losing their
22 life. In this case, I was very concerned and I remember
23 listening to the victim's lung fields multiple times
24 because in short order they can develop a pneumothorax or
25 a hemothorax and they can die from lack of oxygen. So

1 that's -- my primary is life and limb. Documentation is
2 pretty much secondary.

3 Q. I got you. And after you transported Ms. Simon to
4 the hospital, did you ever have the opportunity to meet
5 with law enforcement after that?

6 A. I was available to answer questions if need be. I
7 don't believe I was --

8 Q. But you were never asked about this case until we met
9 with you three weeks ago, correct?

10 A. No, sir. That's correct.

11 Q. And is there a reason that this case stands out in
12 your mind maybe more than others?

13 A. Yes, there is a reason. It's not a common occurrence
14 to have a multiple gunshot victim and I tend to remember
15 calls that I would assume would -- would end up in court,
16 you know, so I pay much more attention, kind of burn them
17 in my memory a little bit more. I've taken care of
18 thousands of people in my career and luckily I'm able to
19 remember a lot of them because I care about them.

20 Q. So out of the thousands of calls you've responded to,
21 this one stood out to you?

22 A. It was in the top 10 percent of the calls that I knew
23 were important and I know when I save lives and deliver
24 babies, things like that, so those ones stick out.

25 **MR. McNAIR:** Thank you, sir.

1 **THE COURT:** Any follow-up on that point?

2 **MR. PHILLIPS:** Yes, Your Honor.

3 RE CROSS EXAMINATION

4 BY MR. PHILLIPS:

5 Q. So it was burned in your memory?

6 A. It was, yes.

7 Q. And it was very important. It was a description of
8 a suspect that was given to you?

9 **THE COURT:** That's beyond the scope of his
10 examination. The description was not mentioned in the
11 redirect.

12 **THE WITNESS:** I don't remember --

13 **MR. McNAIR:** Objection.

14 **THE COURT:** I'll sustain it. It's beyond the scope
15 of redirect.

16 BY MR. PHILLIPS:

17 Q. But as you said, it was burned in your memory. You
18 never went to law enforcement to tell them that
19 description?

20 A. Law enforcement is investigating and I indicate on
21 my EMS run sheet that law enforcement was interviewing the
22 -- the victim prior to me arriving and they knew exactly
23 what unit I was working and where I was and I remained
24 available to answer questions had they needed any
25 clarification under their own investigation. I didn't

1 speak to any detectives or any officers after that call.

2 Q. Until three weeks ago with the solicitor's office?

3 A. That's correct.

4 **MR. PHILLIPS:** Thank you.

5 **THE COURT:** Mr. McNair?

6 **MR. McNAIR:** Nothing further, Your Honor.

7 **THE COURT:** Thank you, Officer Bernard. You can step
8 down.

9 (Witness excused.)

10 **MS. MAYES:** Your Honor, may we approach?

11 **THE COURT:** Yes.

12 (Proceedings held at the bench; not reported.)

13 **THE COURT:** I can tell you what we were whispering
14 about then. We were planning your immediate future. The
15 next witness is gonna be -- will take some time and we have
16 to get prepared for that and so rather than send you out
17 for a late morning break and get you back in, I think the
18 best use of your time and ours is to let you take an early
19 lunch right this minute and we can do those -- we can do
20 those things during your lunch hour. We'll have to take
21 some lunch hour beyond that, too. I'm gonna ask you to be
22 back in the jury room at 1:30. That's a little bit longer
23 than I normally give you, but that's to give us time to do
24 the things that we need to do and some of us might have to
25 eat as well. But if you will leave those notepads and be

1 back at the jury room at 1:30 we'll continue the trial at
2 that time. Thanks. Don't discuss this case with anybody
3 or among yourselves. Remember that.

4 (Whereupon, the jury was excused for lunch at
5 12:00 PM.)

6 **THE COURT:** Folks, a couple of things. First of all,
7 while we're -- while the jury is out during opening
8 statements Mr. McNair made reference to telephone records
9 and to photographs that were gleaned as a result of those
10 records. He referred specifically to a photograph of the
11 Defendant in possession of what appeared to be a Glock
12 pistol and was going on further to talk about photographs.
13 At that point in time Mr. Phillips objected and I made a
14 notation to -- to deal with this out of the presence of
15 the jury. At a sidebar I indicated that there had been a
16 reference at some point in time -- as I understood it,
17 someone had indicated that there was going to be testimony
18 of a -- of a witness who was gonna testify about his
19 possession of a gun. I, therefore, thought that would be
20 cumulative in any event.

21 And the matter of the phone records, of course, is
22 still an evidentiary issue that has not been completely
23 resolved. But in any event, I overruled the objection and,
24 Mr. Phillips, I'll be glad for you to expand on that record
25 if you'd like.

1 **MR. PHILLIPS:** Yes, Your Honor. First, we'd make a
2 motion for a mistrial based on the fact that we knew that
3 this evidence was being challenged and it was presented
4 during opening statement. At that point it had not been
5 ruled on in its admissibility. We were arguing on multiple
6 reasons. One would be relevance, Rule 401.

7 **THE COURT:** Right.

8 **MR. PHILLIPS:** Rule 403, that it was -- the probative
9 value of those pictures because they weren't related in
10 date or time would be substantially -- the probative value
11 would be substantially outweighed by its prejudicial
12 effect. It would also mislead and confuse the issues to
13 the jury by showing them pictures of guns from a prior
14 date and they said it's from a SD card from another phone.
15 So relevance under 401, prejudice and confusion of the
16 issues and misleading the jury under 403.

17 Also with the motion for a mistrial that those
18 statements in the opening when we hadn't addressed it
19 denied his right to a fair trial under the Fifth and
20 Fourteenth amendments to the United States Constitution
21 and Article 1, Sections 3 and 14 of the South Carolina
22 Constitution.

23 With that being said, Your Honor -- and part of that,
24 Your Honor, what -- the argument will be presented later
25 when Your Honor said we would take up the issue that those

1 photographs were generated from a report that we argue is
2 also considered hearsay and would not be admissible based
3 on that ground as well. With that effect, knowing error
4 preservation with the motion for a mistrial Your Honor
5 would have to either give a curative or not and if Your
6 Honor does wish to give a curative we have to object to it
7 and if Your Honor does give the curative, then we can't not
8 allow you to give curative, we have to continue to object
9 to it. In other words, you can't un-ring the bell.

10 **THE COURT:** Right. And I'm not sure at this juncture,
11 of course, depending upon a subsequent ruling as to whether
12 a curative instruction is going to be necessary, but I
13 note that those are things that we'll have to take up if
14 the need should arise. I do not find that the mention of
15 the Defendant being in possession of a weapon at whatever
16 time it was has so irretrievably tainted these proceedings
17 as to deny Mr. Hunter's right to a fair and impartial
18 trial, so the motion for mistrial is respectfully denied.

19 I think I -- I made another notation here to deal
20 with the issue of the easel, but then after that was done
21 then Mr. Chehoski and I have had discussion on the record
22 about the easel, so I don't think I need to do anything
23 further in that regard. And the only other thing that's
24 been fleshed out as well was the -- Mr. Bernard's reference
25 to the statement made by the victim at the time, an unknown

1 little guy tried to rape me, the late disclosure of that,
2 of course, he's testified and he's been cross-examined on
3 that particular point. I find that there was obviously
4 no intentional hiding of that or concealing of that
5 statement. As soon as the State knew about it or
6 immediately thereafter, they related that. The fact that
7 there was an unknown little guy, of course, does not point
8 so directly to the Defendant to the exclusion of whole lot
9 of other folks as to, once again, taint his right to a
10 fair and impartial trial.

11 Now before Ms. Simon takes the stand, which she's to
12 do after lunch, there are some issues of photographs and
13 I had -- I had asked y'all to -- to go over and have those
14 marked -- the ones that you can agree, to have them marked
15 for evidence, the ones that you cannot agree to but the
16 State insists on offering, put those for identification,
17 and then let me just deal with those issues that are in
18 dispute; that is the proposed evidence marked for
19 identification only. That will save a whole lot of time
20 and certainly a whole lot of time before this jury as well.

21 So what I propose is we stop now and give you a chance
22 to do all that and then get back at 1:00 to go over those
23 issues. Can we do that?

24 **MS. MAYES:** Yes, sir, Your Honor.

25 **MR. PHILLIPS:** Yes, Your Honor. We can absolutely

1 go through the photographs. And to make sure the record
2 is clear, our objection was also under Bernard the hearsay
3 objection that, you know, it wasn't proper -- as a hearsay
4 objection, it wasn't properly -- the foundation wasn't
5 properly laid. And then as to the ruling of the Court, he
6 testified that he had provided the information three weeks
7 earlier. We did receive that in an e-mail at 4:44, I
8 believe, this past Friday on the eve of court.

9 **THE COURT:** Right. That's right. He provided it to
10 -- I guess to police officers?

11 **MR. PHILLIPS:** To the prosecutor's office.

12 **THE COURT:** Okay. All right. I understand that.

13 Now as to the hearsay objection, she had seven wounds
14 and she thought she was gonna die, I think that satisfies
15 the excited utterance, okay?

16 **MR. PHILLIPS:** Thank you, Your Honor.

17 **MR. McNAIR:** Judge, may I clarify one thing?

18 **THE COURT:** Yes, sir.

19 **MR. McNAIR:** The photo of the Glock that he is
20 referencing came pursuant to the first extraction of the
21 Defendant's phone back in 2014. At that time they couldn't
22 get to the whole phone because of the pass code. It came
23 from the SD card on the phone.

24 **THE COURT:** Right.

25 **MR. McNAIR:** So that photo has been in existence since

1 2014. It's not a product of the most recent extraction
2 where the investigator had new software to actually crack
3 the pass code.

4 **THE COURT:** Okay.

5 All right, folks. Let's stand in recess until 1:00.
6 We'll resume at 1:00 and deal with these evidentiary
7 issues. The jury will be back at 1:30, okay? Thank you.

8 (Whereupon, a luncheon recess taken.)

9 (State's Exhibit Numbers 11 through 58 were marked for
10 identification.)

11 **BAILIFF:** All rise.

12 **THE COURT:** Good afternoon, folks. As a matter of
13 information, I have been able to complete the review of
14 the forensic -- or the investigative interview, excuse me,
15 during the lunch hour, so that's the reason it took me a
16 little longer to get back out here than I had planned.

17 I understand that the number of objections have been
18 narrowed down somewhat to the photographs and I'll be glad
19 if someone will hand up the ones that are objectionable
20 and we can deal with those right now before the jury comes
21 in.

22 **MS. MAYES:** Yes, sir, Your Honor. The State would
23 be offering four photographs from the victim's treatment
24 at the Palmetto Health Richland Emergency Room. There
25 are four photographs that we are offering. They object

1 to all four. They have been redacted in terms of nudity.

2 **THE COURT:** All right.

3 **MS. MAYES:** And the photos are necessary and
4 probative because they corroborate the victim's injuries.
5 They would also, Your Honor, be necessary to corroborate
6 the testimony not only of the EMS workers who have
7 previously testified, but also the anticipated testimony
8 of a triage nurse there at the trauma unit. There is
9 certainly case law in support of photographs that may be
10 graphic in nature, although the State contends these aren't
11 nearly as graphic as many that we often see, but they're
12 necessary to show the extent and number of injuries that
13 the victim had sustained and this is an attempted murder
14 case.

15 **THE COURT:** All right. Mr. Phillips.

16 **MR. PHILLIPS:** Thank you, Your Honor. Just -- I know
17 some judges don't want attorneys who are not questioning
18 witnesses to make the arguments, but I'll be glad to make
19 the argument.

20 **THE COURT:** I'll listen to anybody's argument.

21 **MR. PHILLIPS:** I appreciate that.

22 **THE COURT:** But just one. All right. Go ahead.

23 **MR. PHILLIPS:** So we would object to those photographs
24 under Rule 403 that the probative value is substantially
25 outweighed by the prejudicial effect and specifically that

1 those photographs are cumulative to the testimony that's
2 been provided. I know Your Honor's always looking at that
3 cumulative nature. We argue that in this case the
4 cumulative nature enhances the prejudice of the Rule 403.
5 Obviously the State's contention is that they need to be
6 able to prove that she was shot multiple times. We heard
7 from EMS Bernard very, very detailed as to each individual
8 gunshot. They've walked through their -- the State has
9 walked through that timeline of her injuries with both EMS
10 persons that were with on the scene.

11 **THE COURT:** Right.

12 **MR. PHILLIPS:** They seek to admit photographs of the
13 crime scene where there's blood everywhere. She will
14 testify specifically as to being shot. I mean, there was
15 testimony from EMS Bernard that she thought she was gonna
16 die and that it was clear and obvious as Your Honor ruled
17 that at this point to admit those photographs, specifically
18 with the redacted black squares where her breasts are
19 exposed, even -- I think the redactions also -- just
20 overall, Your Honor, as a whole you have a photograph of
21 her laying obviously with the bullet wounds and she's
22 exposed. Based on that and Rule 403, it's just cumulative
23 to the testimony and based on that the probative value is
24 substantially outweighed by the prejudicial effect that
25 they would have. It's purely to make the jury to have an

1 emotional reaction and not to actually further prove the
2 element of the crime charged and for that reason we would
3 ask that they be excluded.

4 **THE COURT:** All right. Thank you.

5 (Pause in proceedings.)

6 **THE COURT:** I apologize for this delay. I was hoping
7 I could find in my notebook here the case law that I was
8 looking for, but I can't. Specifically, the case law that
9 I was looking for has to do with one of the elements of
10 the crime in this particular case. Granted there has been
11 testimony about the location of the wounds by one of the
12 officers, the description at least of the locations. He
13 said he could not -- he could just tell that they were
14 penetrating wounds, he couldn't tell anything else about
15 them. The testimony of several witnesses will be
16 corroborated by these photographs. I note that they have
17 been cleaned up as you said in so far as the nudity has
18 been done, and that's just out of respect for common
19 decency for the victim in this particular case.

20 One of the elements of the crime of attempted murder,
21 of course, is the existence of malice. The photographs do
22 in my view have relevance in regard to that particular --
23 to that particular element. I think they depict and have
24 probative value on that more than the sterile testimony
25 would have or even the emotional testimony of the victim

1 in this particular case. I find that each of these
2 photographs depicts a different area -- a different area
3 of the wounds which shows, of course, the repeated nature
4 of the firing and certainly all of that is an element --
5 or, excuse me, is evidence of the element -- of the
6 element of malice. For that reason and the reasons of
7 corroboration that Ms. Mayes has already talked about,
8 I'll overrule the objection and allow these exhibits,
9 which are unnumbered as yet, to come into evidence over
10 objection of defense counsel.

11 All right. Now what other -- what other objectionable
12 ones do we have?

13 **MS. MAYES:** Your Honor, there is a diagram of the
14 inside of the apartment that is currently marked as
15 State's Exhibit 53.

16 **MR. PHILLIPS:** And that is subject to our pre-trial
17 motion. We received that in an e-mail Sunday night --

18 **THE COURT:** Right.

19 **MR. PHILLIPS:** -- and we made the motion on several
20 grounds as to the admissibility. We'd renew that motion
21 as to the photograph.

22 **THE COURT:** Okay. All right. I understand that the
23 diagram itself indicates the statement that it's not to
24 scale; is that right?

25 **MS. MAYES:** It does, Your Honor, and if we could use

1 this for demonstrative purposes only by having the victim
2 and potentially other witnesses use it for demonstrative
3 purposes without actually offering it as an exhibit in
4 evidence.

5 **THE COURT:** And for demonstrative purposes is -- of
6 course, the purpose obviously is to enable the jury to
7 better understand the scene, the scene of the crime, and
8 the testimony that has already been offered. As a
9 demonstrative exhibit, it will be marked for either
10 identification only or a Court's exhibit, it will not go
11 to the jury. And certainly it does in my view assist the
12 jury in their understanding of the dynamics of what was
13 going on that night. The photographs, of course, show
14 -- each individual photograph shows in an isolated area
15 what the photograph depicts, but in order to understand
16 everything that was going on, perhaps the closet where the
17 statement was that the daughter was put, the location of
18 the bedroom, the door that -- that the perpetrator was
19 pushed out of and things of that nature, all of those are
20 better understood in the context of an exhibit of this
21 nature which takes in the whole scenario. I will allow it
22 to be used as a demonstrative exhibit only over objection
23 of defense counsel.

24 Okay. What else do we have?

25 **MS. MAYES:** Your Honor, there was a commentary in

1 opening argument by defense counsel that the victim is a
2 Sister Care or was in the past a Sister Care client, which
3 was alluding to third-party guilt, that this could be
4 someone perhaps from her past that has committed the
5 crime. The State would move to exclude that because
6 there has not been and there is not a sufficient basis
7 under third-party guilt case law to pursue that. The
8 victim was in an abusive relationship previously. As a
9 result, Sister Care put her in this particular location,
10 which is also confidential. My understanding is that
11 they don't -- it is not common knowledge this apartment
12 complex was a Sister Care placement, not only for her
13 sake, but for the sake of other women who have been placed
14 there. But with that aside, all we really know about it
15 is that she knew that person, he is the father of MINOR ,
16 and she would certainly recognize his voice and his
17 physical statute as opposed to this intruder whom she
18 always has maintained is unknown.

19 **THE COURT:** How far do you intend to go with the
20 Sister Care issue, whoever, Mr. Phillips? Mr. Chehoski?

21 **MR. CHEHOSKI:** Your Honor, at this point I don't
22 think I have any intention to -- to delve into any mention
23 of Sister Care.

24 **THE COURT:** Okay.

25 **MR. CHEHOSKI:** I think there was --

1 **MR. PHILLIPS:** And the basis for it, Your Honor, is
2 in the Dickerson Center interview there is the note that
3 she is receiving services from Sister Care and she's not
4 having any contact with the boyfriend because of that.

5 **THE COURT:** Right.

6 **MR. PHILLIPS:** So it's that State document that we
7 are basing that on and to my knowledge Mr. Chehoski does
8 not intend to ask any questions of Ms. Simon regarding
9 Sister Care.

10 **THE COURT:** And, of course, the issue is whether the
11 reference to her placement with Sister Care is gonna be
12 used as an argument to suggest that somebody else did
13 this. Of course, as we know, third-party guilt cases are
14 pretty consistent in that the testimony of third-party
15 guilt must do more than just raise a mere suspicion of
16 someone else other than the defendant himself or herself
17 and, furthermore, must be inconsistent with the guilt of
18 the accused. So I will deal with the testimony if it
19 seems to be going down that road in the face of the
20 well-established third-party guilt law that we're all
21 aware of and trust that won't become an issue, but I'll be
22 mindful if it does and I'm sure somebody will let me know
23 if it does as well.

24 **MR. PHILLIPS:** Yes, Your Honor. And the statement
25 was made in regards to attacking the thoroughness of the

1 police investigation, kind of as a corresponding issue.
2 Let's say a Kyles v. Whitley.

3 **THE COURT:** Once again, it's sort of a side door
4 third-party guilt really, so.

5 All right. Ms. Mayes, what else?

6 **MS. MAYES:** Yes, sir, Your Honor. In terms of
7 scheduling, I know that Your Honor mentioned you had
8 viewed the forensic interview. We have the investigative
9 interviewer here. She'll be here this afternoon if there
10 is time to take up at least an in-camera presentation of
11 her qualifications, which I believe we'd have to do under
12 the statute.

13 **THE COURT:** Right.

14 **MS. MAYES:** And then we also have Detective Mike
15 Phipps available. I believe he is here this afternoon
16 and available. He is the investigator that did the cell
17 phone extraction in case that needs to be dealt with once
18 and for all because it does seem to be a reappearing issue.

19 **THE COURT:** And who is the investigative interviewer?

20 **MS. MAYES:** Laurie Caldwell.

21 **THE COURT:** Is she the lady on the screen?

22 **MS. MAYES:** Yes, sir, Your Honor.

23 **THE COURT:** All right. Let's see after we deal with
24 what we have how much time we've got left. If we can work
25 something in this afternoon, certainly I'll try to do that.

1 **MS. MAYES:** All right. That would be good.

2 **THE COURT:** Okay. Is everybody now ready for the
3 jury?

4 **MS. MAYES:** Yes, sir, Your Honor. We're gonna go
5 ahead and mark as 59 through 62 the additional emergency
6 room photos.

7 **MS. GILREATH:** Judge, may I make a quick request?

8 **THE COURT:** 59 through 63?

9 **MS. MAYES:** 62.

10 **THE COURT:** Yes, ma'am.

11 **MS. GILREATH:** You had -- she mentioned having
12 Mr. Phipps here to deal with the phone records?

13 **THE COURT:** Right.

14 **MS. GILREATH:** It was our impression from what was
15 said earlier that this would be dealt with on a later date
16 and we just sent our expert away just in the interest of
17 the State not having to pay him just to be sitting here.
18 Nothing that's being testified to is relevant to our use
19 of him, so we're just wanting to make sure if we need to
20 have him come back or if we don't believe we will get to
21 that, then we won't have him come back.

22 **THE COURT:** Okay. Will Mr. Phipps be available
23 tomorrow?

24 **MS. MAYES:** He will, Your Honor. He'll be available
25 whenever he's needed.

1 **THE COURT:** Okay. And did I -- Ms. Gilreath, did I
2 understand you to say that your investigator would not be
3 here today or you could get him if you wanted him? You
4 tell me because I wasn't sure about that.

5 **MS. GILREATH:** I can have him come back. He was here
6 earlier and from what was talked about earlier we were
7 under the impression it was gonna be done on a later day.

8 **THE COURT:** Right. And I thought that -- that was
9 sort of my plan. I just didn't know when we would have
10 time for it, but if he's gone and if Mr. Phipps will be
11 ready tomorrow, unless we have some time to kill this
12 afternoon that we can work that in and your person's
13 available, we can get him back, but other than that let's
14 tender to plan on doing the telephone stuff tomorrow
15 sometime, okay?

16 **MS. GILREATH:** Okay. Thank you, Your Honor.

17 **THE COURT:** All right. We will try to do Ms. Caldwell
18 today though.

19 All right. Is the defense ready for the jury as well?

20 **MR. PHILLIPS:** Yes, Your Honor.

21 (State's Exhibit Number 59 through 62 were marked for
22 identification.)

23 (Whereupon, the jury returns to the courtroom at
24 1:41 PM.)

25 **THE COURT:** Good afternoon, folks, and thank you for

1 your prompt return. We will continue with the presentation
2 of evidence and testimony in this case as the State
3 continues to offer evidence in support of the charges that
4 its brought.

5 Ms. Mayes.

6 **MS. MAYES:** The State calls Larenda Simon.

7 **THE COURT:** Ms. Simon, come forward, please, ma'am,
8 and be sworn.

9 (Whereupon, Larenda Simon was duly sworn by the Clerk
10 of Court.)

11 **THE CLERK:** Please be seated. State your full name
12 and spell your last name.

13 **THE WITNESS:** My name is Larenda Simon. Simon,
14 S-I-M-O-N.

15 LARENDA SIMON,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. MAYES:

19 Q. And, Ms. Simon, I'm gonna start by asking how old are
20 you?

21 A. I'm thirty-one.

22 Q. Okay. And where were you living in 2014?

23 A. Park Place Apartments. [REDACTED] Comanche Trail,
24 Apartment [REDACTED].

25 Q. And who did you live at that apartment with?

1 A. Me and my daughter.

2 Q. And what's your daughter's name?

3 A. MINOR .

4 Q. What is MINOR 's date of birth?

5 A. -07.

6 Q. So how old is MINOR today?

7 A. She's nine.

8 Q. All right. Now I want to start by asking you a
9 little bit about yourself. I'm not gonna ask you any
10 information about where you currently live, but you were
11 living in Park Place Apartments back in 2014?

12 A. Yes, I was.

13 Q. And I'm gonna take you specifically to the week of
14 April, 2014. Tell us a little bit about what your plans
15 were in terms of work and school and things of that nature.

16 A. Well, it was the beginning of MINOR 's spring break
17 week. Well, it was that weekend and following -- that
18 week following she would have been on spring break. I
19 just gained employment to -- at the local hospital. I was
20 supposed to start that employment that Monday morning, so
21 -- but during the weekend we was just gonna hang out and
22 be home.

23 Q. All right. Now is MINOR your only child?

24 A. Yes.

25 Q. Did anyone else live with you at Park Place Apartments

1 other than MINOR ?

2 A. No.

3 Q. Approximately how long had you been living there at
4 Park Place Apartments?

5 A. During that time probably like two years.

6 Q. Okay. Back in April of 2014, how old was MINOR ?

7 A. Six.

8 Q. I want to take you to a specific weekend. Looking
9 here at a calendar for 2014 --

10 A. Uh-huh.

11 Q. -- I'm gonna take you specifically to this weekend
12 that would begin on Friday, the 11th, Saturday, the 12th,
13 and Sunday, the 13th.

14 A. Uh-huh.

15 Q. Do you recall that weekend?

16 A. Yes.

17 Q. And you mentioned that you were to start employment
18 at the hospital. What day were you to begin work?

19 A. April 14th.

20 Q. So this Monday, April 14th?

21 A. Yeah, I would have started my orientation.

22 Q. Now as for Saturday, April 12th, where were you and
23 Brianna that day?

24 A. We were home.

25 Q. Okay. Tell us a little bit about the day and some of

1 the things that you recall y'all doing and what's just a
2 ordinary day.

3 A. Well, ordinarily MINOR would want to go outside,
4 so my apartment had a sliding door and I would leave the
5 sliding door open and she would just be right there in the
6 grass area playing with her ball or she had skates and
7 different stuff like that, so she'd be playing in the
8 grass area and I'd just be on the couch on my phone.

