

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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SC Court of Appeals

**APPEAL FROM LEXINGTON COUNTY
In the Court of General Sessions**

The Honorable Frank Addy, Jr., Circuit Court Judge

Appellate Case No. 2019-001865

State of South Carolina Respondent

v.

Terry Renee McClure Appellant

**RECORD ON APPEAL
VOLUME II**

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1 number, you said that you found a name?

2 A. Yes.

3 Q. Jona?

4 A. Jona, J-O-N-A.

5 Q. Based on that information, what did you do?

6 A. Based on that information, we go back to the Alonzo
7 Walker individual from California. I looked at -- we
8 looked at his Facebook page, typed in the name Jona and a
9 Facebook friend of his came up as Jona McCoy and on that I
10 had -- I knew what Justin Butler looked at -- or looked
11 like, I had photographs of him, and the Facebook profile
12 appeared to be Jason Butler, the person I knew as Justin
13 Butler, and upon -- upon further inspection of that
14 Facebook page I saw a CD, a compact disc, of a Jona McCoy
15 or Jona -- General Jona, I believe is what it was, and
16 on the back of that disc contact information for that
17 particular rapper matched up with the 404 number -- I'm
18 sorry, the 510-875-0391 number.

19 Q. So on the Internet you found the 510-875-0391 with the
20 relation -- with the name Jona McCoy?

21 A. Jona -- it was -- Jona McCoy was the Facebook profile
22 and the photograph appeared to be Justin Butler and in the
23 photographs there was a compact disc with that individual
24 on the cover, I believe it was called Gas Station, and it
25 had the phone number that was provided to us by Justin --

1 or that was provided to us as Justin Butler's.

2 Q. In addition to the name Jona, did you also find some
3 information that led you to a Greyhound bus station in
4 Atlanta?

5 A. Yes. On the -- you're referring to the text messages?

6 Q. Yes.

7 A. On the text messages that we were able to receive --
8 I'll have to back up a little. There were text messages
9 that say -- that to me are somebody arranging to pick
10 somebody up at a bus station or making arrangements to be
11 picked up at a bus station.

12 MR. SPANGLER: And, Judge, we're gonna renew our
13 objection for the record.

14 THE COURT: All right. The objection's noted. We'll
15 put it on the record later.

16 Go ahead, please.

17 MR. GRAHAM: Thank you, Your Honor.

18 BY MR. GRAHAM:

19 Q. What's the date and time of that text?

20 A. That text is at 10:00 AM on April 24th.

21 Q. 2014?

22 A. 2014. I'm sorry.

23 Q. And the phone number that's sending the text, where is
24 it coming from?

25 A. It's from Justin Butler to another number.

1 Q. Okay. That's the 404 number that we're talking about?

2 A. Yes.

3 Q. From the 404 number?

4 A. Yes, 404-695-5436.

5 Q. And it's sent to what number?

6 A. 707-392-0402.

7 Q. Looking at the text content of the 404 number, did
8 that 707 number pique your interest?

9 A. It did because the -- I'd already established that --
10 I was quite confident that the person with the 404 number
11 and the number that came back to Justin Butler, I didn't
12 know if they were the same person, but I knew that those
13 phones travelled together to the victims' mother's house
14 from Muscle Shoals, Alabama, and at that time based on
15 those text messages it appeared that the individual
16 associated with those phones were meeting somebody or
17 somehow making arrangements at another location to pick up
18 somebody at a bus station and there was actually a third
19 number that was in this that was making the arrangements,
20 a third party, that was -- these other two were making
21 arrangements to have somebody picked up at a bus station.

22 Q. Let me show you a text content again for the 404
23 number. When you talk about another person, is that the
24 text that you're talking about?

25 A. Yes, sir.

1 Q. All right. That text is sent on what date and time?

2 A. That is April 24, 2014, at 3:42 PM.

3 Q. And the number that it's coming from?

4 A. 707-392-0402.

5 Q. And that's the same number that you talked about just
6 a moment ago that gave you a lead on the bus?

7 A. Yes.

8 Q. Okay. The text that comes from 707-392-0402, from
9 that number it goes to the 404 number --

10 A. Yes.

11 Q. -- that you were linking to Justin Butler or Jona?

12 A. Yes.

13 Q. What was the content of that message?

14 A. It gives a telephone number --

15 MR. SPANGLER: Judge, we'd just renew our objection.

16 THE COURT: Go ahead.

17 THE WITNESS: It gives a telephone number of
18 404-780-9703 with the name Ladondra next to it.

19 BY MR. GRAHAM:

20 Q. So that was the other number that you were talking
21 about?

22 A. Yes, sir. That was another number that piqued my
23 interest because of the association with picking up
24 somebody at a bus station.

25 Q. In the course of your investigation timeline-wise now,

1 you've got two numbers that you've identified, the 404 and
2 510, that are linking back to Justin Butler?

3 A. Justin Butler, yes, sir.

4 Q. You also have now two other numbers. You have the
5 707 number and then just identified another 404 number,
6 correct?

7 A. Yes.

8 Q. So what do you do next in your investigation?

9 A. At that time I called the 404-780-9703 number to see
10 if that individual would provide me with any information.

11 Q. And were you able to come in contact with an
12 individual at that number?

13 A. The first time I did and I didn't -- obviously I
14 wouldn't call and just say, you know, we're working a
15 homicide, are you involved. I believe I told her at that
16 point we found a phone and, you know, your number was in
17 it, do you know who this number is, and at that point I
18 didn't get any information from that individual.

19 Q. Did you subsequently go and meet with that individual?

20 A. I did. Because of the text message content, I
21 obtained a search warrant on that phone and I was able to
22 obtain information off that -- off those search records
23 that made me want to speak to that individual further.

24 Q. I want to show you 67 for ID. Those are the results
25 of the search warrant for that 404 number?

1 A. Yes.

2 Q. 404-780-9703, correct?

3 A. Yes.

4 MR. GRAHAM: Your Honor, that's 67 for ID.

5 THE COURT: Thank you.

6 BY MR. GRAHAM:

7 Q. Where did you go and meet -- you said it was a female,
8 I think, that you spoke with?

9 A. Yes.

10 Q. Where did you go to meet that person?

11 A. Atlanta, Georgia.

12 Q. And did you determine who that person was?

13 A. Yes.

14 Q. And who was that?

15 A. Ladondra Ellis.

16 Q. Ladondra is the same name that you saw in the text
17 content, correct?

18 A. It is.

19 Q. And we'll come back to her.

20 A. Okay.

21 Q. At the same time that's going on, you were also
22 getting records for the 707 number, correct?

23 A. Yes.

24 Q. So I'm talking about the 707-392-0402.

25 A. Okay.

1 Q. And that's the number that you said when you were
2 examining the text content of the 404 number that travelled
3 to South Carolina and back, that number caught your
4 interest as well, correct?

5 A. Yes.

6 Q. Let me show you 65 for ID and ask you if you recognize
7 that as being the contents from that search warrant?

8 A. It is.

9 MR. GRAHAM: And that's 65 for ID, Your Honor, is
10 707-392-0402.

11 THE COURT: That was State's what?

12 MR. GRAHAM: 65 for ID, Your Honor.

13 THE COURT: Thank you.

14 BY MR. GRAHAM:

15 Q. Now as a result of that search warrant for the 707
16 number that you noticed the text with -- back and forth
17 with the 404 number --

18 A. Yes.

19 Q. -- did you also get subscriber information for that?

20 A. I did.

21 Q. Let me show you what I'll mark as State's 81 and ask
22 if you recognize that?

23 A. I do.

24 Q. And is that the subscriber information that was a
25 result of your search warrant for the 707-392-0402?

1 A. It is.

2 MR. GRAHAM: Your Honor, the State would move 81
3 into evidence.

4 MR. SPANGLER: No objection to 81, Your Honor.

5 THE COURT: 81's in evidence.

6 (State's Exhibit Number 81, subscriber information
7 0402, was marked and admitted into evidence.)

8 BY MR. GRAHAM:

9 Q. So 81 is subscriber information for the 707-392-0402,
10 one of the numbers that you found of interest when you
11 looked at the calls and texts for the 404 number that
12 travelled back and forth from South Carolina to Alabama?

13 A. Yes.

14 Q. Do you know when that account -- that's a Sprint
15 account, correct?

16 A. Yes.

17 Q. Who's the account owner of that name?

18 A. Chris Smith.

19 Q. Do you know whether that's a real name or whether that
20 is a default name or do you know?

21 A. I don't know if that's a default name. It's a common
22 name, but I don't know if it's a default name.

23 Q. How about is there an address given?

24 A. P.O. Box 54988, Irvine, California.

25 Q. Do you know whether that's a default name -- I mean, a

1 default address?

2 A. That is a default address.

3 Q. Is that -- from the records are you able to determine
4 when that phone was activated?

5 A. April 4, 2014.

6 Q. April 4th of 2014?

7 A. Yes, sir.

8 Q. Are you able to determine whether that's a prepaid
9 phone or whether that phone is under contract with somebody
10 and being paid monthly?

11 A. It does not appear to be under contract because it is
12 to that default address, the same address as the other
13 default address -- or prepaid phone.

14 Q. So the 404 and the 707 are both prepaid phones?

15 A. Yes, sir.

16 Q. And you have the name of Chris Smith with no address?

17 A. That's correct.

18 Q. So where does your investigation lead you next?

19 A. At that point my investigation leads just like the
20 other phone looking at cell phone patterns, calls, who
21 they're calling and tower location of those calls and any
22 text message that may be available.

23 Q. So once you got the results for the 707 number, did it
24 have cell tower location?

25 A. It did.

1 Q. Did you have a chance to go through it and look at
2 those cell towers and where that phone was moving?

3 A. Yes, sir. I plotted the tower locations of that phone
4 leading up to the incident as well.

5 Q. So you're looking at the dates of April 24th to
6 April --

7 A. 27th.

8 Q. -- 27th?

9 A. Yes, sir.

10 Q. 2014?

11 A. Correct.

12 Q. When you looked at the movement of that phone, what
13 did you find?

14 A. The phone starts out as being associated with
15 Fairfield, California, and then on the 24th it begins to
16 move from Vacaville to Sacramento near the Sacramento --
17 near the Sacramento International Airport and then the next
18 phone activity is at Dulles, in Dulles, Virginia, near the
19 Dulles International Airport, and then Atlanta, Georgia,
20 near the Atlanta International Airport, and then
21 Greenville, South Carolina, and this is all in one day.
22 And so -- and then the phone then from Atlanta seems to
23 move consistently with the other two phones that I
24 associated with Justin Butler and they go from Greenwood
25 -- so on the 26th, they go from Greenwood to Leesville to

1 North, and then back to Leesville, South Carolina, later on
2 on the 24th -- I mean, on the 26th, and then on the 27th
3 they go from the Atlanta airport to the Charlotte airport
4 to the Sacramento airport and then back to the Vacaville,
5 California, area.

6 Q. So both the 404 and the 707 travelled from Atlanta?

7 A. Yes, sir.

8 Q. And they're both in the North, Pelion area on the 26th
9 of 2014?

10 A. That's correct, sir.

11 Q. And then both of them travel back to Atlanta?

12 A. Yes, sir. And then at that point it appears they
13 separate.

14 Q. The 404 phone goes where?

15 A. Back to Muscle Shoals, Alabama.

16 Q. And the 707 goes where?

17 A. Or actually, I'm sorry, the 404 number was no longer
18 being used. The other number associated with Justin
19 Butler, the 510 number, that one went back to Muscle
20 Shoals, Alabama.

21 Q. And the 707 number goes where?

22 A. Goes back to California.

23 Q. So based on the movement of the 707, you mentioned
24 airports?

25 A. Yes, sir.

1 Q. You said Sacramento --

2 A. Sacramento, Dulles --

3 Q. Dulles to Atlanta and Charlotte?

4 A. The 24th. That was on the 24th. On the 27th, it goes
5 back the other way; however, this time it goes from Atlanta
6 to Charlotte to Sacramento.

7 Q. Based on that information, the movement of the 707
8 phone from those airports on those dates and times, what
9 did you do?

10 A. It was obvious that somebody flew on an airplane with
11 that phone, so at that time I contacted the airlines. Once
12 I did some research upfront to find out which airlines
13 travelled that route on those dates at that time, I was
14 able to narrow it down to United and U.S. Airways based on
15 flight patterns and then I began to send off information --
16 search warrant information to the airlines to try to get
17 passenger manifests for those flights during those dates.

18 Q. And at this time we have Justin Butler's name for the
19 404 number. You still don't have a name for the 707, do
20 you?

21 A. I do not.

22 Q. Let me show you an exhibit that is marked already as
23 State's 71 and ask if you recognize that?

24 A. I do.

25 Q. And are those records that you got from United

1 Airlines regarding the flights that you -- that you
2 identified that would go along with the cell tower times
3 that you saw at the airports?

4 A. Yes, sir. This is from United Airlines, the flight
5 manifest.

6 Q. And that would be for the 707 -- we're talking about
7 the 707 movement?

8 A. Yes.

9 Q. On April 24th of 2014?

10 A. Yes, sir.

11 Q. And these are what you got back?

12 A. Yes.

13 MR. GRAHAM: Your Honor, the State would offer 71
14 into evidence.

15 MR. SPANGLER: No objection, Judge. An affidavit
16 was submitted with the required business records.

17 THE COURT: Very good. State's 71 is in.

18 (State's Exhibit Number 71, United Airlines
19 manifest, was admitted into evidence.)

20 BY MR. GRAHAM:

21 Q. And that document is entitled at the top United
22 Airlines Flight Manifest for April 24th; is that correct?

23 A. Yes, sir.

24 Q. Now there's some multiple columns on there; departure
25 date, flight number, destination, PRN ID, last name, first

1 name, et cetera, correct?

2 A. Yes, sir.

3 Q. Now the first name column, those names have been
4 blacked out just protecting privacy, correct?

5 A. Yes, sir.

6 Q. As far as the last names, what names -- I guess at
7 this point you had a list of names that travelled from
8 Sacramento to Dulles?

9 A. Yes.

10 Q. You also then have another manifest that goes from
11 Dulles to Atlanta; is that correct?

12 A. Yes.

13 Q. Okay. Looking at those two flights, Sacramento to
14 Dulles and then Dulles to Atlanta, were there common names?

15 A. Yes.

16 Q. And what were the common names that you saw?

17 A. Terry McClure and then there was one other name that's
18 whited out here. Terry McClure and Jean Ferrosa, if I'm
19 saying that correct?

20 Q. So there were two people who travelled from Sacramento
21 to Dulles and from Dulles to Atlanta on the 24th during the
22 time period that you saw the 707 phone move?

23 A. That's correct.

24 Q. As far as Terry McClure, what time do the records
25 indicate that he checked in at the Sacramento airport?

1 A. It appears 6:45 AM.

2 Q. 6:45 AM --

3 A. Yes, sir.

4 Q. -- at the Sacramento airport. All right. And they
5 don't say Sacramento and Dulles and say Atlanta, they use
6 the airport designations, correct?

7 A. Correct.

8 Q. So what is the airport designation for Sacramento
9 airport?

10 A. SMF.

11 Q. And for Dulles?

12 A. IAD.

13 Q. And Atlanta?

14 A. ATL.

15 Q. So from the flight manifest going out from United,
16 you had two names that matched the travel for the 707
17 phone, correct?

18 A. Yes.

19 Q. You also got records for U.S. Air; is that correct?

20 A. I did.

21 Q. And why did you choose U.S. Air?

22 A. Because that was the airline that had the return
23 flight patterns for that way, as Charlotte is their hub,
24 from Atlanta to Sacramento.

25 Q. So that would be from Atlanta to Charlotte to

1 Sacramento?

2 A. Yes, sir.

3 Q. And you identified the flights on that day that
4 matched up with the cell phone tower locations that you saw
5 for that 707 number?

6 A. Yes.

7 Q. Let me show you State's 72 and ask if you recognize
8 that as being the results of your request for information
9 from U.S. Airways?

10 A. Yes, that's manifest from U.S. Airway for flights on
11 the 27th that corresponded with the 707 number.

12 Q. Okay.

13 MR. GRAHAM: Your Honor, the State would move 72,
14 the U.S. Airways records in at this time.

15 THE COURT: No objection because that's also a
16 business record?

17 MR. SPANGLER: It is, Judge. We have an affidavit.

18 THE COURT: All right. 72's in evidence.

19 (State's Exhibit Number 72, U.S. Airways records
20 manifest, was admitted into evidence.)

21 BY MR. GRAHAM:

22 Q. So, again, the first names have been blacked out for
23 privacy reasons.

24 A. Yes, sir.

25 Q. You said on the flight out you identified two names.

1 There was Terry McClure and a --

2 A. Jean Ferrosa.

3 Q. -- Jean Ferrosa?

4 A. Yes.

5 Q. Did Jean Ferrosa travel back on U.S. Airways on April
6 27th?

7 A. She did not.

8 Q. Did Terry McClure?

9 A. Yeah, he did.

10 Q. So between the flights -- the two flights out on the
11 24th and the two flights back to Sacramento, those four
12 flights, there was only one name that was on all four of
13 those flights?

14 A. Yes, Terry McClure.

15 Q. So now you had a name four the 707 number?

16 A. I did.

17 Q. So going back to the United records, in addition to
18 the manifest did you also get information specific to Terry
19 McClure?

20 A. Yes, sir. I believe it's what's called an E-purchase
21 ticket.

22 Q. And that has the name Terry McClure on it, correct?

23 A. It does.

24 Q. And it has a date of birth; is that correct?

25 A. It does.

1 Q. And what is the date of birth?

2 A. Let's see. The date of birth is -- it looks like
3 March 6th of '88.

4 Q. And how much did those tickets cost?

5 A. \$679.50.

6 Q. So Terry McClure -- somebody named Terry McClure paid
7 almost \$700 for airline tickets?

8 A. Yes, sir.

9 Q. So now you had two names linked with two phones and
10 flight records for Terry McClure, correct?

11 A. I did.

12 Q. Additionally, looking at the 404 number in the text
13 contents, was there also an 864 number that caught your
14 attention?

15 A. There was.

16 Q. What was it about -- without going into specifics,
17 what was it about that 864 number?

18 A. It was from the Greenwood area and there was text
19 messages that -- because the phone was from the Greenwood
20 area and I knew from looking at the phone records that the
21 707, 404 and the 510 number spent some time in Greenwood
22 around the time of the incident, so I thought that may be a
23 significant phone number to look into to try to identify
24 that person also.

25 MR. GRAHAM: Your Honor, State's 68 for ID.

1 BY MR. GRAHAM:

2 Q. Mr. Mefford, do you recognize that?

3 A. Yes, that's a response to a search warrant I did for
4 that number.

5 MR. GRAHAM: So, Your Honor, 68 for identification
6 would be the search warrant results for 864-238-3791.

7 THE COURT: Very good.

8 BY MR. GRAHAM:

9 Q. So we've got multiple search warrants for multiple
10 phones that you received and you were reviewing all that?

11 A. Yes.

12 Q. You have the name identified with the 707 number and
13 the 404 number?

14 A. Yes.

15 Q. You've got a name of a Ladondra in Atlanta?

16 A. Yes.

17 Q. So once you developed the name Terry McClure from
18 flying out of Sacramento, California, are you able to
19 develop a photograph that goes with that name?

20 A. I was.

21 Q. And did the photograph you developed belong to the
22 Defendant, Terry McClure?

23 A. Yes, sir.

24 Q. Were you also able to develop a photograph of Justin
25 Butler --

1 A. Yes.

2 Q. -- the name you have associated with the 404 number?

3 A. Yes, I did.

4 Q. State's 41. Do you recognize that?

5 A. I do. That is the photo lineup created by Brian
6 Travis in our criminal intelligence unit at our request
7 with Justin Butler.

8 Q. All right. So at this point VonKeith Toland, nor any
9 of his family members, gave you the name Justin Butler?

10 A. No, sir.

11 Q. You came up through your investigation with the name
12 Justin Butler?

13 A. Correct.

14 Q. You now have the name Terry McClure?

15 A. Yes.

16 Q. Nobody -- VonKeith Toland nor any of his family gave
17 you that name?

18 A. No, sir.

19 Q. You did it through your own investigation?

20 A. Yes, sir. Through the investigation.

21 Q. State's 41 is a photo lineup that you showed to
22 VonKeith Toland on May 8th of 2014, correct?

23 A. Yes, sir.

24 Q. Did you tell him that the person may or may not be in
25 there or how did you describe it to him when you presented

1 it to him?

2 A. When we present a photo lineup to avoid any
3 suggestion, we advise the individual that we're showing the
4 photo lineup to that the person may or may not be in that
5 photo lineup so they don't feel obligated to pick somebody.

6 Q. Now was it the people who was at his house or was it
7 the people who was involved on the assault on him and his
8 brother?

9 A. This particular photo lineup, the purpose was to
10 identify the two individuals responsible for shooting him
11 and his brother.

12 Q. So as to State's 41, was he able to identify somebody?

13 A. He was.

14 Q. Did you do anything to indicate who he should select?

15 A. Absolutely not.

16 Q. How long did it take him once you showed him the photo
17 lineup to select somebody?

18 A. Immediately.

19 Q. And who did he immediately select?

20 A. He selected Photo Number 3, which is Justin Butler.
21 He indicated this by circling it and placing his initials
22 at the bottom of the page.

23 Q. Any hesitation on his part?

24 A. None whatsoever.

25 Q. And that was May 8th of 2014?

1 A. Correct.

2 Q. Why did you wait so long to show him the lineup?

3 A. Well, two things. We had to first develop a suspect
4 and then he was also still undergoing treatment in the
5 ICU and we wanted to wait until he was able to at least
6 coherently communicate and to provide us a solid
7 identification of the individuals who shot him.