9 Q. All right. And as to this particular Saturday,
10 April 12th, do you know whether or not MINOR went
11 outside and played that day?

12 A. She did.

13 Q. And you just mentioned the patio area by the sliding
14 glass door?

15 A. Right.

16 Q. Can you tell us whether or not that's the area that
17 she used to go outside?

18 A. Yeah, that's the area.

19 Q. Do you know whether or not the door was locked after
20 she came back in?

21 A. Normally I would lock it. That particular night I
22 had got a phone call from a friend, a home girl, and so I
23 was on the phone. So when MINOR came in she normally
24 don't lock it because all she can do is slide it, I
25 normally lock it behind her. When she came in, I'm

1 assuming she'd slide it. It slipped my mind to lock the
2 actual door because I was on the phone, so the door wasn't
3 locked.

4 Q. All right. What else did y'all do that night leading
5 up into the early morning hours, which would be Saturday
6 night on the 12th on into Sunday morning, the 13th.

7 A. Well, usually to get MINOR to go to sleep, I
8 usually have to lay down with her for like ten minutes
9 until she falls asleep, so we -- about 9:00 we went to
10 bed. I usually listen to music until she falls asleep.
11 I put my headphones on and we both just laid in the bed --

12 Q. All right.

13 A. -- but I dozed off along with her.

14 Q. Now when you talk about this particular apartment,
15 how many bedrooms did it have?

16 A. It was two bedrooms, but I was falling on financial
17 hardships, so I only had one bed in my house.

18 Q. All right. And who normally slept in that bed?

19 A. The both of us.

20 Q. You and MINOR ?

21 A. Right.

22 Q. Was that the case on the night of April 12th?

23 A. Right. Yes.

24 Q. You mentioned that you recall falling asleep on the
25 bed, MINOR beside you.

1 A. Right. Yes.

2 Q. What's the next thing you remember that night?

3 A. I don't know exactly what woke me up. I was laying
4 on my back and when I -- I still had my music playing.
5 When I opened my eyes, there was a man standing over me
6 with a gun.

7 Q. All right. What happened next?

8 A. I immediately jumped up. I took the ear plugs out
9 of my ears. I told him I don't have anything, I'm broke,
10 you know, I don't -- I don't have anything. Then he --
11 he just kept saying I'm not gonna hurt you, I'm not gonna
12 hurt you, and when I said I don't have anything, he
13 repeated -- he's like you don't have anything, I was like
14 I don't have anything. So at this point I believe MINOR
15 was still asleep because I hadn't -- I didn't scream out,
16 I just was trying to ensure him that I didn't have
17 anything.

18 Q. All right. How was he dressed?

19 A. He seemed prepared for whatever he was about to do.
20 He had on a hoodie, he had on a ski mask that covered his
21 whole face.

22 Q. What color was his clothing?

23 A. I don't recall the exact colors. I remember seeing
24 some blue, some black, and I definitely seen a gun. I
25 noticed when I looked down at his feet he had on boots.

1 Q. All right.

2 A. It just seemed like he was prepared for -- for
3 whatever he was about to do.

4 Q. All right. I'm gonna ask you about what you call the
5 ski mask. Where did the ski mask go to on his face? Can
6 you describe it? Is it one of those ski masks that covers
7 the whole face or part of the face? If you could describe
8 it further.

9 A. It was one of the ones that covered just the bottom
10 of the face. It seemed like it was one that was probably
11 Velcro in the back and it was like covering his whole
12 face, but I couldn't see his forehead not only because he
13 had on the hoodie, he had the hoodie pulled -- it was all
14 the way down and you could tell he had the strings tight.

15 Q. Okay. So if I understand correctly, the hoodie is
16 down to approximately what part of the forehead?

17 A. Over the eyebrows.

18 Q. Okay. And then the ski mask comes up to approximately
19 what part of the face?

20 A. Over his nose.

21 Q. You're in the bedroom, you told him that you don't
22 have anything. What, if anything, did he say next?

23 A. He then took my phone. He told me that he wanted my
24 phone.

25 Q. And you say your phone, where was the phone at the

1 time that he took it from you?

2 A. It was laying on the bed because once I jumped up and
3 took the ear plugs out, you know, it was on the bed. For
4 some apparent reason I unplugged the headphones and handed
5 him the phone.

6 Q. All right. Okay. So he had your phone?

7 A. (Nods head.)

8 Q. What happened next?

9 A. His next question was -- his next demand was for me
10 to take my panties off and during that time all I had on
11 was a T-shirt and some panties and when he told me to
12 take my panties off, I already knew, you know, what his
13 intentions was, so I just asked him would my baby be --
14 excuse me. I asked would she be able to go in the living
15 room to -- so she wouldn't witness what was about to
16 happen. I was hoping she would know if she did make it
17 into the living room to run out of the door, but I don't
18 -- I think he caught onto that, so he instructed her -- by
19 this point she was -- she had woken up and was kind of
20 crying and he instructed her to go into the closet of the
21 bedroom.

22 Q. All right. Did you remove your underwear?

23 A. Yes, I did.

24 Q. Did you tell him anything about yourself when you
25 removed your underwear?

1 A. I told him I was on my menstrual period.

2 Q. What did he say after that?

3 A. When I told him that -- well, the initial time I
4 told him my panties was on, then when I took them off he
5 witnessed for his self that I was, indeed, on my period.
6 That's when he paused and looked over to the closet and
7 asked how old was my daughter.

8 Q. What did you say?

9 A. I lied. I tried to lie and say she was only five I
10 believe was the age I said just to help -- hopefully he
11 would have not done it, you know, if I had said a younger
12 age. I was like she's only five, she's only a baby, please
13 don't do that to her.

14 Q. What happened next?

15 A. He still instructed **MINOR** to come out of the closet.
16 She -- she came out and she was crying and shaking. She
17 didn't know what was about to happen. As she was walking
18 towards the bed, he told her to take her clothes off. She
19 didn't have much clothes on. I think she had on a -- a
20 skirt and some panties and she -- she took those off.
21 While he was instructing her to take her clothes off, he
22 kept saying to me I'm not gonna hurt her. He instructed
23 me to turn around and lay flat. I didn't fall -- follow
24 all the instructions. I only laid flat. I didn't turn
25 around.

1 Q. And this was on what type of furniture?

2 A. It was on the bed.

3 Q. All right. So you're on the bed. MINOR is
4 standing up?

5 A. She's on her way towards the bed, the side of the
6 bed.

7 Q. And the person that you're describing that came into
8 your home, where is he? What is he doing?

9 A. He's standing in the -- more in the doorway beside
10 the bed like at the foot of the bed.

11 Q. What happened next?

12 A. I just knew in my mind that I couldn't let him do
13 what he had planned to do. I could see just evaluating
14 -- I was laying down and I could see that just by his
15 stature that maybe I could take him on, so --

16 Q. What, if anything, did you see him do to himself?

17 A. As I was evaluating him, I could see he was also
18 fidgeting. He was kind of turning back and forth towards
19 me and her making sure we were doing what we were told
20 and he was also at that time trying to take out his penis,
21 so I just took advantage of the opportunity to give him a
22 fight since he was trying to dictate the room, but he
23 couldn't -- he couldn't keep control of everything that
24 was going on.

25 Q. All right. So as he starts to expose himself, what

1 do you do?

2 A. I jumped for the gun. I remember putting -- taking
3 my right hand and covering the -- I guess what's called
4 the rim of the gun. I covered it with my hand and we were
5 struggling for the gun. I remember hearing the shot.
6 Well, before the shot he was like get off me, I'm gonna
7 kill you, and I was like you can't do this to her, and
8 then that's when I heard the shot and I just decided to
9 take all of my weight and put it on him.

10 Q. Okay. And where did that carry him to when you
11 lunged at him?

12 A. We ended up going diagonal. My bathroom door was --
13 we ended up going into the hallway and into my bathroom.

14 Q. All right. So from the outside of your bedroom into
15 -- diagonally into the bathroom area. Would that be
16 correct?

17 A. Yes.

18 Q. Once in the bathroom where was MINOR ?

19 A. She was still in the bedroom crying.

20 Q. And you and he are in the bathroom. What happens
21 next?

22 A. I just remember trying to take the gun. I was just
23 trying to get the gun from him or at least turn the gun
24 onto him, so we -- we were struggling for the gun.

25 Q. All right. And during this time do you know whether

1 or not the gun fired?

2 A. Yeah, it fired several times.

3 Q. Who was firing the gun?

4 A. The -- the Defendant.

5 Q. Okay. And as the gun is firing, what are you doing?

6 A. I'm still fighting. I'm still holding onto him.

7 I'm still trying to get the gun.

8 Q. What was he trying to do with the gun?

9 A. He was trying to kill me.

10 Q. And what is it that he was doing that allowed you to
11 know that?

12 A. When we were struggling for the gun, somehow or
13 another it was -- we had it both -- we both had it -- our
14 hands on it and it was up here to me and it was pointed
15 at me and I was trying to turn it onto him. Like I can
16 remember seeing numbers on the gun, it was that close to
17 my face, and I tried to turn it onto him, but, you know,
18 I didn't get to do that. But by that time I was already
19 shot several times. I don't know if he had any more shots
20 left, but I was already shot several times.

21 Q. All right. And what was he saying to you during this
22 time?

23 A. He was telling me to get off of him, he's gonna kill
24 me.

25 Q. And after you've been shot and as you've indicated

1 you're still struggling with him, are you standing up in
2 the bathroom or are you --

3 A. At one point we were both on the floor in the
4 bathroom.

5 Q. Okay.

6 A. And then at another point he had gained footing and
7 that's where we were still trying to -- trying to --
8 struggling over the gun. I assume -- I assume he -- once
9 he got his footing I didn't know exactly what he was gonna
10 do, if he already knew that I was shot and not able to do
11 much, if he was gonna go in the bedroom and finish what he
12 was doing or shoot my daughter, I didn't know, so whatever
13 fight I had left in me I continued to hold on to his -- I
14 don't know if I had a piece of his arm or his leg, but I
15 had a piece of his body and when he got his footing and
16 left the bathroom he -- instead of turning to the bedroom,
17 we both went towards the front door or -- well, the sliding
18 door.

19 Q. Okay. So as you're holding onto him and he regains
20 his footing, he flees out of the bathroom?

21 A. Yeah, he was fleeing and I also was pushing him out.

22 Q. Okay. And he ends up going out what door?

23 A. The sliding door. I opened -- personally I opened
24 the door for him and it seems like I pushed him out and
25 when I did that I shut the door and pushed the lock up.

1 Q. Okay. And what did you do next?

2 A. Being that he took my phone, I knew I had a secondary
3 phone in the house, so I tried to search for my other
4 phone, but when I went to turn on the lights none of the
5 lights was working.

6 Q. And when you say none of the lights were working, had
7 the lights been working up until the shots were fired?

8 A. Yes, they were.

9 Q. Okay. And ultimately did you discover whether or not
10 one of the gunshots had hit the breaker box?

11 A. Yes, it did.

12 Q. And when it hit the breaker box, what happened to your
13 lights in your apartment?

14 A. They shut out.

15 Q. So at the point that he gains footing and flees out
16 the door, were you able to -- did you have lighting in the
17 apartment at that point?

18 A. No, I did not.

19 Q. Did you have lighting -- or some lighting in the
20 apartment up to the point that the breaker box was hit?

21 A. I believe -- normally before we go to bed I would turn
22 most of the lights off and leave the hallway light on, but
23 I believe at his point of entry he must have turned that
24 light off, but I'm not certain if the light was on or not.

25 Q. All right. You mentioned that you tried to find your

1 phone?

2 A. Right.

3 Q. You were unable to find your second phone and he had
4 taken your first phone?

5 A. Right.

6 Q. So what did you do to get help?

7 A. I knew we had to go outside to get help. At that
8 time I had just gotten new neighbors, upstairs neighbors,
9 so I went to knock on their door with MINOR behind me.
10 So we went out my front door to go to my upstairs
11 neighbors.

12 Q. Okay. Were the upstairs neighbors at home?

13 A. No, they was not.

14 Q. Okay. Where did you go next?

15 A. I remember MINOR playing with Tiffany's little girl,
16 so I figured, you know, we should go there.

17 Q. When you say Tiffany, are you referring to Tiffany
18 Green who testified earlier today?

19 A. Yes, ma'am.

20 Q. And you knew her because your daughter MINOR --

21 A. And her daughter played together and rode the school
22 bus together.

23 Q. Okay. So when you thought of going to her place,
24 what did you do?

25 A. I didn't -- when we got to her place, I didn't know

1 -- being that it was so early, I didn't even know she
2 would be up, but it just so happened that she was in her
3 kitchen preparing what I -- preparing bottles I think is
4 what she was doing, it seemed like she was preparing for
5 work because she had on her work uniform. I stood by her
6 glass door and knocked on it so she could at least see me
7 before I knocked on the main door and I said this is
8 MINOR 's mom, I need your help.

9 Q. And was MINOR with you at that point?

10 A. She was behind me.

11 Q. What clothing did MINOR have on at that point?

12 A. She -- she was naked.

13 Q. What clothing did you have on at that point?

14 A. I had on no panties, but I had on my -- the shirt I
15 had on, a black silk shirt, but it was -- I guess because
16 I got shot so much the shirt was barely on my body. It was
17 just -- it was ripped up.

18 Q. All right. And do you know whether or not someone
19 called 9-1-1 from that location?

20 A. Yeah, Tiffany called 9-1-1.

21 Q. And from there you went where?

22 A. I remember the police officer came in, then I remember
23 EMS coming in and I had asked what -- during that time I
24 didn't know -- being that my phone was taken, I don't know
25 if I remembered any numbers of family members and I didn't

1 know what my fate was gonna be, so I wanted to get my
2 daughter to -- at least to a family member, so I was
3 yelling out numbers to the EMS crew, to whoever could
4 write down some kind of contact number for my family. I
5 remember EMS asking me what happened.

6 Q. Were you able to give them a description of the
7 intruder?

8 A. Yes, I was. I remember telling them he was a small
9 stature guy. He was wearing -- he had on a disguise and
10 all I could see was his eyes.

11 Q. And when you arrived at the hospital, do you remember
12 whether or not you had surgery that night?

13 A. When I arrived, they had to take -- they had to take
14 certain -- not x-rays, but they had to give me an MRI to
15 see exactly what was, you know, going on. I remember
16 just -- when I first arrived, I remember just nurses and
17 doctors and I remember Mr. Griffin being in the room at
18 the time to take my statement.

19 Q. All right. So let me stop you right there.
20 Ultimately did they operate on you that night?

21 A. Yeah, they did.

22 Q. Okay. But before you went into surgery, do you
23 recall whether or not you spoke with this investigator,
24 Thomas Griffin, of the West Columbia Police Department?

25 A. Yes, I did.

1 Q. When you spoke with Investigator Griffin, were you
2 able to give him a description of the intruder?

3 A. Yes, I was.

4 Q. Were you able to estimate a height of the intruder?

5 A. Yes, I did.

6 Q. What was that?

7 A. He was about four -- 5-4 to 5-6 foot tall.

8 Q. All right.

9 A. Like I said, with my weight I knew he was smaller
10 than me as far as weight goes. I just evaluated him and
11 I just thought I could take him on.

12 Q. All right. And 5-4 to 5-6 was your estimate to
13 Investigator Griffin?

14 A. Yes, ma'am.

15 Q. And is that still your estimate today?

16 A. Yes.

17 Q. Now when we talk about how he's dressed, is it
18 possible that he had on gloves?

19 A. It's possible, yes.

20 Q. Did you ever actually see his hands?

21 A. No, I did not.

22 Q. What was it that you saw and remember seeing?

23 A. His eyes.

24 Q. And what else?

25 A. The gun.

1 Q. When you had that struggle with him in the bathroom,
2 did you learn later whether any item was left behind by
3 the intruder?

4 A. Some detectives had came to me in the hospital
5 and said that during our struggle I took an article of
6 clothing off.

7 Q. You've had a chance to review photographs in this
8 case, correct?

9 A. Yes.

10 Q. Okay. I'm gonna ask you a few questions about some
11 of those photos, Ms. Simon. I'm gonna ask you to take a
12 look at these photos and ask you whether or not you
13 recognize them. This would be State's Exhibit 13 through
14 28.

15 Can you tell us whether or not that's a fair and
16 accurate representation of how you recall your bedroom on
17 that night?

18 A. Yes, it is.

19 Q. All right. I'm gonna also show you these photographs
20 of the bathroom. That would be State's 29 through 32.
21 Are these also a fair and accurate representation of how
22 you recall your apartment that night?

23 A. Yes, ma'am.

24 Q. And then these would be State's Exhibit 39 and 40.
25 Is that a fair and accurate representation of the upstairs

1 area of the apartment complex?

2 A. Yes, ma'am.

3 Q. I'm gonna show you State's Exhibit Number 11. Is
4 that a fair and accurate representation of the exterior of
5 the residence?

6 A. Yes, ma'am.

7 Q. State's Exhibit 35 through 38. Do you recognize
8 what's depicted in these photographs?

9 A. Yes.

10 Q. Is that a fair and accurate representation of the
11 scene?

12 A. Yes.

13 Q. Then you mentioned the sliding glass door. I'm gonna
14 show you State's Exhibit 41, 42 and 43. Is that a fair
15 and accurate representation of that area?

16 A. Yes.

17 Q. And finally State's Exhibit 46 through 51, the
18 hallway area, is that a fair and accurate representation
19 of your home?

20 A. Yes. Yeah.

21 Q. As it was left that night?

22 A. Yes.

23 **MS. MAYES:** At this time, Your Honor, the State would
24 offer all of these items as evidence. I believe that's
25 gonna run from Exhibit 13 to 51.

1 **THE COURT:** And 11 as well, I believe.

2 **MR. CHEHOSKI:** Your Honor, may we approach real
3 quick?

4 **THE COURT:** Okay.

5 (Proceedings held at the bench; not reported.)

6 **THE COURT:** 13 through 51 then in evidence.

7 **MR. CHEHOSKI:** Your Honor, that would be subject to
8 prior objections.

9 **THE COURT:** Over prior objection. I understand.

10 (State's Exhibit Number 13 through 51, photographs,
11 were admitted into evidence.)

12 **THE COURT:** Number 11 -- I think you'd offered
13 Number 11 in there, too; is that right? Was that already
14 in evidence? That was the exterior.

15 **MS. MAYES:** Yes, sir, Your Honor.

16 **THE COURT:** All right. 11 is also in evidence. Also
17 over the same objection.

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

19 **THE COURT:** Okay.

20 (State's Exhibit Number 11, a photograph, was admitted
21 into evidence.)

22 **MS. MAYES:** Your Honor, the State would request
23 permission at this time to publish.

24 **THE COURT:** Yes, ma'am.

25 BY MS. MAYES:

1 Q. I want to start, Ms. Simon, by asking you about
2 photos in the bedroom. This would be the area that you
3 testified you first made contact with him?

4 A. Right.

5 Q. This is State's Exhibit 13. Can you tell us what we
6 are looking at in this photo starting here?

7 A. The bed.

8 Q. Okay. So would this be the entryway here?

9 A. Yes.

10 Q. All right. And then the bed that you indicated that
11 you and MINOR was on, is that the same bed?

12 A. Yes.

13 Q. State's Exhibit 14, there is blood here on the door.
14 Do you know whose blood that is?

15 A. That's my blood.

16 **THE COURT:** Which door is that? Where does the door
17 lead to?

18 **MS. MAYES:** Yes, sir, Your Honor. I'll clarify that.

19 BY MS. MAYES:

20 Q. Can you tell us, Ms. Simon, looking at this
21 photograph which door this would be?

22 A. That's the door to my bedroom.

23 Q. Now you also indicated that the first shot was fired
24 in that bedroom when you lunged for the gun. I'm gonna
25 show you this photograph of the bed and ask you was there

1 a hole there in that bedroom wall prior to this night?

2 A. No, ma'am, there wasn't.

3 Q. And was the drywall scattered across the bed like
4 this prior to going to bed that night?

5 A. No, ma'am, it wasn't.

6 Q. And taking a look at 16, was that drywall there
7 previously?

8 A. No, ma'am.

9 Q. And you indicated that at some point after you were
10 instructed to remove your underwear you did so?

11 A. Yes, ma'am, I did.

12 Q. And that once you did so what, if anything -- what,
13 if anything, was his reaction?

14 A. He -- well, he found out I was telling the truth that
15 I was on my menstrual period and --

16 Q. I'm gonna show you what is State's Exhibit 18 and ask
17 you if you recognize what's in this photograph?

18 A. Those are my panties.

19 Q. And were those the underwear that you removed after
20 he directed you to?

21 A. Yes.

22 (State's Exhibit 19 was marked for identification.)

23 Q. The pink clothing here and here and the skirt, are
24 those your clothing items or do they belong to someone
25 else?

1 A. Those are MINOR 's clothes.

2 Q. And you indicated that the struggle went from your
3 bedroom into the bathroom?

4 A. Right.

5 Q. I'll stop momentarily to show you this one diagram.

6 MS. MAYES: This would be State's Exhibit 53.

7 THE COURT: For identification and subject to
8 objection.

9 MS. MAYES: Your Honor, if the witness may have
10 permission to step down.

11 THE COURT: Yes, ma'am.

12 Ms. Simon, you can step down and I ask you to
13 please stand on the other side of the photograph and face
14 in this direction so you can be facing the court reporter,
15 okay?

16 (Whereupon, the witness steps down from the witness
17 stand.)

18 MS. MAYES: And I will need you to keep your voice
19 up.

20 THE COURT: On the other side of the photograph,
21 please, ma'am.

22 THE WITNESS: This way?

23 THE COURT: That's right. Facing the direction of
24 the court reporter. She needs to hear what you're saying.
25 Thank you.

1 BY MS. MAYES:

2 Q. Ms. Simon, looking here at this diagram, does it
3 appear to be a fair and accurate layout of the interior
4 of [REDACTED], the apartment you lived in at the time?

5 A. Yes, ma'am.

6 Q. I'll scoot it just a little forward this way so that
7 every juror can see. What would this area here be?

8 A. That's the patio area where the sliding door is.

9 Q. Okay. So the sliding glass door here and this would
10 be the patio?

11 A. Right.

12 Q. This would be what area?

13 A. The living room slash dining room.

14 Q. Okay. And then the bedroom that you and [REDACTED] MINOR were
15 in is located where?

16 A. Here.

17 Q. All right. So right here. And then the bathroom is
18 located where?

19 A. Here.

20 Q. All right. So once you went for the gun and the gun
21 goes off and you make physical contact with him, where do
22 the two of you end up?

23 A. We started out here. This is where I was laying,
24 that's where he was standing and I got out to one side,
25 jumped for the gun. Of course, I got up and put all my

1 weight on him and we ended up here in the bathroom.

2 Q. Okay. This area here. And did the struggle
3 continue?

4 A. Yeah, it continued. I'm not sure if he -- I believe
5 he shot me several times there and I continued to put up
6 a fight. We somehow ended up here in between the toilet
7 and the wall. That's where I had him pinned down for a
8 little while and, like I said, he gained footing and then
9 we just went -- we were still -- I still had a part of
10 his body and when he gained his footing I wasn't sure if
11 he was gonna go back to the bedroom or flee out the door,
12 so I still had a part of his body and that's when he --
13 when he exited the bathroom, he turned that way and he
14 just was walking into the living room towards the sliding
15 door.

16 Q. Okay. Towards this area here?

17 A. Yes.

18 Q. Okay. And you indicated before that you sort of
19 pushed him out. What area would that be where you pushed
20 him out?

21 A. When we exited the bathroom, we walked towards this
22 way and I told him you've got to leave, so I opened the
23 sliding door, pushed him out and then I shut it and locked
24 it.

25 Q. Okay.

1 **MS. MAYES:** You may return to your seat.

2 (Whereupon, the witness returns to the witness stand.)

3 BY MS. MAYES:

4 Q. State's Exhibit 31, what are we looking at here?

5 A. That's my bathroom.

6 Q. All right. And specifically as to what's on the floor
7 of that bathroom, did that belong to you?

8 A. No, it did not.

9 Q. Okay. And had you ever seen it there before in your
10 bathroom prior to having that struggle with him and him
11 fleeing the residence?

12 A. No, I didn't.

13 Q. State's Exhibit 32, shell casings in your bathroom.
14 Were there shell casings in your bathroom prior to that
15 night?

16 A. No, there was not.

17 Q. And what are we looking at here, State's Exhibit 47?

18 A. I believe that's where I -- after I got him out of
19 the house, I was attempting to turn on the hallway light
20 so I could find my second phone.

21 Q. Okay. And you were unable to turn on the lights?

22 A. Yes, I wasn't able to turn them on.

23 Q. And what are we looking at here, State's Exhibit 42?

24 A. That's the sliding glass door. That's where I pushed
25 him out of the door.

1 Q. And State's Exhibit 43, the same sliding glass door?

2 A. Yes, it is.

3 Q. Now you testified that when you left the home you
4 went up the stairwell?

5 A. Yes, I did.

6 Q. And what door did you go out of to get to the
7 stairwell?

8 A. My front door.

9 Q. I'm gonna ask you what we're looking at here, State's
10 Exhibit 37?

11 A. That's my front door.

12 Q. Okay. Then I'm gonna show you State's Exhibit 46 --
13 36. I'm sorry.

14 A. That's the entry to my front door.

15 Q. All right. And what room would that be that we're
16 looking into right there?

17 A. The living room.

18 Q. In that living room there are two black articles of
19 clothing. Who did those belong to?

20 A. I believe those were mine.

21 Q. Okay. And State's Exhibit 38?

22 A. I believe that's my front door.

23 Q. The interior of the front door?

24 A. Yes. That's where I was trying to unlock it to get
25 out.

1 Q. When you went to bed that night, what, if anything,
2 did you have around your hair or is there anything that
3 you ordinarily wear around your hair at night?