8 Q. Do you have any doubt that he knew the purpose of this
9 lineup was to identify -- potentially identify somebody who
10 was involved with the attack on himself and his brother?

11 A. Yes, sir. He even indicated more information about
12 that assault.

13 MR. GRAHAM: And I believe just for -- to make sure,
14 Your Honor, 41 is already in evidence.

15 THE COURT: I think it is. I'm almost certain it
16 is. Hold on. Yes, it is.

17 MR. GRAHAM: Thank you, Your Honor.

18 BY MR. GRAHAM:

19 Q. May 10th of 2014, did you show another photo lineup to
20 VonKeith Toland?

21 A. I did.

22 Q. And he's still in the hospital, correct?

23 A. Yes, he was.

24 Q. What's his condition on the 8th and the 10th?

25 A. He was in ICU. On the 8th, he had a trach put in

1 during the course of his medical treatment. Like I said,
2 he was still in ICU and, of course, at that time I wasn't
3 sure he was gonna make it, but we -- we still showed a
4 photo lineup to him since he was able to identify the
5 individuals.

6 Q. Do you know what kind of surgeries he had?

7 A. I do not.

8 Q. Let me show you State's Number 1 and ask if you
9 recognize that?

10 A. I do. This is a photo lineup that I actually compiled
11 myself to present to VonKeith and this photo lineup
12 contains a photo of Terry McClure.

13 Q. And, again, did you tell him that the person may or
14 may not be in there?

15 A. No, I specifically said we may have identified the
16 second individual and they may or may not be in here and
17 showed him the photo lineup.

18 Q. Did you do anything to indicate who he should select?

19 A. Absolutely not.

20 Q. And when you showed him the photo lineup, how long did
21 it take him to identify somebody?

22 A. He immediately identified Number 5, which is Terry
23 McClure.

24 Q. And how did he identify Number 5?

25 A. He first pointed to it and then he circled it to

1 verify it and then wrote Number 5 in the photo lineup
2 section and then put his initials on the witness block.

3 Q. So now VonKeith Toland has identified Justin Butler
4 and Terry McClure?

5 A. Yes, sir.

6 MR. GRAHAM: Your Honor, just for safety's sake,
7 State's 1 is in evidence?

8 THE COURT: Court's 3 -- yeah, State's 1 is in
9 evidence.

10 MR. GRAHAM: Thank you, Your Honor.

11 BY MR. GRAHAM:

12 Q. All right. So now we've shown two photo lineups,
13 we've received two people. You still have an investigation
14 to do, don't you?

15 A. Yes, sir.

16 Q. One of the things we talked about was the number that
17 was identified and that you spoke to for Ladondra Ellis.

18 A. Yes, sir.

19 Q. And that number was what? That was another 404
20 number; is that correct?

21 A. Yes.

22 Q. Forty 404-780-9703?

23 A. 9703, yes.

24 Q. You went to Atlanta and met with her?

25 A. I did.

1 Q. And you verified that that phone number that we're
2 discussing belonged to a lady named Ladondra Ellis?

3 A. Correct.

4 Q. And she had previously been interviewed by police
5 officers in Atlanta at your request?

6 A. Yes.

7 Q. And you were following up on that, correct?

8 A. Yes. And the purpose of that was to -- I'd received
9 her phone records and I observed some information that
10 would lead me to believe that she -- she did have knowledge
11 of the individuals on those phones and I wanted somebody
12 to talk to her in person about that and not just over the
13 phone, so I arranged that for detectives at the Fulton
14 police to interview her and based on information from that
15 interview caused me to want to go speak with her in person
16 in Atlanta myself.

17 Q. So that was the -- so her number you saw and related
18 to the 404 number that was linked to Justin Butler?

19 A. Yes, it was -- it was in relation to picking somebody
20 up at a bus stop.

21 Q. And the 707 number related to Terry McClure?

22 A. Yes, sir. And I wanted to verify -- even though I had
23 the flight records and the flight manifests indicating that
24 that phone belonged to Terry McClure based on the time of
25 travels, I wanted to also speak to somebody who may have

1 communicated with him directly on that phone and that was
2 the purpose of wanting to speak to Ms. Ellis in person.

3 Q. Let me show you State's 2, which is currently in for
4 identification, I guess, and ask if you recognize that one?

5 A. I do. That is the photo lineup -- another photo
6 lineup including Terry McClure and this is the photo lineup
7 that I showed to Ladondra Ellis on May 15, 2014.

8 Q. Did you do anything to indicate to her that she should
9 pick somebody -- or what questions did you ask her?

10 A. I asked her if she could identify the person that she
11 -- she did not know Terry McClure by name and I asked her
12 if she could identify the person that she knew -- that she
13 communicated with on that 707 number and because she didn't
14 have his name, she only had a nickname, I asked her to
15 identify that person.

16 Q. And did she identify that person?

17 A. She did. She identified the person that she knows to
18 be associated with the 707 number as Terry McClure and she
19 circled Number 5 and wrote on here indicating that and she
20 also put Number 5 on the photo lineup section and by her
21 signature as a witness.

22 Q. Was there any hesitation on her picking out the
23 individual that she chose?

24 A. No, sir.

25 MR. GRAHAM: Your Honor, the State would move

1 Number 2 into evidence at this time.

2 MR. SPANGLER: Subject to the prior objection
3 for the Neil v. Biggers hearing.

4 THE COURT: Okay. Yes.

5 Subject to prior objection, State's 2 will be in
6 evidence.

7 (State's Exhibit Number 2, a photographic lineup,
8 was admitted into evidence.)

9 BY MR. GRAHAM:

10 Q. So there was evidence about a bus station being
11 involved; is that correct?

12 A. Yes, sir.

13 Q. And reviewing the records for the 404 and the 510
14 number, did you see evidence of bus activity?

15 A. I did.

16 Q. And based on that, did you get information from
17 Greyhound bus in Atlanta?

18 A. I did.

19 Q. So specifically let me show you 73 and ask if those
20 are records that you received from Greyhound bus?

21 A. They are. They're printouts of tickets from
22 Greyhound.

23 Q. And does this travel coincide with either the 510
24 number that came from Alabama to South Carolina through
25 Atlanta or the 404 travelling the same route?

1 A. It coincides with both phones coming to Atlanta and
2 the 510 number going back to Alabama.

3 Q. And it actually is records related to Justin Butler;
4 is that correct?

5 A. Yeah, that is the name of the person who purchased
6 those tickets and travelled on that bus.

7 MR. GRAHAM: Your Honor, the State would offer 73
8 into evidence.

9 MR. SPANGLER: No objection, Judge. This is
10 another one where the affidavit was provided.

11 THE COURT: Very good. State's 73 is in evidence.

12 (State's Exhibit Number 73, Greyhound bus records,
13 was admitted into evidence.)

14 BY MR. GRAHAM:

15 Q. Looking at State's 73, you said those are tickets for
16 Justin Butler; is that correct?

17 A. Yes, they are.

18 Q. Will you publish to the jury what the travel is and
19 the dates and the times?

20 A. Yes, sir. The departure is on the 24th of April,
21 2014, and they go -- it goes from Athens, Alabama, to
22 Atlanta, Georgia, and the departure time is 9:55 AM and
23 the approximate arrival time is 6:20 PM, and the telephone
24 number used on this in the name of Justin Butler is
25 510-875-0391. That is the first day on the 24th. And on

1 the -- on the 27th of April, the April the route is from
2 Atlanta to Athens with the time -- it looks like a 5, it's
3 cut off here a little bit, but it looks like shortly after
4 5:00 AM the bus departs and arrives back in Athens at
5 10:20 AM on April 27th. Again, in the name of Justin
6 Butler with telephone number 510-875-0391.

7 Q. We'll come back to Greyhound in a minute.

8 Did you also go look for evidence of a car being
9 rented -- for a rental car in Atlanta?

10 A. Yes.

11 Q. Why?

12 A. We -- from the information that we had based on the
13 fact that there was an airport involved, plus a bus
14 involved and an out of state tag, the travels of the two
15 individuals that we felt were responsible for this, we felt
16 like they may have rented a vehicle, so we went back
17 through the rental car companies, which is -- there's
18 several rental car companies, but we were able to actually
19 find a rental car transaction that was associated with this
20 incident.

21 Q. Let me show you State's 70 and ask if you recognize
22 that?

23 A. I do. This is a response for a search warrant in
24 reference to the rental car that was rented by Terry
25 McClure.

1 Q. So you found a rental car that Terry McClure rented?

2 A. Yes, sir.

3 Q. What company was it?

4 A. Enterprise rental company -- Rent-A-Car.

5 Q. And this is what you got in response to a request from
6 Enterprise related to Terry McClure renting a car?

7 A. Yes. I got a printed screen of the information and I
8 also got an electronic copy of the actual contract that was
9 done on the day for the vehicle where it indicates damage
10 to the vehicle and also has a signature at the bottom.

11 MR. GRAHAM: Your Honor, this is State's 70. We
12 would move it into evidence.

13 THE COURT: Same as before?

14 MR. SPANGLER: The affidavit was provided, Judge.

15 THE COURT: The affidavit was provided. State's
16 70 is in evidence.

17 (State's Exhibit Number 70, Enterprise record, was
18 introduced into evidence.)

19 BY MR. GRAHAM:

20 Q. Looking at the screen that you said came from
21 Enterprise regarding this rental and also the ticket
22 that's printed at the actual time when the individual
23 takes possession of the car, can you tell me the state for
24 the tag that was on that vehicle?

25 A. Yes, it's an Alabama tag.

1 Q. And what kind of vehicle was it?

2 A. It was 2014 Hyundai Santa Fe Sport, four-door, blue in
3 color.

4 Q. Do you know whether that's a car or an SUV?

5 A. It's a small SUV.

6 Q. Do you know from the records what time the car was
7 rented?

8 A. Yes, sir. The records indicate the car was rented on
9 the 24th of April, 2014, at 8:02 PM, and returned on the
10 27th of April 2014 at 12:12 PM.

11 Q. Now actual possession -- so the car was rented at
12 8:02 PM on the 24th. Actual possession of the car took
13 place at what time?

14 A. 8:11. So the transaction would have occurred at 8:02
15 and then the vehicle once, I guess, they do the paperwork
16 and inspection, things like that, 8:11 is when it appears
17 to be driven off the lot.

18 Q. The mileage of that vehicle when it was checked out
19 was what?

20 A. Starting mileage is 7,168.

21 Q. And when it was returned, you said it was April 27th
22 at 12:12, which is right after lunch, right?

23 A. Yes, sir.

24 Q. What was the mileage then?

25 A. 7,846.

1 Q. I'm gonna ask you to do some math. So how many miles
2 was the Santa Fe driven between April 24th and April 27th,
3 the time that it left and the time that it returned?

4 A. Actually, I'll have to look for my notes.

5 Q. 7,846 and 7,168.

6 A. It looks like 722 miles.

7 Q. If your math's wrong, it's the difference between
8 those two number, correct?

9 A. Yeah. Yeah, I have it in my notes here.

10 Q. Okay. What name was given for the person who rented
11 that car?

12 A. Terry McClure.

13 Q. And you have to have a driver's license to do that?

14 A. Yes, there's a driver's license indicated on there.

15 Q. And the date of birth of Terry McClure, who rented
16 that vehicle?

17 A. March 6, 1988.

18 Q. And that is the same date I think you said that was on
19 the airline ticket; is that correct?

20 A. It is.

21 Q. The phone number given for that is what?

22 A. The phone number given is 925-895-2790.

23 Q. And then how much did that rental car cost?

24 A. The rental car cost \$207.14.

25 Q. So Mr. McClure spent \$200.00 on a rental car from the

1 24th to the 27th and he spent almost \$700 on plane tickets?

2 A. Correct.

3 Q. Now the second page of that -- the first one was of a
4 screen from the computer from Enterprise, correct?

5 A. Yes.

6 Q. The second one is actually the ticket that's printed
7 off when the car's taken possession of that has like the
8 damage and descriptions and things like that, correct?

9 A. Yes.

10 Q. And there's actually a signature or initials at least,
11 correct?

12 A. Yes.

13 Q. There's also a Visa. What are the last four digits of
14 the Visa that's used?

15 A. 7 -- or, I'm sorry, 9511.

16 Q. And that's for the car that we're talking about and
17 it reflects that on the ticket as well?

18 A. Yes, a blue Hyundai Santa Fe.

19 Q. All right. So now we have names and a car
20 description, correct?

21 A. Yes, sir.

22 Q. Let's go back to Greyhound. You have ticket
23 information for Justin Butler and now you have a car
24 description?

25 A. Yes.

1 Q. Do you actually go and look for video from Greyhound
2 bus station in Atlanta?

3 A. I do.

4 Q. 74 -- State's 74. Did you actually go there?

5 A. I did. I went -- after I met with Ladondra Ellis, I
6 went to the bus station, we met right up the street, and I
7 went to the bus station and that's where I obtained the
8 ticket information and also the video from the Greyhound
9 bus station for the times of the bus's arrival and
10 departure that Justin Butler was registered on.

11 Q. Based on that, did you capture video that you thought
12 was relevant to this case?

13 A. I did.

14 Q. And what does the video show?

15 A. The video shows several things. It shows Justin
16 Butler arriving on the 24th and it also shows Ladondra
17 Ellis picking Justin Butler up outside on the 24th and then
18 on the 27th it shows Justin Butler being dropped off in a
19 vehicle that's consistent with the one rented by Terry
20 McClure in the front of the Greyhound station and then
21 Justin Butler walking in and getting on the bus.

22 MR. GRAHAM: Your Honor, the State would introduce
23 Number 74 into evidence at this time.

24 THE WITNESS: My math was off. I think 678 miles
25 is correct. I apologize for that.

1 THE COURT: All right.

2 MR. SPANGLER: No objection.

3 THE COURT: No objection to 74. That is in
4 evidence.

5 (State's Exhibit Number 74, Greyhound bus station
6 video, was admitted into evidence.)

7 BY MR. GRAHAM:

8 Q. All right. Let me show you three photographs;
9 State's 75, State's 76 and State's 77. Are those
10 photographs that you asked to be taken off of the Greyhound
11 video that's on State's 74?

12 A. It is. It's a part of the video and it shows the
13 vehicle which is consistent with the make and model of that
14 rented by Terry McClure during this incident.

15 Q. So you're talking about the Santa Fe that's in the
16 Enterprise rental agreement?

17 A. Yes, the Hyundai.

18 MR. GRAHAM: Your Honor, permission to publish --
19 actually I move them into evidence.

20 THE COURT: Have you moved them yet?

21 MR. GRAHAM: I have not, Your Honor.

22 THE COURT: Go ahead and show them to him.

23 MR. GRAHAM: State's 75, 76 and 77.

24 MR. SPANGLER: If we could just take a look at them.

25 MR. GRAHAM: Sure.

1 MR. SPANGLER: No objection, Judge.

2 THE COURT: Without objection State's 75, 76 and 77
3 are in evidence.

4 (State's Exhibit Number 75, 76 and 77, photographs,
5 were admitted into evidence.)

6 MR. GRAHAM: Your Honor, if I could have the witness
7 step down for a moment.

8 THE COURT: Please.

9 (Whereupon, the witness steps down from the
10 witness stand.)

11 BY MR. GRAHAM:

12 Q. Mr. Mefford, if you would, I'll let you hold 75. I'm
13 gonna hold 76 and 77. What is -- why did you pull these
14 off? Why are these important?

15 A. These are important because they correspond with --
16 what I was able to do look is look at the video and see
17 when Justin Butler came in through the doors and I was able
18 to back it up and backtrack to where he was dropped off
19 outside and this is right outside the entranceway to the
20 terminal, and I pulled off these because I did significant
21 research on the type of vehicle that this was. I had the
22 vehicle information before the rental information and the
23 -- or the photograph before the vehicle information and
24 later I was able to match that up as being the same
25 appearance as the vehicle rented by Terry McClure and it

1 appears that Justin Butler was dropped off by that vehicle
2 in the parking lot.

3 Q. And there appears to be dates and times on the bottom.
4 Are those accurate or close to accurate?

5 A. Yes, sir. The dates appear to be accurate.

6 Q. You can step down this way.

7 A. (Witness complies.)

8 Q. So you watched a Greyhound video. This is outside.
9 It's off State's 74, the disc.

10 A. Yes.

11 Q. And you saw Justin Butler get out of this vehicle --

12 A. Yes.

13 Q. -- on the 27th?

14 A. Yes.

15 Q. In the morning?

16 A. Yes.

17 Q. And this vehicle is consistent with the vehicle?

18 A. The vehicle rented by Terry McClure, the Hyundai
19 Santa Fe.

20 Q. Thank you. Step down that way.

21 A. (Witness complies.)

22 Q. Thank you.

23 (Whereupon, the witness returns to the witness
24 stand.)

25 BY MR. GRAHAM:

1 Q. If you would go back to -- so remind me again, on
2 State's 70, the Enterprise rental agreement, was there any
3 card information for the credit card that was used to rent
4 that?

5 A. Yes, the last four is 9511.

6 Q. If you would look at the United Airlines information,
7 which is State's 71, and go back to the name under Terry
8 McClure on the last page of it.

9 A. Uh-huh.

10 Q. Do you see the information regarding the credit card
11 number that was used to purchase the United Airlines
12 tickets?

13 A. I do.

14 Q. And what are the last four of that?

15 A. The last four of that card number was also 9511.

16 Q. The same card that's on the Enterprise?

17 A. Yes, the same last four.

18 Q. Did you ask Fairfield Police Department to assist you?

19 A. Yes, sir.

20 Q. And was part of that to arrange for an interview with
21 Terry McClure?

22 A. That's correct.

23 Q. Let me show you some photographs and ask if you
24 provided any of these to the Fairfield Police Department?

25 A. I did. I provided this photo. It is a photo of the

1 two victims, VonKeith Toland and Tycus Toland, in order for
2 them to utilize during their interview as the individuals
3 who were the victims in this case.

4 Q. So this is State's Number 11, correct?

5 A. Yes, sir.

6 Q. And this is a photograph that you provided to, I
7 think, Detective Trojanowski --

8 A. Trojanowski. He was primary, yeah.

9 Q. -- from the Fairfield Police Department?

10 A. Yes.

11 Q. And you said it contains a photograph of VonKeith
12 Toland?

13 A. Yes, sir.

14 Q. He's the individual on the far right of this photo
15 that's State's 11 for ID?

16 A. Yes.

17 Q. And then on the far left is Tycus Toland?

18 A. Tycus Toland. Yes, sir.

19 Q. Now was that the only photograph that you gave him?

20 A. No, I also provided them with the photo of Alonzo
21 Walker and Justin Butler. They already had that from
22 earlier.

23 Q. Okay. So that would be State's Number 5 for ID?

24 A. Yes.

25 Q. You provided that?

1 A. Yes.

2 Q. And you also provided, you said, one for Alonzo
3 Walker?

4 A. The original photo with them both in it.

5 Q. The Instagram photo?

6 A. Yes, sir. That was -- that was provided previous
7 to my request for the interview. That was just for
8 information purposes. And I also provided them with
9 several things that would have helped in the interview.
10 I provided them things that I would want to know in the
11 interview like where the crime occurred, some of the
12 information we had as far as the flight records, the phone
13 records, and also gave -- provided them with some
14 information on some of the phone activity we had and the --
15 obviously the victim's address and a description of the
16 victim's address to utilize in that interrogation.

17 Q. Let me go through some information and make sure that
18 we understand what Detective Trojanowski had.

19 A. Yes, sir.

20 Q. So you provided him the incident date of April 26,
21 2014?

22 A. Yes.

23 Q. You provided him the address of 688 Bushberry Road in
24 Pelion, South Carolina?

25 A. Yes.

1 Q. You gave him the Instagram photo of Alonzo Walker and
2 Justin Butler?

3 A. Yes, sir.

4 Q. You gave him the name Alonzo Walker?

5 A. Yes.

6 Q. You gave him information about a 707-392-0402 number?

7 A. Yes.

8 Q. And that number you believed to be at that time
9 related to Terry McClure, correct?

10 A. Yes, based on the flight information. I also provided
11 the flight information to him.

12 Q. What, if any, information did you give him regarding
13 one of the tower location hits for a phone call on the 707
14 as relates to high schools or community colleges?

15 A. That was in reference to the earlier text messages we
16 were able to retrieve from the phone communicating with the
17 404 number and I provided him the information that that
18 phone would have -- at some point was communicating with --
19 or communicating about school or class and was near some
20 schools in that area, in the Fairfield area, and I asked
21 him to look into that for me during the course of the
22 interview.

23 Q. Did you give him information about -- so that's towers
24 near either a high school or a community college, correct?

25 A. Yes, sir.

1 Q. Did you also give him a location regarding the use
2 about the airport in Sacramento?

3 A. Yes.

4 Q. Did you give him information and the times for the
5 Washington Dulles airport?

6 A. Yes, sir.

7 Q. For the Atlanta airport on both the 24th and the 27th,
8 I guess?

9 A. Yes.

10 Q. For the phone -- the 707 number being in Greenwood,
11 South Carolina?

12 A. Yes.

13 Q. On the 25th?

14 A. Yes, sir.

15 Q. That the phone was at or near the victim's mother's
16 house in North, South Carolina, on the --

17 A. 26th.

18 Q. -- 26th?

19 A. Yes, sir.

20 Q. That the phone, the 707, was in the Pelion area at the
21 time that Tycus Toland was killed and the time VonKeith
22 Toland was shot?

23 A. Yes, and we felt that whoever was in possession of
24 that phone was responsible or involved in this incident.

25 Q. And also about the phone going back -- the 707 phone

1 going back to the Sacramento airport?

2 A. Yes, sir.

3 Q. Did you also tell him about the manifest and what you
4 found from United and U.S. Air?

5 A. Yes, I told him that the flight records indicate that
6 Terry McClure was the only one to travel the routes in
7 conjunction with the phone.