4 A. I usually wear a -- like a nylon silk hair wrap, a
5 black one.

6 Q. Okay. And did you have one on that night?

7 A. Yes, I did.

8 Q. All right. And do you know whether or not that came
9 off at some point as you went for help?

10 A. Yes.

11 Q. I'm gonna show you what is State's Exhibit 11 and ask
12 you whether or not you recognize that item?

13 A. Yes, I do.

14 Q. What is that item?

15 A. That's my hair wrap.

16 Q. And you testified that you went to -- upstairs to a
17 neighbor's house?

18 A. Yes, I did.

19 Q. I'm gonna show you what is State's Exhibit 40 and ask
20 you what is depicted in that photo?

21 A. That's my upstairs neighbor's door where I was banging
22 on the door.

23 Q. All right. And do you know whose blood that is on
24 the exterior of the door?

25 A. That is my blood.

1 Q. And, again, the blood trail here on the cement outside
2 that door?

3 A. That's my blood.

4 Q. Going back to your bedroom for a moment, what are we
5 looking at here in State's Exhibit 21?

6 A. That's the closet of the bedroom that we were in.

7 Q. And then also State's Exhibit 19. After MINOR was
8 instructed to remove her clothes, what room was she in when
9 her clothing was removed?

10 A. She was in that room.

11 Q. This bedroom?

12 A. Yes.

13 Q. Now during the course of the investigation, did you
14 become familiar with the name of the Defendant in this
15 case, Nathaniel Hunter?

16 A. Yes, I did.

17 Q. Did you have ever have any previous knowledge of
18 Nathaniel Hunter?

19 A. No, I never met him.

20 Q. No relationship with him?

21 A. (Shakes head.)

22 Q. No former acquaintance with him?

23 A. No.

24 Q. He was a stranger to you?

25 A. Yes, he was.

1 Q. And what about to Brianna? Is there any relationship
2 that Nathaniel Hunter would have had to Brianna?

3 A. No, ma'am.

4 Q. And leading up to the trial of this case, you did you
5 have the opportunity to be present for court proceedings
6 this week?

7 A. Yes, this week.

8 Q. Okay. And in the context of court proceedings this
9 week, have you had the opportunity to hear Nathaniel Hunter
10 speak in conversation?

11 A. Yes, I have.

12 Q. Have you had the opportunity to see him --

13 A. Yes.

14 Q. -- in terms of his full face?

15 A. Yes.

16 Q. Including his eyes?

17 A. Yes.

18 Q. Ms. Simon, can you tell us whether or not the voice
19 of Nathaniel -- what can you tell us about the voice of
20 Nathaniel Hunter?

21 **MR. CHEHOSKI:** Objection, Your Honor.

22 **THE COURT:** I'll overrule the objection pursuant to
23 State versus Lewis, L-E-W-I-S. I note the objection.

24 **MR. CHEHOSKI:** Thank you. Your Honor.

25 A. During the time of the incident, I just remember the

1 voice. I remember the -- I remember the way he instructed
2 me and MINOR to do things. When I heard him speak in
3 court this week, it's the same voice to me.

4 Q. And that night how close were you to his eyes, your
5 eyes to his eyes, during that struggle?

6 A. I looked him -- I looked him dead in the eyes because
7 his eyes was all that I could see. I looked him in the
8 eye.

9 Q. And having observed him in court this week, what, if
10 anything, can you tell us about the eyes of Nathaniel
11 Hunter?

12 A. It's the same person. It's the same eyes.

13 MS. MAYES: I beg the Court's indulgence.

14 THE COURT: Yes, ma'am.

15 BY MS. MAYES:

16 Q. In addition to that information you've given about his
17 voice and his eyes, you had previously given a description
18 of the intruder as between 5-4 and 5-6. Have you had the
19 opportunity to see Nathaniel Hunter stand up in court?

20 A. Yes, I have.

21 Q. Can you tell us whether or not the height --

22 A. The height -- the height is the same. I believe he
23 gained a little weight, but the height is still the same.

24 Q. And that night prior to going into surgery, what
25 arrangements did you make for MINOR?

1 A. Like I said, I was calling out -- being that my phone
2 was taken, I wasn't sure if I had the right numbers. I
3 don't remember numbers other than having it on speed dial
4 on my phone. So I was just calling out numbers of family
5 members to see if I could remember anybody's number to
6 hope that someone would get a call to get the custody of
7 her because I didn't think I was gonna make it.

8 Q. And going back to that struggle that you had in the
9 bathroom, during that struggle did you ever see the
10 intruder touch your towel rack?

11 A. No.

12 Q. Did you ever see lean against -- or touch the surface
13 of your counter?

14 A. No.

15 Q. Where was he for most of that struggle in the
16 bathroom?

17 A. For most -- most of the part we were on the floor
18 and, like I said, once he gained his footing we were
19 standing in the bathroom. I would say his hands remained
20 on the gun for most part of the time because it was a
21 struggle for the gun.

22 Q. If he had ever taken his hand off that gun, what
23 would you have done?

24 A. I would have shot him.

25 Q. If he had even taken one hand off of that gun, what

1 would you have done?

2 A. I would have shot him.

3 **MS. MAYES:** Nothing further.

4 **THE COURT:** Mr. Chehoski, you can cross-examine.

5 **MR. CHEHOSKI:** Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. CHEHOSKI:

8 Q. Ms. Simon, good afternoon.

9 A. Good afternoon.

10 Q. You testified that your normal routine at night was
11 to shut off the bedroom lights?

12 A. No, my normal routine is to -- yes, shut off the
13 lights, but keep the hallway light on.

14 Q. Keep the hallway light on?

15 A. Yes, sir.

16 Q. But the bedroom lights are off?

17 A. Well, to be honest, there aren't any lights in the
18 bedroom. You have to use lamps.

19 Q. Okay. Thank you. And you said that the intruder
20 was wearing a mask that covered his nose?

21 A. Yes, he was.

22 Q. And he was wearing a hoodie that was below his
23 eyebrows?

24 A. Yes, he was.

25 Q. All right. And during that -- that occasion you were

1 focussed on the gun, correct?

2 A. I was focussing on the gun, but I also, like I said,
3 examined his demeanor and his height and everything to see
4 if I could take him on.

5 Q. All right. And you were trying to keep him away from
6 your daughter?

7 A. Right.

8 Q. You had the opportunity to speak to Investigator
9 Griffin that night, correct?

10 A. Yes, I did.

11 Q. You also had the opportunity to speak to Investigator
12 Neel a couple of weeks later?

13 A. Yeah.

14 Q. All right. At no point during either of those times
15 you got to speak to Investigator Griffin or Investigator
16 Neel did you say the intruder had dreadlocks; is that
17 right?

18 A. Like I said, he had the hoodie over his head and the
19 string tied tight, so if he had dreads I wouldn't have
20 been able to see them. The only thing I saw was his eyes.

21 Q. And you don't remember taking off any clothes from
22 the intruder?

23 A. Like I said, I had him very tight. I would not let
24 him go.

25 Q. Right. You would not let him go until he was out of

1 your house?

2 A. Right.

3 Q. You also in your statement to Investigator Griffin
4 said that you thought the voice sounded familiar; is that
5 right?

6 A. Prior to this incident I drove cabs for a while. I
7 didn't know if it was someone that I had maybe picked up.
8 The voice seemed familiar, but that was just something I
9 said to -- hopefully to help the investigation because I
10 didn't know if I would survive.

11 Q. I understand. Just a few more questions. Also you
12 asked the police if they could track your phone?

13 A. No, I never asked them about my phone.

14 Q. Oh. And you never got your phone back?

15 A. I never got my phone back.

16 Q. All right. And I just wanted to ask just a few more
17 questions, okay? When you had the opportunity to -- let
18 me make sure I say this right -- to see Mr. Hunter, you
19 were -- you were pointing him out as he's sitting right
20 now?

21 A. Right.

22 Q. Okay. At defense table?

23 A. You mean at the point of me seeing him, he was --

24 Q. No, as in right now.

25 A. As of right now, yes.

1 Q. And he's surrounded by defense attorneys?

2 A. Right.

3 Q. I've got just a couple -- just one more thing about
4 -- about your phone. I understand that this was -- that
5 you were at the hospital, this was right before that you
6 were being wheeled in into surgery --

7 A. Yes, sir.

8 Q. -- but did the police tell you that they were going
9 to try and track down your phone?

10 A. Yeah, they said they would try.

11 Q. And they never got it back to you?

12 A. I never seen the phone again.

13 Q. All right. And you gave them the phone number to the
14 phones?

15 A. I don't remember giving them the phone number. Like
16 I said, I was calling out numbers of family members to
17 gain custody of my daughter. I don't remember giving them
18 my number.

19 Q. Not to -- so they can locate your phone? You don't
20 remember that?

21 A. I don't remember giving them my number.

22 Q. But is it possible that you did give them the
23 numbers?

24 A. It's possible.

25 **MR. CHEHOSKI:** One moment, please, Your Honor.

1 **THE COURT:** Yes, sir.

2 BY MR. CHEHOSKI:

3 Q. At the time you were woken up, do you recall if the
4 light was on in the hallway?

5 A. Do I remember what? I'm sorry.

6 Q. If the light was on in the hallway.

7 A. I can't recall that.

8 Q. Do you remember if the light was on in the bathroom?

9 A. I can't -- I can't recall that either.

10 **MR. CHEHOSKI:** Nothing further.

11 **THE COURT:** Thank you. Redirect, Ms. Mayes?

12 **MS. MAYES:** Yes, sir, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. MAYES:

15 Q. Mr. Chehoski was asking you about lighting. I'm
16 gonna ask you a little bit more about that. He was asking
17 about lights that were on. I'm gonna show you what is
18 marked as State's Exhibit 48. Are you familiar with what
19 is depicted in this aerial photograph?

20 A. That's -- that's my apartment complex.

21 Q. All right. This would be an aerial view?

22 A. Right.

23 Q. All right. And whose apartment is right here?

24 A. That's my apartment.

25 Q. Okay. Can you tell us whether there are lights

1 externally here in the parking lot area?

2 A. Yes, there are.

3 Q. All right. And can you tell us whether those lights
4 aid in your bedroom area?

5 A. Yes, it does.

6 Q. Okay. In other words, in your bed -- can you tell
7 us whether the lighting is better in your bedroom area
8 versus the bathroom?

9 A. Yeah, it's better in the bedroom.

10 Q. All right. And why is that?

11 A. There's -- at the back of my apartment there's -- I
12 believe there's a streetlight somewhere back there.

13 Q. All right. So into your bedroom window do you have
14 exterior lighting --

15 A. Yes.

16 Q. -- that comes into the window?

17 A. Yes.

18 Q. And can you tell us prior to your breaker box being
19 shot out were you able to see better before your breaker
20 box got shot out or after?

21 A. I'm -- I'm not understanding your question.

22 Q. Okay. All right. I'm sorry. After your breaker box
23 got shot out and y'all were in the bathroom, were you able
24 to see his -- his type of hairstyle and things of that
25 nature at that point?

1 A. I didn't see any hair period, but --

2 Q. Explain what you mean.

3 A. I'm sorry?

4 Q. Explain what you mean.

5 A. Like I said, he had on a hoodie and it was tied. It
6 was tight.

7 Q. Okay. And then after he fled out the door, were you
8 able to see whether his hair was outside of his clothing
9 or inside of his clothing or anything like that?

10 A. Once I got him out, I didn't look -- look out the
11 window.

12 Q. And to follow up with Mr. Chehoski's questions to
13 you about the fact that he is accompanied by attorneys
14 in the court, can you tell us whether or not that affects
15 your ability to recognize his voice?

16 A. No, it's not.

17 Q. How sure are you that it's the same voice?

18 A. I'm pretty sure it's the same voice.

19 Q. And can you tell us whether or not that affects your
20 ability to identify his eyes?

21 A. No, it does not.

22 Q. Can you tell us whether or not you have any doubt
23 it's the same eyes?

24 A. I have no doubt it's the same eyes.

25 **MS. MAYES:** Nothing further.

1 **THE COURT:** Thank you. Mr. Chehoski, any follow-up
2 on any of those points?

3 RE CROSS EXAMINATION

4 BY MR. CHEHOSKI:

5 Q. Does your bedroom have blinds?

6 A. Yes, they do, but at the time the blinds due to my
7 daughter playing in them were missing some of the blind.

8 Q. The parts that weren't missing, were they shut?

9 A. No, they was not actually.

10 **MR. CHEHOSKI:** Nothing further, Your Honor.

11 **THE WITNESS:** Thank you.

12 **THE COURT:** Ms. Mayes, you have the last word.

13 **MS. MAYES:** Nothing further, Your Honor.

14 **THE COURT:** Ms. Simon, you can step down.

15 **THE WITNESS:** Thank you.

16 (Witness excused.)

17 **THE COURT:** Folks, this is a good time for us to
18 take the afternoon recess and we'll send you to your jury
19 room. We'll let you have until about five or ten after
20 the hour, fifteen or twenty minutes, and we'll start back
21 then at that time. Probably about ten after three.

22 Please don't discuss this case among yourselves while
23 you're in the jury room. Thank you.

24 (Whereupon, the jury retires to the jury room at
25 2:48 PM.)

1 **THE COURT:** Ms. Mayes, who do you anticipate calling
2 next?

3 **MS. MAYES:** Your Honor, we have Colleen Belk. She
4 was one of the advocates that -- or law enforcement
5 victim advocate that responded to the scene and then we
6 also have Ms. Caldwell. Since we're on the record at
7 this time, I'll go ahead and state the -- the State's
8 position is that if there's a challenge to the inability
9 to question the child about the content of the forensic
10 interview it may make more sense in our presentation to
11 call the forensic interviewer, publish the video
12 potentially and then the child would be subject to
13 cross-examination about the video, as well as any other
14 matters which would resolve that issue. We can assure
15 the Court the child will testify.

16 **THE COURT:** All right. Of course, I need to --

17 **MS. MAYES:** And we would proffer Ms. Caldwell's
18 testimony at a time Your Honor deems appropriate.

19 **THE COURT:** Okay. And certainly out of the presence
20 of the jury I have to make certain determinations
21 regarding her qualifications or training I should say.
22 Do you intend to offer that in the presence or out of the
23 presence of the jury first?

24 **MS. MAYES:** In-camera, Your Honor.

25 **THE COURT:** Okay. Good. That's what I thought.

1 All right. Do we have time to do that during this
2 break? Probably not. Probably not cross-examination,
3 too.

4 **MR. PHILLIPS:** And, Your Honor, with addressing the
5 admission of the out-of-court statement whenever we would
6 be getting to that, we would definitely need to have the
7 competency hearing prior to that because that's step one
8 of the analysis.

9 **THE COURT:** That should not be a problem either.

10 **MS. MAYES:** Correct, Your Honor. And I believe
11 Ms. Caldwell would need to be heard on that matter, too,
12 because she would like to clarify something in the report
13 regarding that.

14 **THE COURT:** Okay.

15 All right. Let's stand in recess until ten after the
16 hour and we'll take the next witness or so and then we'll
17 have to declare another break before we deal with these
18 issues.

19 **MR. PHILLIPS:** Thank you, Your Honor.

20 **MS. MAYES:** Thank you, Your Honor.

21 (Recess taken.)

22 **BAILIFF:** All rise. Court's now is session.

23 **THE COURT:** Thank you, folks. You-all can be seated.
24 Are both sides ready for the jury?

25 **MR. McNAIR:** Ms. Mayes stepped out for one second.

1 She'll be back shortly.

2 **THE COURT:** Okay. You can have the next witness
3 already in court if she's not already here.

4 **MS. MAYES:** She is.

5 **THE COURT:** Okay. Are both sides now ready for the
6 jury?

7 **MS. MAYES:** Yes, sir, Your Honor.

8 **MR. PHILLIPS:** Yes, Your Honor.

9 **THE COURT:** Thank you.

10 (Whereupon, the jury returns to the courtroom at
11 3:15 PM.)

12 **THE COURT:** Folks, we'll continue now with the
13 State's presentation of evidence and testimony.
14 Ms. Mayes.

15 **MS. MAYES:** The State calls Colleen Belk.

16 **THE COURT:** Ms. Belk, come forward, please, and be
17 sworn.

18 (Whereupon, Colleen Belk was duly sworn by the Clerk
19 of Court.)

20 **THE CLERK:** Please be seated. State your full name.

21 **THE WITNESS:** Colleen Belk, B-E-L-K.

22 COLLEEN BELK,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. MAYES:

1 Q. Good afternoon, Ms. Belk. Can you tell us a little
2 bit of information about yourself? What type of career
3 have you had in law enforcement?

4 A. Yes, ma'am. I started in law enforcement in 1992.
5 I was a communications officer for eight years before I
6 went to the criminal justice academy and became a Class 1
7 certified officer.

8 Q. All right. And can you tell us what capacity you
9 were working in back in 2014?

10 A. I was a law enforcement victim advocate.

11 Q. And for what agency?

12 A. West Columbia Police Department.

13 Q. During the course of your employment as a victim
14 advocate, were you also still a law enforcement officer?

15 A. I was.

16 Q. And if a crime happened in the middle of the night,
17 for example, what's the protocol or process for you to
18 respond?

19 A. If something happens during the night that requires
20 a victim advocate to come out either for -- whatever type
21 of call it may be, then I would respond. I was on call
22 twenty-four hours a day, seven days a week.

23 Q. I'm gonna refer you back to the early morning hours
24 of April 13th of 2014.

25 A. Okay.

1 Q. Were you called out in response to a crime that had
2 occurred in the middle of the night?

3 A. I was.

4 Q. And where did you go?

5 A. I came to West Columbia, I responded from my home,
6 and it was -- the address was [REDACTED] Comanche Trail,
7 Apartment [REDACTED].

8 Q. All right. And what do you recall about your initial
9 arrival there at the scene?

10 A. The dispatcher had briefed me a little bit about what
11 had happened, but when I responded to the scene the officer
12 that was there on the scene directed me to the location of
13 a child that was involved and so I went directly to make
14 contact with the child.

15 Q. Now at this point in time where was the child's
16 parent, her mother?

17 A. Her mother was -- had been transported to the
18 hospital.

19 Q. All right. And in this situation was there any
20 other immediate relative or a guardian on-site for [REDACTED] MINOR
21 Simon?

22 A. No, there was not. Unh-unh.

23 Q. And is that routine for you to get involved to assist
24 children who have witnessed a crime?

25 A. Very routine. That's -- I would say that was one of

1 my primary duties with children or the elderly or any
2 other type of victim of a crime.

3 Q. What can you tell us about [REDACTED] 's demeanor when
4 you went to her aid?

5 A. Her demeanor, she was shaken. You could tell she had
6 been crying and she still -- her eyes were full of tears.
7 She was nervous, scared.

8 Q. And did you observe anything about her physically?

9 A. Physically, I did. Do you want me to elaborate?

10 Q. Yes, please.

11 A. When I first got to the apartment, they directed me
12 over there and when I went to the apartment where she was
13 I noticed that she was completely nude other than a very
14 small bathrobe that was several sizes too small for her
15 and I found out immediately after I got there that when
16 she had gone to the neighbor's house the neighbor gave
17 her a bathrobe to wear that was one of the neighbor's
18 children's, so she just gave her whatever she had at that
19 point to try and help her cover her body.

20 Q. All right. And you were able to see the bathrobe and
21 underneath the bathroom?

22 A. Oh, it was very obvious. The bathrobe was very small
23 and it was very obvious that she was nude.

24 Q. Okay. I'm gonna show you what's in evidence, State's
25 Exhibit 9, and ask you whether or not you recognize this

1 item?

2 A. I do.

3 Q. How so?

4 A. That was the bathrobe that she had on the night that
5 I responded.

6 Q. And ultimately were you also present when it was
7 collected as evidence by your CSI officer, Crime Scene
8 Investigator Charles Bramlett?

9 A. Yes. Yes, I was. Uh-huh.

10 Q. Speaking of which, in 2014 who was your primary
11 investigator for West Columbia Police Department?

12 A. Officer Chuck Bramlett.

13 Q. And can you tell us what occurred with Sergeant
14 Bramlett?

15 A. In 2015, Chuck suffered a massive heart attack and
16 he was without oxygen to his brain for a while, so he
17 passed away several days after that.

18 Q. All right. You had the opportunity to work side by
19 side with Chuck for approximately how long?

20 A. Well, I was friends with Chuck. My husband and
21 Chuck were friends for many years, since high school, and
22 I worked with Chuck from 1994 until his death.

23 Q. You were familiar with his collection procedures as
24 it concerned crime scene evidence?

25 A. Very much. Chuck was very meticulous about

1 everything, so, yes.

2 Q. Did you also have the opportunity to go to the
3 hospital where Larenda Simon, the victim in this case,
4 was treated following surgery for gunshot wounds?

5 A. Yes. Actually I was at the hospital several different
6 times. I went initially before she had surgery just to
7 make -- make some contact with her and then I did see her
8 every day while she was in the hospital.

9 Q. Okay.

10 A. Yes.

11 Q. And I want to refer you specifically to the date of
12 April 15th of 2014. Do you recall whether or not you were
13 present along with Sergeant Chuck Bramlett --

14 A. I was.

15 Q. -- for the collection of any evidence from Larenda
16 Simon there at the hospital?

17 A. Yes, I was.

18 Q. Let me show you an item and ask you whether or not
19 you recognize it. During the course of your career in
20 law enforcement, have you had the opportunity to witness
21 what's called buccal swab standards being collected?

22 A. Several times, yes.

23 Q. All right. And they are collected from what part of
24 the body?

25 A. The mouth.

1 Q. Okay.

2 A. Inside the mouth I should say.

3 Q. Let me show you these items and ask you whether or
4 not they are consistent with buccal swab collection
5 packaging?

6 A. That's Chuck handwriting right there. Chuck Bramlett,
7 that's his handwriting.

8 Q. All right.

9 A. Cotton swabs of right and left cheek, 4-15-14 is when
10 he collected them.

11 Q. All right.

12 A. That's his handwriting as well on the actual swab
13 casing. Larenda Simon, C. Bramlett, 4-15-14, oral swab.

14 Q. And do you recall being present when those swabs were
15 collected from Ms. Simon?

16 A. I was there. Uh-huh.

17 Q. And once they were collected, where did Sergeant
18 Bramlett actually package them?

19 A. Sergeant Bramlett normally packaged everything at the
20 time of collection as to not contaminate anything when he
21 was leaving. He wouldn't take it back to his car and
22 package it, he would package it right there and have
23 everything sealed and he would write -- take his time and
24 write everything up. He was, like I said, very meticulous,
25 very detail-oriented.

1 Q. Can you tell us whether or not that was the case with
2 the collection of the buccal swabs there in the hospital
3 by Sergeant Bramlett of the victim in this case, Larenda
4 Simon?

5 A. It was. Do you want me to elaborate on how I remember
6 that? The reason I know that, we kept -- the hospital and
7 I, the social workers, we kept her in a secure location in
8 the hospital. She wasn't in the public registry and so I
9 was privy to her hospital room number, so when Investigator
10 Bramlett went there I went with him.

11 Q. All right. To the private or secure room of Larenda
12 Simon?

13 A. Correct. Yes.

14 **MS. MAYES:** Your Honor, at this time we would mark
15 this item for identification.

16 **THE COURT:** All right. State's next for
17 identification.

18 (State's Exhibit Number 63 was marked for
19 identification.)

20 **THE COURT:** That number?

21 **THE COURT REPORTER:** 63.

22 **THE COURT:** 63. Thank you.

23 BY MS. MAYES:

24 Q. Now as to **MINOR** that night, is there anything that
25 you recall about seeing her physically that you made a

1 request for Sergeant Bramlett to document?

2 A. Yes, Sergeant Bramlett when he came back to the
3 office I had called him to let him know that I had seen
4 some blood evidence on her and he was -- he came into --

5 **MR. PHILLIPS:** I object. We're starting to go into
6 hearsay testimony, Your Honor.

7 **MS. MAYES:** I can rephrase that.

8 **THE COURT:** If you can.

9 BY MS. MAYES:

10 Q. And this is premarked as State's Exhibit 12.

11 A. Yes, I recognize that.

12 Q. All right. Do you know where that photograph was
13 taken?

14 A. It was taken in my office at the West Columbia Police
15 Department.

16 Q. Okay. And it was taken by Sergeant Bramlett at whose
17 request?

18 A. At my request.

19 Q. All right. And who is the person depicted in the
20 photograph?

21 A. **MINOR**.

22 Q. And can you tell us whether or not that's a fair and
23 accurate representation as you remember **MINOR** that
24 night in your office?

25 A. Yes, it is. Yes, uh-huh.

1 Q. And this is while her mother was being treated at the
2 hospital?

3 A. Yes. I believe they were prepping her mother for
4 surgery at that time.

5 **MR. PHILLIPS:** Your Honor?

6 **THE COURT:** Yes, sir.

7 **MS. MAYES:** We move this in evidence without
8 objection.

9 **MR. PHILLIPS:** Subject to the prior objection, Your
10 Honor.

11 **THE COURT:** All right. Subject to prior objection,
12 12 is in evidence.

13 (State's Exhibit Number 12, a photograph, was admitted
14 into evidence.)

15 BY MS. MAYES:

16 Q. What are we looking at? What does that appear to be?

17 A. It appears to me to be blood.

18 Q. All right. Now when you have a child witness, what
19 steps do you take as a law enforcement officer and as the
20 victim advocate to follow up in terms of an investigation?

21 A. Initially my job would be to make sure the child was
22 safe and secure and to -- if need be, arrange for a
23 follow-up -- for an interview, a professional interview.

24 Q. Okay. And when you say a follow-up with a
25 professional interview, did you set up an interview with a

1 trained interviewer?

2 A. Yes, we did.

3 Q. All right. And do you know where you referred the
4 child for that interview to be done?

5 A. I do.

6 Q. Okay. What is the name of that location?

7 A. The Dickerson children.

8 Q. Okay. For children?

9 A. It's a child advocacy center, yes.

10 Q. Can you tell us whether or not that's normal protocol?

11 A. That is our normal protocol, yes.

12 **MS. MAYES:** Nothing further of Ms. Belk at this time,
13 Your Honor.

14 **THE COURT:** Mr. Phillips, cross-examine?

15 **MR. PHILLIPS:** Thank you, Your Honor.

16 **THE COURT:** Uh-huh.

17 **MR. PHILLIPS:** We have no further questions of this
18 witness.

19 **THE COURT:** Thank you. Ms. Belk, you can step down.
20 Thank you, ma'am.

21 **THE WITNESS:** Thank you, Your Honor.

22 (Witness excused.)

23 **THE COURT:** Can we talk about a scheduling matter
24 over at the sidebar at this time?

25 **MS. MAYES:** Yes, Your Honor.

1 (Proceedings held at the bench; not reported.)

2 **THE COURT:** The testimony of the last witness was
3 preliminary testimony that had to be offered before some
4 other additional witnesses are gonna be offered under our
5 rules and I also have to deal with some matters of law
6 regarding those additional witnesses before they're gonna
7 be allowed to testify and so that's the reason we had to
8 get her out to establish this and now I've got to send you
9 out again while I take care of those other matters. That
10 way we can keep things in their proper sequence and to make
11 sure that the building blocks are in place to allow this
12 matter to proceed.

13 And what that means is I'm not gonna send you back
14 into the jury room, I'm gonna send you home, and I
15 apologize for sending you home with an hour and a half of
16 regular court time left in the day. It's gonna take a
17 good bit of that court time for us to do what we have to
18 do before the additional testimony can be offered. And so
19 we might be able to squeeze in another thirty minutes of
20 court time today, but with the expense of you waiting for
21 an hour back in the jury room. I don't want to do that.
22 One of my pet peeves is having jurors wait in the jury room
23 while we're doing stuff out here and I try to guard against
24 that every way I can. The only way I can guard against it
25 today is to send you home, so I'm sorry about that. Now if

1 you want to hang around, you can, but we aren't gonna be
2 able to use your efforts any more here today in the
3 courtroom.

4 So we're on good time in this case. It's not gonna
5 be a problem with us running out of time before we run
6 out of case in this particular case. We're okay in that
7 regard. And I apologize for this. I wish there was some
8 other way that we could just stack things up and let
9 things go smoothly like an assembly line, but there's a
10 matter of the Constitution. Golly, bum, it just gets in
11 the way sometimes, but it's what -- it's what greases the
12 wheels that we operate under and that's what we do and so
13 it takes a while to meet the demands of our law and the
14 Constitution, but we don't apologize for that. All of us
15 are protected by it, so that's what we have to do.

16 That's a long way of saying I'm gonna let you go now.
17 You're beating the traffic, if that's any consolation.
18 I need you back at 9:30 again in the morning. I remind
19 you, as always, to please not to discuss the case among
20 yourselves or with anybody else and I'll see you back at
21 9:30 tomorrow. Thank you.

22 (Whereupon, the jury was excused for the day at
23 3:34 PM.)

24 **THE COURT:** All right, folks. We've just had a break,
25 so let's keep going.

1 **MS. MAYES:** The State calls Agent Laurie Caldwell.

2 **THE COURT:** Ms. Caldwell, come forward, please.

3 Ms. Caldwell, come forward, please, ma'am, and be sworn.

4 (Whereupon, Laurie Caldwell was duly sworn by the
5 Clerk of Court.)

6 **THE CLERK:** Please be seated. State your full name
7 and spell your last name.

8 **THE WITNESS:** My name is Laurie Caldwell,
9 C-A-L-D-W-E-L-L.

10 LAURIE CALDWELL,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION (In-Camera)

13 BY MS. MAYES:

14 Q. And, Agent Caldwell, where are you current employed?

15 A. I'm employed by the State Law Enforcement Division.

16 Q. In what capacity?

17 A. My title is senior special agent.

18 Q. All right. And how long have you been an agent with
19 the State Law Enforcement Division currently?

20 A. Currently, three years this month.

21 Q. And then prior to this, what was your career with the
22 State Law Enforcement Division?

23 A. Twenty-five years as a senior special agent.

24 Q. All right. I'm gonna show you a document and ask you
25 whether or not you recognize it?

1 A. Yes, that's my CV.

2 Q. All right. And did you bring this with you today for
3 purposes of court?

4 A. Yes.

5 Q. And establishing any background, education and
6 training that you have?

7 A. Yes.

8 Q. All right.

9 **MS. MAYES:** And, Your Honor, we'd ask this could be
10 marked as a Court's exhibit. We have provided a copy to
11 defense counsel.

12 **THE COURT:** Thank you.

13 (Court's Exhibit Number 6 was marked for
14 identification.)

15 BY MS. MAYES:

16 Q. Now you mentioned that you're currently an agent
17 with the State Law Enforcement Division. What years were
18 you previously employed as an agent with the State Law
19 Enforcement Division prior to now?

20 A. 2000 -- excuse me, 1986, and I retired in
21 February 2011.

22 Q. So approximately twenty-five years at the State Law
23 Enforcement Division?

24 A. Yes.

25 Q. And during that time that you were an agent, what

1 type of criminal investigations did you focus on primarily?

2 A. Primarily I investigated crimes against children and
3 then eventually also exploitation of vulnerable adults,
4 but the vast majority children.

5 Q. And during that twenty-five years of experience as
6 a SLED agent, did you have the opportunity to conduct
7 interviews with children yourself?

8 A. Yes.

9 Q. As well as regular training in the field of
10 interviewing children?

11 A. Yes.

12 Q. Did that include children who were witnesses to crimes
13 or victims of crimes?

14 A. Yes.

15 Q. Following your retirement from the State Law
16 Enforcement Division in 2011, where did you go to work and
17 in what capacity?

18 A. I began employment about three weeks after I retired
19 at the Dickerson Child Advocacy Center. When I was there,
20 it was called the Dickerson Center for Children. There I
21 was the -- what we referred to as forensic coordinator.
22 I was the chief investigative interviewer of children and
23 I supervised the other employees there that conducted
24 interviews with children and I also coordinated and
25 facilitated the Lexington County Multidisciplinary Team,

1 as well as the advocacy program at the Dickerson Center.

2 Q. All right. During that three years as an interviewer
3 at the Child Advocacy Center here in Lexington County --
4 let me clarify that. The Dickerson Center primarily serves
5 what counties?

6 A. Primarily serves Lexington County.

7 Q. Is it possible for you to estimate how many children
8 you would have conducted forensic interviews with?

9 A. In my -- in my career, well over 2,000.

10 Q. And specifically in terms of what may be called a
11 forensic interview or an investigative interview that's
12 done pursuant to specific non-leading questions, is it
13 possible to estimate how many?

14 A. Well over 2,000.

15 Q. And that was your approach or protocol throughout your
16 career?

17 A. Absolutely, yes.

18 Q. Now what type of specific training have you received
19 leading up to your role at the time termed forensic
20 interviewer with the Dickerson Childrens Center that --
21 that allowed you to keep up with current techniques and
22 training in regards to investigative interviews of
23 children?

24 A. It started as early as 1987 at the South Carolina
25 Criminal Justice Academy, their child abuse investigative

1 school. I attended multiple seminars; Medical Aspects of
2 Child Abuse, Abuse and Exploitation -- excuse me. That
3 has nothing to do with children. I attended the Division
4 of Public Safety's Innovative Concepts of Investigations
5 of Child-Related Crimes, I've attended training through
6 the National Center for Missing and Exploited Children,
7 training through the Federal Law Enforcement Training
8 Center.

9 Q. All right. So let me stop you right there. What is
10 meant by the Child First Training Program?

11 A. That the child's wellbeing is the utmost first in
12 investigation.

13 Q. All right. And what about the Finding Words Training
14 Program?

15 A. That was the forensic interview model -- or the
16 investigative child interview model where it is designed
17 to meet a child on their level but to create an environment
18 to solicit information from the children in a non-leading,
19 non-suggestive environment.

20 Q. So the Finding Words Program, if I understand
21 correctly, can you tell us whether that focuses
22 specifically on how you approach interviewing children?

23 A. Yes.

24 Q. Including non-leading interviews of children?

25 A. Correct.

1 Q. Take a look, if you will, and review your CV and tell
2 us during what year you received training specifically in
3 that Finding Words Program which deals with interviewing
4 techniques for children.

5 A. I attended it in 2001.

6 Q. And what about an advanced course for Finding Words?

7 A. 2001, 2003, 2004, 2006.

8 Q. Okay. And which of those would have been the Finding
9 Words advanced courses?

10 A. The advanced course would have been 2003, 2004, 2006.
11 I also attended in 2010 When Words Matter. That was also
12 an advanced course in the Finding Words model.

13 Q. All right. Then I want to ask you about training in
14 2013 regarding Extended Forensic Interviewing of Children.

15 A. Yes, I attended that at the National Childrens
16 Advocacy Center in St. Louis, Missouri.

17 Q. And was that -- can you tell us whether or not that
18 was within the period of time that you were a forensic
19 interviewer at the Dickerson Center for Children?

20 A. Yes, it was.

21 Q. Throughout that time can you tell us whether or not
22 as Director of Forensic Services you maintained your
23 training that is followed by peers in the field?

24 A. Yes, I did. Yes.

25 Q. And can you tell us whether or not you followed

1 that training regarding techniques and protocols for
2 interviewing children?

3 A. Yes, I did.

4 Q. Can you tell us whether or not that was the same
5 type of approach you had for the interview with Brianna
6 Simon on April 15th of 2014?

7 A. Yes, it was.

8 Q. Have you had the opportunity to review the actual
9 recording of [REDACTED] 's forensic interview?

10 A. Yes, I have.

11 Q. And have you had an opportunity to review the
12 document which is a summary of the forensic interview?

13 A. Yes, I have.

14 Q. Who actually prepared this document?

15 A. The summary, I prepared it.

16 Q. All right. Can you tell us whether or not during the
17 course of [REDACTED] 's interview -- how old was she?

18 A. Six and a half at the time.

19 Q. All right. With her being six or six and a half,
20 can you tell us whether or not it's standard to have the
21 child agree to certain rules to follow in the interview?

22 A. Yes, it is.

23 Q. And why is that?

24 A. I want to establish the expectation that we're gonna
25 talk about things that are real and true.

1 Q. All right. And can you tell us whether or not --
2 how you instruct children regarding guessing or if they're
3 not sure of an answer?

4 A. Well, I make sure I give them permission that it's
5 okay to say I don't know and I want to, you know, make
6 sure that they don't guess and so I kind of test that a
7 little bit just with just some fun questions. Like in
8 this particular case, I said do you know my last name and
9 she said I don't know and I praised that, right, you do
10 not know. And in reviewing the DVD, I was reminded that
11 I asked her how many horses do I have in my backyard and
12 she said I don't know and I said you're right, you don't
13 know, and so encouraging and praising that answer if that
14 is real and true.

15 Q. All right. And do those factors also come into play
16 in assessing a child's competency, their ability to
17 understand your questions and then communicate a response?

18 A. Yes.

19 Q. Based on all of that, did MINOR appear to be
20 competent?

21 A. Yes, she understood that -- the expectation that
22 we're only gonna talk about things that are real and true
23 and things that she had seen, heard or felt.

24 Q. All right. And did she agree -- not only in what you
25 observed with her answering your questions, but did she

1 agree to follow those rules during the interview?

2 A. Yes, she did.

3 Q. I'm gonna refer you to Page -- I believe it's gonna
4 be 2, Page 2 of your report or your summary. Do you have a
5 section where you discuss a child's ability to understand
6 the interview rules and agree to follow the interview
7 rules?

8 A. Yes, I do.

9 Q. All right. And can you tell us -- what, if anything,
10 can you tell us about this document and how you prepared
11 it?

12 A. It was probably the very last report, number one, that
13 I prepared as I was leaving the Dickerson Center returning
14 to SLED, but I used a template and in this particular case
15 I made a mistake on it because I did not notice that I had
16 checked "no" instead of "yes" on this particular report.

17 Q. All right. So when it says rules, no guessing,
18 correct the interviewer, only talk about things that are
19 real and true, did you discuss that with **MINOR** ?

20 A. Yes, I did.

21 Q. Was she able to give you accurate answers and
22 responses to those rules?

23 A. Yes.

24 Q. In fact, to actually correct you and say I don't know
25 how many horses are in your yard?

1 A. Correct.

2 Q. So what would -- based upon your memory of the
3 interview and your observations, did she understand the
4 interview rules?

5 A. Yes, she did.

6 Q. And did MINOR agree to follow the interview
7 rules?

8 A. Yes.

9 Q. All right. So your notation here is inaccurate?

10 A. It's inaccurate on the report, yes.

11 Q. What, if anything, can you tell us about the format
12 for filling this out that may have allowed for that error?

13 A. I may have, in thinking back, have cut and pasted a
14 little bit and just did not take a formal report to save
15 time because of the amount of work volume that was coming
16 in.

17 Q. Is this a template software program?

18 A. It's a template, yes.

19 Q. So is there any doubt that was an error on your part?

20 A. No, no doubt that was definitely an error on my part.

21 Q. All right. If you can just account for the additional
22 pages of training; Page 2, Page 3, Page 4 and Page 5, 6
23 and 7 that are part of your curriculum. If you could tell
24 us roughly how many or what percentage of these courses
25 that deal with children would have involved interviewing

1 techniques.

2 A. The majority of it. The majority of it would involve
3 interviewing children.

4 Q. Now I also want to ask you, you're not being offered
5 as an expert witness in this case, but have you previously
6 been offered and qualified as an expert in courts of this
7 state?

8 A. Yes.

9 Q. And specifically in the field of child sexual abuse
10 and related dynamics?

11 A. Yes.

12 Q. Have you testified previously in court regarding
13 forensic interviews?

14 A. Yes.

15 Q. Is it possible to estimate how many times you've
16 testified in general sessions and family court on forensic
17 interviews that you have conducted?

18 A. I'm not even sure how to estimate that. I'm sorry.
19 I'm afraid it would --

20 Q. More than one or more than a few?

21 A. Yes, more than a few.

22 Q. Okay. Going back to that interview that was conducted
23 with [REDACTED] MINOR, have you had a chance to review it
24 again in anticipation of this trial?

25 A. Yes.

1 Q. Can you tell us whether or not you followed your
2 procedure of non-leading questions?

3 A. Yes, I did.

4 Q. Does your protocol and training allow you to ask more
5 specific questions at any point during an interview?

6 A. Yes.

7 Q. Explain that please.

8 A. We are allowed to ask specific questions, but we
9 always try to return to the open-ended questions.

10 Q. Can you ask more specific questions in follow-up to
11 something that the child has stated?

12 A. Yes. As follow-up, yes.

13 Q. Can you tell us whether or not you are trained in
14 conducting investigative interviews of children?

15 A. Yes, I am trained.

16 Q. All right. Can you tell us whether or not MINOR's
17 account contained details of the crime?

18 A. Yes, it did.

19 Q. Was she able to describe the person that came into the
20 home?

21 A. Yes.

22 Q. Was she able to describe what he was wearing?

23 A. Yes.

24 Q. And what portions of his face were covered?

25 A. Yes.

1 Q. Was she able to describe whether or not he was armed
2 with a weapon?

3 A. Yes.

4 Q. Was she able to describe whether or not he spoke to
5 her and her mother?

6 A. Yes.

7 Q. Was she able to describe who was in the room with her?

8 A. Yes.

9 Q. Was she able to describe whether or not she heard the
10 weapon fired?

11 A. Yes.

12 Q. Was she able to describe whether or not her mother was
13 injured?

14 A. Yes.

15 **MS. MAYES:** Your Honor, that's all we have from
16 Ms. Caldwell at this time.

17 **THE COURT:** All right.

18 **MR. PHILLIPS:** Just a second. I'm sorry, Your Honor.

19 **THE COURT:** That's okay. I was just looking to who
20 was gonna do the cross-examination.

21 **MR. PHILLIPS:** I will, Your Honor.

22 CROSS-EXAMINATION (In-Camera)

23 BY MR. PHILLIPS:

24 Q. Hi, Ms. Caldwell.

25 A. Hi.

1 Q. How are you?

2 A. Good. Thank you.

3 Q. In reviewing the report -- when was the most recent
4 time that you reviewed the report?

5 A. I believe I can tell you it was faxed to me on
6 March the 2nd, 2017.

7 Q. And with that fax did you have any conversations or
8 -- with the solicitor's office regarding that report?

9 A. Not until yesterday. And I'm incorrect. It was
10 faxed on April the 6th 2017. I think this March 2nd is
11 between somebody else. I must have gotten a fax of a fax.

12 Q. Okay. Did you have any e-mails or phone calls?

13 A. Just e-mails from the solicitor's investigator,
14 Investigator Sullivan, and it was just in preparation, I
15 want to drop this CD off -- or, excuse me, DVD, but other
16 than any specific conversations not until yesterday
17 afternoon.

18 Q. So just to make sure, there was no faxes, e-mails or
19 any other type of phone calls that had anything to do with
20 that report other than sending you the report itself?

21 A. Correct. And then they wanted to make sure I saw the
22 DVD.

23 Q. And the DVD. So yesterday you had the phone call with
24 the solicitor?

25 A. Yes.

1 Q. And -- and was it you after reviewing the report who
2 noticed the error or the solicitor?

3 A. I noticed the error, yeah.

4 Q. Okay. So you were the first one to bring it up to the
5 solicitor?

6 A. I believe so because, see, I watched the DVD and then
7 when I was reviewing my report, I was like whoa, I made a
8 mistake.

9 Q. With those reports having the errors, you said it's a
10 copy and paste. Is it a program where you actually click
11 "X", you know, to check boxes?

12 A. Yes.

13 Q. So you can copy and paste a program you can click?

14 A. What I can do, and now I'm not saying I did that with
15 this report because that was a long time ago, is I can take
16 an existing report sometimes and like if I already had one
17 with West Columbia and the same investigators, I can use
18 that and then change the pertinent information.

19 Q. Okay. In making this mistake, how often do you make
20 mistakes in creating reports?

21 A. I wish I knew.

22 Q. Thousands of times?

23 A. No, I would not think so. I don't think SLED would
24 have hired me back if that were the case.

25 Q. But you wouldn't have known that you made an error in

1 those reports, the thousands of reports you made, had you
2 not received a phone call and a fax from the solicitor's
3 office; is that right?

4 A. In this case, I would not have known had I not been
5 preparing to testify.

6 **MR. PHILLIPS:** No further questions. Just a motion,
7 Your Honor.

8 **THE COURT:** Thank you. Redirect, Ms. Mayes?

9 **MS. MAYES:** Just briefly, Your Honor.

10 REDIRECT EXAMINATION (In-Camera)

11 BY MS. MAYES:

12 Q. Does -- do you also review the actual physical DVD?

13 A. Yes.

14 Q. You re-watch the video?

15 A. Correct.

16 Q. Having re-watched the video, is there any doubt
17 whatsoever that she understood the interview rules?

18 A. There's no doubt in my mind she understood the
19 interview rules and what to expect.

20 Q. And followed them?

21 A. Yes.

22 **MS. MAYES:** Nothing further.

23 **THE COURT:** All right. Is now an appropriate time
24 for me to hear arguments in connection with compliance
25 with Section 17-23-175?

1 **MS. MAYES:** It is for the State, Your Honor.

2 **THE COURT:** All right. Let's go ahead.

3 **MS. MAYES:** Your Honor, pursuant to 17-23-175, the
4 first fact that we would offer would be that the statement
5 was given in response to an investigative interview.
6 Secondly, that it was audio and visually recorded. And
7 then, third, that the child is expected to testify at
8 trial and be subject to cross-examination on the elements
9 of the offense and the statements that were made on the
10 video.

11 Your Honor, the State can -- I can state with
12 certainty that we will comply with element three and that
13 elements one and two have already been met in terms of
14 this being an investigative interview pursuant to the
15 statute and that it was recorded properly.

16 Moving on now to the guarantees of trustworthiness,
17 Your Honor, the statement was elicited -- all of the
18 statements basically during the course of the interview
19 were elicited by non-leading questions. The interviewer
20 was very careful to ask the child what she saw, what she
21 heard, what she experienced without pursuing anything
22 further beyond what **MINOR** was actually able to tell her.
23 At one point in time the child is describing the gun and
24 it's very clear that the gun is black and then wants to
25 draw the gun which the interviewer allows her to do and

1 the child states "but you don't have a black marker", and
2 so the child definitely seemed to be aware of her
3 surroundings and being able to express what she had
4 observed.

5 Secondly, Ms. Caldwell does have experience conducting
6 these interviews and has for years and has testified
7 previously in court regarding investigative interviews.

8 Third, whether the statement contains a detailed
9 account of the offense, again, Your Honor, this would be
10 from the eyes of a six-year old, so everything that she
11 was able to give an account for was what she actually from
12 a developmental level was able to observe and explain, and
13 at age six she's really not gonna have a firm understanding
14 of everything that's happening beyond what she was able to
15 express, that he had a gun, that she called him a burglar,
16 that he was dressed in black, that his face was at least
17 partially covered and that she heard the gun pop and that
18 her mom was shot and then she's able to describe the gun
19 and also that he wanted her to do what he made her mom do.
20 I can be more specific on that, but "he wanted me to do
21 what mom did". The Court's indulgence on that.

22 **THE COURT:** Okay.

23 **MS. MAYES:** This happened in her mother's bedroom at
24 night and she states "he tried to kill my momma". And
25 then as she's questioned further, the interviewer says,

1 "What did momma say, what was momma saying?", and the
2 child's response is, "She said don't let her do that" and
3 then the interviewer said, "Don't let her do what?", the
4 child states "Do what?", and the interviewer says, "I'm
5 confused. Your mom said don't let her do this, what was
6 she talking about?", and the child states, "Do the same
7 thing exactly -- do the same thing as my momma's doing."
8 And so, Your Honor, that is the six-year-old's account of
9 what he's instructing her to do there in the bedroom and
10 that would, again, be something the child would only know
11 because she had experienced it.

12 As to element four, whether the statute -- whether
13 the statement has internal coherence in compliance with
14 the statute, again, from the eyes of a six-year-old she's
15 actually very detailed and very descriptive about what she
16 saw, how he was dressed, the circumstances of that night
17 and the things she heard him saying and what she perceived.

18 And, finally, sworn testimony of any other participant
19 which may be determined as necessary by the Court, we have
20 already heard the testimony of other people in this case
21 that do corroborate the child's account. There's no doubt
22 that her mother was shot that night, there's no doubt that
23 she was shot in the bedroom because of the physical and
24 forensic evidence that supports that, there's no doubt that
25 she was shot multiple times as the child described, and we

1 have a black item of clothing that was left behind by the
2 burglar as the child described. So certainly, Your Honor,
3 there are other participants who have already given
4 testimony that corroborate the child's account as given
5 in this forensic interview and for these reasons, Your
6 Honor, the State's position is that we have complied with
7 the requirements of 17-23-175 and ask for permission to
8 publish that forensic interview.

9 Now as for the statement that we're talking about
10 things that are real and true, there's been no request
11 from the defense to do any redactions, but we do have
12 a redacted version of this forensic interview or
13 investigative interview if necessary that would take out
14 the word "truth" and would take out -- I believe there's
15 another reference somewhere along the way to "we have to
16 tell the truth" and we could remove that as well for full
17 compliance with Kromah.

18 **THE COURT:** Thank you, Ms. Mayes.

19 Mr. Phillips.

20 **MR. PHILLIPS:** Thank you, Your Honor.

21 **THE COURT:** Ms. Caldwell, you can step down during all
22 this while we're talking about you and we'll get you back
23 on the stand if we need you. Thank you, ma'am.

24 (Whereupon, the witness steps down from the witness
25 stand.)

1 (Witness excused.)

2 **MR. PHILLIPS:** First, in determining that first prong
3 with the admission under this statute, we believe that --
4 the whole -- the reason why I had the order of my motions,
5 I think the competency hearing needs to come first --

6 **THE COURT:** Right.

7 **MR. PHILLIPS:** -- in order to satisfy that prong and
8 to do that we would have to have the testimony of **MINOR**
9 **[REDACTED]**.

10 **THE COURT:** Can we -- can we go forward -- if she's
11 not competent, of course, we'll deal with it. If we can
12 assume that she is -- if she's here and we can determine
13 competency, and it shouldn't take too long to do it, but
14 -- and Agent Caldwell didn't specifically use the word --
15 might not have used the word "competent", but clearly
16 that was the implication of everything that she said in
17 response to the interview itself and the child's
18 understanding. I think the -- you made the statement the
19 child understood the rules and followed them, which, I
20 think, is the essence of competency, and if all of these
21 other things are in place, like the coherence of the
22 statement and things of that nature. But just -- just
23 for purposes of argument, suppose we bring the child up
24 right this minute and determine that competency exists,
25 then where would that lead you? What would you proceed

1 to then?

2 **MR. PHILLIPS:** Once Your Honor was satisfied with the
3 first prong, I could just start going through the video and
4 we'll reserve -- I just -- for error preservation purposes,
5 as Your Honor said, we'll just reserve the right to have
6 that testimony.

7 **THE COURT:** Let's -- let's do that rather than the
8 break the flow of this and --

9 **MR. PHILLIPS:** Well, I guess the thing is would the
10 video be admitted without her testifying? Because then I
11 -- I would waive the issue. I've got to have her testimony
12 in-camera for the competency part prior to the admission
13 of the video if my motion is denied.