8 Q. So you knew that Terry McClure took flights and the
9 phone, the 707, went along with the flights?

10 A. Yes, sir.

11 Q. Did you pass any information to him regarding the
12 descriptions of the two suspects?

13 A. Yes, we did. The approximate height. He knew Justin
14 Butler at that point and he had already identified Justin
15 Butler for us, so he knew Justin Butler's physical
16 description, and I also provided him with information that
17 we had regarding the height of the second individual that
18 was involved in this incident.

19 Q. And did you also share with him who VonKeith Toland
20 identified as the shooter?

21 A. Yes.

22 Q. So those are the things that he knew?

23 A. He did.

24 Q. Ultimately did you or somebody under your direction
25 obtain arrest bench warrants for Justin Butler?

1 A. Yes, once we had enough information, enough probable
2 cause, we obtained -- Detective Garrick obtained arrest
3 warrants for Justin Butler.

4 Q. And, additionally, did you or somebody under your
5 direction obtain and place Mr. McClure under arrest for the
6 charges that he's here for today?

7 A. Yes, Detective Garrick did that also.

8 MR. GRAHAM: I beg the Court's indulgence, Your
9 Honor.

10 THE COURT: Yes.

11 BY MR. GRAHAM:

12 Q. I apologize. There's one more document that I want
13 you to review. This is currently marked as State's 78.

14 A. Yes, sir.

15 Q. It's a list of phone numbers and people that you've
16 been able to associate with the phone --

17 A. Yes.

18 Q. -- with those numbers?

19 A. Yes, sir.

20 Q. So the first number, from your investigation are you
21 able to recognize that that number belonged to VonKeith
22 Toland?

23 A. Yes, that number belongs to VonKeith Toland.

24 Q. And that number is what?

25 A. 803-221-5730.

1 Q. Now Alonzo Walker, a/k/a Zo from Cali, were you able
2 to determine a number that went to him through your
3 investigation?

4 A. I was. I was able to determine that 916-514-2961 was
5 the phone number associated with Alonzo Walker.

6 Q. Justin Butler, a/k/a Jona McCoy, were you able to
7 attribute two numbers to him?

8 A. Yes, sir. I was able to attribute 404-695-5436 and
9 510-875-0391 to Justin Butler from my investigation.

10 Q. Were you able to determine that Terry McClure was
11 related to the 707-392-0402 number?

12 A. Yes.

13 Q. How about who is associated with the 925-895-2790
14 number?

15 A. Terry McClure.

16 Q. The 404-780-9703, who was that number associated with
17 through your investigation?

18 A. I was able to determine that was a phone number for
19 Ladondra Ellis.

20 Q. And then, finally, you talked about an unknown number
21 in Greenwood, South Carolina, where the 404 and the 707 and
22 510 travelled?

23 A. Yes, sir. 864-238-3791 and we were never able to
24 determine who was associated with that number. We were
25 able to determine that that phone did not travel to North

1 or Pelion, South Carolina, on the date that the incident
2 happened.

3 MR. GRAHAM: Your Honor, that is State's 78. We
4 would move that into evidence at this time.

5 MR. FLOYD: Your Honor, may we approach on this?

6 THE COURT: Sure.

7 (Proceedings held at the bench; not reported.)

8 THE COURT: Objection noted. Overruled.

9 State's 78 is in evidence.

10 MR. GRAHAM: Thank you, Your Honor.

11 (State's Exhibit Number 78, a phone number chart,
12 was admitted into evidence.)

13 MR. GRAHAM: Thank you, Mr. Mefford. Please answer
14 any questions the defense has for you.

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. Ladies and gentlemen of the
17 jury, we've been at it for -- by my watch about an hour
18 and forty-five minutes. Some of you need to stretch your
19 legs. I can tell because you're antsy and fidgety over
20 there, so we're gonna take about a ten-minute break and
21 we'll be back on the record. Anybody who wants to pop
22 outside and smoke, just let the bailiff know and she'll
23 get you downstairs, okay? We'll be back on the record
24 in about ten minutes.

25 (Whereupon, the jury retires to the jury room at

1 3:46 PM.)

2 THE COURT: You can step down and feel free to get
3 some water or something, okay?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: All right. We'll be at ease for a few
6 moments.

7 (Recess taken at 3:46 PM.)

8 (Back on the record at 3:58 PM.)

9 BAILIFF: All rise. Court's now in session.

10 THE COURT: Thank you. Please have a seat.

11 Before the jury comes back in, the record will
12 reflect that Mr. Floyd made an objection when Mr. Graham
13 questioned this witness about certain items that are in
14 the 404-695-5346 text message log. The Court has that
15 in front of me and it was a reference -- the second
16 reference to Jona on the first page of the log dated
17 4-23-14, and then there was a second objection on the
18 second page.

19 If I understood Mr. Floyd's objection, it was based
20 upon hearsay; am I correct?

21 MR. SPANGLER: It was, Judge.

22 THE COURT: All right. Maybe it was Mr. Spangler's
23 objection. I did indicate to the attorneys that -- I've
24 lost it now, but I did some research the other day and it
25 would appear that State versus, I think, Sims would be on

1 point as it relates to this document being evidence in
2 furtherance of a conspiracy and, therefore, outside the
3 scope of a hearsay exclusion.

4 I know that we haven't had arguments on that. I
5 think that witness isn't gonna testify until sometime
6 tomorrow, so that will probably be the appropriate time
7 to put those arguments on the record. And so I overruled
8 Mr. Floyd's objection, but I did want to note that he
9 did object and I told him I would put this on the record
10 at the next break that we had. So that was the nature of
11 that objection at sidebar.

12 All right. Let's have the jury back in, please.

13 (Whereupon, the jury returns to the courtroom at
14 4:02 PM.)

15 THE COURT: Okay. The record will reflect the
16 jury is back and seated.

17 We're still involved in the examination of
18 Mr. Mefford, who is still under oath, of course.

19 So at this point, Mr. Spangler, your examination,
20 sir.

21 MR. SPANGLER: All right. Thank you, Judge.

22 CROSS-EXAMINATION

23 BY MR. SPANGLER:

24 Q. Mr. Mefford, I want to start off with -- I think it
25 was way back at the beginning of your direct examination.

1 You said you arrived on the scene about what time?

2 A. I believe it was sometime shortly before 5:00.

3 Q. Okay. Shortly before 5:00. And I think you said
4 there was -- EMS had already left, but there were some
5 officers there that had already secured the scene; is that
6 right?

7 A. There were some -- I don't know that all EMS left
8 the area because sometimes they'll hang around to get
9 information and things like that. I didn't have any
10 interaction with any EMS workers at that time. There were
11 several people on the scene.

12 Q. Okay. But no family members to your knowledge?

13 A. Not to my knowledge. I know some showed up, but I
14 believe they left shortly after. I didn't have any contact
15 with them at that time.

16 Q. Okay. So when you get there --

17 A. Yes.

18 Q. -- if I understand this right, the first thing you did
19 was touch base with the deputies that are already there and
20 then you did a walkthrough of the scene?

21 A. Not of the scene. I did outside. We were waiting on
22 a search warrant to go inside the residence. The only
23 people that went inside the residence did a protective
24 sweep. The search -- the scene was secured until the
25 search warrant was done.

1 Q. So when you're looking around outside --

2 A. Yes.

3 Q. -- let's focus on that.

4 A. Okay.

5 Q. You locate two vehicles; a Honda Accord and a white
6 Infinity; is that right?

7 A. I observed two vehicles. I didn't really locate them.
8 They were -- they were there.

9 Q. They were there. You see them.

10 A. I didn't find them, yes.

11 Q. Okay. They're there sitting in the driveway?

12 A. Yes, sir.

13 Q. Okay. Now you see Tycus Toland laying on the ground?

14 A. Correct.

15 Q. Okay. Beside Tycus I think you located a phone?

16 A. I didn't locate a phone there. I -- when I walked
17 through, I saw -- I saw Tycus's body, I saw the two
18 vehicles, I noticed the vehicle door open. I'm not sure if
19 I -- I'd have to look at my notes and see if I referenced a
20 phone. I know I referenced him laying there. As far as
21 the phone, I'm not sure.

22 Q. Okay. And as -- would you call yourself the primary
23 investigator on the case or lead investigator? How does
24 that work?

25 A. I designated Detective Garrick as the lead

1 investigator. I would be considered, I guess, the
2 supervising investigator. I had the majority of the
3 knowledge of the phone activity and the identification of
4 the suspects is the part I did. The investigators mainly
5 did the legwork as far as interviews and statements and
6 things of that nature. I mainly did a lot of office stuff,
7 which was where -- a lot of this stuff was generated behind
8 the computer and not actually out beating the streets and
9 interviewing people as the detectives were assigned to do.

10 Q. Got you. So if I understand it right, you were
11 heavily involved with the phone aspect of this case?

12 A. Well, the identification of the two subjects in
13 general.

14 Q. Okay. Are you aware of how many phones were located
15 at the scene, 688 Bushberry?

16 A. I'm sure that it's documented somewhere, but I know
17 for sure VonKeith's phone. That was sitting in the door of
18 the vehicle from what I remember, somewhere around the door
19 of the vehicle.

20 Q. Okay. So you're sure of VonKeith's phone. How about
21 a phone belonging to Tycus Toland?

22 A. I'm -- I'm sure there was one. I don't have any
23 direct knowledge of that.

24 Q. Okay. But you assume that there was a phone for Tycus
25 Toland?

1 A. It should be in the -- documented in the evidence
2 somewhere.

3 Q. Okay. Now you actually -- after CSI goes in and takes
4 pictures of the house, you go in and at some point did your
5 walkthrough of the home?

6 A. It was later in the evening prior -- just prior to
7 leaving. I wanted to just walk -- do a walkthrough and
8 familiarize myself with the residence layout. Not in
9 depth. I didn't do any kind of searching or anything like
10 that. I just wanted to walk through and just kind of
11 familiarize myself with the layout of the residence because
12 we had very little information at that point from the
13 victim. And like I said before, I was approaching this as
14 a homicide that we weren't gonna have any witnesses, so I
15 was trying to just familiarize myself with the basic layout
16 of the residence and let CSI do their thing.

17 Q. So you're walking through for a basic layout, but I
18 think what you said on direct examination is you noticed
19 some cords and cameras outside; is that right?

20 A. Yeah, the cameras were outside, but the cords were --
21 you couldn't help but notice them. They were laying on the
22 ground.

23 Q. Laying on the ground.

24 A. And it was probably something CSI pointed out to me.

25 Q. Okay. Did you also notice while you were walking

1 through the house that there were numerous computers still
2 in the residence?

3 A. I didn't -- I didn't keep that as a -- I didn't note
4 that at the time.

5 Q. Okay. So you don't recall here today whether you saw
6 any computers inside the residence?

7 A. I don't recall whether I -- how many I saw or if I saw
8 any. That wasn't something I was looking for.

9 Q. Okay. You just saw the wires and there was nothing
10 plugged into the wires, right?

11 A. There did not appear to be anything -- the wires
12 appeared to dead end on the ground or where they were
13 laying.

14 Q. Okay. And you don't actually know what those should
15 have been plugged into, do you?

16 A. I do not, no. Not at the time. We just assumed based
17 on -- like I said, I worked burglaries before, so we go in
18 and look at things that are disturbed.

19 Q. Okay. But you don't know what they were actually
20 hooked up to in the house if that had been taken, right?

21 A. That's correct.

22 Q. Okay. Now you say you have experience with
23 burglaries. Did you hear about anything in this case
24 actually being taken from inside the residence?

25 A. Not specific. We looked at the -- the intent, the

1 criminal intent of the burglary. As you well know, the
2 elements are just the intent to commit a crime and I can
3 deduct from the forced entry, the ransacking of the
4 residence it appears that there was an intent to commit a
5 crime, but it's not necessary to determine what was taken
6 or to specifically say what the crime was. Obviously in
7 this case we can deduct they were looking for something of
8 value and that's the way I took it based on my experience.

9 Q. Okay. And I understand what you're saying, but were
10 -- let's say televisions. Were those removed from the
11 home?

12 A. None that I'm aware of.

13 Q. Okay. How about evidence that a safe had been taken
14 from the home? Anything like that?

15 A. I'm not aware if there was even a safe at the
16 residence.

17 Q. Okay. But you don't have any evidence that things
18 like that were actually taken from the residence?

19 A. I believe later it was testified to that a DVR was
20 taken.

21 Q. Okay. Something involving those -- those wires that
22 we had talked about?

23 A. That's my understanding, yes, sir.

24 Q. Okay. Now you're aware that one of the victims
25 actually had over \$1,200 in cash in his pockets, right?

1 A. VonKeith?

2 Q. VonKeith Toland.

3 A. Yes.

4 Q. That cash was not taken, was it?

5 A. No, it was not.

6 Q. That was left at the scene of where all the shooting
7 took place?

8 A. It was -- I believe it was in the pockets of the
9 shorts he was wearing at the time of the incident, sir,
10 yes.

11 Q. Okay. And you're aware that he actually stripped off
12 those shorts at some point and those were left under the
13 house?

14 A. I'm aware of that, yes, sir.

15 Q. Okay. There was also a bag of marijuana that was left
16 in those shorts that were left under the house, right?

17 A. Yes, sir.

18 Q. That marijuana wasn't taken?

19 A. It was not taken. It was taken by us, but --

20 Q. It wasn't taken by somebody --

21 A. Just to make sure, we're saying taken as evidence, but
22 it wasn't just left there by us. It was not. It was
23 obviously there when we got there.

24 Q. It was left there by presumably whoever did this
25 shooting?

1 A. It was left there by VonKeith Toland, who took his
2 pants off after he was shot.

3 Q. How about the keys to the Honda and the Infinity?
4 You're aware that those were left as well?

5 A. I'm aware of the keys being located on the engine
6 compartment. I'm not sure where the keys to the Honda
7 were, but I don't disagree with that.

8 Q. Okay. So keys for the Infinity are left in the engine
9 compartment of the Infinity?

10 A. That's what I'm guessing.

11 Q. Okay. It would have been easy just to pick up those
12 keys, put them in the ignition and drive off, right?

13 A. If that's what you were after, stealing a vehicle.

14 Q. Okay. But the vehicle wasn't stolen in this case, was
15 it?

16 A. It was not.

17 Q. Okay. And based on your knowledge of what's going on,
18 this was originally set up as looking at a used car, right?

19 A. Looking at the white Infinity in the driveway
20 specifically.

21 Q. A white Infinity that was left there along with the
22 keys right in the engine block, right?

23 A. Yes, sir.

24 Q. Okay. Let's talk a little bit more about the crime
25 scene just when you get there. On direct examination you

1 testified there was a significant amount of blood that you
2 found I think beside the Honda, right?

3 A. More so in -- the driver's door was open and in the
4 door, in the apex I guess you'd say, of the open door, seat
5 area of the Honda, yes.

6 Q. Okay. Actually there was blood on the passenger seat
7 of the Honda, right?

8 A. Yes, and some smear -- smeared sand -- smear on what
9 appeared to be sand and smeared -- a combination of sand on
10 the -- I guess the weatherstripping of the door.

11 Q. Okay. How about in the area leading from the trailer
12 to that vehicle? Did you see a blood trail there?

13 A. I did not and I was not looking at that point for --
14 for that. We obviously got information later on of
15 VonKeith's travels, which would we have been more, you
16 know, looking at that point if we knew that information,
17 but, again, at this point we're trying to piece this
18 together with no information whatsoever and I did not
19 notice any myself.

20 Q. Okay. And just to confirm -- I appreciate that, but
21 if you had seen blood, that is something that would stick
22 out in your head, right?

23 A. Yes. The blood I did see obviously stuck out, so,
24 yes.

25 Q. Okay. You didn't see any crawl marks, blood trail,

1 anything coming out from the bottom of that trailer?

2 A. I saw the trailer -- the underpinning down, but it was
3 -- so to me it appeared that somebody crawled out of that
4 trailer because it was -- obviously you can't walk out of,
5 you know, a mobile home like that underneath it, so clearly
6 somebody crawled out from under that trailer. So there was
7 some crawling involved, but I just don't know. From that
8 point on, you're correct, I did not see any -- any specific
9 evidence, nor was I looking for any at that time.

10 Q. Okay. No blood trail, no crawl marks, I guess,
11 wanting to get away from that trailer leading to that
12 vehicle?

13 A. Correct.

14 Q. Okay. Were you aware that a firearm was found in the
15 house?

16 A. I was made aware of that, yes.

17 Q. Okay. A 40 caliber firearm?

18 A. Yes.

19 Q. Okay. Were you aware that bullets or cartridges for
20 that firearm were found in the house as well?

21 A. Yes.

22 Q. Okay. One of the bullets actually recovered in this
23 case was a jacketed hollow point, right?

24 A. From my understanding, yes.

25 Q. You're also aware that the bullets found in that

1 house, those were jacketed hollow points, weren't they?

2 A. I'm not sure exactly what type of bullets they were.

3 I just know there was some unspent rounds inside the house
4 in a cabinet.

5 Q. Okay. Well, let's talk about that. There's a box of
6 bullets in there. Did you look at the box?

7 A. I think I've got photographs of the -- it might have
8 been pointed out to me at the time, but it was still in
9 place. I mean, it wasn't being manipulated when I was
10 there, but it was logged into evidence and I saw
11 photographs of it. As far as the -- the type of ammunition
12 it was, I just know from looking at the box and the -- and
13 we slide it out from -- from what I saw how many were in
14 there.

15 Q. Okay. So from looking at the box -- that's something
16 you did yourself, right?

17 A. Photographs.

18 Q. You looked at a photograph of the box?

19 A. I looked at the box in the cabinet and then
20 photographs later.

21 Q. Okay. Photographs of the box and that's where you see
22 it says 40 caliber Smith & Wesson on the box?

23 A. Yes.

24 Q. And below that JHP, right?

25 A. I don't know that for sure, but --

1 Q. You can't recall that?

2 A. I can't recall that specifically on it. I know they
3 were 40 caliber though.

4 Q. Okay. You know they were 40 caliber bullets, but you
5 can't remember whether they were jacketed hollow points?

6 A. I can't remember.

7 Q. Okay. Do you think that would be something important
8 to know in this case?

9 A. It would be now, yes.

10 Q. Sitting here on the stand today, that's a question you
11 can't answer?

12 A. I cannot answer that question, no. It's obviously
13 documented though.

14 Q. Now let's talk a little bit about -- you said during
15 your investigations you rely on what's called a CAD report,
16 right?

17 A. We rely somewhat on the CAD report. It is a source of
18 many sources.

19 Q. Okay. And in this case you did rely on the CAD
20 report.

21 A. We -- we got some information from the CAD report. I
22 wouldn't say relied on it. It was an investigative tool to
23 further the investigation and take the next step.

24 Q. Okay. An investigative tool that you employed in this
25 case?

1 A. Yes.

2 Q. Okay. And a CAD report, just so we're all on the same
3 page, correct me if I'm wrong, it's a computer automated
4 dispatch?

5 A. Yeah.

6 Q. Is that what it stands for?

7 A. Yes, sir.

8 Q. And that's something that as EMS is taking
9 information, they're putting it into the computer system,
10 right?

11 A. I'm not sure if EMS --

12 Q. Or 9-1-1 communications?

13 A. Dispatchers, yes. Dispatchers I know for sure. I'm
14 not sure if officers -- officers may. I left the road a
15 long time ago, so that was before my time, we were
16 dispatched with pen and paper. So there's data terminals,
17 but as far as investigators we weren't dispatched through
18 that system, but I'm familiar with it and the input is done
19 by different sources, yes.

20 Q. Okay. And you're familiar with the CAD report in this
21 case, right?

22 A. I am.

23 Q. That's a CAD report that relates to 9-1-1 calls made
24 related to this incident?

25 A. Yes.

1 Q. Okay. Have you listened to those 9-1-1 calls?

2 A. I have.

3 Q. All of the 9-1-1 calls?

4 A. I believe I've listened to every 9-1-1 call, yes.

5 Q. Okay. Let's take those in order. So the first 9-1-1
6 call that you would have heard is from VonKeith Toland,
7 right?

8 A. Yes, sir.

9 Q. Okay. Now you would agree with me that first 9-1-1
10 call only lasted about thirty seconds or so?

11 A. From my -- from what I remember, yes, it was very
12 short.

13 Q. In that first 9-1-1 call he doesn't give his name,
14 does he?

15 A. He does not.

16 Q. He doesn't identify the people who shot him or his
17 brother, does he?

18 A. Not to my knowledge.

19 Q. In fact, he gives the wrong address for his house. He
20 says 700 Bushberry.

21 A. Yes.

22 Q. Okay. And then he hangs up?

23 A. Well, the line's disconnected. I don't know if -- if
24 he hangs up or it's disconnected. I think that's --

25 Q. Okay. Well, do you think 9-1-1 hung up on him?

1 A. I can't say who hung up. I don't know if -- in Pelion
2 the line may have been dropped.

3 Q. Okay. So 9-1-1 then reaches back out. You're
4 familiar with that part of the 9-1-1 recording? They start
5 trying to call his phone?

6 A. Yes, sir.

7 Q. They finally end up getting through to him, right?

8 A. Yes, sir.

9 Q. Now there were several calls that just rang and rang
10 and rang and there was no answer.

11 MR. GRAHAM: Judge, I'm gonna object to this line
12 of questioning. If he wants -- I don't think this is
13 the witness to talk about what the CAD report says and
14 who hung up and who called. It's not -- he used it to
15 get information and he did more, but I don't know that
16 these questions are appropriate for this witness.

17 THE COURT: Okay. I'll give him some attitude.
18 He's on cross at the moment.

19 So to the extent you can though, go ahead and get
20 to the point and feel free to lead since you are on
21 cross.

22 MR. SPANGLER: Yes, sir.

23 BY MR. SPANGLER:

24 Q. Now VonKeith Toland, his voice on the phone, we can
25 tell he's very upset.

1 A. He's more than upset. He's been shot six times, sir,
2 and saw his brother murdered.

3 Q. Okay. You would say --

4 A. I would agree that he's upset and maybe that's an
5 understatement.

6 Q. He was in despair. Maybe that's the right word.

7 A. Distressed, appeared to be possibly dying, and I could
8 understand if he was less than extremely vocal at that
9 point, especially considering his condition and the
10 circumstances he had just been through. So, yes, sir, he
11 was in distress.

12 Q. He was in distress. Now you're aware that his mother
13 made a call to 9-1-1, right?

14 A. I am. Yes.

15 Q. Okay. Have you listened to that portion of the call?
16 Without going into any of the contents of it, have you
17 listened to that call?

18 A. I have. I'm aware of the content.

19 Q. Okay. How would you describe her demeanor during that
20 call?

21 A. I would say she was also distressed or upset.

22 Q. In distress or despair?

23 A. She was upset, yes. Yes, sir.

24 Q. Okay. Actually the 9-1-1 dispatcher was concerned for
25 her safety and wanted her to breathe slowly, things like

1 that?

2 A. Yes, considering the situation I -- I could understand
3 that.

4 Q. Okay. And in that 9-1-1 call she told the dispatcher
5 a white person had shot her son, right?

6 A. That's correct.

7 MR. GRAHAM: Your Honor, I'm gonna object. I don't
8 know if this is for the truth of the matter or for the
9 purpose of investigation or what we're doing, but it's
10 not appropriate.

11 THE COURT: Do you want to speak to that? I think
12 this witness would be perhaps better capable of testifying
13 as to things he actually did. Where are you going with
14 this?

15 MR. SPANGLER: I mean, Judge, he's familiar with
16 the 9-1-1 call. We're not sure if the State's actually
17 gonna put up the 9-1-1 dispatcher, so it might be one
18 of the only witnesses we have who has heard the calls,
19 the primary investigator on the case, and can speak to
20 it.

21 THE COURT: I think we played the call the other
22 day, didn't we?

23 MR. SPANGLER: Just the portion from VonKeith
24 Toland, not the portion from his mother.

25 THE COURT: All right. Let's move it along then.

1 Go ahead.

2 BY MR. SPANGLER:

3 Q. Just to confirm, it was relayed that a white person
4 had done the shooting?

5 MR. GRAHAM: Objection. You told him to move along,
6 Your Honor.

7 THE COURT: Do you recall his mother referencing a
8 white person in her 9-1-1 call?

9 THE WITNESS: Yes, Your Honor.

10 MR. SPANGLER: Okay. Nothing further on that
11 issue, Judge.

12 BY MR. SPANGLER:

13 Q. Now let's talk about what you did investigation-wise
14 in this case. You went to the hospital and actually met
15 with VonKeith I think the first week of May or so, right?

16 A. May 8th.

17 Q. May the 8th. And at that point I think you said he
18 had a trach in, he couldn't speak?

19 A. He could -- I wouldn't say speak. He could try to
20 communicate, but it wasn't a -- it wasn't -- it certainly
21 wasn't back and forth communication.

22 Q. Okay. And it was at that point on May the 8th that
23 you had that he circled what you showed as Terry McClure's
24 picture, right?

25 A. That's incorrect. That was --

1 Q. On the 10th. I'm sorry.

2 A. On the 10th, yes. Justin Butler's -- he circled
3 Justin Butler and identified him as one of the individuals
4 involved in the murder on the 8th and he identified Terry
5 McClure as the other individual involved in the murder on
6 the 10th.

7 Q. And that was May the 10th of 2014?

8 A. Yes, sir.

9 Q. Okay. Now you'd agree with me that getting
10 information from victims and recording it is very
11 important, right?

12 A. Yes.

13 Q. Okay. Can you tell the jury at what point did you
14 take a written statement from VonKeith Toland?

15 A. I did not take a written statement from VonKeith
16 Toland.

17 Q. Okay. So at no point in the last five and a half
18 years have you gotten a statement from him about what
19 happened?

20 A. I have not, no.

21 Q. Okay. As the supervising investigator or whatever the
22 title was, are you aware if there is any written statement
23 from VonKeith Toland about the --

24 A. I'm not aware of a written statement.

25 Q. Okay. How about a recorded statement?

1 A. Not a recorded statement either.

2 Q. Okay. And those are things we'd be able to have here
3 in court today if they existed, right?

4 A. You would be able to have them in addition to his
5 testimony, yes, sir.

6 Q. Now you went through the investigation that you did
7 with the flights.

8 A. Yes, sir.

9 Q. You'd agree with me that both Justin -- well, let's
10 start with Terry McClure. For the flight, Terry McClure,
11 he checked in using his real name, right?

12 A. Yes.

13 Q. Showed his driver's license there, too?

14 A. I would think so for flying, yes.

15 Q. Well, I think you had a driver's license number
16 somewhere.

17 A. I think that's the rental car you're thinking about.

18 Q. On the rental car?

19 A. Yes, sir.

20 Q. Okay. On the rental car he used his real name as
21 well?

22 A. Yes, sir.

23 Q. Okay. He uses his Visa card to actually pay for it,
24 right?

25 A. He uses a Visa card. I'm not sure. I just have the

1 last five -- or last four of that -- the number.

2 Q. Okay. He wasn't trying to pay in cash or anything
3 like that, right?

4 A. Not to my knowledge, no.

5 MR. GRAHAM: Objection. Speculation.

6 THE COURT: He investigated the matter. I'll let
7 him have a little bit of latitude with the question.

8 Go ahead.

9 BY MR. SPANGLER:

10 Q. He used a Visa card to pay for these things, he didn't
11 use cash, right?

12 A. Not to my knowledge.

13 Q. Okay. Justin Butler, again, he checked in for the
14 Greyhound bus using his own name?

15 A. (Nods head.)

16 Q. Is that yes?

17 A. Yes. I apologize. I thought --

18 Q. I'm sorry. Just for -- just for the record.

19 A. I'm sorry. It sounded more like a statement. I'm
20 sorry.

21 Q. That's okay. And when they're being picked up and
22 dropped off from these places, they're pulling up right in
23 front of the Greyhound station; is that right?

24 A. At four in the morning, yes, and then on the -- when
25 getting picked up though, they would get picked up kind of

1 up the street a little bit.

2 Q. Okay. But in a place where cameras are there for it
3 to be captured?

4 A. If they know they're there.

5 Q. Okay. But it was captured on camera here, right?

6 A. Yes, it was.

7 Q. Okay. He's not -- Justin Butler, he's not wearing a
8 mask or anything like that when he's getting out of the
9 car?

10 A. No, sir.

11 Q. Okay. No evidence that Terry McClure was trying to go
12 through the airport wearing a mask or a hood or anything
13 like that?

14 A. No, sir.

15 Q. You'd also agree with me it's tough to get on a plane
16 if you're carrying a gun?

17 A. Yes, sir.

18 Q. Okay. But it's your testimony that Terry McClure flew
19 from California all the way to Atlanta, right?

20 A. Yes. Based on the information I have, yes.

21 Q. And, finally, Detective Mefford, you'd agree with
22 me that VonKeith Toland from the beginning of this
23 investigation at points he's been uncooperative with you?

24 A. I wouldn't say uncooperative. He's never been
25 uncooperative with me directly.

1 Q. Okay. Well, has he provided all the information that
2 you-all have asked for?

3 A. That I've asked for, yes.

4 Q. Okay. How many times in the past five and a half
5 years have you spoken with VonKeith Toland?

6 A. I've spoken to him twice during the initial situation
7 for the photo lineups and during some preparation for court
8 hearings.

9 Q. Okay. So two times back when it -- in 2014 when it
10 happened?

11 A. To -- yes, to identify --

12 MR. GRAHAM: Your Honor, if I can approach?

13 THE COURT: Okay.

14 (Proceedings held at the bench; not reported.)

15 THE COURT: Please continue, Mr. Spangler.

16 BY MR. SPANGLER:

17 Q. All right. Mr. Mefford, I think the question was you
18 spoke with him two times when you were investigating this
19 back in 2014, right?

20 A. I spoke with him on the 8th when he identified Justin
21 Butler as one of the people involved in this murder and I
22 spoke to him on the 10th when he identified Terry McClure
23 as one of the individuals involved in this murder and then
24 there was some subsequent conversations later on.

25 Q. Okay. But no written or recorded statements of any

1 kind?

2 A. Not from me.

3 Q. Okay. And you talked a little bit about prepaid cell
4 phones. Those aren't illegal to have, are they?

5 A. No, sir.

6 Q. You see ads for them on TV?

7 A. Yes, sir.

8 Q. Boost Mobile, things like that. Anybody can buy a
9 prepaid cell phone?

10 A. Absolutely.

11 Q. It's not against the law to use a prepaid cell phone?

12 A. Certainly not.

13 Q. And it doesn't take somebody actually trying to hide
14 their name from the cell phone company, you just buy the
15 phone and your name isn't attached to it, right?

16 A. That's what I understand. Yes, sir.

17 Q. They're not making an attempt to delete their name
18 from the cell phone company, right?

19 MR. GRAHAM: Objection. Speculation.

20 THE COURT: Overruled.

21 BY MR. SPANGLER:

22 Q. Based on your knowledge of prepaid cell phones,
23 there's no attempt by the person to obscure their
24 information from the company?

25 A. They're certainly not making it available.

1 Q. Okay. Well, that's just the way that prepaid phones
2 work. When you buy one at Wal-Mart, right, you don't have
3 to give your name for it?

4 A. That's correct.

5 Q. Okay. Just a brief moment. And, finally, what time
6 in your investigation -- if you don't know, that's fine,
7 but what time do you believe this shooting took place?

8 A. It would be hard to pinpoint that with the -- with the
9 way it is, sir. I wouldn't be able to say exactly when it
10 occurred because of the circumstances.

11 Q. Okay. So no time identified during your
12 investigation?

13 A. There's a timeframe, but -- but because of the
14 circumstances of VonKeith having to crawl that distance to
15 get to the phone, we may not know the exact time of how
16 long that took, so I would rather not try to speculate on
17 that, sir.

18 Q. Okay. That's fair.

19 MR. SPANGLER: All right. Thank you, Judge.
20 Nothing further with this witness.

21 THE COURT: Anything on redirect?

22 MR. GRAHAM: No, Your Honor.

23 THE COURT: All right.

24 You may step down, sir. Thank you.

25 THE WITNESS: Thank you, Your Honor.

1 (Witness excused.)

2 THE COURT: Do we have one we can tackle in thirty
3 minutes or so, give or take?

4 MS. FULLER: Yes, Your Honor.

5 THE COURT: All right. Call your next witness,
6 please.

7 MS. FULLER: Your Honor, the State calls Ladondra
8 Ellis.

9 (Whereupon, Ladondra Ellis was duly sworn by the
10 Clerk of Court.)

11 THE CLERK: Have a seat, please. Once you're
12 seated, state your full name, spelling your last.

13 THE WITNESS: Ladondra Ellis, E-L-L-I-S.

14 LADONDRA ELLIS,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. FULLER:

18 Q. Ladondra, where do you live right now?

19 A. Atlanta, Georgia.

20 Q. And do you want to be here today?

21 A. No, I don't.

22 Q. And are you essentially under subpoena to be here by
23 my office?

24 A. I am.

25 Q. And so that's essentially an order to come to court?

1 A. It is.

2 Q. The Defendant sitting at the table, do you know him?

3 A. I do.

4 Q. And how long have you known him?

5 A. For a long time.

6 Q. Approximately how long?

7 A. Like fifteen, sixteen years.

8 Q. And how old are you now?

9 A. Thirty-one.

10 Q. So you've known him since high school?

11 A. I have.

12 Q. And his name is Terry McClure. Is that what you've
13 always known him as?

14 A. No.

15 Q. What have you known him as?

16 A. L.

17 Q. Would L be his nickname?

18 A. Yes.

19 Q. Where did you go to high school?

20 A. Then or now? I mean --

21 Q. When you knew him.

22 A. Fairfield High.

23 Q. And where is that?

24 A. Fairfield, California.

25 Q. And you currently live in Atlanta?

1 A. I do.

2 Q. And how long have you lived in Atlanta?

3 A. Off and on for years. Like probably like ten years, a
4 little less. Probably a little less than ten years.

5 Q. And back in April of 2014, where were you living?

6 A. Atlanta, Georgia.

7 Q. As it relates to this case, were you contacted by the
8 person you know as L?

9 A. I was.

10 Q. And what, if anything, did he ask you to do?

11 A. Pick up his brother and drop him off.

12 Q. And did you know his brother?

13 A. Not really, no. Not at all.

14 Q. Had you met his brother before?

15 A. I haven't.

16 Q. Do you know brothers of L?

17 A. Yeah.

18 Q. Like back from high school and --

19 A. Yeah.

20 Q. -- back from California?

21 A. Uh-huh.

22 Q. This individual wasn't a brother you knew?

23 A. I'd never seen him.

24 Q. Do you remember -- do you know this individual's name
25 when he asked you to pick them up?

1 A. I didn't at the time.

2 Q. How did you communicate with L as it relates to
3 picking someone up in Atlanta?

4 A. My cell phone.

5 Q. And do you recall that number?

6 A. I don't remember.

7 Q. If I -- do you remember giving law enforcement that
8 number or speaking to law enforcement on that number back
9 in 2014?

10 A. I do.

11 Q. And you just don't have that number now?

12 A. I don't.

13 Q. If I showed you what's in evidence as State's 78, do
14 you -- pointing to a number identified by a detective as
15 speaking to you on 404-780-9703, would that sound familiar?

16 A. Yes.

17 Q. So would you say that that's your number back on --
18 back in April of 2014?

19 A. Yes.

20 MR. FLOYD: Objection, Your Honor. Leading.

21 THE COURT: Overruled.

22 BY MS. FULLER:

23 Q. And do you recall telling law enforcement back then
24 in 2014 the numbers that you had identified to L in your
25 phone?

1 A. I'm sorry, can you repeat the question?

2 Q. Do you recall telling law enforcement back in 2014 the
3 phone numbers that you had for L in your phone?

4 A. Yes.

5 Q. Okay. And is that something you would recognize
6 today?

7 A. I probably wouldn't.

8 Q. You wouldn't?

9 A. Not my numbers. I mean, I seen it because you showed
10 me, but I don't exactly remember my phone number at that
11 time.

12 Q. Okay. I apologize for confusing you. When you spoke
13 to law enforcement, they asked you what phone number did
14 you have for Terry McClure. Do you remember that?

15 A. They asked me -- no, they asked me what numbers --
16 they asked me -- they had numbers already. They asked me
17 about the numbers they already had.

18 Q. Okay.

19 A. And then they asked me further what was the numbers I
20 had of his.

21 Q. Okay. And were you able to confirm that the numbers
22 that they were asking you about was saved in your phone
23 under L?

24 A. It was.

25 Q. And one of those numbers was 707-392-0402?

1 A. I believe so.

2 Q. And you also gave another number for him as well? You
3 had two numbers saved in your phone for L?

4 A. I did.

5 Q. Now what do you recall about the individual that you
6 picked up and where did you pick him up from?

7 A. I picked him up from Greyhound. He had a hoodie on
8 and two bags.

9 Q. And when you picked him up -- you picked him up from
10 Greyhound and he got in your car?

11 A. He did.

12 Q. Okay. And what kind of car were you driving?

13 A. A 2007 Nissan Sentra.

14 Q. And this was outside of the Greyhound bus station?

15 A. It was.

16 Q. And when he got in your car, did he introduce himself
17 to you?

18 A. He did.

19 Q. And what did he introduce himself as?

20 A. I don't remember.

21 Q. Okay. And where were you taking him?

22 A. To the airport.

23 Q. So you were picking someone up from the bus station
24 and taking them to the airport?

25 A. I did.

1 Q. And what were you supposed to do?

2 A. That was it.

3 Q. Okay. Did you receive anything for giving him a ride?

4 A. I didn't.

5 Q. He didn't pay you?

6 A. No.

7 Q. It was just a favor for a friend?

8 A. It was.

9 Q. And when you dropped him off at the airport, do you
10 know where you dropped him off?

11 A. I don't remember exactly, but at the terminal, like
12 the departure terminal, the arrival terminal, on the same
13 area.

14 Q. And when you dropped him off, did you see L at the
15 airport?

16 A. I didn't.

17 Q. Did you know whether or not L was there?

18 A. I didn't.

19 Q. When you dropped this brother off, did you communicate
20 with L letting him know that you dropped him off?

21 A. I believe so. I don't remember that far, but I
22 believe I did let him know that I already dropped him off.

23 Q. Okay. Now if I told you that there's record of L
24 flying to Atlanta airport around the same time that you
25 dropped off his brother, what would your response be to

1 that?

2 MR. FLOYD: Objection. Leading, Your Honor.

3 THE COURT: Can you rephrase or break it into
4 pieces?

5 MS. FULLER: I'm thinking. Sorry.

6 BY MS. FULLER:

7 Q. If I -- if I told you that you were at the airport the
8 same time as L, the same time that you were dropping off
9 his brother L was landing at the Atlanta airport and their
10 phone records put them there at the same time, what would
11 your response be if I told you I believe that you saw L at
12 the airport?

13 A. If you told me --

14 MR. FLOYD: Your Honor, I think it's still
15 leading.

16 MS. FULLER: It's actually kind of focussed.

17 THE COURT: You can ask her if she saw L at the
18 airport, picked up L, the approximate time that she
19 recalls picking up Butler. Maybe break that compound
20 question into a few fragments and we'll get there.

21 MS. FULLER: Thank you, Your Honor.

22 BY MS. FULLER:

23 Q. So there are records in evidence that puts L landing
24 in Atlanta airport around 6:43. Do you recall around
25 approximately what time you would have dropped his brother

1 off at the airport?

2 A. No, I don't remember that.

3 Q. Do you remember if it was light outside or dark
4 outside?

5 A. I don't remember. It was so long ago.

6 Q. Okay.

7 A. I'm sorry.

8 Q. And do you remember how often you communicated with L
9 that night while you were at the airport dropping off his
10 brother?

11 A. I don't remember. I know I called and probably let
12 him know that I dropped his brother off, but I don't
13 remember how many times I called or --

14 Q. Had -- had you seen -- later that day did you ever see
15 his brother again?

16 A. No.

17 Q. Do you remember speaking to law enforcement from
18 Fulton county about this case?

19 A. I do.

20 Q. And they asked you about did L tell you he was coming
21 to Atlanta. Do you remember what you told him?

22 A. I told him when I was living in California he did tell
23 me that he was coming, but I never seen him here. He never
24 came from my knowledge.

25 Q. And do you recall when law enforcement asked you about

1 communicating with them and who was supposed to be there --
2 who was supposed to be there, in some of your responses you
3 stated "they" and so you kept saying "they" were supposed
4 to call you. Do you remember saying that?

5 A. I do.

6 Q. And who was your understanding of "they" if it wasn't
7 L?

8 A. Whoever he was meeting at the airport I guess because
9 I know they was meeting somebody, but I didn't know exactly
10 who it was. I didn't think it was L because if it was I
11 thought I would see him.

12 Q. You thought you would see him?

13 A. Yeah.

14 Q. And why is that?

15 A. Because, I mean, if he come all the way to Atlanta
16 from somewhere else, I mean, why wouldn't he want to see
17 me.

18 Q. Did you have any plans to meet up with his brother
19 later that night?

20 A. No.

21 Q. So when you told the officer that they were supposed
22 to call you when you-all get to the room, what did that
23 mean?

24 A. Just let me know they made it safe to wherever they
25 were going to.

1 Q. And that's the brother, an unknown person that you
2 don't know?

3 A. Right.

4 Q. But your understanding was that the brother was
5 meeting someone?

6 A. Right.

7 Q. In this case when you spoke to law enforcement, you --
8 you didn't know his full name, correct?

9 A. Correct.

10 Q. So they showed you a photo lineup. Do you remember
11 that?

12 A. I do.

13 Q. Okay. I'm gonna show you what's been -- I believe
14 it's in evidence as State's 2, and do you recognize it?

15 A. I do.

16 Q. And how do you recognize it?

17 A. From when the officer came to show me this lineup.

18 Q. And he came to Atlanta and showed it to you?

19 A. He did.

20 Q. And is that your signature on there?

21 A. It is.

22 Q. And you circled Number 5?

23 A. I did.

24 Q. And what else did you write on this document?

25 A. This is the person I know as L.

1 Q. And that's because you've known him since high school?

2 A. Yes.

3 Q. And right here where I'm pointing, that's your
4 handwriting?

5 A. It is.

6 Q. And that's where you circled 5?

7 A. I did.

8 Q. And that's your signature?

9 A. It is.

10 Q. And no one told you who to identify?

11 A. No.

12 Q. The -- when it comes to the brother that you were
13 communicating with, how did -- did you communicate with him
14 directly or did you just only go through L prior to picking
15 him up?

16 A. Before I picked him up, I was just going through L at
17 first and then I asked him to exchange numbers so we can
18 know exactly who each other are.

19 Q. And so you spoke and you texted with --

20 A. I don't know if I texted because my phone crashed. I
21 don't believe I texted, but I believe I spoke on the phone.
22 I don't know remember if -- I know my phone was crashed.

23 Q. And the phone that was crashed you're referring to is
24 the 404-780 number -- 780-9703, correct?

25 A. I believe so.

1 Q. And that's that same number that you see in this
2 message, 404-780-9703?

3 A. Yes.

4 Q. And that's your name?

5 A. It is.

6 Q. And that's Ladondra?

7 A. It is.

8 Q. The number that you communicated with on -- with the
9 brother, do you remember the number being -- telling law
10 enforcement the number was 404-695-5436?