14 **THE COURT:** Well, of course, the statute requires,
15 as I understand it, that in order for the -- these other
16 things to fall in place she's gonna have to testify in
17 court. That's prong number three -- (A)(3).

18 **MR. PHILLIPS:** So she would -- if Your Honor says --
19 denies the motion and the video's admitted, she will
20 testify before the video is shown? Because I know that
21 issue comes up in CSC cases quite often.

22 **MS. MAYES:** We can do that.

23 **THE COURT:** Right. I'm trying to decide the -- what
24 the order of it all is and the statute doesn't say that
25 specifically, but it would imply that the child testifies

1 and is subject to cross-examination and then the -- the
2 video is shown. That would seem to be the order of things
3 under the statute.

4 **MS. MAYES:** We can go either way, Your Honor.
5 Whatever Your Honor deems appropriate.

6 **THE COURT:** Well, rather than -- is MINOR here?

7 **MS. MAYES:** She is, Your Honor. We can proffer her
8 testimony limited to the issue of competency.

9 **THE COURT:** Why don't we do that right this minute?

10 **MR. PHILLIPS:** That would be perfect. That -- that
11 clears up everything.

12 **THE COURT:** It will. It will be easier to do that
13 than argue about it.

14 **MR. PHILLIPS:** Thank you.

15 **THE COURT:** Okay.

16 **MS. MAYES:** The State calls MINOR .

17 **THE COURT:** MINOR , if you'll come forward, please,
18 ma'am, and be sworn.

19 (Whereupon, MINOR was duly sworn by the Clerk
20 of Court.)

21 **THE CLERK:** Be seated. State your full name.

22 **THE WITNESS:** I'm MINOR . , .
23 MINOR ,

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION (In-Camera)

1 BY MS. MAYES:

2 Q. Okay. And, MINOR, I'm gonna get you a little
3 situated, okay? And we're just gonna go real slow and
4 just kind of ask some easy questions, if that's okay?

5 A. Yes, ma'am.

6 Q. What grade are you in right now?

7 A. Fourth.

8 Q. And what's the name of the school that you go to?

9 A. Saluda River Academy for the Arts.

10 Q. Saluda River Academy for the Arts. And how long have
11 you gone to that school?

12 A. Since kindergarten.

13 Q. Okay. Were you going there when you were six years
14 old?

15 A. Uh-huh.

16 Q. And one thing I want to ask you about is whether you
17 can give an actual answer like "yes" or "no" so that when
18 this lady is making a note of everything that you say
19 she'll get it right.

20 A. Yes, ma'am.

21 Q. Okay. Were you going there in first grade?

22 A. Uh-huh. Yes, ma'am.

23 Q. Okay. And when this happened, when someone came into
24 your house, were you also in -- at Saluda River Academy
25 then?

1 A. Yes, ma'am.

2 Q. And are you someone who when you go to school you are
3 able to follow the rules that the teacher gives you?

4 A. Yes, ma'am.

5 Q. Okay. And what about when you're at home with your
6 mom?

7 A. Yes, ma'am.

8 Q. And what happens if you, let's say, don't follow a
9 rule?

10 A. Can you repeat the question?

11 Q. Yes. If you -- let's say you went to school and you
12 didn't follow the rules that the teacher gave you and you
13 didn't follow the rules that the principal gave you and
14 you did something wrong, what kind of punishment might you
15 get?

16 A. I might get -- hum.

17 Q. Have you ever seen anyone else at school get in
18 trouble?

19 A. Uh-huh.

20 Q. What happens to someone at your school if they get in
21 trouble?

22 A. Mostly get a denote.

23 Q. What does that mean?

24 A. It means like you get like a bad note and the bad note
25 is like if you did something wrong the teacher will sign

1 you up and write it down on a piece of paper and give it --
2 give it to the principal and then give it to your parents
3 and then let them sign it.

4 Q. Okay. So a bad note might get sent home with a child
5 that does something wrong in school?

6 A. Yes, ma'am.

7 Q. All right. And what about if you are at home and you
8 didn't follow a rule that your mom had set and let's say
9 that you were supposed to stay inside from the time it was
10 dark on but you wanted to play and so you went out and
11 played against the rules, what might happen to you?

12 A. I might --

13 Q. Have you ever gotten in trouble at home before?

14 A. Uh-huh.

15 Q. Okay. And what kind of things would your mom do if
16 you did something wrong at home?

17 A. She might take away my phone for like a day or two.

18 Q. Okay. So that's how you could get in trouble if you
19 did something wrong at home?

20 A. Uh-huh.

21 Q. Okay. And remember about --

22 A. Yes, ma'am.

23 Q. Okay. So in court, which is where we are now, have
24 you ever seen court before on TV?

25 A. Yes, ma'am.

1 Q. Okay. Do you know what the person who's wearing the
2 black robe right there, do you know what that person's
3 called?

4 A. Yes, ma'am.

5 Q. What's that person called?

6 A. A judge.

7 Q. Okay. And who has control of the courtroom and makes
8 sure that all the rules are followed?

9 A. The judge.

10 Q. Okay. Now if somebody does something wrong in court,
11 what might happen?

12 A. I don't know.

13 Q. Okay. So let me ask you this. Is it good or bad to
14 tell the truth?

15 A. It's good.

16 Q. Is it good or bad to tell a lie?

17 A. Bad.

18 Q. Okay. If someone were to tell a lie in court, who
19 would be the person who would make a decision about what
20 should happen?

21 A. I don't understand that.

22 Q. Okay. So let me ask it -- if someone tells a lie in
23 court, is that good or bad?

24 A. Bad.

25 Q. Okay. And what might happen?

1 A. They might like get arrested.

2 Q. Okay. In court when you walked up here, you put your
3 hand on that Bible.

4 A. Yes, ma'am.

5 Q. And what did you promise to do?

6 A. To tell the truth.

7 Q. Okay. And is that something that you can do in court
8 just like when you're in school and you have to follow
9 rules?

10 A. Yes, ma'am.

11 Q. What about when you're at home and you have to follow
12 rules, is that something that you can do here in the
13 courtroom?

14 A. Yes, ma'am.

15 Q. What's the biggest rule for a witness in court?
16 What's the most important job for a witness?

17 A. To tell the truth.

18 Q. Okay.

19 A. Nothing -- and nothing but the truth.

20 Q. Okay. And so when you did put your hand on the Bible
21 and now you're sitting in the chair and that makes you a
22 witness, can you tell the truth?

23 A. Yes, ma'am.

24 Q. And if you didn't tell the truth, would that be good
25 or bad?

1 A. Bad.

2 Q. And if you didn't tell the truth, what might happen?

3 A. I don't -- I don't know.

4 Q. Would that -- okay. If you didn't tell the truth,
5 would that be good or bad?

6 A. Bad.

7 Q. Okay. Who might be bad or upset about that if you
8 didn't tell the truth?

9 A. My parents and the judge.

10 Q. Okay.

11 A. And the judicial.

12 Q. Okay. If the judge was mad because someone didn't
13 tell truth, who would decide the punishment for that
14 person?

15 A. The judge.

16 Q. Okay.

17 A. Or the judicial.

18 Q. Okay. So when you say the judge would decide, what
19 would happen if the judge instructs you to tell the truth,
20 can you do that?

21 A. Yes, ma'am.

22 Q. And have you done that when you put your hand on the
23 Bible?

24 A. Yes, ma'am.

25 Q. Okay. Have you -- leading -- leading up to this, had

1 you ever studied about court in school before?

2 A. No, ma'am.

3 Q. Okay. So when you talk about a judge and judicial,
4 is that something that you'd ever had any experience with
5 in your own life?

6 A. No, ma'am.

7 Q. Or in school?

8 A. No, ma'am.

9 Q. But you've been able to sit in court today?

10 A. Uh-huh. I mean, yes, ma'am.

11 Q. Okay. And the people who are sitting in the chair
12 right there, what are they called?

13 A. The witness.

14 Q. Okay. The witness. And I'm just gonna ask you this
15 one last time. If a witness's job is to tell the truth,
16 is it good or bad if they don't tell the truth?

17 A. Bad.

18 Q. Okay. And who would decide what should happen to
19 them?

20 A. The judge.

21 Q. Okay.

22 **MS. MAYES:** Nothing further, Your Honor.

23 **THE COURT:** Thank you. Mr. Phillips, any examination
24 on that limited addition?

25 **MR. PHILLIPS:** Very brief.

1 CROSS-EXAMINATION (In-Camera)

2 BY MR. PHILLIPS:

3 Q. Hey, MINOR. How are you?

4 A. Good.

5 Q. You did a great job answering the questions.

6 A. Thank you.

7 Q. Just two quick ones, okay? If I said the sky was
8 blue, is that true?

9 A. Yes.

10 Q. And if I said grass, is it normally purple, is that
11 true?

12 A. No.

13 Q. What color is grass?

14 A. Green.

15 Q. And that would be a lie?

16 A. Yes, sir.

17 **MR. PHILLIPS:** No further questions, Your Honor.

18 **THE COURT:** Thank you.

19 All right. MINOR, you can step down. Thank you
20 very much.

21 (Witness excused.)

22 **THE COURT:** Understanding the presumption of
23 competency that our rules of evidence apply and the
24 examination further of MINOR, Mr. Phillips, do you have
25 any questions or arguments in regard to the issue of

1 competency?

2 **MR. PHILLIPS:** She -- we have no motion regarding her
3 ability to be competent to testify today.

4 **THE COURT:** Okay.

5 **MR. PHILLIPS:** So as to the issue of competency for
6 her testimony today, we have no issue with it and no
7 objection.

8 **THE COURT:** All right.

9 **MR. PHILLIPS:** Of course, again, we would leave it in
10 the Court's discretion based on our motion. We would make
11 the argument that competency today would be different than
12 competency at the time of the Dickerson Center video, which
13 is at the heart of the issue of 17-23-175.

14 **THE COURT:** Right.

15 **MR. PHILLIPS:** And we would reserve that argument
16 based on our motion that was listed as Exhibit Number 7
17 that was before the Court based on the evaluation at the
18 time or the summary report provided by Ms. Caldwell at the
19 time that the interview was conducted.

20 **THE COURT:** And that was on the sole issue of the --
21 the ability to follow rules; is that it?

22 **MR. PHILLIPS:** Yes, Your Honor. Essentially that it
23 said she did not appear to understand the interview rules
24 and did not agree to the interview rules and they had the
25 rules listed as no guessing, correct the interviewer and

1 only talk about things that are real and true.

2 **THE COURT:** Okay. Other than that, what Agent
3 Caldwell just testified to as a scrivener's error, I
4 suppose, an error, is there any other evidence that
5 **MINOR** was incompetent at the time the interview was
6 given?

7 **MR. PHILLIPS:** None at all, Your Honor.

8 **THE COURT:** All right. Thank you.

9 All right. I've had a chance to, of course, look
10 at the interview and Ms. Mayes has summarized it very
11 completely. I watched it, I saw Agent Caldwell pose the
12 questions in the way that she did and the business of
13 following rules and -- and telling the truth and things of
14 that nature was a preliminary part of everything that went
15 on. And Agent Caldwell did, as we all know because we've
16 all seen the interview, as to those -- those trick
17 questions about how many horses she's got, although if
18 **MINOR** had known that she lives on Househeaven Lane over
19 in Wedgefield she might have wanted to guess at one or two
20 anyway, but, nonetheless, she -- she didn't fall for that.

21 I find that the interview was properly conducted in
22 that regard, of course, by someone who's trained to do it
23 and extensively trained to do it, as a matter of fact,
24 and that the elements of 17-23-175 have been complied
25 with, including the fact that she's competent today

1 without objection, and that she was competent at the time
2 of the interview on the date in question. Rule 601(b) --
3 Rule 601(b) talks about being disqualified and Rule
4 601(a) talks about being qualified and competent in that
5 regard.

6 State versus Needs, 1998, in order to be competent and
7 testify, the witness has to have the ability to perceive
8 the event with a substantial degree of accuracy, and
9 certainly the interview tape would reveal that certainly
10 from the perspective of a six-year-old; to remember it, and
11 that the time, of course, was shortly after the event
12 happened itself. As Agent Caldwell said, I believe her
13 mother was in the hospital at the time; to communicate
14 about it intelligibly, as she did; and be mindful of the
15 duty to tell the truth under oath. She was mindful of the
16 duty to tell the truth at that particular time and that
17 was developed.

18 So I find that the issue of competency has been
19 established in so far as the current date today or
20 tomorrow when she testifies or whenever during the course
21 of this trial and as of the date of the interview as well.
22 The provisions of 17-23-175 having been complied with, the
23 jury is entitled to look at the taped interview and, of
24 course, she'll testify in court as well.

25 Does that cover all the bases, folks?

1 **MR. PHILLIPS:** For the competency. We still have to
2 walk through the objections first.

3 **THE COURT:** That's right. Okay. Take us through
4 those then, Mr. Phillips.

5 **MR. PHILLIPS:** Thank you, Your Honor. Specifically
6 for the Defendant's objection to the State's motion for
7 admission of the out-of-court recorded interview of the
8 child witness. Section 17-23-175 violates the Defendant's
9 right to a fair trial, right to contemporaneous corrob --
10 confrontation -- sorry, Your Honor, it's late in the day
11 -- and cumulative and improperly bolsters the child
12 witness's testimony. Specifically, the main issue that's
13 before the Court and our primary argument is one that has
14 not been in my mind or at least not in the cases that
15 I've found ruled on by the appellate court is the
16 contemporaneous cross-examination. Some of those arguments
17 are arguments that are against precedent under procedural
18 due process, improper bolstering, ex post facto. I've
19 listed those cases in that motion. It's Defense Exhibit
20 Number 8 that was given to Your Honor. So I've listed
21 the areas that are against precedent, but one that has
22 not been addressed by our state appellate courts is the
23 contemporaneous cross-examination issue. Specifically in
24 violating those rights, it would be the Fifth, Sixth and
25 Fourteenth amendments to the United States Constitution,

1 and Article 1, Sections 3 and 14 of the South Carolina
2 Constitution. The specific case would be Maryland v.
3 Craig. That's 497 U.S. 836, a 1990 case of the United
4 States Supreme Court, finding that the child witness must
5 be competent to testify and must testify under oath. The
6 defendant retains full opportunity for a contemporaneous
7 cross-examination, and that's the direct quote taken from
8 that case. Specifically noting, Your Honor, that although
9 Craig came before Crawford v. Washington, there's no
10 indication that Crawford v. Washington has abrogated or
11 somehow overruled Maryland v. Craig and essentially in
12 quoting the Craig court as listed in my motion that the
13 confrontation clause doesn't prohibit the use of a
14 procedure that despite the absence of the face-to-face
15 confrontation as to the live video feed, Your Honor, in
16 the case, ensures the reliability of evidence by subjecting
17 it to rigorous adversarial testing thereby preserves the
18 essence of effective cross-examination. And in the motion
19 we emphasize that because this issue of admitting the
20 out-of-court statement takes away that very -- the holdings
21 set forth in Craig, that very -- the whole meaning of
22 preserving the essence of effective cross-examination, that
23 in the moment you're submitting you made this special
24 exception that directly contradicts our Sixth Amendment
25 right to confront your accuser. With that it's also not

1 under oath. So when we're looking at the Sixth Amendment
2 right for the opportunity of effective cross-examination
3 as envisioned by our Constitution, it is statements that
4 were made under oath and are contemporaneous, and I walked
5 through that fairly detailed in the motion, Your Honor. I
6 know obviously I don't want to go read through all of it if
7 Your Honor certainly doesn't want me to, but one of the
8 things that the Craig court notes in that case where they
9 have the live feed issue is if the State makes an adequate
10 showing of necessity, so my argument would be the State
11 hasn't made this adequate showing of necessity that the
12 child doesn't perceive the same events that she perceived
13 back at the time the video was taken and that the testimony
14 would merely be cumulative, that she could testify today to
15 everything she said in that video if her memory's the same
16 and it would still be the exact same testimony without
17 having her testimony plus the video, having that cumulative
18 hearsay.

19 In objecting to the video, it's also important to
20 note that we would argue -- the Defendant argues that it's
21 inadmissible hearsay and it is unduly prejudicial in having
22 that cumulative effect of the same testimony. Obviously
23 one of the things we noted in the motion is that if the
24 interview is admitted over the Defendant's objection, it
25 must be redacted to comply with the South Carolina Rules

1 of Evidence. That was in the motion that was provided
2 pretrial, Your Honor, and a copy was provided to the
3 State --

4 **THE COURT:** Right.

5 **MR. PHILLIPS:** -- when I came in a little after 8:30
6 or whenever and put it on the table.

7 With that, Your Honor, one of the things we did
8 include in the motion, and I think Your Honor said he
9 reads the statute to comply this way, but I knew the
10 issue comes up in CSC cases, that I reserve the right
11 or at least I made the request that we move to reserve
12 cross-examination after the child witness and, you know,
13 the evidence comes in. So if Your Honor denies our
14 motion, we still reserve the motion, but if that's the
15 case we want to reserve cross-examination until after
16 both things have taken place strategically. Your Honor
17 knows where I am going with it. Prosecutors have used it
18 to essentially where I can't cross-examine on it because
19 it comes later.

20 **THE COURT:** Right. I understand. And I take it if
21 the tape is played first and if she testifies later, then
22 your cross-examination right would have some more efficacy
23 then. Is that fair to say?

24 **MR. PHILLIPS:** Yes, Your Honor. And that's been the
25 argument of defense attorneys for quite some time with

1 this -- this statute, but I would say using the rationale
2 set forth in Craig when you're looking at -- when it says
3 essentially if the State makes an adequate showing of
4 necessity, I think you take that same rationale in Craig
5 about contemporaneous cross-examination and you apply it
6 to our statute, the State has to show that the child
7 somehow doesn't have same memory at the time because she
8 was young or old. I think that's where I'm making the due
9 process -- a separate due process right to a fair trial
10 that's not what was argued. And the recent case of State
11 v. Legg, this due process right to a fair trial would be
12 much different if they used the arbitrary standard that
13 was argued, you know, in the Holmes versus South Carolina
14 that went to the Supreme Court. I think that was the
15 argument that was framed in that case. This argument
16 would be entirely different; that without the showing of
17 that necessity by the State that that process is what
18 denies the Defendant of his right to a fair trial and,
19 of course, the other rights that we have listed, Your
20 Honor; that that necessity must be made before the video
21 is admitted.

22 **THE COURT:** The cumulative argument has been
23 addressed by our courts, I believe, already --

24 **MR. PHILLIPS:** That's correct, Your Honor.

25 **THE COURT:** -- in dealing with the statute itself

1 and conceded that except for the statute it would be
2 cumulative, it would be hearsay except for the statute.

3 **MR. PHILLIPS:** That's correct.

4 **THE COURT:** But, Ms. Mayes, I'll be glad for you to
5 respond to Mr. Phillips's concerns in that regard.

6 **MS. MAYES:** Yes, sir, Your Honor. We can comply by
7 making the child available for cross-examination before
8 the video or after the video. We can be flexible in that
9 regard. If it's a situation where the child has to be
10 questioned about the content of the video, either way the
11 jury's gonna see it in close context to the child's
12 testimony whether before or after. Our plan is to call
13 them consecutively --

14 **THE COURT:** Okay.

15 **MS. MAYES:** -- and then publish the video to the jury
16 thereafter, so we can certainly comply with that however
17 the Court deems appropriate.

18 **THE COURT:** It would appear that Mr. Phillips's
19 concerns about contemporaneous cross-examination would
20 have more -- more efficacy, as I've said, if the live
21 testimony were given following the playing of the tape.

22 Is that your view of it as well, Mr. Phillips?

23 **MR. PHILLIPS:** Yes. I mean, certainly not to waive
24 my objection.

25 **THE COURT:** I understand. I'm not trying to trap you.

1 **MR. PHILLIPS:** Certainly I agree with that. If the
2 State would address the issue of the necessity, whether
3 they can meet that need or whether Your Honor wanted to
4 make a ruling on that.

5 **THE COURT:** I'm not sure that the statute itself --

6 **MS. MAYES:** And that would be -- Your Honor, I don't
7 mean to interrupt, but that would be the State's position,
8 is that the statute, the legislative intent was -- took
9 into account many different things when the statute was
10 passed and a showing of necessity independent of the
11 statute is certainly not something that's been required
12 thereafter. With that said, given the age of the child I
13 certainly think that it's probative to have the video
14 account for what the child at age six was able to describe
15 in conjunction with her testimony in front of the jury.

16 **THE COURT:** Right. And that's -- well, that was the
17 point I was getting to. The statute doesn't have a
18 requirement other than necessity involved in it, so I note
19 your objection and you -- and maybe this is gonna be the
20 case and that's finally gonna be addressed, Mr. Phillips.
21 I'm not sure if the need will arise, but we will see.

22 **MR. PHILLIPS:** I think it will take a Federal court.

23 **THE COURT:** You're probably right about that. But at
24 least I don't have to address it here. Having found that
25 the statute has been complied with, I need not go any

1 further.

2 **MR. PHILLIPS:** Thank you, Your Honor.

3 A few other follow-ups based on the hearing, not on
4 the admissibility. I know we've already argued that.

5 **THE COURT:** Right.

6 **MR. PHILLIPS:** The follow-ups would be the redactions
7 that were requested in the motion.

8 **THE COURT:** Right.

9 **MR. PHILLIPS:** The solicitor has agreed to redact
10 language regarding the truth also noted in the motion
11 essentially under Rule 401 and, of course, won't go into
12 the hearsay. You've already ruled on that.

13 **THE COURT:** Right.

14 **MR. PHILLIPS:** And the 403 argument would be -- as
15 noted in the motion, I think it's Argument 3, we ask for
16 redactions regarding -- to comply with the South Carolina
17 Rules of Evidence under 401 and 403, relevance and then,
18 of course, unduly prejudicial, with that being the child
19 witness, I believe, towards the beginning of the video
20 starts explaining that she's afraid of the dark, the child
21 witness describes that she and her mother had been playing
22 dress-up that day, the interviewer leaves the room for a
23 while, she asks **MINOR** to draw a picture, so there is some
24 downtime where **MINOR** is drawing a picture. **MINOR** also
25 at the end of the interview is drawing a picture for quite

1 a while with no questions being asked of the interviewer.
2 Under rules 401 and 403 we don't believe those portions,
3 in agreement with also the addition that the -- what the
4 State presented, are not in compliance with the South
5 Carolina Rules of Evidence under those two rules, not
6 being relevant, and, of course, that the probative value
7 of those parts of the video are substantially outweighed
8 by their prejudicial effect. And what I noted in the
9 motion is that this argument doesn't waive our prior
10 objection to it, we're just saying that if it is admitted
11 over the objection we would request that it comply with
12 the South Carolina Rules of Evidence. And then I have a
13 few more if you want me to kind of go through.

14 **THE COURT:** Are you asking for further reaction
15 regarding the --

16 **MR. PHILLIPS:** No, no further reaction. That would be
17 it on the redaction issue. We've already addressed that.

18 **THE COURT:** Okay. Ms. Mayes has agreed to redact the
19 business about truth and things of that nature in other
20 places. Are you asking for further redaction, is my
21 question, in regard to the drawing of the pictures and
22 things of those nature?

23 **MR. PHILLIPS:** Yes, Your Honor. And that was
24 included in the motion I handed to the Court on Monday.

25 **THE COURT:** All right. You know, of course, she was

1 drawing the picture to -- apparently to give to her mother
2 or show to her mother. State -- State versus -- what was
3 the case -- Russell, the Russell case, in the Russell case
4 the -- Mr. Russell raised on -- somewhat too late the fact
5 that the part of the video that showed the child drawing a
6 picture to give to its parent, the mother as a matter of
7 fact, was prejudicial because it was stirring the emotions
8 of the jury. The court of appeals does, as it sometimes
9 does and has a right to do as you well know, if -- that
10 they dodged that issue because it wasn't preserved on
11 appeal, but it did not necessarily say that if it had been
12 preserved on appeal that they would rule differently, but
13 I will -- I'll let Ms. Mayes cogitate on that overnight to
14 see if that last part of the -- well, just in between --
15 it's after Agent Caldwell left the room or before she left
16 the room there was a drawing going on, then she left the
17 room and then came back, so --

18 **MS. MAYES:** Certainly, Your Honor, if it's just the
19 child sitting there drawing without any statement, that's
20 not something that would be probative.

21 **THE COURT:** It doesn't have any probative value. I
22 agree. Now the drawing of the gun is another matter
23 entirely, but this part in which I think Agent Caldwell
24 did, you know, trying to -- knowing that the mother was in
25 the hospital and in right rough condition that a drawing

1 from her daughter that she had not been able to see and
2 the daughter had not been able to see her might cheer her
3 up. It really doesn't have any probative value on the
4 issues in this case. I agree with Mr. Phillips on that,
5 okay?

6 **MR. PHILLIPS:** As far as -- I'm sorry, Your Honor, to
7 belabor this point. I had several things listed. So, one,
8 where she's at the beginning explaining that she's afraid
9 of the dark, would Your Honor say that that's admitted in
10 the video? Would that relevant or prejudicial?

11 **THE COURT:** I don't think it has a whole lot of
12 relevance unless it's just something to establish the
13 interplay between the interviewer and the child herself.
14 I'll let -- I'll let Ms. Caldwell and Ms. Mayes discuss
15 that before we show the tape to see if it has some -- some
16 inherent intrinsic value in the context of the interview
17 itself. From my perspective, it doesn't have any relevance
18 on the issue of whether or not the child understands what
19 she's doing and telling the truth, so. Ms. Mayes might
20 already know the answer to that question. If not, I'll let
21 her talk with Agent Caldwell to see if that's -- if that's
22 a part of the training, the protocol. I don't know that it
23 is and if it's not, then it doesn't have any place in there
24 quite frankly.