11 A. I'm sorry, I don't remember if that was the exact.
12 I'm sorry.

13 Q. I'm gonna show you a document from their file and ask
14 you if you recognize it?

15 A. I recognize it.

16 Q. And how do you recognize it?

17 A. This is the picture that the officer showed me.

18 Q. And is your name written on there?

19 A. It is.

20 Q. And your signature?

21 A. It is.

22 Q. And whose handwriting is this under the photograph?

23 A. It's mine.

24 Q. And the phone number, who wrote that phone number?

25 A. I did.

1 Q. And what's the phone number that you wrote?

2 A. It's 404-695-5436.

3 Q. And the individual that the officer showed you, what
4 was the purpose of him showing you this photograph?

5 A. He asked me did I pick him up.

6 Q. And what did you tell the officer?

7 A. I told him no because I didn't -- I didn't recognize
8 him at that time, but then he showed me -- well, first he
9 showed me another picture and then he showed me this one
10 and this one I recognized, but the other one I didn't.

11 Q. So -- but this isn't the first photo he showed you?

12 A. It is not.

13 Q. This is the second photo he showed you?

14 A. It is.

15 Q. And once he showed you this photograph, you recognized
16 the other individual as the person you picked up?

17 A. It looked -- yeah, I said this looks like the guy I
18 picked up from the Greyhound.

19 Q. And when you wrote the phone number -- what did you
20 write before you wrote the number?

21 A. I called the guy.

22 Q. And then you wrote the phone number you called him on?

23 A. I did.

24 MS. FULLER: Your Honor, at this time the State
25 seeks to introduce this into evidence.

1 MR. FLOYD: Your Honor, may we approach?

2 THE COURT: Yes.

3 (Proceedings held at the bench; not reported.)

4 MS. FULLER: Thank you, Your Honor.

5 THE COURT: That's gonna be State's --

6 MS. FULLER: 82.

7 THE COURT: State's 82 is in evidence.

8 (State's Exhibit Number 82, a photograph, was
9 marked and admitted into evidence.)

10 BY MS. FULLER:

11 Q. And, Ladondra, this is what I just showed you,
12 State's 82. Down here that's your name?

13 A. It is.

14 Q. And your signature?

15 A. It is.

16 Q. And that's the photograph -- the second photograph
17 that the detective showed you?

18 A. It is.

19 Q. And that's what you just told me when I was up there
20 where the jury couldn't see this, correct?

21 A. (Nods head.)

22 Q. The -- the phone number you were reading, is that what
23 I'm pointing to?

24 A. Yes.

25 Q. And that's the guy that you picked up from Greyhound?

1 A. Yes, it is.

2 MS. FULLER: Your Honor, I believe that's it. If
3 I can confer a moment.

4 That's it, Your Honor. Thank you.

5 THE COURT: Mr. Floyd.

6 MR. FLOYD: Thank you. Just a couple of questions.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. FLOYD:

10 Q. So, Ms. Ellis, you've known Terry since high school;
11 is that correct?

12 A. It is.

13 Q. And so he called you to ask you to pick somebody up.
14 He called him his brother; is that correct?

15 A. Yes.

16 Q. Now do you know all of his brothers?

17 A. Not all of them.

18 Q. Do you know whether or not he was using brother as a
19 friend or as another name for a friend or one of his blood
20 brothers?

21 A. I don't know.

22 Q. You don't know?

23 A. (Shakes head.)

24 Q. It wasn't important enough to ask, was it?

25 A. No, I was just doing a favor.

1 Q. I understand. Now do you know about the Terry's music
2 business?

3 A. Yeah.

4 Q. And does he often travel to perform music?

5 A. He told me about the music, but I don't -- I didn't
6 dig that deep.

7 Q. Okay. Did he tell you that he was coming to do some
8 music this particular weekend?

9 A. No, because I didn't know he was coming.

10 Q. Okay. Did he just call you out of the blue on this
11 one?

12 A. He asked me to pick his brother up and drop him off.

13 Q. Okay. Thank you. But do you know him to travel --

14 A. To do music.

15 Q. -- to perform music before?

16 A. I have.

17 MR. FLOYD: Thank you. No further questions.

18 THE COURT: All right, ma'am. Thank you. You can
19 step down.

20 (Witness excused.)

21 THE COURT: Do you have another really brief one?

22 MS. FULLER: No, the next one's long.

23 THE COURT: Let's huddle up over here for just a
24 moment, please.

25 (Proceedings held at the bench; not reported.)

1 THE COURT: Ladies and gentlemen, I'm gonna ask --
2 I have a matter scheduled -- I had a matter scheduled
3 for 9:30. I had my assistant push that up to 9:00.
4 I'm hoping it will only take fifteen minutes or so, so
5 I'm gonna ask that you be back here at 9:15 in the hopes
6 that we can potentially get this case to you sometime
7 tomorrow or tomorrow afternoon or tomorrow evening
8 perhaps. We'll see. Knock on wood.

9 Enjoy your evening. Don't discuss the case. Be
10 back in the jury room though at 9:15 tomorrow morning.
11 If I'm keeping you waiting, eat another doughnut, it's
12 because I'm still involved with the other case that I
13 started at 9:00, okay?

14 So with that, see you in the morning. Have a good
15 night.

16 (Whereupon, the jury was excused for the evening
17 at 4:52 PM.)

18 THE COURT: Before we go off the record, let's go
19 ahead and address a few housekeeping issues. There's
20 a question of State's 4 and I expect that one of the
21 witnesses tomorrow will be -- or one of the first
22 witnesses in the morning will be the investigator who
23 is in that video as well.

24 I did review that video late last night and,
25 honestly, the biggest problem -- the only portion that

1 I really had a problem with was toward the end where
2 the burden shifting-type language was posed by the
3 officer. I have it like at .31 until the end of the
4 video where he basically asks how are you gonna explain
5 this or words to that effect, but it's kind of like at
6 the .31 mark to the end, but the very tail end of the
7 video, and then it just goes dead. So it's like the
8 Defendant doesn't even respond and I assume that that's
9 the point where Mr. McClure asks for counsel or something
10 to that effect, so I do have kind of a little bit of an
11 issue with that portion. Otherwise, you know, I think
12 it is probative that Mr. Butler -- that the Defendant
13 knew Mr. Butler, knew Mr. Walker, that people call him
14 Zo, went to see his sister, denied seeing Mr. Butler,
15 he denied knowing how long he was in Atlanta. And, of
16 course, this is the trip that took place only a couple of
17 weeks prior to the interview. Generally most people can
18 remember that kind of a thing. The 707-392-0402 number,
19 he denies knowing the number. Doesn't remember whether
20 he was in class despite the I'll call back because I'm in
21 class comment on the 4-21 text message conversation. He
22 maintains that he stayed in Atlanta. His phone says
23 different or the tracking of his phone presumably will
24 show different. I think his demeanor is relevant when
25 the officer informs him that the victim in this case

1 identified him as the shooter. There are other
2 substantiating aspects of that conversation about the
3 phone number that booked the fight and tracking of the
4 cell phone, things of that nature.

5 So, generally speaking, I really do not see a great
6 deal of hearsay material in that video that would otherwise
7 -- or that has otherwise been excluded in this trial. If
8 you-all want to correct me or someone wants to correct me,
9 I'm all ears, but my review of the video largely
10 substantiates a lot of what the evidence -- a lot of
11 evidence that's already been admitted it corroborates a
12 lot of the State's theory, so my inclination is to permit
13 the publication of that video with the exception of that
14 burden shifting stuff towards the end, and I think you
15 know what I'm getting at. So it's kind of around the .31
16 mark is where I'm having --

17 MR. GRAHAM: I'm sure it's the last statement by
18 the investigator, Mr. McClure saying you-all, the
19 investigator talking again.

20 THE COURT: Right. It's like the last five seconds.

21 MR. GRAHAM: How do you want to explain this is how
22 it starts.

23 THE COURT: Right.

24 Mr. Spangler, do you want to be heard on this?

25 MR. SPANGLER: Judge, we would renew our objection

1 that it is inadmissible hearsay leading him through that
2 at the time. There's no foundation laid throughout the
3 trial that Detective Trojanowski actually had the records
4 that he was looking at and that would be based on his
5 personal knowledge and he would be relaying it. The
6 testimony was that Mefford orally told him these things,
7 so that's the level of hearsay we're dealing with.

8 THE COURT: I understand, but the flip side of that
9 is even though it's hearsay, you have the opportunity
10 to confront Mefford about all of that and did so in
11 some respects this afternoon. So even if it is hearsay,
12 the confrontation clause issue, it's almost as if the
13 officer in California steps into the shoes of Mefford.
14 Mefford is basically making the characterization
15 vicariously by relaying this information to the other
16 officer. So it's basically an extension of the
17 investigation out here -- or out there in California is
18 the way I see it. I understand you disagree with it and
19 I certainly take no issue with that, but that's kind of
20 how I'm reading this. The California officer to a certain
21 extent became a co-investigator of a South Carolina agency
22 and he was pretty certain of information that he questioned
23 Mr. McClure about.

24 MR. SPANGLER: And, Judge, our only question would
25 be when the investigator in California is relaying

1 information learned from the girlfriend, Shantel Chase,
2 those were things that Mefford didn't supply. He's
3 referencing this other interview and then there is a
4 statement in there that the California investigator says
5 our technicians found X, Y, Z, referring to stuff from
6 the phone, and their technicians there in California, so
7 those were things that Mefford couldn't have relayed to
8 him that we haven't been able to --

9 THE COURT: Is that part of the bluff or is that
10 something else?

11 MR. GRAHAM: It's my -- it's my remembrance that
12 that was made up by that officer as an interview
13 technique is what he testified to.

14 THE COURT: That's something you can handle on
15 cross of that investigator to say hey, this was not true,
16 correct, and you'll just have to handle it that way.

17 MR. SPANGLER: Yes, Judge. And finally there's
18 just a few more of those burden shifting things that I
19 had identified, and this is -- I have it as 20:45:00, so
20 it's like --

21 THE COURT: Was that they got you locked in?

22 MR. SPANGLER: You can either explain it or not.
23 That's further towards the beginning. It was right after
24 you don't know what info Justin Butler gave and then they
25 say you can either explain it or not.

1 THE COURT: I really don't see that as a burden
2 shifting thing. That explains -- I've already ruled that
3 he has the right to talk, he has a right not to talk, they
4 explained all that to him by way of Miranda. I don't
5 really see that as burden shifting, but I understand your
6 position.

7 MR. SPANGLER: Okay. And just one additional one.
8 This is towards the end, so it might be covered. It looks
9 like the last ninety seconds. It's before they say they
10 got you locked in. There's one that says explain your
11 way out. We assert that that is a burden shift. That's
12 at 10:53, approximately thirty seconds into, at 10:53.

13 MS. FULLER: That's not the part the judge --

14 MR. SPANGLER: So, finally, the last bit before he
15 invokes is they've got you locked in. Prior to that
16 there's a statement at 51 minutes and 30 seconds, explain
17 your way out, so that's in addition to the first one.

18 THE COURT: Okay. Because I was using the -- I was
19 using the -- you're using the original, I looked at the
20 edited one, so I don't have that time.

21 MR. SPANGLER: No, that's from the redacted one.
22 These notes we made in here.

23 THE COURT: Oh.

24 MR. GRAHAM: Can you give me more of an idea of
25 where that is? Not time-wise, but the conversation.

1 MR. SPANGLER: It's right after the -- let's see.
2 No way someone from across the country picks you out and
3 then he followed it up with phone numbers and then the
4 investigator says explain your way out of it.

5 MS. FULLER: I think that's -- the investigator says
6 how do you want to explain this? Did you write the exact
7 quote?

8 MR. SPANGLER: It could be that. It could be that.

9 MS. FULLER: Because that's the part the judge has
10 asked us to redact and we said we will.

11 THE COURT: Well, no, because I think he's saying
12 that it occurs further in the conversation before we get
13 to the end where he invokes his Fifth.

14 MR. SPANGLER: It's about ninety seconds from that
15 they got you locked in.

16 MS. FULLER: I guess we're not seeing that.

17 Okay. It's the --

18 MR. GRAHAM: The same time that you were on the
19 airplane, how do you explain that.

20 THE COURT: Would you read that to me again then,
21 please.

22 MR. GRAHAM: Sure, Judge. It says -- it's a
23 question. The same time that you were on the airplane,
24 how do you explain that.

25 THE COURT: What's the previous statement?

1 MR. GRAHAM: So Mr. McClure had said something along
2 the line of you keep saying Justin Butler, somebody was
3 with Justin, man, holler at him, that's who you need to
4 talk to. That's who they need to -- or you -- go get
5 him, holler at him because I ain't done nothing. I ain't
6 do no killing or shooting nobody. And the investigator
7 said then explain to me why that phone number followed
8 the airplane. He goes that's crazy. The same time --
9 the investigator, the same time you were on the airplane.
10 How do you explain that?

11 THE COURT: That's not too far -- that's not too
12 far out of burden shifting. I think that's a legitimate
13 question. How can those two things be the same or be the
14 truth.

15 MR. SPANGLER: Yes, Judge. So just the reaction on
16 the final they got you locked in?

17 THE COURT: Yeah. They got you locked in, I think
18 that that crossed the line. Everything else maybe
19 approached the gray, didn't really get into the gray, but
20 the last one then is definitely into the grey, maybe a
21 little bit towards the darker side of the grey.

22 MR. SPANGLER: All right. Thank you, Judge.

23 MR. GRAHAM: Judge, if I can ask a question, how
24 does Your Honor want me to handle the interview ending?
25 Did the interview end or did he invoke his rights? What

1 do I say?

2 THE COURT: To what?

3 MR. GRAHAM: When -- when the officer is up there
4 and I say -- we play it, do we just play it and I just
5 say and the interview ends or do I say he invoked his
6 rights?

7 THE COURT: No. No, because it's obvious that it
8 is edited somewhat. I'm gonna preface this the way --
9 the way I do other times. I'm simply gonna tell the
10 jury that there's a lot of material in there that is not
11 germane or relevant to any issue in this case and it's
12 been edited out in the interest of time because the
13 interview took more than the twenty minutes that I think
14 is kind of reflected on the redacted version. So when
15 the officer testifies, you can -- when it ends you
16 simply say, you know, that was the substance of the
17 conversation, yes, and then you can follow up with any
18 additional questions about what is shown.

19 If you-all want to cut out that last little bit,
20 you can just substitute another 4 and -- we can do a 4-A
21 or something for that video, however you want to do it.
22 I just don't want you to send it back there with that --
23 that clip on there if we're gonna send it back to the
24 jury room.

25 MS. FULLER: We'll just take back that copy.

1 THE COURT: If you-all want to take 4 back and do
2 it that way, that's fine.

3 MR. GRAHAM: Your Honor, I do have a motion to
4 follow up on my objection during his questioning of
5 Mr. Mefford.

6 THE COURT: Okay. Go ahead.

7 MR. GRAHAM: When he asked Mr. Mefford about didn't
8 VonKeith's mom say that a white guy shot him, I objected
9 and said was it for the investigative purposes or was it
10 for the -- offering for the truth and he never followed
11 up, so I would say it was offered for truth and it should
12 not have been in and it should not be able to be referred
13 to unless he wants to call the appropriate people up to
14 get that statement in.

15 THE COURT: I appreciate your position. I don't
16 think it's that substantial. I really don't. Plus, he's
17 the investigating officer. He reviewed a whole bunch of
18 stuff. He can testify about what he heard on the 9-1-1
19 recording. I mean, the alternative is that we play it or
20 that we bring the mother in here and question her. I
21 don't know if she's gonna testify or not, but, I mean,
22 the alternative is that we simply say by the way, some
23 evidence of what was said on that tape is gonna come in.

24 MR. GRAHAM: Again -- and I respect Your Honor's
25 ruling, but, I mean, we're going down the road of

1 third-party guilt and they've got to have evidence to go
2 down that road.

3 THE COURT: Okay. You could always re-call your
4 investigator. I think he would probably be able to
5 competently handle any suggestion that a white guy
6 committed these crimes. We're not going down
7 third-party guilt based upon that and that alone. It
8 has to be much more substantial than that. You don't
9 get third-party guilt over somebody who's not an
10 eyewitness putting it in.

11 MR. GRAHAM: And I guess that's my point, is that
12 I'm asking you to say that they can't talk about it in
13 closing then.

14 THE COURT: Well, we're not even close to closing,
15 so I'm not gonna muzzle anybody at this point in time.

16 Ms. Fuller, you have something else?

17 MS. FULLER: Yes, Your Honor.

18 Prior to Mike Phipps testifying, who is the cell
19 phone expert in this case, cell phone analysis, we would
20 have a short chain witness for the cell phone seized in
21 California and that would be one of the California
22 officers that came out, Pedro Arroyo. There wasn't a
23 motion regarding the California search warrant, but I
24 just -- to protect the proceedings in the future, I
25 wanted to go ahead and put on the record argument for

1 its validity and also probably make it a Court's
2 exhibit. The copy of the search warrant was provided
3 in discovery, but it was a draft copy. I sent affidavits
4 asking that the original search warrant be unsealed,
5 their system is a little different in how they do it,
6 and a judge there did sign that the search warrant be
7 unsealed; however, there was no search warrant number so
8 he could identify it, so then I did another affidavit
9 requesting that the entire case number be unsealed as
10 relates to the shooting; however, they did that and they
11 couldn't find the original file, so we don't have a true
12 copy of the search warrant.

13 I tried to do some research to see if that was like
14 somewhat problematic and I wanted to make sure we
15 protect the record. There is State v. Freeman where
16 the Court did say that there's a problem without having
17 it, but the issue there is that the prosecutor didn't
18 present testimony that the original search warrant was
19 lost. I wanted to be able to proffer that with Pedro
20 Arroyo prior to his testimony so I can just protect the
21 record. It shouldn't take long.

22 THE COURT: Let's handle it this way. Are you-all
23 -- I assume you are challenging the California search
24 warrant or something?

25 MS. FULLER: They -- they haven't moved to suppress

1 it, Your Honor. I just wanted to do it out of an
2 abundance of caution, just put that on the record.

3 THE COURT: Yeah, if they're not fighting that
4 battle, then I see no reason to really address it, but --

5 MR. SPANGLER: Judge, I do think we're gonna
6 challenge it.

7 THE COURT: Okay. We'll have to handle it, I guess,
8 tomorrow then when that witness is here, I suppose, and
9 we'll simply deal with it then.

10 MS. FULLER: Okay.

11 THE COURT: That will be the second or third witness
12 that you'll call; do you think?

13 MS. FULLER: It will be the first witness because I
14 have to get the phone in before I put the cell phone
15 stuff in.

16 THE COURT: So it's the first witness we'll deal
17 with in the morning?

18 MS. FULLER: Uh-huh. Yes, Your Honor.

19 Again, in pre-trial I asked for all the pre-trial
20 motions, they didn't tell me there was a motion to
21 suppress, so I didn't, but I'm gonna go ahead and mark
22 this as a Court exhibit and give Your Honor a copy to
23 review as well so we can kind of go through it kind of
24 quickly in the morning.

25 So I have two copies, Judge.

1 What Court's number are we on?

2 THE COURT REPORTER: It will be 8.

3 THE COURT: Is there any chance that we can do the
4 investigator first or does he talk about what's found in
5 that?

6 MS. FULLER: Yes, Your Honor. He did the cell phone
7 extraction.

8 THE COURT: That's with the interview? I'm talking
9 about the officer who did the interview first. I'm trying
10 to avoid keeping the jury waiting.

11 MS. FULLER: That wasn't necessarily our trial
12 strategy order, Your Honor. We can --

13 MR. GRAHAM: We can see if we can get Dr. Ross here
14 first thing in the morning, Judge.

15 THE COURT: That would be lovely. And then we can
16 take a break after she testifies and deal with that and
17 if that's possible -- I just don't want to take up a
18 search warrant issue when I've already -- I kept them
19 waiting over lunch. I feel like I've been ever so rude
20 to this jury. I had to keep them waiting this morning.
21 I really want to hit the ground running at 9:15. So even
22 if we have to take maybe one witness before we get the
23 search warrant guy, let's try and do that so that we're
24 not imposing on this jury.

25 All right. I'll see you-all at 9:15.

1 Thank you.

2 MS. FULLER: Thank you, Your Honor.

3 (Court's Exhibit Number 8 was marked for
4 identification.)

5 (Whereupon, the proceedings were concluded for
6 October 23, 2019, at 5:10 PM.)

7 (The following proceedings were held October 24,
8 2019, beginning at 9:33 AM.)

9 (State's Exhibit Numbers 83 through 117 were
10 marked for identification.)

11 (State's Exhibit Number 118 was marked for
12 identification.)

13 BAILIFF: All rise. Court come back to order.

14 THE COURT: I'm told the jury is here, we have our
15 next witness here. The record, of course, will reflect
16 that Mr. McClure is present with counsel, so let's have
17 the jury, please.

18 (Whereupon, the jury enters the courtroom at
19 9:34 AM.)

20 THE COURT: All right. The record will reflect
21 that the jury is back and is seated.

22 Ladies and gentlemen, thank you for being here.
23 As I mentioned yesterday, I had a 9:00 hearing that
24 ran a little bit longer than I was wanting and I just
25 basically cut them off, so we're gonna resume with the

1 trial in this case at this point in time, okay?

2 We're, of course, still in the State's case in
3 chief, so, Solicitor, if you'll call your next witness,
4 please.

5 MR. GRAHAM: Thank you, Judge. The State calls
6 Dr. Janice Ross.

7 (Whereupon, Janice Edwards Ross was duly sworn by
8 the Clerk of Court.)

9 THE CLERK: Have a seat, Doctor. Once you're
10 seated state your full name, spelling your last, please.

11 THE WITNESS: Janice Edwards Ross, R-O-S-S.

12 JANICE EDWARDS ROSS,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. GRAHAM:

16 Q. Dr. Ross, you're a forensic pathologist; is that
17 correct?

18 A. Correct.

19 Q. Would you explain to the jury what forensic pathology
20 is?

21 A. Yes. A forensic pathologist, first of all, has had
22 four years of college, four years of medical school, and
23 over five years -- four or five years of training in the
24 field of pathology. Pathology is a field in medicine where
25 we learn how to identify and diagnose diseases by using a

1 microscope and using blood work. We also learn how to do
2 an autopsy to find a cause of death.

3 A forensic pathologist does further training to be
4 able to identify patterns of injury, to identify manners of
5 death, such as homicide, suicide, accident, and many times
6 natural deaths. So we are -- we do a forensic autopsy
7 where we do -- further do toxicology and document any kind
8 of injury for the court of law.

9 Q. How many years have you been a forensic pathologist?

10 A. Forty-three.

11 Q. How many forensic autopsies have you done?

12 A. Over 14,000.

13 Q. How many times have you been qualified as an expert in
14 South Carolina?

15 A. Over 260.

16 MR. GRAHAM: Your Honor, the State would offer
17 Dr. Janice Ross as an expert in the field of forensic
18 pathology.

19 THE COURT: No objection?

20 MR. FLOYD: No questions, Your Honor.

21 THE COURT: All right.

22 Again, ladies and gentlemen, as I explained with
23 several of the other expert witnesses yesterday, the
24 parties agree that Dr. Ross is an expert in the field
25 of forensic pathology, so she can give opinion testimony

1 in that area that you can use as you think is appropriate.

2 Mr. Graham.

3 MR. GRAHAM: Thank you, Your Honor.

4 BY MR. GRAHAM:

5 Q. Dr. Ross, did you perform an autopsy on Tycus Toland?

6 A. Yes.

7 Q. On April 27th of 2014?

8 A. Yes.

9 Q. In general terms, would you describe how the autopsy
10 of Mr. Toland began?

11 A. Yes, we did the autopsy in the hospital morgue in
12 Newberry County Memorial Hospital. The patient is brought
13 to us in a body bag. We open the body bag, identify
14 clothing, take photographs externally with clothing and
15 without clothing, and in this case we could identify a
16 gunshot wound, so we did -- further did x-rays to see if
17 there was any bullet or bullet fragments still left in him.

18 Q. On the external examination, what, if anything, did
19 you find?

20 A. Just the entrance gunshot wound, some tattoos. The
21 patient measured 71 inches in height, which is five feet
22 eleven. And we didn't -- we don't have a -- we didn't have
23 a scale in the morgue, but we identified -- estimated the
24 weight of 185 pounds.

25 Q. If I asked you what defensive wounds are, would you

1 tell the jury what that is?

2 A. Yes. Defensive wounds are just like they sound. If
3 somebody identifies a weapon or something coming at them,
4 they will put their hands up, so you find injuries to their
5 hands or their forearms, front or back. In this case there
6 were no such wounds.

7 Q. Would you describe the location of the wound to the
8 head?

9 A. Yes. The entrance wound was in the right side of the
10 head sort of behind and above the right ear and he had long
11 dreadlocks in his hair.

12 Q. Let me show you two exhibits, State's 46 and State's
13 118, and ask if you recognize those?

14 A. Yes.

15 Q. Would that help you in your testimony in explaining to
16 the jury your findings of the autopsy?

17 A. Yes.

18 MR. GRAHAM: Your Honor, the State would move 46
19 and 118 into evidence.

20 MR. FLOYD: No objection, Your Honor.

21 THE COURT: Without objection, State's 46 and 118
22 are in evidence.

23 (State's Exhibit Number 46, a photograph, and
24 State's Exhibit Number 118, a diagram, were admitted
25 into evidence.)

1 MR. GRAHAM: Permission to publish, Your Honor.

2 THE COURT: You may.

3 BY MR. GRAHAM:

4 Q. State's 118 appears to be a diagram; is that correct?

5 A. Yes.

6 Q. What's the purpose of you using a diagram?

7 A. This is a form that we use -- I use in the morgue to
8 just jot down any evidence of injury, tattoos, hair,
9 mustache, beard, et cetera, for the purpose of being able
10 to dictate the report afterwards.

11 Q. And on here you indicated, and I think you testified
12 just a moment ago, that he had dreadlocks?

13 A. Black hair in dreadlocks, brown eyes and natural
14 teeth, yes.

15 Q. Now on the back side view up here, you put a dot and
16 some notations to the side. What does that mean?

17 A. That's where the entrance gunshot wound was found and
18 it was two inches below the top of the head and six inches
19 to the right of -- to the right of midline from front to
20 back.

21 MR. GRAHAM: Your Honor, if I could ask the witness
22 to step down?

23 THE COURT: Sure, if you would.

24 (Whereupon, the witness steps down from the witness
25 stand.)

1 BY MR. GRAHAM:

2 Q. Dr. Ross, I'm gonna ask you to do this twice just so
3 the jury can see you. If I would be Tycus Toland, would
4 you point out to the jury where he was shot?

5 A. Right here.

6 Q. Do you know the direction off the top of your head or
7 do you need to see your report?

8 A. No, it went -- bullets go straight and it went pretty
9 well straight across but towards the front and towards the
10 left side of the head and the bullet fragments were found
11 at the base of the skull or behind the left ear -- I'm
12 sorry, the left eye.

13 Q. Step down this way, too, I'm sorry, Doctor, just so
14 that the rest of the jury can see this as well. Again, if
15 you would point out where Tycus was shot.

16 A. (Witness complies.)

17 Q. Thank you, Doctor.

18 (Whereupon, the witness returns to the witness
19 stand.)

20 BY MR. GRAHAM:

21 Q. The fragment or the projectile that you found, is that
22 shown in State's 46?

23 A. Yes.

24 Q. So there was one entrance wound that you described?

25 A. Correct.

1 Q. You described the bullet path as what again, Doctor?

2 A. From back to front and right to left.

3 Q. And you said you found -- you recovered those
4 fragments behind Tycus's left eye?

5 A. Behind, yeah, and inside bone.

6 Q. Can you describe what destruction that bullet did as
7 it went through Tycus's brain?

8 A. Well, it lacerated both sides of the brain and part of
9 the base of the brain.

10 Q. Lacerated means it was cut?

11 A. Yes.

12 Q. So did Tycus die as a result of that gunshot?

13 A. Yes.

14 Q. What was the cause of death?

15 A. Laceration of the brain due to the gunshot wound to
16 the head.

17 Q. And what happens with a laceration of the brain? How
18 long does it take for Tycus to die?

19 A. Well, first of all, the explosive effect inside the
20 skull will cause unconsciousness pretty much immediately
21 and the laceration -- the injury to the brain will cause
22 swelling and would take four or five minutes for permanent
23 brain death.

24 Q. What would have happened to his ability to move, to
25 ambulate, to walk, after that bullet penetrated his brain?

1 A. He would have collapsed where he was. He would be
2 unconscious.

3 Q. Immediately?

4 A. Yes.

5 Q. And how long would it take him to pass?

6 A. Four to five minutes.

7 MR. GRAHAM: Thank you, Doctor. Please answer
8 any questions the defense has.

9 THE COURT: Mr. Floyd.

10 MR. FLOYD: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. FLOYD:

13 Q. Good morning, Dr. Ross.

14 A. Good morning.

15 Q. Dr. Ross, were you able to determine the distance
16 between the gun and the individual in this case?

17 A. That was undetermined. I could tell that it was not
18 a contact wound. I can explain to the jury that the --
19 when a bullet comes out of a gun so does soot and powder,
20 fragments and powder, but the soot and the powder only go
21 a certain distance depending on the type of gun and the
22 ammunition, but generally goes no further than two feet;
23 whereas, the bullet will go further than that. So if you
24 see evidence of soot or tattooing, you can identify that
25 the range from the muzzle of the weapon to the victim

1 was within two feet, but in this case there were long
2 dreadlocks and a lot of hair and we could not see either
3 soot nor tattooing of the powder, so it's indeterminant.

4 Q. Could it have been further away than two to
5 three feet?

6 A. It could be, yes.

7 Q. Now when a bullet strikes a body, are you familiar
8 with the phenomenon known as blood spatter or blood
9 splatter?

10 A. Yes.

11 Q. Can you tell the jury what that means?

12 A. Well, that goes -- if the bullet opens up an artery,
13 then you get blood spurting out and in this case it goes
14 into the skull and into the brain and there's -- blood does
15 not come out.

16 Q. So you wouldn't have blood spatter in this?

17 A. No.

18 Q. Would you have loss of blood?

19 A. Yes.

20 Q. And how long would it take the blood to bleed out?

21 A. It depends on the arteries and et cetera. The skull
22 is in a closed -- the brain is in a closed house so to
23 speak, so with some extra volume in there, there's a lot
24 of pressure and that would eventually stop the bleeding,
25 but the cause of death mainly is the injury to the brain,

1 not blood bleeding out.

2 Q. All right. Did you do any gunshot residue testing?

3 A. I think they were done by -- I did not do any.

4 Q. Can you tell the jury what gunshot residue testing
5 would show?

6 A. You take samples of -- swabs of the hands, back -- the
7 back of the hands and the palms of the hands to look for
8 gunshot residue, which would be tantamount to soot.

9 Q. And that would be to show whether or not the victim
10 had, in fact, fired a gun also?

11 A. Yes, but it could be positive if you're just in the
12 room or have handled a gun or -- it's not real specific
13 always.

14 Q. But there was no testing of the gun by you --

15 A. Not by me.

16 Q. -- in connection with that?

17 A. Correct.

18 Q. All right. Was there a toxicology check done?

19 A. Yes.

20 Q. Were there any substances found in the victim's
21 body?

22 A. Some marijuana products, yes.

23 MR. FLOYD: Thank you. No further questions,
24 Dr. Ross.

25 THE COURT: Any redirect?

1 MR. GRAHAM: Just briefly.

2 REDIRECT EXAMINATION

3 BY MR. GRAHAM:

4 Q. Dr. Ross, regarding gunshot residue, you don't have
5 to shoot a gun to have gunshot residue on your hands, do
6 you?

7 A. No, you don't. You can just be in the room or maybe
8 have handled a gun.

9 Q. Or be in the vicinity of a shot?

10 A. Exactly.

11 Q. There wasn't an exit wound in this case; isn't that
12 right?

13 A. Correct.

14 MR. GRAHAM: Thank you, Doctor.

15 THE COURT: All right, Doctor. Thank you very
16 much for coming. Have a safe drive back to Charleston.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 THE COURT: Okay. I think the next witness we
20 needed to take up a few matters before they testify?

21 MS. FULLER: That's correct.

22 THE COURT: Ladies and gentlemen of the jury, I'm
23 gonna ask that you give us the courtroom. If you would
24 return to the back for just a few moments. I need to
25 take up a few matters of law that relates to the next

1 witness. Don't talk about the case yet. I'll have you
2 back out here as soon as possible.

3 Thank you.

4 (Whereupon, the jury retires to the jury room at
5 9:49 AM.)

6 THE COURT: The jury is out. The next witness is
7 who? Do we need a proffer or --

8 MS. FULLER: I believe so, Your Honor.

9 THE COURT: Okay.

10 MS. FULLER: It will be necessary for the caselaw.

11 THE COURT: Sure. Go ahead and call them.

12 MS. FULLER: Pedro Arroyo.

13 (Whereupon, Pedro Arroyo was duly sworn by the
14 Clerk of Court.)

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

17 THE WITNESS: Pedro Arroyo. That's A-R-R-O-Y-O.

18 PEDRO ARROYO,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION (In-Camera)

21 BY MS. FULLER:

22 Q. Mr. Arroyo, where are you employed?

23 A. I'm employed at the City of Fairfield Police
24 Department.

25 Q. And what do you do there?

1 A. I'm a sergeant on patrol.

2 Q. And how long have you been in law enforcement?

3 A. Approximately sixteen years.

4 Q. And have you spent your entire career at Fairfield?

5 A. No.

6 Q. Where else have you been employed?

7 A. I started my career at Oakland Police Department
8 and from there I went to Azusa PD and lateral'd over to
9 Fairfield.

10 Q. Back in 2014, were you working with the City of
11 Fairfield Police Department?

12 A. Yes, I was.

13 Q. And what was your position at that time?

14 A. I was a detective with the family violence unit.

15 Q. And I'm just gonna ask you a few questions to explain
16 how things work in California compared to our court here.
17 Were you involved in the investigation of a shooting that
18 took place on May 1st of 2014, in California, in Fairfield?

19 A. Yes.

20 Q. And I'm gonna move the mic just a little bit closer.
21 I'm having a hard time.

22 And as it relates to that shooting, were you involved
23 in obtaining a search warrant in the case?

24 A. Yes.

25 Q. And can you explain to the Court the procedure in

1 California when it comes to obtaining a search warrant?

2 A. Once you -- well, first you have to have a crime or
3 something that you're investigating. At that point you
4 have to have enough probable cause and if you have probable
5 cause, you write down basically the probable cause, what
6 you're looking for, what items you wish to seize and the
7 location that you're gonna go seize them at. Once you have
8 all of that completed on a form, you go and you speak with
9 a judge and you swear regarding the evidence that you're
10 looking for and the probable cause that you have and the
11 judge either grants it or does not.

12 Q. Okay. And also in California can you explain to the
13 Court what sealing is of a search warrant?

14 A. Sealing of a search warrant is if a case is still
15 being investigated and you don't want anyone else to see it
16 and it's basically sealed from the public. You can swear
17 that you wish that -- for the search warrant to be sealed
18 at that time.

19 Q. Okay. So back on the May 1st shooting incident, can
20 you explain to the Court what actually occurred?

21 A. I'm sorry?

22 Q. The nature of the investigation. What was the cause?

23 A. The cause was a shooting that took place in Fairfield,
24 California, and we understood through our investigation
25 that subject Terry McClure was the shooter and so I

1 authored a search warrant to go to his residence.

2 Q. And do you recall on what day you authored that search
3 warrant?

4 A. I believe it was May 1st.

5 Q. If you want to refer to your notes, the incident
6 happened on May 1st, but what date did you actually author
7 the search warrant?

8 A. May 8th.

9 Q. Okay. Thank you. And on May 8th, do you know whether
10 or not Terry McClure was in custody at that point?

11 A. I believe he was.

12 Q. And what was the nature of him being in custody on
13 May 8th?

14 A. He is on active parole, so we had him go to his parole
15 office. While he went to his parole office, we had a team
16 to go over there and do a compliance check of his vehicle
17 that we observed him driving in on -- well, he was actually
18 the passenger, and we went and did a compliance check of
19 that vehicle where we located a loaded Glock firearm.

20 Q. And this is all in relation to investigating the
21 shooting as well as on parole. Can you explain to the
22 Court what your knowledge is of compliance checks when
23 you're on parole?

24 A. When you're on parole it's because that you are in
25 prison and then you are released early, but because you're

1 technically still in the lowest form of custody when you're
2 on parole, that means you can be searched and seized and
3 items can be -- basically you can be searched at any time
4 to be within compliance of said laws.

5 Q. Okay. And I believe the Court already knows this, but
6 on May 8th Terry McClure was being interviewed and his
7 girlfriend, Shantel Chase, who was driving the vehicle was
8 also at the police department at this time?

9 A. At the parole office, ma'am.

10 Q. At the parole office. I apologize. In terms of
11 executing the search warrant and drafting it, I believe --
12 actually, I'm gonna show you what's been premarked --
13 marked as Court's Exhibit 8 and I'll ask you if you
14 recognize that document?

15 A. I do.

16 Q. And what do you recognize that to be?

17 A. This is my search warrant with affidavit attached.

18 Q. Okay. And what was the probable cause? What -- let
19 me stop you. What was the property to be searched?

20 A. The property to be searched was the residence.

21 Q. And what was the location of that residence?

22 A. It is 159 Aegean Way, Number 138. And that's spelled
23 A-E-G-E-A-N.

24 Q. And the city and state?

25 A. The city of Vacaville, California.

1 Q. And whose residence is that?

2 A. It is Terry McClure's girlfriend and Mr. McClure's.

3 Q. And what was the basis of your probable cause?

4 A. The victim of the shooting in Fairfield advised us
5 that he was -- Terry McClure was the shooter and we were
6 still looking for more firearms, more phones, more evidence
7 on this case. After we had a positive identification and
8 we also had a firearm that was located, we felt we had
9 enough probable cause to show a judge to get a search
10 warrant.

11 Q. And did that happen in this case? Did you author that
12 search warrant and take it to a judge to be signed?

13 A. Yes.

14 Q. And would that be on May 8th?

15 A. Yes.

16 Q. And did a judge sign the search warrant or did he
17 reject the search warrant?

18 A. Signed the search warrant.

19 Q. And at that point what did you do?

20 A. We completed the search warrant. We -- I'm sorry. We
21 basically -- I don't know the words, Sutanania, but we went
22 and served it.

23 Q. Okay. And go ahead and take the judge through your
24 procedure of executing a search warrant.

25 A. Your Honor, when we go and do the search warrant what

1 we do is we go over there. In this case, the door was
2 locked, and we didn't have keys, and to our understanding
3 Mr. McClure and his girlfriend were already in custody or
4 detained, but we could not obtain access, so at this point
5 we forced entry. At that point what we do is we did a
6 quick clearing to make sure nobody was inside and we take
7 video of how we -- that residence is before we basically do
8 anything and then after we do anything. So we go inside,
9 we take video, we then complete the search warrant by
10 basically completing our search, looking for evidence.
11 Once we have our evidence, then we leave a copy of the
12 search warrant and then we do a video -- an exit video.

13 Q. Okay. And you -- on this particular search warrant
14 on the first page there is a box checked cause sealing
15 requested and you indicated yes on this, so sealing was
16 requested of this search warrant?

17 A. Correct.

18 Q. Now in terms of coming to court today, have you guys
19 been able to locate a signed, executed, sealed copy of that
20 search warrant?

21 A. No.

22 Q. Can you explain to the Court what efforts we've made
23 to locate that search warrant that's now lost?

24 A. Numerous efforts. We have attempted to unseal search
25 warrants, we have -- I have gone to the county clerk's

1 office and tried to check back there, tried to do anything
2 I can to locate the search warrant. I have gone through
3 thumb drives, computers, anything that I've touched over
4 the last five years.

5 Q. And in terms of sealing, what is the law in California
6 when a search warrant is sealed? Can there be another copy
7 of it floating around?

8 A. As in like an original copy?

9 Q. Yes.

10 A. No.

11 Q. Okay. So once it's sealed, it stays in the possession
12 of the clerk's office?

13 A. That is correct.

14 Q. And in this particular case in preparing for court
15 here, did a district attorney in Fairfield county assist in
16 getting a court order pursuant to my affidavit to have the
17 case file unsealed?

18 A. Yes.

19 Q. And that's what you're describing to the Court, that
20 the effort was made to go through the clerk's file and get
21 it unsealed and you couldn't locate the specific search
22 warrant as it relates to the residence?

23 A. That's correct.

24 Q. I'm gonna show you --

25 MS. FULLER: I'll mark that as Court's Exhibit 9.

1 (Court's Exhibit Number 9 was marked for
2 identification.)

3 BY MS. FULLER:

4 Q. I'm gonna show you what's been marked as Court's 9 and
5 ask if you recognize it?

6 A. I do.

7 Q. And what do you recognize that to be?

8 A. It is a report with items that were taken from the
9 property.

10 Q. And can you publish to the Court what were the items
11 taken from the property?

12 A. It was, one, a black cell phone, ZTE; two, a blue cell
13 phone, Sanyo; three, a silver Toshiba laptop; four, indicia
14 for Shantel Case -- I'm sorry, Chase; five, indicia for
15 Terry McClure; and, six, a Scan thumb drive.

16 Q. And if those items were taken from the residence,
17 would you -- would you have recorded that information if it
18 wasn't taken from the residence?

19 A. I wouldn't. I recorded only what was taken.

20 Q. And down under the facts, can you read the facts that
21 you've written -- as you've written them to the Court?

22 A. On 5-8-14, I authored a search warrant for 159 Aegean
23 Way, Apartment --

24 THE COURT REPORTER: Just a minute. You'll have
25 to slow down.

1 THE WITNESS: I'm sorry.

2 On 5-8-14, I authored a search warrant for 159 Aegean
3 Way, Apartment 138, in Vacaville, California, 95687. The
4 search warrant was executed and I was designated as the
5 finder. During the search, I recovered six items for
6 evidence. One, a black cell phone, ZTE; two, blue cell
7 phone, Sanyo; three, silver Toshiba laptop; four, indicia
8 for Shantel Chase; five, indicia for Terry McClure; six,
9 Scan thumb drive. I also took digital video of the
10 walkthrough and exit. The door was forcibly opened and I
11 took digital pictures of the door and all items taken.
12 I left a receipt for all items taken for evidence at --
13 and left it at said address.

14 BY MS. FULLER:

15 Q. And would you have written that report if that didn't
16 have happen that day, if you weren't executing a valid
17 search warrant?

18 A. Absolutely not.

19 Q. And do you recall when you actually wrote this report?
20 Was it back in 2014?

21 A. Yes.

22 (Court's Exhibit Number 10 was marked for
23 identification.)

24 BY MS. FULLER:

25 Q. I'm gonna show you what's been marked as Court's 10

1 and ask you if you recognize these?