25 **MR. PHILLIPS:** And the next would be -- and this might

1 be, I guess, the same answer from the Court. The child
2 witness describing what her and her mother did that day,
3 they're talking about playing dress-up.

4 **MS. MAYES:** I certainly think that has relevance,
5 Your Honor, to show that the child recalls the details of
6 that day and the ordinary events of that day leading up to
7 the night's events, so it goes to the child's recollection.

8 **THE COURT:** That's a good point. I think that's
9 right. I agree with that. Okay.

10 **MR. PHILLIPS:** So the two parts would be where the
11 interviewer leaves the room, drawing the picture, possibly
12 the afraid of the dark interplay and then at the end where
13 she's drawing -- kind of the end of the interview, there's
14 no questions, they're just drawing and --

15 **THE COURT:** That's right.

16 **MR. PHILLIPS:** Okay. That's it on -- and, of course,
17 Your Honor pointed out that Russell was -- that issue was
18 not preserved.

19 **THE COURT:** That's right.

20 **MR. PHILLIPS:** So that's it on that.

21 **THE COURT:** Okay.

22 All right. Yes, sir. What else do we have before we
23 offer the testimony of Agent Caldwell and **MINOR** in the
24 presence of the jury?

25 **MR. PHILLIPS:** I'm sorry, Your Honor. I've got a few

1 more. During the testimony of Ms. Caldwell, she made the
2 -- she did use the word "competency". We would ask that
3 the Court prohibit her from making that determination on
4 the record. I know Your Honor went back and forth and
5 wasn't sure whether she actually used those words, but with
6 the competency that's beyond the scope of a lay witness.
7 She's not being admitted as an expert witness in this case,
8 so for her to make the competency determination --

9 **MS. MAYES:** I can take care of that right now. The
10 only reason she was addressing competency was because it
11 was a pretrial hearing on that matter.

12 **THE COURT:** That's right. And that is a part --
13 obviously is a part of the in-camera protocol that has to
14 be dealt with, so that's fine.

15 **MR. PHILLIPS:** The next part was my pretrial motion
16 to prohibit use of the word "forensic" with the interview
17 and interviewer. It was used two or three times from both
18 Ms. Caldwell and Ms. Mayes.

19 **THE COURT:** That was because during the time that she
20 was taking some of those courses they were called -- that's
21 what it was called during that time. I think we've --
22 unless it's necessary to establish her credentials and I
23 think that probably is no longer necessary, I've made that
24 finding.

25 Ms. Mayes, do we have to use word "forensic"?

1 **MS. MAYES:** That is correct. That was done for the
2 purpose of establishing her credentials and that was the
3 name of the courses in her training at that point in time.

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

5 **MR. PHILLIPS:** And I would just renew my pretrial
6 motion where our Supreme Court said that the use of words
7 "forensic interviewer" is a misnomer --

8 **THE COURT:** It is.

9 **MR. PHILLIPS:** -- and that any use of that word would
10 cause a misleading -- it would give value where there's no
11 value needed.

12 **THE COURT:** I think that the Court said it's patently
13 wrong, used the word "patently wrong", or something like
14 that which meant as **MINOR** would testify don't do it.

15 **MR. PHILLIPS:** Exactly.

16 **THE COURT:** They will take away my phone.

17 **MR. PHILLIPS:** I'm in complete agreement, Your Honor.

18 **THE COURT:** Okay.

19 **MR. PHILLIPS:** And the last one, Your Honor.

20 **THE COURT:** That's all right. We've still got time.

21 **MR. PHILLIPS:** One of the issues would be that when
22 **MINOR** came to testify the victim's advocate came with
23 her and sat beside her. We would argue under Rule 403
24 that -- or I don't even know if -- that's technically,
25 I guess, not an evidentiary rule, that would be the

1 Fifth and Fourteenth Amendments to the United States
2 Constitution and Article 1, Section 3 of the South
3 Carolina Constitution. That it would violate his right
4 to due process to have the victim's advocate escort the
5 child to the witness stand and sit beside the child while
6 she testified similar to having a therapy dog on the
7 witness stand or any other type of aid which is generally
8 -- I think the courts make the note that those need to be
9 hidden and out of view, so if there is a therapy dog they
10 can't be in view of the jury during the testimony as it
11 aids, again, the emotional decision-making.

12 **THE COURT:** I'm gonna leave that up to **MINOR**. If
13 she wants the victim's advocate to come with her, she's
14 coming. If she doesn't, she doesn't have to.

15 **MR. PHILLIPS:** Thank you, Your Honor.

16 **MS. MAYES:** And for the record, Your Honor, I just
17 want to be clear as to the portion we have redacted in
18 addition to the redactions that are going to be made,
19 during the course of the interview when they're going over
20 the rules Ms. Caldwell states "because we're only going to
21 talk about things that are real, things that really
22 happened" and then she follows up with, "Um, when someone
23 doesn't tell the truth, what do you call it?" "If somebody
24 doesn't tell the truth, what are they doing?" So that
25 whole reference there to "Um, when somebody doesn't tell

1 the truth, what do you call it? If somebody doesn't tell
2 the truth, what are they doing", would be redacted. And
3 then Brianna says "lying" and then the therapist -- or,
4 I'm sorry, the interviewer says, "Right, so we're just
5 going to talk about things that are really -- yes, that
6 you've seen, heard, tasted or felt anywhere on your body
7 and, you know what, you can ask me questions and I have to
8 tell the truth, too, is that cool, can we agree, awesome",
9 so that entire portion there would also be redacted.

10 **THE COURT:** Right. Okay.

11 **MR. PHILLIPS:** And then, of course, in addition to
12 what we've requested.

13 **THE COURT:** Sure. All right.

14 **MR. PHILLIPS:** Thank you, Your Honor.

15 **THE COURT:** Thank you, Mr. Phillips.

16 All right. Now are the decks cleared for the
17 testimony of Agent Caldwell and **MINOR** tomorrow?

18 **MS. MAYES:** Absolutely, Your Honor.

19 **THE COURT:** Subject to all that stuff being cleaned
20 up.

21 **MS. MAYES:** Yes, sir, Your Honor. And based on this
22 hearing it appears we would go with Agent Caldwell and then
23 with **MINOR**.

24 **THE COURT:** Okay.

25 All right. That's where we'll start in the morning

1 at 9:30. I'll be here by -- I might not be here by nine.
2 I'll be here a little bit before 9:30 tomorrow in case
3 something has come up at the last minute.

4 All right. Thank you, folks. We'll stand in recess
5 -- I appreciate your -- I think we obviously made the best
6 use of the afternoon in the absence of the jury. This was
7 a good thing to do.

8 **MR. PHILLIPS:** Absolutely.

9 **THE COURT:** We'll start back at 9:30 in the morning.

10 **MR. PHILLIPS:** Thank you, Your Honor.

11 (Whereupon, the proceedings were concluded for
12 April 25, 2017, at 4:43 PM.)

13 (Whereupon, the following proceedings were held
14 April 25, 2017, beginning at 9:39 AM.)

15 **BAILIFF:** All rise. Court's now in session. The
16 Honorable Thomas Cooper presiding.

17 **THE COURT:** Please be seated. Thank you, ladies and
18 gentlemen. Good morning.

19 Is the State ready for the jury?

20 **MS. MAYES:** One matter, Your Honor, and it's the
21 on-going matter of a third-party guilt.

22 **THE COURT:** Right.

23 **MS. MAYES:** As the State indicated at the outset of
24 the trial, there were two other people who were listed in
25 the notes and in the investigative materials that were

1 provided as persons of interest and we provided a document
2 previously at the request of the defense that wanted to
3 know why those people were persons of interest and Scott
4 Neel provided a summary. He's one of the investigators
5 in the case. He provided a summary that it was because
6 they had -- their names had been given by law enforcement
7 along the way as people who had committed a similar offense
8 or suspects in similar offenses. As we indicated, the
9 suspect Michael Thomas was later determined to have been
10 incarcerated during the time period of this offense. The
11 other person is Detavian Jones Smith. Your Honor, he was
12 -- we turned over materials on him, including his DMV
13 record. He's actually six-foot-one, another reason he's
14 ruled out as a possible suspect.

15 Investigator Griffin in this case did last week in
16 response to the inquiry by the defense look on a system
17 called SCIEEx to see what, if any, information he could
18 find on Detavian Smith. Detavian Smith was a suspect in a
19 Richland County CSC burglary case; however, it appears that
20 there was no arrest from this case, but as we indicated
21 he's six-foot-one and there's no link to him whatsoever in
22 this case. As the investigation revealed, the victim does
23 not know him and there's no physical evidence whatsoever
24 to link him to the residence. Investigator Griffin has
25 supplied us with this document. I will provide it to the

1 defense. The State's position, however, is that under the
2 case law, Your Honor, there would not be any -- any grounds
3 to pursue him as a possible suspect for third-party guilt.

4 Now in terms of his name being mentioned in the --
5 in the case file or investigative file, certainly, I mean,
6 I think that's fair game. He is mentioned there as a
7 possible person of interest, but beyond that there's just
8 nothing to link him to the case.

9 **THE COURT:** All right. As you say, it might be a
10 proper area of inquiry just in connection with the
11 investigation.

12 **MS. MAYES:** Yes, sir, Your Honor.

13 **THE COURT:** It would not be a proper matter for
14 argument, at least as to those two individuals, given that
15 -- that investigation as you revealed it, but I'll be glad
16 to hear further, Mr. Phillips.

17 **MR. PHILLIPS:** Thank you, Your Honor. First,
18 obviously just receiving this report from the State
19 regarding Detavian Smith for the first time in court this
20 morning and this report was generated --

21 **MS. MAYES:** My understanding is that in response to
22 your e-mail last Wednesday and the information provided
23 by Investigator Neel last Wednesday, at some point
24 Investigator Griffin did check the SCIEEx system to see
25 what were the similar incidents that were being referred

1 to that made him a potential person of interest and he
2 generated the report. We didn't get it until after five
3 yesterday, but we're turning it over now in follow-up to
4 Investigator Neel's summary that he prepared for you.

5 **THE COURT:** All right.

6 **MR. PHILLIPS:** And we would include that in our
7 pretrial motion, Your Honor, for the continuance.

8 **THE COURT:** All right.

9 **MR. PHILLIPS:** With that, as to -- just to clarify,
10 so I would be able to cross-examine on the thoroughness
11 of the investigation as to the Detavian Smith, we just
12 wouldn't be able to make the argument at closing as to
13 third-party guilt based on that; is that correct?

14 **THE COURT:** That's correct.

15 **MR. PHILLIPS:** Okay. I just want to clarify that.

16 I would make an additional argument as to third-party
17 guilt. The case law shows you've got to have that
18 "reasonable inference" is the buzzwords. Going to the
19 issue of Sister Care and the thoroughness of the
20 investigation, the Dickerson Center report shows that
21 Ms. Simon was receiving services from Sister Care and that
22 she was living in the apartment or living apart from that
23 person and that was the reason why she was receiving
24 services from Sister Care. She told Investigator Griffin
25 while she was in the hospital right after the incident that

1 the voice sounded familiar. It is Defendant's argument
2 that that is the reasonable inference that would be the
3 logical connection; that in attacking the thoroughness of
4 the investigation that would be proper for argument because
5 there is a reasonable inference when you have someone who
6 is apart from an individual that we don't know the full
7 reason why because there's been no investigation and the
8 voice sounding familiar. That's the reasonable inference
9 that is directly related to the third-party guilt case law
10 and that not being able to argue that in closing would deny
11 his opportunity to present a full and complete defense
12 citing State v. Mays and, of course, that would deny his
13 right to a fair trial, right to present a complete defense
14 under Article -- or we'll just start at the top.

15 **THE COURT:** Right. Okay.

16 **MR. PHILLIPS:** The Fifth, Sixth and Fourteenth
17 amendments to the United States Constitution and Article 1,
18 Section 3 and 14 of the South Carolina Constitution.

19 **THE COURT:** All right. Ms. Mayes, do you want to be
20 heard on that?

21 **MS. MAYES:** Yes, sir, Your Honor. And if need be we
22 can proffer additional testimony from Larenda Simon on that
23 matter because she was not cross-examined even in-camera on
24 that. She can state with certainty that her ex-partner,
25 who is the father of Brianna, had no role in this

1 whatsoever, that she would identify him by voice. He's
2 also very large by physical stature, not only in height
3 but in body size. She knows with certainty that he was
4 not the intruder and so if we need to offer testimony on
5 that, we can.

6 **THE COURT:** All right. I still think it's fair ground
7 for him to explore that and then I'll allow you to recall
8 Ms. Simon if you need to to clear up that point. Fair
9 game. That's right. The jury will make out of it what it
10 will.

11 **MR. PHILLIPS:** Thank you, Your Honor.

12 **THE COURT:** All right. Anything else?

13 Mr. Phillips, is the defense ready for the jury?

14 **MR. PHILLIPS:** Yes, Your Honor.

15 **THE COURT:** All right. Good. You can bring us the
16 jury.

17 (Whereupon, the jury enter the courtroom at 9:49 AM.)

18 **THE COURT:** Good morning, ladies and gentlemen. Thank
19 you for your prompt return this morning. We're ready now
20 to continue the trial as the State continues to offer
21 evidence and testimony in this case.

22 Ms. Mayes.

23 **MS. MAYES:** The State calls Larenda Simon.

24 **THE COURT:** Ms. Simon, come forward, please, and
25 resume the stand. You're still under oath.

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LARENDA SIMON,

having been previously sworn, testified as follows:

FURTHER REDIRECT EXAMINATION

BY MS. MAYES:

Q. And briefly, Ms. Simon, one thing I neglected to ask you yesterday --

A. Yes, ma'am.

Q. -- is prior to living in Park Place Apartments, had you ever received assistance from an organization known as Sister Care?

A. Yeah, probably the summer of 2012 I received assistance from Sister Care. I was placed in their shelter for a while and then I was placed in my own apartment thereafter.

Q. All right. And just to clarify, Sister Care is when there has been an abusive relationship in the past?

A. Right. Yes, ma'am.

Q. And who was the perpetrator in the abusive relationship you had?

A. His name was Calvin Green. We was in -- we was in a relationship for two years prior to the incident happening.

Q. Okay. And just to clarify, you know that individual well because you were in a relationship with him?

A. Yes, ma'am.

Q. And approximately how tall is he?

1 A. He's around 6-1 to 6-2.

2 Q. And his general weight or physical stature?

3 A. He's a big guy. He's about three hundred pounds.

4 Q. All right. Was there any indication that he was the
5 intruder?

6 A. No. I would know him right off the bat. I wouldn't
7 -- there wouldn't be a doubt that if it was him that
8 entered my apartment that night that I would know it
9 automatically.

10 Q. All right. By height and physical stature?

11 A. And voice.

12 **MS. MAYES:** Nothing further.

13 **THE COURT:** Thank you. Mr. Phillips. Excuse me,
14 Ms. Chehoski. I'm sorry.

15 **FURTHER RECROSS EXAMINATION**

16 **BY MR. CHEHOSKI:**

17 Q. Ms. Simon, did the police ever ask you about this at
18 all?

19 A. At the time the Sister Care situation, I think, was
20 confidential. No, they never asked about it.

21 Q. Okay. They never asked you?

22 A. No.

23 **MR. CHEHOSKI:** Thank you.

24 **THE COURT:** Any redirect on that?

25 **MS. MAYES:** No, sir, Your Honor.

1 **THE COURT:** Thank you, Ms. Simon. You can step down.

2 **THE WITNESS:** Thank you.

3 (Witness excused.)

4 **MS. MAYES:** The State calls Laurie Caldwell.

5 **THE COURT:** Ms. Caldwell, come forward, please, ma'am,
6 and be sworn. Come forward, please, ma'am, and be sworn.

7 (Whereupon, Laurie Caldwell was duly sworn by the
8 Clerk of Court.)

9 **THE CLERK:** Have a seat, please, ma'am. Once you're
10 seated, state your full name, spelling your last, please.

11 **THE WITNESS:** My name's Laurie Caldwell,
12 C-A-L-D-W-E-L-L.

13 LAURIE CALDWELL,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. MAYES:

17 Q. All right. And can you give us some information about
18 yourself, Ms. Caldwell? Where are you currently employed?

19 A. I'm employed with the State Law Enforcement Division,
20 better known as SLED.

21 Q. You mentioned you are an agent with the State Law
22 Enforcement Division?

23 A. Yes, I am.

24 Q. How long have you been with SLED?

25 A. The first employment with SLED, I was with them as an

1 agent for twenty-five years. I retired in February of 2011
2 and then returned to SLED in April of 2014 as an agent.

3 Q. All right. And what type of cases have you generally
4 worked throughout your career with the State Law
5 Enforcement Division?

6 A. The first twenty-five years I worked primarily crimes
7 against children.

8 Q. All right. And what about after -- there was a period
9 of time I believe where you were -- you had retired from
10 the State Law Enforcement Division after twenty-five years?

11 A. Yes, I sought employment at -- or accepted a position
12 at a child advocacy center here in West Columbia. It is --
13 when I was there, it was called the Dickerson Center for
14 Children. It's now called the Dickerson Child Advocacy
15 Center.

16 Q. All right. And so after that twenty-five year period
17 at SLED working in cases involving crimes against children,
18 what type of work did you do with the Dickerson Center for
19 Children?

20 A. I was what they referred to as the forensic
21 coordinator and what that means is I was the --

22 **MR. PHILLIPS:** Renew the prior objection, Your Honor.

23 **THE COURT:** I'll note that. I think she's just
24 referring to a title that she held at that particular time.
25 And, Ms. Caldwell, if you'd just focus on what you did

1 rather than your title, please, ma'am.

2 **THE WITNESS:** Yes, sir.

3 **THE COURT:** Thank you.

4 A. I was the chief -- or the lead child investigative
5 interviewer, but I also supervised some of the other social
6 workers there that conducted investigative interviews and
7 I also coordinated and facilitated the Lexington County
8 Multidisciplinary Team, which is -- it's a team devised of
9 the staff at the Dickerson Center, law enforcement, social
10 services, mental health, pediatricians and victim
11 advocates.

12 Q. All right. Now you mentioned that there at the
13 Dickerson Center for Children investigative interviews were
14 conducted. What is the general purpose of an investigative
15 interview for a child?

16 A. It's to create an environment for a child that is
17 comfortable and meets them on their level to -- to obtain
18 information from them on alleged -- if they're an alleged
19 victim or a possible witness to a crime that is not
20 suggestive or leading.

21 Q. All right. And what -- what can you tell us involving
22 MINOR ? Can you tell us whether or not you had the
23 opportunity to conduct an investigative interview with a
24 child by that name?

25 A. Yes, I did.

1 Q. And what was the date of that interview?

2 A. I interviewed her on April the 15th, 2014.

3 Q. All right. And who made that recommendation to the
4 Dickerson Center for Children for that child to receive an
5 investigative interview?

6 A. Detective Scott Neel with the West Columbia Police
7 Department.

8 Q. All right. Now is it possible for you to estimate how
9 many children you've conducted investigative interviews
10 with during that time there at the Dickerson Center for
11 Children?

12 A. While I was at the Dickerson Center for Children in
13 that three years -- it was three years and two months,
14 well over five hundred.

15 Q. All right. And you mentioned the type of format
16 involved with the interview. Did you follow those
17 guidelines or that protocol with your interview with
18 MINOR ?

19 A. Yes, I did.

20 Q. And prior to going into the interview, did Brianna
21 appear to understand what -- appear to understand the
22 nature of the interview?

23 A. Yes.

24 Q. All right. Have you had an opportunity to review that
25 interview, Ms. Caldwell?

1 A. Yes, I have.

2 Q. Is the interview that you have reviewed, does it
3 appear to be a fair and accurate representation of your
4 investigative interview with [REDACTED] on April 15th?

5 A. Yes, it is.

6 Q. Okay. And in this particular case, the offense or
7 crime date is April 13th, so your interview would have been
8 conducted approximately two days later?

9 A. That's correct.

10 Q. And how old was [REDACTED] at the time of this interview?

11 A. Brianna was six and a half at the time.

12 Q. Okay. Now do you necessarily expect to get all
13 details from a six-year-old?

14 A. No.

15 **MS. MAYES:** Your Honor, at this time we'd have this
16 marked as State's Exhibit --

17 **THE COURT REPORTER:** 64.

18 **MS. MAYES:** -- 64.

19 **THE COURT:** Subject to the objection previously made
20 and argued, State's 64 in evidence subject to objection.

21 (State's Exhibit Number 64, Redacted Interview, was
22 marked and admitted into evidence.)

23 **MS. MAYES:** Your Honor, at this time the State would
24 request permission to publish.

25 **THE COURT:** Permission is granted.

1 (Whereupon, State's Exhibit 64, the investigative
2 interview, was played in open court.)

3 **MR. PHILLIPS:** Your Honor, may we approach?

4 **THE COURT:** Yes, sir.

5 (Proceedings held at the bench; not reported.)

6 **THE COURT:** Ms. Mayes.

7 **MS. MAYES:** Yes, sir, Your Honor.

8 BY MS. MAYES:

9 Q. Now just in follow-up, Ms. Caldwell, just a few
10 questions. Is anyone else allowed in the interview room?

11 A. No.

12 Q. And is that just in **MINOR**'s case or is that routine
13 in all of the investigative interviews that are conducted
14 there at the Childrens Advocacy Center?

15 A. That is routine in all cases unless an interpreter is
16 needed.

17 Q. All right. And you mentioned that Ms. Colleen was
18 there and at one point you stepped out to speak to
19 Ms. Colleen. Who were you referring to?

20 A. Colleen Belk. She was the victim advocate with the
21 West Columbia Police Department at the time.

22 Q. And you mentioned at some point that she can see us.
23 Describe the room setup and what you were referring to when
24 you made that reference.

25 A. At that time the Dickerson Center was located in an

1 old two-story house and the interview room was upstairs and
2 right below that room was a conference room where we could
3 -- where we'd meet to initiate the information on the case
4 and there's a TV set up there where the officer and the
5 victim advocate can actually watch the interview live
6 through the TV.

7 Q. All right. And so someone can actually view the
8 interview from law enforcement or a similar agency?

9 A. Correct.

10 Q. All right. But can you see those people?

11 A. No, I can't see them.

12 Q. All right. I want to ask you a little bit about
13 Brianna's demeanor. What did you observe as the
14 interviewer about MINOR 's demeanor when she was
15 disclosing actual details of the events that occurred in
16 the bedroom with whom she called the burglar?

17 A. A little hesitancy to talk based -- my professional
18 opinion would be that -- the trauma of having watched her
19 mother be shot and a little bit sadness and the fear that
20 she might not see her again and just the level of trauma.

21 **MR. PHILLIPS:** Your Honor, may we approach?

22 **THE COURT:** Yes. How -- the jury was able to see
23 the demeanor and you understand that there's no point in
24 pushing this to the edge, quite frankly. I'll note your
25 objection and we'll deal with it out of the presence of the

1 jury.

2 **MR. PHILLIPS:** Thank you, Your Honor.

3 **THE COURT:** Thank you.

4 BY MS. MAYES:

5 Q. And why is the easel or for art to be used?

6 A. Just to help the child relax and instead of them just
7 staring at me while we're talking about these serious
8 issues, it directs their attention and helps relax them
9 during that process.

10 Q. All right.

11 **MS. MAYES:** Nothing further.

12 **THE COURT:** Thank you. Cross-examination,

13 Mr. Phillips?

14 **MR. PHILLIPS:** Yes, Your Honor. Thank you.

15 CROSS-EXAMINATION

16 BY MR. PHILLIPS:

17 Q. Good morning, Ms. Caldwell. How are you?

18 A. Good.

19 Q. In these interviews you draft a report afterwards?

20 A. Yes.

21 Q. And in drafting that report, you note that you spoke
22 with several people?

23 A. Right.

24 Q. And part of that is kind of a pre-interview to get all
25 of the information together?

1 A. Correct.

2 Q. And in your report you put in there that Ms. Simon
3 told law enforcement that the voice sounded familiar?

4 A. I'm going to refer to my report real quick.

5 Q. It's in the brief psychosocial history section, the
6 last sentence.

7 A. Yes, that was the information I was given.

8 Q. That the voice -- that Ms. Simon told law enforcement,
9 and this is literally -- you're getting the information
10 within a day or so?

11 A. Yes.

12 Q. That the voice sounded familiar?

13 A. Correct.

14 **MR. PHILLIPS:** Thank you. No further questions.

15 **THE COURT:** Thank you. Redirect?

16 **MS. MAYES:** Yes, sir, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. MAYES:

19 Q. And did you question **MINOR** specifically about
20 that --

21 A. Yes.

22 Q. -- as to whether the voice sounded familiar?

23 A. I did.

24 Q. Or whether she recognized the voice?

25 A. Yes, I did.

1 Q. And what was her response?

2 A. She did not recognize the voice.

3 **MS. MAYES:** Nothing further.

4 **THE COURT:** I think it's -- there are two Ms. Simons
5 obviously, MINOR and her mother. In the note when
6 Ms. Simon said the voice sounded familiar, who was that
7 note referring to? Can you tell me?

8 **THE WITNESS:** It was referring to Larenda Simon.

9 **THE COURT:** All right. Thank you.

10 **MR. PHILLIPS:** Thank you, Your Honor. That was my
11 follow-up.

12 **THE COURT:** All right. Thank you very much.

13 Ms. Caldwell, you can step down. Thank you, ma'am.

14 (Witness excused.)

15 **MS. MAYES:** The State calls MINOR.

16 **THE COURT:** MINOR, come forward, please, and be
17 sworn.