2 A. I do.

3 Q. And what do you recognize them to be?

4 A. This was the door that we forced entry on and property
5 that we seized from the residence.

6 Q. And those are photographs of each of the items that
7 you just read out in your report?

8 A. Correct.

9 Q. How many search warrants do you think you've executed
10 in your career?

11 A. Many. I --

12 Q. Ten, twenty, hundreds?

13 A. I would say over fifty.

14 Q. Okay. And is your procedure the same typically?

15 A. Yes.

16 Q. And would you have executed a search warrant if a
17 judge hadn't signed it?

18 A. No.

19 Q. Would you have documented the items seized from the
20 residence if that didn't happen?

21 A. No, ma'am.

22 Q. And was there a good faith attempt to locate that lost
23 search warrant?

24 A. Beyond good faith, ma'am.

25 MS. FULLER: I think that's it for now, Your Honor.

1 Thank you.

2 THE COURT: Any questions, Mr. Spangler?

3 MR. SPANGLER: Yes, Judge.

4 Did the Solicitor hand up a copy? I think she
5 mentioned yesterday there was a draft copy of the search
6 warrant. If we could just take a look at one of those.

7 THE COURT: She gave me this one to look at and
8 then she introduced Court's 8, so if you want to borrow
9 that one since I have Court's 8 now.

10 MR. SPANGLER: I'll just take a look at it.

11 CROSS-EXAMINATION (In-Camera)

12 BY MR. SPANGLER:

13 Q. All right. Is it Officer -- I'm gonna butcher this,
14 but is it Arroyo?

15 A. That's actually perfect right there, sir.

16 Q. Arroyo. Okay. Officer Arroyo, when you're talking
17 about the search warrant, and you went through the process
18 for that, so you put together an affidavit; is that right?

19 A. Yes, sir.

20 Q. Okay. And that's handed off then to a judge in
21 California?

22 A. Yes.

23 Q. Okay. And that judge presumably either signs it or
24 does not sign it?

25 A. Correct. So he either grants it or does not.

1 Q. Right. And then at this point I think you said it
2 goes into a sealed file?

3 A. You have to request it to be sealed, so then you
4 request it to be sealed at that point, and then once it
5 gets filed, it gets sealed.

6 Q. Okay. So after the judge signs it, what happens with
7 the warrant?

8 A. You take it with you.

9 Q. Okay. So you actually at some point -- it's your
10 testimony you had a copy of the signed warrant?

11 A. Yes, sir.

12 Q. Okay. And you carried that warrant over to the home
13 with you?

14 A. Yes, sir.

15 Q. Okay. Now in this case we don't have a copy of the
16 signed warrant, do we?

17 A. No, sir.

18 Q. Okay. Do you recall completing a search warrant
19 return?

20 A. No, sir.

21 Q. Okay. A list, I guess, on the warrant saying what you
22 received from the house?

23 A. I recall not doing one of those.

24 Q. Okay. So that was not done in this case?

25 A. I'm not saying it was not done, sir. I'm saying I

1 don't recall me doing it.

2 Q. Okay. Were there other officers on the scene with
3 you?

4 A. I would like to say there were other ones. I don't
5 remember all of them.

6 Q. Okay. But they weren't -- they're not here to
7 testify, right?

8 A. No, sir.

9 Q. You're the only officer here to testify about this
10 specific issue, the search warrant?

11 A. Yes, sir.

12 Q. Okay. Now on the back of the search warrant, it looks
13 like on this one, Page 7 of 7, I can show it to you if you
14 need it, but is there a place where who was executing it
15 would actually sign it? I guess the question is who has
16 signed -- I have a blank here. It says executed at City of
17 Fairfield, County of Solano, California, and a blank. Who
18 was supposed to sign that portion?

19 A. That would be a judge, sir.

20 Q. Okay. So the judge signs when it's executed?

21 A. No, sir. That would be my portion. I'm sorry.

22 Q. Okay. So that's the portion that the officer signs?

23 A. Yes.

24 Q. But, again, we don't have any copies with your
25 signature or another officer's signature on it, do we?

1 A. No, sir. You have a copy of just the original search
2 warrant.

3 Q. That's unsigned by a judge?

4 A. Correct.

5 MR. SPANGLER: Thank you. Nothing further.

6 THE COURT: Redirect?

7 MS. FULLER: No, Your Honor. Just argument.

8 THE COURT: Okay. Do you remember the name of the
9 judge that you took this to by any chance?

10 THE WITNESS: The believe it was Brad Nelson, sir.

11 THE COURT: Brad Nelson. And he's a duly appointed
12 magistrate judge, whatever you call them in California?

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay. Very good. You can step down
15 if you want.

16 (Witness excused.)

17 THE COURT: Let me hear from you, Ms. Fuller.

18 MS. FULLER: Thank you, Your Honor.

19 And, for the record, since we're dealing with a
20 California search warrant, I went ahead and printed
21 State of California Penal Code Section 1524 and then
22 accompanying caselaw for it.

23 Your Honor, the procedure out in California from
24 what I can tell from their statute is quite similar to
25 ours in terms of probable cause can be written or verbal.

1 They actually have something additionally where a judge
2 can just verbally tell someone they can go serve a search
3 warrant. They also have destruction of property to gain
4 entry, so -- but other than that it's fairly standard and
5 similar to ours.

6 I beg the Court's indulgence.

7 THE COURT: Yes, ma'am.

8 MS. FULLER: Your Honor, in looking at South
9 Carolina state law under State v. Freeman, case cite
10 319 South Carolina 110, that was a case involving drugs
11 and the search warrant involved the actual case on trial.

12 In this situation, we're dealing with a California
13 separate investigation, they were investigating a shooting,
14 so this is a separate search warrant, it had nothing --
15 there wasn't a murder weapon seized, there wasn't anything
16 particularly directly involved in the actual shooting as it
17 relates to this case.

18 In Freeman, it's the State's position that it stands
19 for the proposition they can use secondary evidence to
20 establish the existence and contents of a search warrant
21 and the supporting affidavit and that there was a good
22 faith basis to comply with the statute, which is the
23 California Penal Code, and a good faith basis to actually
24 locate that lost search warrant and so that's why we
25 provided testimony to establish the existence of the

1 search warrant, a decorated officer who's been in law
2 enforcement for numerous years who testified that he
3 wouldn't have executed a search warrant if it wasn't
4 signed by a judge and it wasn't valid. He testified
5 to the efforts made -- the good faith effort made to
6 locate that lost search warrant, Your Honor, and under
7 the rules of evidence, 1004, original documents are not
8 necessarily required and other evidence of the contents
9 is admissible, and there's a criminal case on point
10 that I've handed up, which is State v. Halcomb,
11 382 South Carolina 432.

12 Also in looking at other jurisdictions that support
13 the ability of the prosecution to use secondary evidence
14 to prove the existence of a search warrant and its
15 contents, I've handed up numerous cases. There's a
16 California case that states in passing that the fact
17 that the original search warrant cannot be located in
18 state court records does not establish that the warrant
19 was invalid or that the search of an apartment was
20 unreasonable. That's U.S. v. Ellis.

21 Also, Scott v. Commonwealth, which is a Kentucky
22 case, established that the burden, of course, is on the
23 State to prove the contents of the search warrant if the
24 document itself cannot be found. In this case, we do
25 have the original search warrant, although unsigned. I

1 think Your Honor had an opportunity to review the actual
2 contents of it, the affidavit and the probable cause,
3 which was well detailed in that actual search warrant
4 since they were investigating that shooting.

5 You also have a case out of Alabama. The contents
6 of a lost search warrant --

7 THE COURT REPORTER: Okay. Slow down.

8 MS. FULLER: I'm sorry.

9 THE COURT: Go a little slower, please.

10 MS. FULLER: -- may be established by parol
11 evidence. And out of Texas you have the loss of a
12 search warrant affidavit and the diligence in looking
13 for them are shown to the satisfaction of the trial
14 court or proof of the contents of the documents is
15 sufficient to establish the sufficiency of them. Also,
16 Skiles v. State out of Texas as well. Upon the proper
17 predicate showing loss and diligence, a search warrant
18 may be proved by parol evidence, and proof of the
19 substance would suffice. And then out of Massachusetts,
20 Your Honor, also stands for the same proposition as that
21 it can't be serious fault or bad fault upon the State in
22 actually losing that search warrant.

23 Your Honor, I believe that the testimony of the
24 officer establishes the existence of the search warrant.
25 Also, his report that he wrote that accompanied it

1 established that the items that were marked -- that
2 were located in the residence and actually seized, and
3 I think his testimony would support the existence of a
4 search warrant and the validity of it. And what you're
5 looking for with the existence of the search warrant is
6 that did probable cause exist, was enough information
7 given to that magistrate, and I think what he's offered
8 out there in his testimony supports that probable cause
9 exists.

10 Now in terms of complying with the statute,
11 establishing a good faith attempt to comply with the
12 statute, and in California he testified to recording
13 going in and coming out. We don't have the actual
14 recording to show Your Honor, but we have the
15 photographs of the actual items seized. And so in
16 Freeman the issue was the items on -- they actually had
17 not the original but a copy and the items on the return
18 couldn't necessarily be lined up with the items seized.
19 In this case, he has photographs of the actual items
20 seized, as well as his report that accompanied it that
21 detailed the items actually seized. He testified that
22 he marked it for sealed. He testified other -- on cross
23 that other officers were present and he testified to his
24 good faith attempt to locating that search warrant.

25 And so at this point, Your Honor, I think the State

1 has established the validity of that search warrant and
2 that evidence seized in that search warrant should be
3 admissible in this trial.

4 MR. SPANGLER: Judge, I just -- it's troubling here
5 and it's kind of twofold. We're not dealing with just a
6 return not being made with the search warrant. That is
7 one issue and that seems to be what Freeman dealt with,
8 a return that wasn't timely filed or not filed at all.
9 We're dealing with the additional issue of we don't
10 actually have a copy of the signed search warrant. Now
11 the testimony was that this is the warrant he remembers
12 taking, but at this point we don't have any signatures
13 on this, either from a judge or from the people who
14 actually executed the warrant. That paired with the
15 failure of any return to be completed, that's what the
16 witness said, that no return for the search warrant was
17 completed, it's our contention that it doesn't comply
18 with the statute, not for a failure to timely file
19 within the ten days, but failure to file a return at
20 all, and we don't think that's remedied by a later
21 report detailing what was found in the residence.

22 So for those reasons, the failure of any signature
23 on any a search warrant from the judge, the failure of
24 the signature from the officers who executed it, failure
25 of a return being made. And we're not saying the State

1 didn't do their due diligence in trying to find it, but
2 at this point without the search warrant itself or the
3 return, there's just not enough here for this evidence
4 to come in, so we move to exclude the phone and the
5 records that came from it based on those reasons.

6 MS. FULLER: Your Honor, briefly.

7 I don't believe his testimony was that a return
8 wasn't done. His testimony was that he didn't do it.
9 Typically, even our local search warrants, you have an
10 officer who's the affiant present for the execution,
11 but another officer would have completed the return.
12 He testified that he had marked it for sealed and
13 that should have been done in this case. And there was
14 definitely a good faith attempt, but let's say for the
15 sake of argument that we have -- you have the probable
16 cause issue and then you have the statutory compliance.

17 So the argument is that the statutory requirement
18 was not properly complied with. We do have caselaw on
19 point that indicates where the Supreme Court and Court
20 of Appeals have specifically ruled that administrative
21 errors did not void a search warrant where the defendant
22 was not able to show that he was prejudiced.

23 Now as it relates to this proceeding, I would argue
24 that he certainly can't argue any prejudice because
25 this was a separate investigation that took place in

1 California in regards to the shooting. We were just
2 -- you're not liking that argument, Your Honor?

3 THE COURT: I'm -- I'm --

4 MS. FULLER: Well, I guess showing prejudice in
5 the sense that this wasn't a search warrant executed
6 directly as relates to this case where, for example,
7 the clothes that he was wearing was seized and blood
8 was on it or a gun that he was using was seized. This
9 was a separate shooting incident that took place in
10 California, a totally separate investigation, and --
11 which, I guess, I didn't elicit the -- the background.
12 That shooting charge -- out there they have information,
13 indictments, complaints in terms of their procedure.
14 That was never formally charged, there wasn't enough
15 going forward with it, and so the case never made it
16 to the DA's office. Had that happened, of course, we
17 may have had a copy of that search warrant because then
18 it would have been unsealed and provided in discovery
19 to the attorney up there, but this was just an
20 investigation at this point, which I think also lends
21 to the fact of why it was kind of lost because it never
22 formally went up the normal channels of going to the
23 DA's office for prosecution because the charges for the
24 shooting -- he was never charged with it. He was just
25 investigated for it and was violated on his parole.

1 And I guess what I'm also being told is that the
2 reason also why it wasn't being prosecuted there is
3 because the victim recanted because they were dealing
4 with two gangs apparently.

5 But, Your Honor, in terms of caselaw that we have
6 where the Supreme Court and Court of Appeals have
7 consistently looked at the statutory requirements not
8 properly being complied with, you have State v. Weaver
9 where the court held that the State's failure to produce
10 a return to the search warrant within ten days was a
11 ministerial error and did not void the warrant. In
12 State v. Quoran, the court held that the search warrant
13 was not invalidated on the basis the return was not
14 made.

15 THE COURT: Say that again, please, a little
16 louder.

17 MS. FULLER: State v. Quoran, 310 South Carolina
18 546, the court held that the search warrant was not
19 invalidated on the basis that the return was not made
20 within ten days and the marijuana seized was not listed
21 on the return. Defendant failed to show any prejudice
22 in failing to comply with the ten-day requirement and
23 listing of items seized was a ministerial act.

24 State v. Mollison, the court held that the
25 State's failure to comply strictly with the statute

1 requiring return of the search warrant within ten days
2 did not require exclusion of evidence seized pursuant
3 to warrant. No prejudice could be discerned from the
4 record. Defendant did not argue prejudice. And that
5 was 319 South Carolina 41.

6 THE COURT: Do you want to --

7 MR. SPANGLER: Judge, briefly.

8 Our argument is that this is not just dealing with
9 a ministerial act. We're not dealing with just the
10 return not being properly filled out or filed twelve
11 days later or fifteen days later. We're dealing with
12 no return being presented to this Court paired with no
13 testimony from an officer who may have been involved if
14 a return was actually made.

15 Further, we have a search warrant that -- what
16 they've handed up is just blank. There's no signatures
17 on it from any party; not from a judge, not from the
18 officers who were involved in executing it. In the
19 totality of the circumstances, this search warrant --
20 there's not even enough there for us to challenge it,
21 and that's the grounds that we're going under, is that
22 there's not enough on the search warrant itself for us
23 to even challenge it because we don't have a date that
24 it was signed, we don't have the information on the
25 judge who signed it, we don't have the information on

1 the officers who executed it.

2 And the prejudice to the Defendant is overwhelming
3 if these records are allowed in. We anticipate the
4 State is gonna use that phone and the content in it
5 in their case in chief through their next witness,
6 Investigator Phipps, to try to track his movements along
7 with that phone, to take content off that phone and put
8 in the record for the truth of the matter, so there is
9 certainly overwhelming prejudice the Defendant's gonna
10 face based on the evidence seized from the phone.

11 So, again, Your Honor, we'd move to exclude the
12 evidence from that phone because we have an unsigned
13 search warrant, no signature from who executed it and
14 no return.

15 MS. FULLER: Your Honor, I disagree slightly in
16 terms of not having enough to challenge it. The legal
17 ground for suppression and challenging a search warrant
18 is being able to challenge if probable cause existed
19 at the time the magistrate authored it and then we have
20 enough caselaw and our rules allow for secondary -- our
21 caselaw allows for secondary evidence to establish the
22 existence of the search warrant and his testimony along
23 with the report that he wrote at the same time while
24 this was going on was dated on May 8, 2014. He testified
25 that that's when he authored that search warrant and

1 he published to the Court that he was the finder and
2 present for the execution of that search warrant. So I
3 think on cross it could have been challenged considering
4 that we can establish the existence of that search
5 warrant by caselaw -- according to caselaw by secondary
6 evidence.

7 So I disagree with the fact that you can't properly
8 challenge the probable cause, which is what a basis for
9 suppression would be, and now you're dealing with
10 statutory requirements of filing and he explained what
11 the sealing process would be, what the normal process
12 would be, and the caselaw suggests that as long as
13 it's not bad faith on the part of the State or law
14 enforcement in destroying that search warrant, then I
15 think we do have enough before the Court based on his
16 testimony, and I believe the caselaw allows that.
17 There hasn't been any bad faith shown. There, frankly,
18 wouldn't be. The shooting case was not filed. There
19 would be no reason for law enforcement to get rid of the
20 search warrant where they didn't find a gun. They found
21 phones and paper and work belonging to the home occupants,
22 so I would disagree with that there isn't enough to
23 challenge. There is enough before him and the Court to
24 judge whether or not probable cause existed and then
25 based on his testimony, the secondary evidence provided

1 by the State, you have enough to challenge the date,
2 enough to challenge the sealing process and enough to
3 challenge whether or not there was a good faith attempt
4 to find this lost search warrant, so I do disagree with
5 that fact.

6 THE COURT: All right. One thing that occurs to
7 me, and this was something I was gonna ask about sort
8 of before the argument began, and I'm trying to recollect
9 the conflict of laws class that I took in 1991, most of
10 that related from what I recall unfortunately to
11 civil-type causes of action. I believe though, and
12 I'm, again, just relying upon my memory, that in terms
13 of whether a search warrant was properly executed and
14 assuming that it was not properly executed or preserved
15 or a return was filed, it would be the law of the State
16 where the search warrant was sought that would control
17 that issue, not necessarily the law of the venue where
18 the case is being tried.

19 So we have, of course, a South Carolina court here
20 trying Mr. McClure for murder, and apparently evidence
21 was collected pursuant to California law by way of a
22 search.

23 Do you have a case out of California, Solicitor,
24 on point that indicates that a copy -- an unsigned copy
25 of a search warrant under California law can be admitted

1 or the products of that search rather -- product of that
2 search can be admitted pursuant to California law despite
3 the absence of a duly executed and otherwise properly
4 executed search warrant?

5 MS. FULLER: Your Honor, the -- one of the first
6 cases I cited, U.S. v. Ellis, 270 F. Supplement 3rd 1134,
7 it's a Federal case out of California. It should be
8 the third one in your packet -- third or fourth one.

9 THE COURT: Okay. Here we go.

10 MS. FULLER: And that one -- that's a California
11 case that states that the fact that the original search
12 warrant cannot be located in a state court record does
13 not establish that the warrant was invalid.

14 THE COURT: This seems to relate to the use of
15 Stingrays to track or monitor a cell phone absent a
16 warrant.

17 MS. FULLER: The -- Page 22 is the motion to
18 suppress evidence seized from the apartment.

19 THE COURT: Page 22? I see it.

20 I'm looking at Page 23 and the first paragraph --
21 well, the Government also compares the copy of the
22 unredacted warrant produced to defendants with the
23 redacted copy left at scene and points out there are
24 no discrepancies, and here's the part I'm interested
25 in, in Judge Horner's signature and date. Even if the

1 police had not provided Ellis with a copy of the warrant,
2 suppression of the evidence obtained pursuant to a valid
3 search warrant would not be justified, and it cites
4 Hector, H-E-C-T-O-R, from the Ninth Circuit and it talks
5 about serving -- did not require a copy of the warrant
6 to be served.

7 MS. FULLER: The next paragraph, Your Honor,
8 addresses --

9 THE COURT: Okay.

10 MS. FULLER: -- or it states that the statutory
11 provisions -- like if you read down -- covering the
12 filing and return of search warrants are ministerial
13 in nature, the violation of which does not in itself
14 invalidate an otherwise lawful search or requiring
15 suppression of evidence seized thereby at least in the
16 absence of demonstrated prejudice to the defendant.

17 THE COURT: Yet, again, it says years long delay
18 in locating and filing the original warrant that was
19 issued by state court judge may raise concerns about
20 clerical operations after the search was conducted does
21 not weigh against the finding that the police searched
22 Apartment 212 pursuant to a warrant.

23 It seems to be saying here that in this case an
24 original signed warrant was located. I agree with you
25 that under the law of South Carolina, and it stands to

1 reason that under the law of California, filing the
2 return is merely a ministerial duty that the officer
3 has and doesn't otherwise affect the validity of the
4 search where there's probable cause supported by other
5 affirmation.

6 But I'm reading this case and it sounds as if the
7 court in Ellis had an actual signed search warrant or a
8 copy of an actual signed search warrant and apparently
9 the law's the same in California as it is in South
10 Carolina. There's no state court authority requiring
11 suppression as a remedy for failure to comply with the
12 search warrant return procedures.

13 It would appear that they at least had a copy of
14 the signed warrant in this case.

15 MS. FULLER: Your Honor, I'll offer an alternative,
16 if you want it. So looking at the state -- the penal
17 code that I handed up, if you go to 1538 -- I think
18 it's 38.

19 THE COURT: Give me that again, please.

20 MS. FULLER: The 1538.5. So it's the procedure in
21 California that details when a defendant may move for
22 the return of property that's being held. So in this
23 case the charges were never brought, never filed, so at
24 this point the property left at the City of Fairfield
25 Police Department would have been considered abandoned

1 and he never exercised any rights or duties pursuant to
2 State of California Penal Code 1538.5 moving for the
3 return of the objects seized in that search warrant, and
4 so it would be the State's position that those materials
5 be considered abandoned in custody of the City of
6 Fairfield.

7 MR. SPANGLER: And, Judge, this is a cell phone
8 that the police came into his house and took and then
9 he's been locked up since then. The idea that he needed
10 to come out and assert some right to get his cell phone
11 back that the Supreme Court has held contains all of his
12 private data, he definitely has a reasonable expectation
13 of privacy in it. That's almost -- it just doesn't make
14 sense, that argument, that he had some duty to go and try
15 to retrieve his cell phone that we heard had been stored
16 in evidence since May of 2014.