18 (Whereupon, MINOR was duly sworn by the Clerk
19 of Court.)

20 **THE CLERK:** Once you're seated, state your full name,
21 spelling your last.

22 **THE WITNESS:** MINOR, , .
23 MINOR,

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. MAYES:

2 Q. All right. And, MINOR, I'm gonna scoot this just a
3 little closer to you.

4 A. Thank you.

5 Q. Can you tell us a little bit about yourself?

6 A. I'm nine years old. I -- I'm in the fourth -- I am in
7 the fourth grade. I go to Saluda River Academy for the
8 Arts.

9 Q. Okay.

10 A. My teacher's name is Crystal Mills.

11 Q. Okay. And is -- how long have you been going to that
12 school, Saluda River for the Arts?

13 A. Since kindergarten.

14 Q. Okay. And were you also going there in first grade
15 when you were six years old?

16 A. Yes, ma'am.

17 Q. Now what's your favorite subject in school?

18 A. Science.

19 Q. And what, if anything, do you like to do for fun when
20 you're not in school?

21 A. Can you repeat the question?

22 Q. Yes. What do you like to do for fun when you're not
23 in school?

24 A. Go outside.

25 Q. Okay. And what about this past spring break, what did

1 you do for spring break?

2 A. Me and my mom went to Dave and Buster's and go to the
3 arcades.

4 Q. Okay. And did you get to go on a trip anywhere?

5 A. No, ma'am.

6 Q. Okay. Let me ask you a little bit about when you
7 lived in another apartment when you were six years old.

8 A. Yes, ma'am.

9 Q. Do you remember the old apartment that you used to
10 live in?

11 A. Yes, ma'am.

12 Q. What was the number or the address for that apartment?

13 A. Comanche Trail, Apartment [REDACTED].

14 Q. Okay. Who all lived in that apartment?

15 A. Me and my mom, Larenda Simon.

16 Q. Okay. And did anybody else actually live there other
17 than the two of you?

18 A. No, ma'am.

19 Q. And [REDACTED] MINOR, how many bedrooms were in that apartment?

20 A. Two.

21 Q. And how many bathrooms were in that apartment?

22 A. One.

23 Q. And where did you normally sleep?

24 A. In my mom's room.

25 Q. Okay. And, [REDACTED] MINOR, do you remember a time when you

1 were sleeping in the room with your mom and anything
2 happened that was unusual?

3 A. Yes, ma'am.

4 Q. Okay. Was it usual or unusual what happened?

5 A. Unusual.

6 Q. What do you remember about that?

7 A. A burglar came in and shot my mom like multiple times
8 and there was a lot of drama and chaos.

9 Q. Okay. Had you ever seen that kind of, as you put it,
10 drama and chaos in your house before?

11 A. No, ma'am.

12 Q. And when you say drama and chaos, can you tell us what
13 you mean by that?

14 A. I mean, like -- like it never been happened to me. I
15 never seen like an adult never been hurt before.

16 Q. Okay. Had you ever seen anyone come in your house
17 with a mask on before?

18 A. No, ma'am.

19 Q. What do you remember about the person that came in?
20 How were they dressed?

21 A. All black.

22 Q. Can you describe whether or not you were able to see
23 the mouth and the nose?

24 A. No.

25 Q. Why?

1 A. Because it was like a mask. It was like -- it was
2 like -- it was like a hoodie. He -- like it covers like
3 right here to his little head and there's something like
4 right here.

5 Q. Okay.

6 A. And then it looks like -- it looked like there was
7 nothing between the eyes and the eyebrows.

8 Q. Okay. So something's to here --

9 A. Uh-huh. I mean, yes, ma'am.

10 Q. -- the nose? Okay. And then you said like hoodie?

11 A. Yes, ma'am.

12 Q. The hoodie came here?

13 A. Yes, ma'am.

14 Q. And could you see the eyes?

15 A. Yes, ma'am.

16 Q. And was this a man or a woman?

17 A. A man.

18 Q. All right. And for a man, can you tell us was the
19 person tall or not tall?

20 A. Tall. He was like medium size. Like short and tall,
21 like in the middle.

22 Q. Okay. And at the time you were six years old?

23 A. Uh-huh. Yes, ma'am.

24 Q. And then what else can you tell us about this person?

25 Did he have anything with him?

1 A. Yes, ma'am.

2 Q. What was that?

3 A. A gun.

4 Q. Okay. Did you actually see the gun?

5 A. No, ma'am.

6 Q. Well, let me ask you this. Did you ever actually see
7 what color he had in his hand?

8 A. Yes, ma'am.

9 Q. What was that?

10 A. Black.

11 Q. And did you also hear anything?

12 A. Yes, ma'am.

13 Q. What did you hear?

14 A. The gun and a lot of toppling and stomping and
15 groaning and stuff.

16 Q. Did you hear the gun one time or more than one time?

17 A. Multiple times.

18 Q. Okay. You said -- you said that you first saw the
19 person in what room?

20 A. In -- in the room we was sleeping in.

21 Q. Okay. So that would be the bedroom?

22 A. Yes, ma'am.

23 Q. And what do you remember about anything he said or
24 wanted y'all to do?

25 A. I remember that he wants me and my mom to take off

1 the clothes we were wearing and -- and her -- and said
2 while my mom was trying to take away the gun from him, he
3 -- he said I'm gonna kill you to my mom.

4 Q. Okay. You said when she was trying to take the gun
5 from him?

6 A. Yes.

7 Q. And where did you see -- where did you see him go and
8 your mom go after she tried to take the gun from him?

9 A. Like they went into the hallway and then to the
10 bathroom.

11 Q. Okay. And where were you at?

12 A. Still in the bed.

13 Q. Okay. And were you able to see anything?

14 A. Like -- not like most of the time, but like sometime.

15 Q. Okay. And were you able to hear anything at that
16 point?

17 A. Yes, ma'am.

18 Q. Okay. What could you hear at that point?

19 A. I heard a lot of groaning, shouting and tumbling and
20 -- and that's it.

21 Q. Okay. All right. Now you said that one thing that
22 he wanted you to do and your mom to do was take off your
23 clothes?

24 A. Yes, ma'am.

25 Q. Did that happen?

1 A. Yes, ma'am.

2 Q. And you remember that -- I believe you said a few
3 moments ago you remember that your mom tried to take the
4 gun away?

5 A. Uh-huh.

6 Q. When she tried to take the gun away, was she ever able
7 to get it?

8 A. No, ma'am.

9 Q. Okay. In the video that we just watched, you drew a
10 picture of the gun?

11 A. Yes, ma'am.

12 Q. What color did you want in order to draw the gun?

13 A. Black.

14 Q. And why did you want black?

15 A. Because I just wanted like to be -- like I don't know
16 the word. Like -- like I forgot the word.

17 Q. Okay. What color do you remember the gun being?

18 A. Black.

19 Q. Okay. And, MINOR, you said that it was a hoodie
20 that he had on. How do you know that it was a hoodie?
21 What was it that let you know it was a hoodie?

22 A. Because like when -- like when -- when my momma pushed
23 out the door and she said come on and let's go, I looked
24 into the bathroom and like I just -- I just saw like -- I
25 just saw like a thing that covered up the -- the -- the

1 nose down.

2 Q. Okay. All right. And so what do you mean by that
3 when you heard your mom say go and you looked in the
4 bathroom and you just saw that, what -- what was missing?

5 A. Can -- can you repeat the question?

6 Q. Yes. When you heard your mom say go and you said you
7 looked in the bathroom and you just saw that --

8 A. Uh-huh.

9 Q. -- what was missing from the person?

10 A. The -- the mask.

11 Q. Okay. What part?

12 A. The nose down. It was like on the bottom.

13 Q. Okay. All right. And what about the hoodie, what
14 happened to the hoodie?

15 A. I don't know.

16 Q. Okay. I'm gonna show you what is State's Exhibit 55.

17 **MS. MAYES:** I believe there's no objection.

18 **THE COURT:** It's in evidence as I recall.

19 **THE COURT REPORTER:** I didn't have it.

20 **THE COURT:** You didn't have it? All right.

21 **MR. PHILLIPS:** Subject to the prior motion.

22 **THE COURT:** That's right. There were objections
23 previously lodged. You're right. I have through 51
24 and then the diagram as 53. I don't have a 55. You're
25 right.

1 **MS. MAYES:** All right. I beg the Court's indulgence.

2 **THE COURT:** 55 subject to prior objection.

3 (State's Exhibit Number 55, a photo blow-up, was
4 admitted into evidence.)

5 BY MS. MAYES:

6 Q. 30, I believe, and 31 are in evidence. I'm gonna show
7 you these two pictures, [REDACTED] --

8 A. Okay.

9 Q. -- 30 and 31.

10 A. Okay.

11 Q. All right. Do you recognize the place that's shown in
12 this photo?

13 A. The restroom.

14 Q. Okay. I'm gonna ask you to speak up just a little bit
15 more. Do you recognize that place?

16 A. Yes, ma'am. It's the restroom.

17 Q. Okay. The restroom. And how many restrooms or
18 bathrooms were in that house?

19 A. One.

20 Q. Okay. Before you went to bed that night, was there
21 blood on the floor?

22 A. No, ma'am.

23 Q. And before you went to bed that night, was there a
24 hoodie on the floor?

25 A. No, ma'am.

1 Q. All right.

2 MS. MAYES: Nothing further.

3 THE COURT: Mr. Phillips, cross-examine?

4 MR. PHILLIPS: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. PHILLIPS:

8 Q. Good morning, MINOR .

9 A. Good morning.

10 Q. I just have a couple of quick questions for you. When
11 you met with Ms. Laurie and we watched the video --

12 A. Uh-huh.

13 Q. -- she asked you about the skin color. You said the
14 skin color was lighter than your momma's?

15 A. A little bit, yes.

16 Q. A little bit. And in the video, you say that you
17 didn't see his hair?

18 A. No, sir.

19 Q. Okay. You were asked about the hoodie being taken off
20 in the bathroom?

21 A. Yes, sir.

22 Q. And at that part were you in the bedroom or were you
23 out of the bedroom at that time?

24 A. I was in the -- I was in the bathroom -- I mean, the
25 bedroom.

1 Q. The bedroom? So you could hear everything?

2 A. Yes, sir.

3 Q. But you couldn't see what was going on?

4 A. Yes, sir.

5 Q. And when all of that was going on and you -- so you
6 weren't seeing where -- anything about the hoodie being on
7 the floor?

8 A. No, sir.

9 **MR. PHILLIPS:** Thank you.

10 **THE WITNESS:** You're welcome.

11 **THE COURT:** Ms. Mayes?

12 **MS. MAYES:** Yes, sir, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. MAYES:

15 Q. Other than the eyes, could you see any other part of
16 his face?

17 A. No, ma'am.

18 **MS. MAYES:** Nothing further.

19 **THE COURT:** Mr. Phillips, any follow-up on that
20 point?

21 **MR. PHILLIPS:** Just one.

22 RECROSS EXAMINATION

23 BY MR. PHILLIPS:

24 Q. Earlier you were asked that the mask had come all the
25 way down. Did that -- was his mask at one point down at

1 his chin?

2 A. Yes.

3 Q. It was?

4 A. Yes, it was.

5 Q. And you were able to see him?

6 A. Yes. Yes, sir.

7 **MR. PHILLIPS:** Thank you.

8 **THE COURT:** Ms. Mayes, you've got the last word.

9 **MS. MAYES:** All right.

10 FURTHER REDIRECT EXAMINATION

11 BY MS. MAYES:

12 Q. What do you remember seeing about him?

13 A. Can you repeat the question?

14 Q. Yes. He was just asking you what you remember about
15 his face.

16 A. I remember he have like brown eyes and -- and that's
17 all I can remember.

18 Q. Was it a person that you've ever seen before?

19 A. No, ma'am.

20 Q. Okay. Was it a person that you would know if you ever
21 saw again?

22 A. No, ma'am.

23 Q. Okay.

24 **THE COURT:** All right. **MINOR**, you can step down.

25 Thank you.

1 (Witness excused.)

2 **THE COURT:** How long will your next witness take,
3 Ms. Mayes?

4 **MS. MAYES:** Less than thirty minutes.

5 **THE COURT:** Okay. We'll get the next witness in and
6 then we'll take a break and deal with the motions.

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

8 **MR. McNAIR:** Your Honor, the State calls Jill Sparks.

9 **THE COURT:** Ms. Sparks, come forward, please, ma'am,
10 and be sworn.

11 (Whereupon, Jill Sparks was duly sworn by the Clerk of
12 Court.)

13 **THE CLERK:** Have a seat right up there. Once you're
14 seated, state your full name, spelling your last, please,
15 ma'am.

16 **THE WITNESS:** Good morning. I'm Jill Sparks with
17 Sprint.

18 JILL SPARKS,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. McNAIR:

22 Q. Good morning, Ms. Sparks. You are employed with
23 Sprint in what capacity?

24 A. I am a custodian of records for Sprint.

25 Q. As part of your job, do you regularly travel around

1 and appear in court as the custodian of records for Sprint?

2 A. Yes.

3 Q. And were you subpoenaed to bring certain Sprint
4 documents with you here today?

5 A. Yes.

6 Q. What documents were you asked to bring?

7 A. Subscriber information, as well as call detail
8 information, including cell sites.

9 Q. All right. And does that include any cell tower
10 information for phone number 803-529- [REDACTED] on the date of
11 April 13th of 2014, between 1 AM and 5 AM?

12 A. There were no records found on April the 13th, 2014,
13 between 1 AM and 5 AM.

14 Q. And do you have a document from Sprint that indicates
15 that?

16 A. I do.

17 Q. Do you have that with you now?

18 A. I do.

19 Q. All right. Thank you, ma'am.

20 (State's Exhibit Number 65 was marked for
21 identification.)

22 BY MR. McNAIR:

23 Q. All right. I'm gonna show you what's been marked as
24 State's Exhibit 65 and this is the official Sprint document
25 you were just referencing?

1 A. Yes.

2 Q. All right. And is that document made and prepared as
3 a part of the ordinary course of Sprint's business?

4 A. Yes.

5 Q. All right. As custodian of records, do you have
6 access to that document?

7 A. Yes.

8 **MR. McNAIR:** Your Honor, we'd offer State's 65 into
9 evidence at this point.

10 **THE COURT:** Any objection?

11 **MS. GILREATH:** No objection.

12 **THE COURT:** Thank you. 65 in evidence.

13 (State's Exhibit Number 65, Sprint records, was
14 admitted into evidence.)

15 BY MR. McNAIR:

16 Q. As you mentioned, there was no activity, no cell
17 tower activity, on that phone on April 13, 2014, between
18 1 AM and 5 AM; is that correct?

19 A. Correct.

20 Q. And would that be consistent with there not being any
21 activity on that phone during that time period?

22 A. Correct.

23 **MR. McNAIR:** No further questions.

24 **THE COURT:** Thank you. Ms. Gilreath.

25 **MS. GILREATH:** Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MS. GILREATH:

3 Q. Ms. Sparks, these documents that you provided were in
4 response to a search warrant, correct?

5 A. Yes.

6 Q. And that search warrant was sent to Sprint in order to
7 obtain these records?

8 A. Yes.

9 Q. And whenever you're compiling these records to send
10 in response to a subpoena, essentially you go by exactly
11 what is requested through that -- with a search warrant or
12 subpoena, you go by exactly what is requested in that
13 search warrant?

14 A. Yes.

15 Q. And in this case do you have a copy of the search
16 warrant here?

17 A. Not in front of me, no.

18 Q. But the letter that you have -- that you do have in
19 front you there.

20 A. I don't have it anymore in front of me, but, yes.

21 **MS. GILREATH:** May I approach the witness, Your Honor?

22 **THE COURT:** Yes, ma'am.

23 BY MS. GILREATH:

24 Q. Ms. Sparks, I'm handing you State's 65 and you
25 indicated that this is the letter that was sent from Sprint

1 in response to the search warrant?

2 A. Yes.

3 Q. So everything that was requested by the search warrant
4 is actually listed in this letter, correct?

5 A. Correct.

6 Q. If I could direct your attention to Page 2, could you
7 tell us what the -- the first thing there, the request
8 type, CDR, could you tell us what that means?

9 A. CDR stands for call detail records.

10 Q. And what does that mean? What does that show?

11 A. Call detail records reflect inbound and outbound call
12 detail records. It shows the calling number and the called
13 number and the date and time.

14 Q. So that's phone calls that are being made by this
15 phone?

16 A. Yes.

17 Q. So it doesn't show content or anything like that.
18 It's just the number that was called from, the number that
19 was called to?

20 A. It reflects the number that was called, the number
21 that it called, and -- reflects the calling number, called
22 number and the date and time.

23 Q. And the second piece of information there for the
24 request type it says switch slash cell site historic. What
25 does that mean?

1 A. The switch is responsible for routing call detail --
2 traffic on the Sprint network. The cell site is asking for
3 the specific cell site location of the tower that would be
4 utilized in the call.

5 Q. And this information is picked up when, for example,
6 a phone call is made?

7 A. Correct.

8 Q. And that's because when a phone call is made, the
9 phone is essentially interacting with the tower in order
10 to make the call?

11 A. Yes.

12 Q. That's how the phone accesses the network in order for
13 the data or the call to go through to the other phone?

14 A. Right. Whenever you place a phone call your cell
15 phone emits a radio signal that will connect you to the
16 strongest cell tower and the cell tower is responsible for
17 both receiving and transmitting call detail records.

18 Q. So as soon as that phone call is made, that phone is
19 automatically interacting with the tower because otherwise
20 it wouldn't be able to make the call?

21 A. That is correct.

22 Q. So if the call was made during the time period that
23 you were looking at as far as the cell site data there, if
24 a call is made or something is done on that network that
25 would show up in that report, correct?

1 A. We would have a record of that transaction, yes.

2 Q. So everything that's -- that would be included in this
3 -- I believe it was 1 AM to 5 AM is the time range for
4 which the cell site data was being looked at?

5 A. That would be correct.

6 Q. That would include everything that is using the
7 network?

8 A. The specific cell site would be encompassing the first
9 and last cell of the call -- that the call was placed on
10 and the call was terminated on.

11 Q. Correct. Now what that doesn't include is anything
12 that would happen over a wi-fi connection, correct?

13 A. Correct. Wi-fi does not utilize cell towers.

14 Q. So if a phone is not making a phone call but is
15 surfing the Internet or watching videos or anything that's
16 using a wi-fi connection, that's not going to show up in
17 this report?

18 A. Not in this report, no.

19 Q. So what this report shows is just simply whether the
20 phone was interacting with the network in order to
21 communicate with another phone, another device?

22 A. Yes.

23 Q. It doesn't show whether there was any wi-fi Internet
24 activity going on during that time?

25 A. It does not. These particular records are not broken

1 down by if it was a wi-fi call or anything like that, so I
2 wouldn't -- it wouldn't reflect that, no.

3 Q. So during this time from 1 AM to 5 AM we can't
4 necessarily say that a phone was off, we can only say it
5 was not communicating on the network, correct?

6 A. Correct.

7 Q. Because it could be on a wi-fi signal doing something,
8 anything, on the Internet?

9 A. It could be.

10 Q. And that's not reflected here?

11 A. It is not.

12 Q. And the only time range that was requested here was
13 1 AM to 5 AM. There was no request for cell site data
14 outside of that specific time range of 1 AM to 5 AM?

15 A. No.

16 **MS. GILREATH:** I beg the Court's indulgence.

17 **THE COURT:** Yes, ma'am.

18 BY MS. GILREATH:

19 Q. Now we mentioned that the range requested here, just
20 for the cell site data, that's 1 AM to 5 AM, correct?

21 A. Yes.

22 Q. The CDR, however, was a broader range, correct, from
23 the 12th through the 17th?

24 A. Correct.

25 Q. So if -- just, for example, if the search warrant

1 had expanded to include any calls or any interactions with
2 the network or data sent over the network between that
3 beginning time on the 12th and ending time on the 17th, it
4 would have shown cell site data for phone calls that were
5 made?

6 A. If it was requested and if it was there, we would have
7 provided it, yes.

8 Q. Correct, but that wasn't requested here?

9 A. It was not.

10 **MS. GILREATH:** Thank you. No further questions,
11 Your Honor.

12 **THE COURT:** Thank you. Redirect, Mr. McNair?

13 **MR. McNAIR:** Yes, sir, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. McNAIR:

16 Q. All right. Based on the cell tower information,
17 obviously you cannot testify as to whether or not he was
18 accessing wi-fi during that time, you can only testify as
19 to whether or not he was on the cellular network, correct?

20 A. Correct.

21 Q. So for number 803-529-██████ on April 13, 2014, there is
22 no cellular activity between 1 AM to 5 AM, correct?

23 A. Correct.

24 Q. All right. And that would -- so if he had called
25 anybody or texted anybody, that would be reflected in the

1 cell tower information, correct?

2 A. Cell towers are not reflected for text messages, but
3 it would reflect if there was any actual calls that
4 required a cell tower.

5 Q. All right. Ms. Gilreath also mentioned call detail
6 records and what do those records reflect?

7 A. Call detail records reflect the calling number, which
8 is the number placing the call, it reflects the number
9 dialed, it reflects the date and time the call was made, it
10 reflects the duration, which is in seconds, and -- yeah,
11 the start date, end date and the time.

12 Q. Okay.

13 **MR. McNAIR:** If you could mark this, please.

14 (State's Exhibit Number 66 was marked for
15 identification.)

16 BY MR. McNAIR:

17 Q. I'm gonna show you State's Exhibit 66. Are those call
18 detail records that you previously provided for this phone
19 number?

20 A. Yes.

21 Q. All right. And what is the date range on those call
22 detail records?

23 A. The start date is 4-12-2014 and the last called is
24 4-17-2014.

25 Q. All right. And these are also official Spirit

1 documents that are kept in the regular course of Sprint's
2 business?

3 A. Yes.

4 **MR. McNAIR:** Your Honor, we'd offer State's Exhibit 66
5 in evidence at this time.

6 **THE COURT:** Ms. Gilreath?

7 **MS. GILREATH:** Your Honor, if I could just look at it
8 one more time. I just looked at the first page.

9 **MR. McNAIR:** (Handing.)

10 **MS. GILREATH:** No objection, Your Honor.

11 **THE COURT:** All right. Thank you.

12 (State's Exhibit Number 66, call detail records, were
13 admitted into evidence.)

14 BY MR. McNAIR:

15 Q. Do you have a copy of this up there with you?

16 A. I do not.

17 Q. (Handing.) Now is there any cell tower information
18 indicated on these call detail records?

19 A. No.

20 Q. All right. And why is that? Is that outside the
21 timeframe -- does that include calls outside the timeframe
22 of what Sprint was asked to produce?

23 A. Correct.

24 Q. Okay.

25 A. We only provide cell tower information for the

1 specific date and time requested.

2 Q. All right. But that does reflect all outgoing and
3 incoming calls made from the 12th to the 17th?

4 A. It does.

5 Q. All right. But there's no cell tower information
6 because there was none during that time period on
7 April 13th between 1 AM and 5 AM?

8 A. Correct.

9 Q. But based on these call detail records, when was the
10 last activity on April 13, 2014?

11 A. The last transaction was April 13, 2014, at 23:27:42
12 which is 11:27 PM and --

13 Q. And what kind of transaction was that?

14 A. That was an outbound call.

15 Q. Okay. And when is the next activity after that?

16 A. It ended on 4-13-2014 at 23:28:15.

17 Q. All right.

18 **THE COURT:** That last timeframe that you mentioned,
19 I didn't get the time. It was military time. Would you
20 tell me what that was again?

21 **THE WITNESS:** Sure. 11:28. 11 PM. 11:28 PM.

22 **THE COURT:** 11:28. I had the last call at 11:27,
23 right?

24 **THE WITNESS:** The call started at 11:27 and 42
25 seconds, PM, and ended at 11:28 and 15 seconds.

1 **THE COURT:** Okay. Thank you, ma'am.

2 BY MR. McNAIR:

3 Q. And the next call made after that date was?

4 A. 4-14-2014.

5 Q. At what time?

6 A. 7:19 AM.

7 Q. Okay. All right. And let's talk about when was the
8 last call made on April 12, 2014.

9 A. The last call that was placed on April the 12th of
10 2014 was an inbound call that started at 20:48 or 10:48 PM
11 and it ended at 20:48, which it started and began both at
12 10:48 PM.

13 Q. All right. And when was the next call made after
14 that?

15 A. The next call was on 4-13-2014. It was an inbound
16 call that started at 11:59 AM and ended on April 13, 2014,
17 and ended at 12 noon.

18 Q. All right. And no other calls made between those two
19 times?

20 A. That is correct.

21 **MR. McNAIR:** All right. I beg the Court's indulgence.

22 **THE COURT:** Okay.

23 **MR. McNAIR:** No other questions, Ms. Sparks. Thank
24 you.

25 **THE COURT:** Thank you. Ms. Gilreath, any follow-up on

1 those points?

2 **MS. GILREATH:** Yes, Your Honor.

3 **THE COURT:** Thank you.

4 **RE CROSS EXAMINATION**

5 BY MS. GILREATH:

6 Q. Ms. Sparks, were those records that we were looking at
7 here, I believe it's marked as State's 66, for the time
8 range requested -- and, Your Honor, may I approach the
9 witness?

10 **THE COURT:** Yes, ma'am.

11 BY MS. GILREATH:

12 Q. Could you tell me what is the time range that was
13 requested for the call logs?

14 A. The timeframe that was requested was April 12, 2014,
15 through 4-17-2014.

16 Q. And this shows all of the calls that were made or
17 received during that timeframe for that phone?

18 A. Yes.

19 Q. And if the search warrant that was received had
20 expanded the cell site -- the cell tower data that was
21 requested to include all of that range, it would have
22 included the cell tower records for those calls?

23 A. If it was available, yes.

24 Q. So -- but it wasn't requested?

25 A. It was not requested outside that specific timeframe

1 of 1 AM to 5 AM on 4-13-2014.

2 Q. And just to make sure I'm clear here, even though the
3 last call -- it appears you said that the last call that
4 was made on I believe it was the 12th was an inbound call
5 at 10:48 PM?

6 A. It was.

7 Q. And so this only reflects the phone calls that could
8 have been made by the phone? During that time period that
9 would have only reflected phone calls, it wouldn't have
10 reflected -- this doesn't reflect text messages --

11 A. It does.

12 Q. -- or Internet search history or anything like that?

13 A. It reflects text messages.

14 Q. Okay. So this does reflect text messages?

15 A. Not the content, but it does show, yes. It shows the
16 number that was -- sent and received the text, correct.

17 Q. Okay. And this is for that expanded range?

18 A. What was for the expanded range?

19 Q. Meaning it expanded beyond that 1 AM to 5 AM. It
20 shows from the 12th through the 17th --

21 A. Correct.

22 Q. -- both calls and text messages, the numbers?

23 A. It does.

24 Q. Do you still have the original -- the letter that was
25 -- we were looking at earlier. I believe it's State's 65.

1 A. Yes.

2 Q. Could I bring your attention to Page 3?

3 A. Yes.

4 Q. There's a section on here that says features. Do you
5 see that?

6 A. I do.

7 Q. And that reflects features that the phone has, things
8 that the phone can do?

9 A. Correct.

10 Q. And that doesn't just include -- it's not a phone that
11 only makes phone calls, correct?

12 A. It also has data, uh-huh, and pictures, so you can
13 take pictures on it. It has video services, data services,
14 text services, so it's not just -- you can do other things
15 than just make or receive calls, yes.

16 Q. And the records that -- that you brought does not
17 reflect whether that phone was on wi-fi doing any of these
18 other things. This would not reflect if it were connected
19 to wi-fi?

20 A. This does not reflect if it was connected to wi-fi,
21 no.

22 Q. So you mentioned that for that expanded range if the
23 cell tower data had been requested over that range that
24 would have been provided for where it was available?

25 A. Correct.

1 Q. And when it is available, that comes in a format where
2 you can essentially see tower by tower, time by time, for
3 every time it was available, correct?

4 A. It will reflect the first and last cell of the call.
5 It would show the first cell site that the call was started
6 on and it will also reflect the last cell tower which the
7 call was terminated on.

8 Q. And depending on where the call was made from, that
9 would show which tower it was communicating with?

10 A. Yes.

11 Q. Because it's gonna communicate with the tower that
12 is most near or most available to it based on the Sprint
13 network, correct?

14 A. It will connect to the strongest tower, the tower that
15 has the strongest signal.

16 Q. So if a phone makes a call in one location and
17 connects to the tower with the strongest signal to it at
18 that location, that might be different from if the phone
19 then travelled fifty, a hundred, however many miles away
20 and made another phone call, that could be a different
21 tower?

22 A. Yes, it would be a different tower.

23 Q. So looking at these records just based on the phone
24 calls and the cell tower data that's available, you could
25 potentially get sort of an idea of general locations that

1 this phone could be --

2 A. Yes.

3 Q. -- based on the towers that it's communicating with?

4 A. Yes.

5 Q. And if that had been requested for this time range,
6 we could have potentially seen the general areas on a map
7 that this phone would have been in, correct?

8 A. It wouldn't be -- we don't put it on a map, but it
9 would show a location provided by latitude and longitude of
10 the tower that the call was placed on and the call that it
11 was terminated on.

12 Q. Sure. I just mean that with the tower information we
13 would be able to determine based on that latitude and
14 longitude where that tower is physically, geographically,
15 for each call that was made which tower it was
16 communicating with?

17 A. Correct.

18 Q. If the search warrant had requested for a particular
19 phone call, you would be able to determine what tower it
20 was communicating with?

21 **THE COURT:** I think she's answered that.

22 **MS. GILREATH:** I'm just -- let me rephrase my
23 question. I'm just trying to go a little bit more narrow.

24 BY MS. GILREATH:

25 Q. If they were requesting for a specific phone call made

1 from a specific location, it would show -- I mean, you
2 don't have to just do a range, you could determine for a
3 specific phone call that was made what tower and what
4 location?

5 A. Can you rephrase that? I'm not -- I don't know that
6 I'm --

7 **MR. McNAIR:** She's already answered that, Your Honor.

8 **THE COURT:** I think she has. Let me just add another
9 layer of confusion. I think you've mentioned this,
10 Ms. Sparks, but you haven't had a specific question
11 directed at this, but you've answered -- you've been
12 implicit in your answer. It's possible for one tower to
13 be the tower of origination, but if the call lasts long
14 enough it could switch to another tower; is that what you
15 said?

16 **THE WITNESS:** Yes.

17 **THE COURT:** Okay. So a single call could occupy more
18 than one tower --

19 **THE WITNESS:** Yes.

20 **THE COURT:** -- if you're travelling along?

21 Okay. Now since I've added more confusion,
22 Ms. Gilreath, I'll let you try to clear that up.

23 BY MS. GILREATH:

24 Q. Just one additional question. If the search warrant
25 had expanded to include a broader date range outside of

1 the 12th through the 17th, any phone calls made from -- if
2 a phone call was made from this courthouse or from an
3 apartment complex in West Columbia, it would have reflected
4 what cell tower was -- the phone was communicating with in
5 order to make that call, even if it was outside the search
6 warrant range, if that had been requested, that would have
7 been reflected here?

8 A. Correct.

9 **MS. GILREATH:** No further questions, Your Honor.

10 **THE COURT:** Thank you. Mr. McNair?

11 **MR. McNAIR:** Nothing further, Your Honor.

12 **THE COURT:** Thank you. Ms. Sparks, you can step down.

13 Without objection can she be excused?

14 **MS. MAYES:** Yes, sir, Your Honor.

15 **THE COURT:** Ms. Gilreath?

16 **MS. GILREATH:** No objection, Your Honor.

17 **THE COURT:** Okay. You can be excused, Ms. Sparks.

18 Thank you for coming.

19 (Witness excused.)

20 **THE COURT:** All right. Folks, this is a good time for
21 us to take the morning recess. We've got some matters of
22 law that we need to deal with outside of your presence, so
23 we'll take about twenty minutes. We'll start back at
24 twenty minutes of the hour. 11:40 we'll be back. We'll
25 try to get you back in at that time. Remember, as always,

1 not to discuss this case among yourselves while you're in
2 the jury room. Thank you.

3 (Whereupon, the jury retires to the jury room at
4 11:21 AM.)

5 **THE COURT:** Madam Reporter, at sidebar during the --
6 or following the playing of the video, a timely objection
7 was made regarding the redactions to the video that was
8 played. As a precatory matter, Madam Solicitor, it's
9 probably already in the record, but I want an un-redacted
10 copy of that DVD to be a Court's exhibit, as well as the
11 redacted copy, which is in evidence, so the appellate
12 court can review the extent of the redactions that were,
13 in fact, made.

14 **MS. MAYES:** (Nods head.)

15 **THE COURT:** I think the main part of the objections
16 had to do with the reference to the drawing and perhaps
17 others. Mr. Phillips, I'll allow you to put that on the
18 record now.

19 **MR. PHILLIPS:** Thank you, Your Honor. That will be
20 Court's 7.

21 (Court's Exhibit Number 7 was marked for
22 identification.)

23 **MR. PHILLIPS:** Thank you, Your Honor.

24 **THE COURT:** Yes, sir.

25 **MR. PHILLIPS:** In detailing what we discussed at

1 sidebar and, of course, yesterday when we were addressing
2 the redactions, one of the recommendations was the afraid
3 of the dark. I believe the dark part was taken -- was
4 redacted, but the afraid part was still included in the
5 video. There was discussion of princess and frog games
6 and playing dress-up. Now I know Your Honor had said that
7 you made the ruling specifically that that was allowed,
8 so that was my confusion that that was supposed to be
9 redacted as well.

10 **THE COURT:** Of course, the record should reflect that
11 -- my notes from yesterday, which obviously are not
12 official, had to do with redactions regarding truth and
13 drawings and then there was an objection to dress-up. At
14 that point in time Ms. Mayes specifically said that those
15 were relevant to her recollection of the events of the day
16 and I allowed those to go into the record. The record will
17 reflect that, but nonetheless that was my recollection from
18 yesterday.

19 **MR. PHILLIPS:** In the video that was shown today, the
20 redacted video, there was still draw your momma a picture,
21 showed and discussing her drawing the picture at the
22 different times before Ms. Caldwell left the interview and
23 when she came back in, the references to pictures for your
24 mom, draw fishes on your picture, all of this was still
25 included in the redacted video. We would renew our

1 objection and motion to suppress from yesterday.

2 **THE COURT:** All right. Thank you. The purpose of
3 getting the un-redacted video in the record was to show
4 that there's a great deal more regarding that drawing that
5 was on the video and that has been redacted. In this
6 particular instance, **MINOR** was being asked questions
7 while she was drawing. As a matter of fact, Ms. Caldwell
8 specifically asked her if she could talk and draw at the
9 same time and so there were a series of questions on-going
10 while she was drawing and, of course, those questions were
11 -- obviously were relevant and had to be included.

12 I find that the minor reference to the drawing and
13 what was going on to set a context for what she was doing
14 at the time she was being asked questions was not so
15 prejudicial as to render the process unfair. And quoting,
16 again, from the Russell case, as we did yesterday, Russell
17 did not necessarily say that the -- that the drawing in
18 that particular case, which was much more extensive than
19 this one, would have been error if it had been preserved.
20 It just simply said it was not preserved and so we can only
21 imagine what would happen.

22 But in any event, notwithstanding Russell, I don't
23 find that there was anything in the process as it was
24 actually conducted and after the redactions were made that
25 renders this unfair and deprives Mr. Hunter of his right to

1 a fair trial.

2 Also during Ms. Caldwell's testimony she was asked
3 questions about the demeanor of MINOR during the --
4 during the examination and she responded that she showed a
5 hesitancy to talk which was consistent with -- with trauma.
6 At that point in time, of course, you asked that a matter
7 of law be noted and I did and I stopped the questioning
8 at that point from going any further. Now according to
9 Kromah, observations that are made -- personal observations
10 regarding a child's behavior or demeanor are not rendered
11 reversible and, as a matter fact, are -- I think are even
12 sanctioned as being within the proper area of testimony.
13 The problem is when the statement goes so far as to even
14 indirectly vouch for the child's believability, then Kromah
15 says that absolutely off basis.

16 Madam Reporter, the Kromah we're talking about is
17 K-R-O-M-A-H. There's several "Kromah's", as a matter of
18 fact, dealing with child abuse cases. But, nonetheless,
19 I'll be glad for you to develop that more completely,
20 Mr. Phillips, but that was the -- I think that was the
21 essence of your objection that was being raised.

22 **MR. PHILLIPS:** That's correct, Your Honor. And Kromah
23 and the following case, Chavis, is cited in our pretrial
24 motion --

25 **THE COURT:** Right.

1 **MR. PHILLIPS:** -- so we did directly -- we knew the
2 issue could come up with the witness and it was one that
3 was directly addressed in our motion to prohibit exactly
4 what happened. I think, quote unquote, Ms. Caldwell said
5 in her professional opinion. She wasn't qualified as an
6 expert as Kromah and Chavis show that they're not allowed
7 to be qualified as experts. But, again, going to my motion
8 to prohibit the use of the word "forensic", it has that
9 misleading basis.

10 Also it's -- it started to go down the road of the
11 Douglas and Jennings case. I don't know whether it was
12 improper vouching or bolstering. When you look at both
13 Kromah, Chavis and then the improper vouching or bolstering
14 of Douglas and Jennings, that would be the crux of our
15 arguments that are before the Court that were addressed
16 with the very nature of having the admission of that
17 videotape, as well as having the interviewer testify as
18 to her interview. With that, in giving her professional
19 opinion when she had not been qualified as an expert
20 witness under 702, in addition to all of the arguments
21 made before Your Honor, we would certainly make the motion
22 for a mistrial at this time.

23 **THE COURT:** All right. I note that. You're right.
24 She was not qualified as an expert for obvious reasons,
25 but she was not called a forensic interviewer either. The

1 only reference to forensic was made to her background when
2 that was what -- that was the term that was used at the
3 time when she was involved in the -- in the center. And
4 so the -- the lone statement that I recall her having made
5 on her examination regarding the -- **MINOR** herself was
6 the statement that I just cited and, of course, the record
7 will reflect my incompleteness. The question was asked
8 specifically about her demeanor and she answered as I
9 said. That was her observation, of course, as a trained
10 interviewer, but beyond that I don't think it went any
11 further.

12 Ms. Mayes, I'll be glad for you to put something on
13 the record. You or somebody on your behalf is gonna have
14 to argue this before the Supreme Court if necessary at
15 some point in time, so I want you to put whatever you
16 need to on the record.

17 **MS. MAYES:** Yes, sir, Your Honor. Pursuant to
18 Kromah, it's the personal observations regarding the
19 child's behavior or demeanor that is sanctioned. And in
20 this particular case, it would be subjective in nature.
21 I realize she did use the word "opinion", but it's an
22 observation; therefore, it would be subjective in nature.
23 She described the child as hesitant during the discussion
24 about the events in the bedroom as opposed to some of the
25 other events that the child discussed more freely and that

1 is generally the observation that concerns the demeanor
2 that was to be elicited; that the discussion of the actual
3 details of the event were somewhat more hesitant. She
4 also did address that the child was discussing her mother's
5 hospitalization. That conversation is included in the
6 course of the interview that the jury saw. I believe at
7 one point the child stops talking and she questions her
8 further about being sad about her mom's hospitalization
9 and then they talk about that. So it's generally limited
10 to what she observed about the child's demeanor or changes
11 in demeanor when they're discussing various different
12 topics along the way and during the course of the
13 interview.

14 **THE COURT:** All right. Thank you.

15 **MR. PHILLIPS:** And, Your Honor, just to clarify, so
16 we would need two rulings. I believe one on the issue
17 that Your Honor directly brought up was regarding -- just
18 to make sure I say this artfully, one would be on the
19 expert -- Rule 702 making -- a lay witness making -- using
20 the phrase "in my professional opinion". So beyond the
21 scope of a lay witness essentially providing testimony of
22 an expert witness, improperly providing testimony, in
23 violation of Rule 702. And then with the direct issue --
24 primary issue of whether she violated Kromah and Chavis.

25 **THE COURT:** I think I've already ruled that she did

1 not violate Kromah in the statement -- or Chavis in the --
2 in the context of the document or what she said.

3 **MR. PHILLIPS:** I apologize, Your Honor. I think just
4 -- from the defense standpoint it just highlights the
5 dangerous nature of having that interviewer's testimony and
6 the admissibility -- you know, the admissibility of that
7 interview videotape before the jury.

8 **THE COURT:** Is there any reason why she could not
9 testify as she did testify without being qualified as an
10 expert under Rule 701? The witness is not testifying as
11 an expert and the witness's testimony in the form of
12 opinions or inferences is limited to those opinions which
13 are rationally based on her perception of the witness,
14 helpful of a clear understanding of the witness's
15 testimony, et cetera, don't require necessarily skill,
16 experience and training. She had special skill and
17 experience and training. She was not qualified, you're
18 right, so as to whether the jury -- the jury's not gonna
19 be, at least as to this witness, told that she was
20 testifying as an expert, so I don't know what else to say
21 in that regard. To the extent that that -- that that could
22 be deemed to be expert opinion testimony, although she was
23 not qualified as an expert, I would suggest at the very
24 least that it is harmless. The difficulty or the problem,
25 of course, is in qualifying the interviewer as an expert in

1 child abuse assessment or others is the problem because it
2 enhances the testimony of the witness in the eyes of the
3 jury. Although they're told not to, it enhances the
4 testimony of the -- of the particular witness who was
5 improperly qualified and, of course, that's the reason as
6 we know that forensic experts have been disallowed because
7 of the fact of the peer review and things of that nature
8 and a whole body of expert qualifications that come to bear
9 are not met in that particular area of testimony.

10 I don't think that I have to rule any more than I have
11 in that regard. The record is replete with my ramblings
12 and the Court of Appeals will make of it what they'll make.

13 **MR. PHILLIPS:** Thank you, Your Honor. And just in the
14 procedure, since the motion for mistrial is denied, the
15 Defendant would respectfully request a jury instruction
16 based on the cumulative effect of all the testimony and the
17 motion for --

18 **THE COURT:** I'll take that under advisement and we'll
19 address that issue if I do within my charge to the jury at
20 the conclusion of the trial and I'll let you know in
21 advance whether -- what I'm gonna do in that regard. I'll
22 be glad for you to submit -- if you'd like when you submit
23 proposed charges a specific charge in that regard for me to
24 take into account.

25 **MR. PHILLIPS:** Thank you, Your Honor.

1 **THE COURT:** All right, folks. Let's take about ten
2 more minutes and we'll start back at a quarter of the hour.

3 (Recess taken.)

4 **BAILIFF:** All rise. Court is now in session.

5 **THE COURT:** Thank you, folks. You-all can be seated.
6 Are both sides ready?

7 **MR. McNAIR:** I'll check on Ms. Mayes, Your Honor.

8 **THE COURT:** Okay.

9 (Pause in proceedings.)

10 **THE COURT:** All right, folks. Are both sides ready
11 for the jury?

12 **MR. PHILLIPS:** The defense is ready, Your Honor.

13 **THE COURT:** Thank you. Ms. Mayes, is your next
14 witness already in the courtroom?

15 **MS. MAYES:** Yes, he is, Your Honor.

16 **THE COURT:** All right. Good. Bring us the jury,
17 please.

18 (Whereupon, the jury returns to the courtroom at
19 11:52 AM.)

20 **THE COURT:** Ms. Mayes, you can call your next witness.

21 **MS. MAYES:** The State calls Investigator Thomas
22 Griffin.

23 **THE COURT:** Investigator Griffin come forward, please,
24 and be sworn.

25 (Whereupon, Thomas Griffin was duly sworn by the Clerk

1 of Court.)

2 **THE CLERK:** Once you're seated, state your full name,
3 spelling your last, please.

4 **THE WITNESS:** Yes. My name is Thomas Griffin,
5 G-R-I-F-F-I-N.

6 THOMAS GRIFFIN,
7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. MAYES:

10 Q. All right. And, Investigator Griffin, where are you
11 currently employed and in what capacity?

12 A. I'm currently employed with the City of West Columbia
13 Police Department and my current role is I'm a criminal
14 investigator.

15 Q. And how long have you been with the West Columbia
16 Police Department?

17 A. I've been with the police department approximately
18 nine years as of February.

19 Q. All right. And how much of that time has involved
20 work as an actual criminal -- major crimes unit
21 investigator?

22 A. I've been doing major crimes and criminal
23 investigation for four years now, yes, ma'am.

24 Q. All right. Can you tell us whether or not that
25 includes training in the field of crime scene?

1 A. Yes, ma'am, it does include training in the field of
2 crime scene, as well as I've worked multiple cases
3 involving homicides, attempted murders, burglaries, armed
4 robberies, any violent crime of those natures.

5 Q. And can you tell us whether or not you were working in
6 that capacity in April of 2014?

7 A. Yes, ma'am, I was.

8 Q. What role, if any, did you have in the investigation
9 regarding the burglary, home invasion, attempted criminal
10 sexual conduct case involving a victim by the name of
11 Larenda Simon?

12 A. I was notified by my captain Bruce Wade of the actual
13 incident. My first initial duties were to go to the
14 hospital and make contact with Ms. Simon, which I did.

15 Q. All right. And I want to take you back to that point
16 in time. You mentioned that you were notified by your
17 captain to go to the hospital. At that point in time where
18 was Larenda Simon being treated?

19 A. Larenda Simon was being treated at Palmetto Health
20 Richland in Columbia in their trauma unit.

21 Q. All right. Take us through what actually -- what you
22 actually observed once you arrived at the emergency room
23 there at Palmetto Health Richland.

24 A. Yes, ma'am. Once I arrived on-scene, I went directly
25 to the location where Ms. Simon was at, which was in the

1 trauma room in the ER. I observed Ms. Simon laying on a
2 stretcher or a gurney. She did have a few doctors and
3 nurses around her. I believe she was completely nude. If
4 not completely nude, I know it was from the chest down.
5 She had multiple gunshot wounds about her chest and body.
6 She was bleeding profusely, she was in pain, very terrified
7 and scared at that time.

8 Q. All right. And while you were at the hospital, what
9 role was taking place back at the actual crime scene?

10 A. While I was at the hospital -- typically when we have
11 -- the crime scene, it becomes more than just one crime
12 scene where it actually occurred. You have multiple crime
13 scenes. One where it occurred. Obviously Ms. Simon went
14 to another location, which creates another crime scene,
15 anything that would have been lost in that transfer. Her
16 being transported to the hospital, that, again, becomes
17 another crime scene, so at the time we had other
18 investigators and officers at the initial crime scene.

19 Q. All right. And who was -- what officer or officers
20 were taking a part in the actual collection of evidence
21 back at the crime scene?

22 A. That would have been Investigator Scott Neel and
23 Investigator Chuck Bramlett.

24 Q. All right. So moving forward to your conversation
25 with Ms. Simon in the emergency room, you've described her

1 demeanor. At this point in time were there doctors around
2 tending to her?

3 A. There was. Yes, ma'am.

4 Q. All right. And how active, if at all, were they in
5 the course of your interview with her?

6 A. It was -- it was an active emergency room. I was
7 trying to speak with Ms. Simon while they were prepping her
8 for surgery and treating to her wounds and counting the
9 bullet holes in her just so they could get an idea prior to
10 her surgery.

11 Q. All right. I'm gonna show you some photographs and
12 ask you whether or not you recognize them. It's going to
13 be State's Exhibit 62, 61, 60, 59.

14 A. Yes, ma'am, I do recognize these photos. They were
15 taken by myself and they were taken of Ms. Simon as she
16 laid in the hospital room.

17 Q. All right. Is that a fair and accurate representation
18 of how you recall her as she's in the hospital being
19 treated by hospital staff?

20 A. Yes, ma'am.

21 Q. All right.

22 **MS. MAYES:** Your Honor, this will be 59, 60, 61 and 62
23 for evidence.

24 **THE COURT:** Over objection of defense counsel.

25 **MR. PHILLIPS:** Thank you, Your Honor.

1 **THE COURT:** In evidence. Thank you.

2 (State's Exhibit Numbers 59, 60, 61 and 62,
3 photographs, were admitted into evidence.)

4 BY MS. MAYES:

5 Q. Now as you're having this conversation with Ms. Simon,
6 can you give us an overall picture of what you're trying
7 to get at in terms of the investigation while you're
8 interviewing a patient who's being prepped for surgery?

9 A. Yes, ma'am. Given the seriousness of Ms. Simon's
10 injuries, as well as we're talking about multiple gunshot
11 wounds, she's in the ER trauma, she's in intense pain, I'm
12 unsure as to whether or not we're gonna be able to speak to
13 her again because I know that she will be going to surgery
14 here shortly, so my main concern, first and foremost, is to
15 get a description of the suspect due to because I may not
16 be able to -- she may not be able to answer that again.

17 When I first asked her about the description of the
18 suspect, she gave me the height of 5-4 to 5-6.

19 Q. All right.

20 A. He was 150 pounds approximately. He was small, black,
21 and was wearing a ski mask.

22 Q. Can you slow down just a little bit more.

23 A. I'm sorry. Yes, ma'am.

24 Q. 5-4 to?

25 A. 5-4 to 5-6, approximately 150 pounds. She stated that

1 he was small, black and that he was wearing a ski mask,
2 which was covering his nose and his mouth.

3 Q. All right. And are you actually making notes
4 contemporaneously as you're interviewing her?

5 A. I am making notes as I'm speaking to her. As she says
6 it, I'm writing it down. Yes, ma'am.

7 Q. All right. And do you have those notes with you
8 today?

9 A. Yes, ma'am.

10 Q. Is that what you're actually reading from?

11 A. That's what I'm referring to. Yes, ma'am.

12 Q. All right. So those were made in the emergency room
13 on April 13, 2014?

14 A. They were. Yes, ma'am.

15 Q. What happened next?

16 A. What happened next? Given that I was able to get the
17 initial information, I began -- I knew with her going into
18 surgery that any statement that we could get from her would
19 be beneficial at that point. I had an audio recorder with
20 me. Typically we like to take either a recorded statement
21 or a written statement when they're giving a statement of
22 the events that actually happened. Due to her going into
23 surgery and such, I did not know when, I know the nurses
24 were prepping her for it, I went ahead and advised her
25 that I was gonna start the recording and I recorded a

1 conversation -- or a statement from her about the incident.

2 Q. All right. We'll look at State's Exhibit 59. Again,
3 who took these photos?

4 A. I did.

5 Q. State's Exhibit 60?

6 A. I took those photos as well.

7 Q. 61?

8 A. Yes, ma'am.

9 Q. And 62?

10 A. Yes, ma'am.

11 Q. All right. And throughout the course of your
12 interview as we see healthcare workers here tending to
13 her pre-surgery, were they with you and giving her care
14 throughout that time?

15 A. They were in the room the entire time. Even
16 throughout the recording of the statement of Ms. Simon we
17 have to pause. The recording continues, but doctors are
18 just prepping her, telling her what she's going to incur
19 once she undergoes surgery.

20 Q. All right. Moving forward, what did you do once you
21 received this information?

22 A. From Ms. Simon, once I received that information, it
23 was relayed to the investigators on the scene.

24 Q. All right. And how long did you stay there at the
25 hospital?