17 MS. FULLER: Well, now that's a different argument,
18 Your Honor, because there's a separate search warrant for
19 the phone and I don't believe that's being challenged and
20 that has been properly complied with in South Carolina
21 where the phone is presently. But in terms of the City
22 of Fairfield, if we're applying California law -- and,
23 like I said, their search warrant statute is a lot more
24 detailed than ours and --

25 THE COURT: Well, one thing -- one thing that maybe

1 helps me answer the first question is I'm looking at
2 1538.5(a)(1), defendant may move for return of property
3 or to suppress as evidence any tangible or intangible
4 thing obtained as a result of a search or seizure on
5 either of the following grounds, and you look down under
6 (B) the search or seizure with a warrant was unreasonable
7 because any of the following applies, colon, number one
8 -- or little "i" rather, the warrant is insufficient on
9 its face. Four, the method of execution of the warrant
10 violated Federal or state constitutional standards.

11 MS. FULLER: Your Honor, I will note for the
12 record the cell phone is currently in South Carolina,
13 so a motion to suppress the execution of a South Carolina
14 search warrant going into that phone would be a different
15 argument, and I don't believe that's been made. So we're
16 still just dealing with the seizure and so South Carolina
17 code and caselaw would control actually going in and
18 executing a search warrant on the actual cell phone since
19 it now in South Carolina.

20 THE COURT: Which raises the question of what the
21 ramification would be under South Carolina law if the
22 initial seizure of the item was unlawful. Let's assume
23 that you -- that you unlawfully seized an automobile
24 under Georgia law, had it towed to South Carolina, and a
25 valid search warrant was conducted in South Carolina

1 where you found the murder weapon. What's the law on
2 that?

3 MS. FULLER: Well --

4 MR. SPANGLER: Well, Judge, we think it would be
5 the fruit of the poisonous tree --

6 MS. FULLER: I disagree.

7 MR. SPANGLER: -- that the first search, if there's
8 not enough there, it would cut off all the subsequent
9 searches. I believe what the evidence will show in this
10 case is that the phone was directly -- it was seized
11 in California pursuant to whatever warrant was issued
12 or signed or may not have been signed and then it was
13 directly transferred from California to South Carolina,
14 and that's the piece of the chain that's missing, all
15 right? If we can't get past this first argument as to
16 whether the seizure was lawful, California then moving
17 it directly to South Carolina, the search in South
18 Carolina is the fruit of the poisonous tree and would be
19 excluded as well.

20 MS. FULLER: Your Honor, this -- I would disagree.
21 So you're dealing with a search. We're challenging the
22 search warrant right now, the search. Law enforcement
23 seized that item pursuant to a lawful search warrant.
24 There's been no challenge that the search -- the seizure
25 of the phone was invalid or illegal, so then we can

1 easily fall back on good faith. They were relying on a
2 valid search warrant at the time of the actual seizure.
3 Those are two different arguments.

4 So once we move past the seizure, now we're in
5 South Carolina, so the phone is here. If we're going
6 under Defendant's -- charges were not brought. The
7 Defendant could have moved to release that item. It's
8 been five years it's been sitting there. There were no
9 charges filed, it never went up. I understand -- I
10 understand that, but we've got to keep it separate.
11 Search and seizure are two different procedures here.

12 So law enforcement -- and that's well established,
13 I believe -- I would venture I could say across the
14 country for good faith reliance on a valid search warrant
15 when something's seized in property.

16 The first thing that I brought to the Court was
17 challenging the validity of the search warrant and I
18 argued, hopefully, some good caselaw that establishes
19 that we can establish the validity of the search warrant
20 pursuant to secondary evidence, and I believe that we
21 can. I think there's enough caselaw that supports
22 establishing the validity of the search warrant with
23 secondary evidence. Challenging the seizure is a
24 different issue and I don't believe that was challenged
25 and I don't believe it can be because law enforcement

1 was operating under what they thought was a valid search
2 warrant.

3 So it's a lot -- a lot going on here, but I think
4 -- I think we have grounds for admitting that search --
5 the cell phone. I believe in the alternative it was
6 abandoned and if we follow California penal code that
7 item could have been returned to the Defendant. And we
8 see defendants do that all the time. As soon as they
9 get transferred to the Department of Corrections or
10 released, they're petitioning for the release of their
11 property.

12 THE COURT: Solicitor, I'm simply looking at
13 Freeman, to take away defendant's right to be free
14 from unreasonable searches and seizures was violated
15 by failure of the State to produce original warrant and
16 return for trial court's review on motion to suppress.
17 It was impossible for the trial judge to determine as a
18 matter of law that the search warrant was legally proper
19 where he, the judge who issued the warrant, had no
20 recollection of receiving or signing the original return,
21 never provided a sufficient explanation concerning the
22 location of the original warrant, never had opportunity
23 to review the original return.

24 I'm going back to cases that I tried as a trial
25 attorney. I had a similar type of an issue where -- it

1 was Judge Johnson and this was '95, '96 -- somehow the
2 original got -- it was back when you used that old
3 carbon paper for some of these warrants and apparently
4 for whatever reason the judge's signature was not on
5 the warrant. The officer did complete the affidavit
6 portion and everything, but the court in that instance
7 had a copy of the warrant, one of those old carbon
8 copies, but nowhere on it was the judge's signature,
9 the judge could not recall having even met with the
10 officers.

11 I have a problem holding that the property was
12 abandoned when the Defendant has been in pretty much
13 continual custody, and I'm assuming was charged shortly
14 after he was taken into custody and probably taken over
15 here to South Carolina at some point. I guess in 2016.

16 MS. FULLER: He was not charged --

17 MR. SPANGLER: Well, Judge, he was charged in
18 California and then he did some time in California, then
19 as soon as he was released in California, he wasn't
20 really released, he got hit with the South Carolina and
21 was immediately moved here.

22 MS. FULLER: He wasn't charged in South Carolina
23 until July of 2016.

24 THE COURT: When did the search of the phone in
25 South Carolina take place?

1 MS. FULLER: Last month.

2 THE COURT: Last month?

3 Let me take a break and discuss this with my law
4 clerk.

5 MS. FULLER: Thank you, Your Honor.

6 (Recess taken at 10:41 AM.)

7 (State's Exhibit Number 4, the redacted interview
8 marked during pre-trial, was substituted with further
9 redactions after objection by defense.)

10 (State's Exhibit Numbers 119 through 125 were
11 marked for identification.)

12 (Back on the record at 11:09 AM.)

13 BAILIFF: Come to order. Court is back in
14 session.

15 THE COURT: Thank you. Please have a seat.

16 Okay. If we may, we'll go back on the record in
17 the State versus Mr. McClure. I have had a chance to
18 consult with Judge Keesley on this question.

19 Solicitor, I do not believe that under -- I believe
20 that under California law the courts of California would
21 not find this to be a valid search, so it then turns to
22 the question of whether a good faith exception would
23 apply to permit the subsequent search in South Carolina
24 pursuant to a search warrant.

25 Can you provide me with a case that is reasonably

1 similar? I've looked at McKnight from '87. I looked at
2 -- of course, I'm familiar with Leon. I've looked at
3 Robinson from 2014, an appellate court decision, and I'm
4 struggling to square those factual situations with this
5 because, candidly -- I mean, candidly, my gut, Judge
6 Keesley's gut, his clerk's gut, say that it's the fruit
7 of the poisonous tree and that any subsequent search
8 under South Carolina law, even if it was valid, the
9 initial seizure of the phone which contained the data,
10 if it's invalid, then that fruit extends to South
11 Carolina even if search in South Carolina was valid.

12 Can you point me to something that's closer to
13 the factual scenario that we have here under Federal
14 jurisprudence or --

15 MS. FULLER: If I can have a moment, Your Honor,
16 just to look through.

17 THE COURT: Sure.

18 And, similarly, if the defense is familiar with
19 something that might shed light on this, feel free to
20 inform me.

21 MS. FULLER: Your Honor, just to be clear, you
22 said you looked at Leon already and McKnight. Did you
23 look at Sachs? I need to go pull it, but --

24 THE COURT: Which one?

25 MS. FULLER: Sachs, I think, where the search

1 warrant was defective under -- it was a South Carolina
2 case and the seized items may be admitted under the
3 good faith rule.

4 THE COURT: I missed what you said, and I'm so
5 sorry. Say that again, please.

6 MS. FULLER: I think it's Sachs, S-A-C-H-S. I'd
7 like to go print it so I can read it completely.

8 THE COURT: Do you have a cite and I can look it
9 up?

10 MS. FULLER: 264 S.C. 541. I'm not sure exactly
11 what he's looking through. I'm shorthanded.

12 MR. SPANGLER: And, Judge, we would just put on
13 the record that State v. Adams, 409 South Carolina 641,
14 that deals with a GPS search or a GPS put on a vehicle
15 and then a search following that GPS and they found
16 that the exclusionary rule despite acting in good faith
17 excluded the search because the placement of the GPS was
18 not a lawful search.

19 THE COURT: That was a recent one. I think I
20 remember that one.

21 MR. SPANGLER: Yeah, that was 2014, Judge.

22 THE COURT: All right. I have reviewed Sachs and
23 I've reviewed Adams. I don't really think that they're
24 terribly on point. Adams, as cited by the defense,
25 deals with more of a situation where you have a specific

1 statutory provision concerning putting mobile tracking
2 devices on cars, the police didn't even know that section
3 existed, and they put the tracking device on the car
4 anyway. In that case, there's clear and unambiguous
5 proof that the authorities failed to follow the law and
6 I think that's really what the Supreme Court is hanging
7 its hat on.

8 Sachs is a little bit dated. S-A-C-H-S. Sachs is
9 a little bit dated and generally stands for who can
10 issue the search warrant, general issues about probable
11 cause. The question here is -- is essentially, I think,
12 more one of Federal law than state law because we have
13 a -- under California law a search, which was invalid.
14 The question then becomes whether South Carolina
15 authorities could rely in good faith on an invalid search
16 or does the initial search and seizure of the telephone,
17 as well as all the data in the telephone, whether under
18 Federal law the subsequent search of that under South
19 Carolina law requires suppression under the fruit of the
20 poisonous tree type of a doctrine. It seems reasonable
21 for the Court --

22 MS. FULLER: Judge, just a question.

23 THE COURT: Yes, ma'am.

24 MS. FULLER: Under Leon you don't think that applies
25 in terms of the reasonable reliance? Because there was

1 no way of knowing until we were preparing for trial that
2 we didn't -- you do your normal request a couple of weeks
3 before for the original certified true copy and there's
4 no way of knowing at the time when the phone was sent
5 over here that they didn't have a true certified copy of
6 their search warrant, and that's literally how it played
7 out until last week and putting together our certified
8 binder and we realized they didn't have it. So law
9 enforcement here wouldn't have known that the search
10 warrant was lost in California at the time of executing
11 the search warrant here to search the phone.

12 So I'm just -- I'm still looking to find a case
13 like directly on point, but Leon I think stands for the
14 -- stands for the fact that law enforcement can rely on
15 good faith because the initial seizure we thought was --
16 well, I know you disagree with --

17 THE COURT: I lost -- I lost the cite on Leon
18 somewhere and it's not on my trail here.

19 MS. FULLER: 468 U.S. 896. I apologize. I thought
20 you said you looked at it.

21 THE COURT: I did and I want to look at it again
22 because -- I mean, part of me says that okay, perhaps
23 Federal law should apply to the situation, Federal law
24 is all encompassing with the fifty states and territories
25 and Puerto Rico, et cetera, and if that is the case, then

1 perhaps Leon should apply.

2 And, admittedly, based upon the testimony that's
3 been presented here, this isn't a situation where someone
4 simply went completely rogue, decided that they were
5 gonna sign a search warrant and then omits -- or signs
6 the affidavit and then omits to get a judge's signature,
7 that kind of a thing. You know, I'm harkening back to
8 -- we're citing old judges now, but Henry Floyd in '97,
9 '98 on a case I was trying said Mr. Addy, there is no
10 such thing as a good faith exception in South Carolina
11 where a warrant is facially invalid on its face, and I
12 think that was a situation where the judge thought he
13 signed a warrant and didn't or something.

14 You wanted to chime in, Mr. Spangler?

15 MR. SPANGLER: Briefly, Judge.

16 We would just put on the record that the warrant
17 in South Carolina, that's not a warrant actually seizing
18 the phone. The warrant that was executed in South
19 Carolina is just for a search. So that warrant standing
20 alone is only searching a phone. We only get to that
21 search after that phone has actually been seized. That
22 search warrant refers to the phone being located at
23 the sheriff's department. It doesn't command law
24 enforcement to go out and get it from anywhere, they
25 already have it. So we move further up in that chain

1 to when the phone was first seized out in California and
2 at this point it's our contention that the exclusionary
3 rule would apply because we don't have any evidence about
4 that initial search, that first search warrant, and it
5 would be fruit of the poisonous tree. We'd just like to
6 put that on the record and that Leon, a good faith basis,
7 would not apply in this case.

8 THE COURT: Let me look at Leon again real quick,
9 please.

10 My problem in relying on Leon, Solicitor, is that's
11 -- of course, that's a situation where the officer did
12 everything he could, the magistrate thought there was
13 probable cause and the subsequent court decided that
14 there was not probable cause for that search.

15 MS. FULLER: I guess when I think about the
16 exclusionary rule and the fruit of poisonous tree, and
17 I'm going back to high school and undergrad is -- I was
18 taught is to deter police conduct and so -- or would
19 show police misconduct and so in this situation I can't
20 articulate that police acted inappropriately. I know we
21 don't have the true certified copy of the actual search
22 warrant, but we had an officer testify that in sixteen
23 years in law enforcement he wouldn't have executed a
24 search warrant that wasn't valid.

25 And I respect the Court's ruling on not having it

1 in front of you and signed by the judge, but he did do
2 a report while -- like right shortly after he executed
3 his search warrant, he's listed as the finder and he
4 did testify, so I still lean on my secondary evidence
5 argument.

6 So that's one thing and then when you come to South
7 Carolina, law enforcement here is completely relying on
8 evidence sitting in property for five years where no
9 one's acted on it and no one's requested it be released,
10 so when it's transferred here we appropriately execute
11 a search warrant on it relying on the fact that it was
12 seized.

13 So I -- I guess I don't see how good faith wouldn't
14 apply on our officers here relying on a valid search and
15 seizure in California. So that's -- that's just -- the
16 exclusionary rule in this situation wouldn't necessarily
17 deter police from acting because they -- in my opinion
18 they acted appropriately and correctly because I don't
19 think Officer Arroyo would have gone to the Defendant's
20 address or forced entry into the home, taken photographs,
21 executed a search warrant if he didn't have a valid
22 search warrant.

23 THE COURT: And I don't disagree with you.

24 MS. FULLER: I understand.

25 THE COURT: It's a function of California law

1 controlling that issue, and I agree with you, but --
2 and, again, that's based upon my cursory reading of
3 Ellis and the portions of Ellis that seems to indicate
4 there was more to what they had in that case than what
5 we have in this case.

6 Out of curiosity, what was found on the phone when
7 you-all searched?

8 MS. FULLER: A lot.

9 THE COURT: Okay.

10 MS. FULLER: I can show you what we have marked.
11 I've listed out the items on the front.

12 THE COURT: All right. So it's basically some
13 additional corroboration of stuff that has already
14 come in and that kind of thing. I was just curious.
15 It's obviously not relevant to the Court's --

16 MS. FULLER: I figured -- I figured you were just
17 curious why the State was interested.

18 THE COURT: I was merely curious. It looks like
19 it was additional cumulative evidence and stuff that's
20 already been testified to.

21 Candidly, Solicitor, I'm -- if I had a day or a
22 half a day to put into this, to research it, I may come
23 to agree with your position. And, speaking candidly,
24 I'm somewhat mischievously inclined to rule in your
25 favor simply so that the Supreme Court can pass upon

1 this question. But in all honestly based upon my review
2 of the cases, my discussion with Judge Keesley, my gut
3 instincts and absent something on all fours saying that
4 this was valid, I'm ruling that the search in South
5 Carolina was tainted by the initial illegality of the
6 California search and will not -- will not be permitting
7 the State to go into testimony about anything associated
8 with the items that were seized out in California.

9 I understand your position though and I think you
10 make a fine argument, but I believe that that's the
11 correct ruling on the law at this point in time, so that
12 will be my ruling.

13 MS. FULLER: Thank you, Your Honor.

14 THE COURT: Do we have -- boy, that really put us
15 behind the eight ball. Who's next?

16 MS. FULLER: The -- Mike Phipps.

17 THE COURT: All right. Let us have the jury,
18 please.

19 MS. FULLER: Oh, I apologize, Your Honor.

20 THE COURT: Hold them for one second.

21 Yes, ma'am.

22 MS. FULLER: Do we have an official ruling on the
23 text content? It's gonna come in now or we'll be moving
24 it in now.

25 THE COURT: Okay. So long as the -- you're talking

1 about this?

2 MS. FULLER: Yes, Your Honor.

3 THE COURT: Okay. So long as you redact out the
4 Greenwood account owner-type stuff because that's
5 clearly hearsay and we cannot establish that that
6 information was in furtherance of a conspiracy because
7 it has to be communications between the co-conspirators
8 under the case that I cited yesterday and we cannot
9 establish the Greenwood account owner is a
10 co-conspirator, so that would be need to be redacted
11 out.

12 But other than that, the rest of the material
13 subject to Mr. Spangler's objection unless there's
14 something else that Mr. Spangler wants to alert me to
15 by way of the law, but the Court would find that these
16 text messages would constitute evidence of a conspiracy
17 outside of the hearsay exclusionary rule.

18 MR. SPANGLER: Yes, sir.

19 MR. GRAHAM: Judge, if we might, if I understand
20 your ruling, you want us to strike anything that was
21 sent by the Greenwood account owner?

22 THE COURT: Sent or received because we can't
23 establish that they were part of the conspiracy, so.

24 MR. GRAHAM: The argument -- if I may, Your Honor?

25 THE COURT: Sure.

1 MR. GRAHAM: If you look down on the bottom of the
2 first page, there's a text from the Greenwood account
3 owner to Justin Butler that says are you gonna need a
4 hammer -- hamma, H-A-M-M-A, to fix it or not. The
5 testimony from the interpretation of that is that's a
6 gun and they had to have a gun to shoot the people
7 involved in this case.

8 THE COURT: I understand, but the -- the case I
9 cited yesterday that I looked at it at length, it has
10 -- any communication has to be in furtherance of the
11 conspiracy, to support the conspiracy, made by
12 coconspirator, and I don't know who the Greenwood
13 account owner is, I don't know whether he was talking
14 about fixing a bad deck on the back, a nail that was
15 popped up on is somebody's back deck. Without context
16 of who the Greenwood account owner is, it's impossible
17 for this Court to conclude that he's a member of any
18 conspiracy involving Mr. McClure and Mr. Butler.

19 I appreciate your position though. Anything
20 involving the Greenwood account owner would need to be
21 redacted. Plus it looks like it's one-way messaging, so
22 I don't know what's going on with that, but it looks
23 like the Greenwood account owner is pushing this
24 information to Mr. Butler and Mr. Butler responds only
25 on 4-24 at 18:07 and then, again, at 7:56.

1 MS. FULLER: Your Honor, it's in timeline format.
2 I apologize for jumping in. I guess in terms of the
3 testimony that Detective Mefford put forth was that
4 number of interest in the effort to identify that person
5 and we have approached that unidentified number as an
6 unidentified co-conspirator and prior to introduction
7 of those text messages would be the cell phone records
8 that would put them -- put Mr. McClure and Mr. Butler
9 with that person at the same time in Greenwood prior
10 to this happening and then we have the messages for
11 context. And so if we present the additional information
12 in addition to Mr. Mefford's testimony about that number
13 and the cell phone information that would come forth
14 prior to the introduction of the messages, would that
15 impact your ruling? Because I know the standard is kind
16 of low in terms of identifying someone and it doesn't have
17 to be -- the caselaw doesn't say it has to be a charged
18 co-defendant and so this would be communications and
19 Mr. Butler does respond back and forth and then phone
20 records that we're about to introduce puts Mr. McClure
21 corresponding with that same number before and after this
22 occurred and then you have the text messages there that
23 backs up the communication with that unidentified person
24 with Mr. Butler, so I guess it would be developed through
25 this next witness, that communication, and the last thing

1 entered would be the text message content to tie it all
2 together.

3 THE COURT: All right. I'm gonna let you speak
4 in a minute, Mr. Spangler. I'm not necessarily saying
5 redact out the fact that the calls were placed with
6 Greenwood account owner. It's the substance of the text
7 messaging that the Court is having more of a problem
8 with. That I don't know that there's enough here in and
9 of itself to demonstrate the Greenwood account owner
10 is a co-conspirator. I understand your interpretation
11 of hamma. I sometimes -- you know, maybe it could be
12 used in a number of different contexts. I don't know.
13 I have a problem with the hearsay nature of somebody
14 where it's not absolutely clear under the State's theory
15 or what the evidence is so far that that person is, in
16 fact, an unknown co-conspirator.

17 You wanted to chime in?

18 MR. SPANGLER: And, Judge, that's exactly what our
19 position is. We have an unknown phone number, not
20 associated with anybody in this case. All we know is
21 that it was texted by one of the people and at that point
22 it's a statement by a third party out of court that we
23 anticipate the State's gonna rely on for its truth and
24 argue that it's probative of the Defendant's guilt. It
25 raises the hearsay issue, it raises the confrontation

1 clause issue, a whole host of issues.

2 So we would just ask the Court, just like the ruling
3 was, that the text message content be redacted from that
4 certain document.

5 MS. FULLER: Thank you, Your Honor.

6 THE COURT: I think it's best that the conversation
7 between -- I'm certain that's the case, that it's best
8 to go ahead and redact the actual -- you can leave the
9 phone number and show that it took place, but what was
10 actually said between Butler and Greenwood account
11 owner we'll just need to pull that out, okay?

12 MS. FULLER: We were just gonna -- I think she's
13 preparing -- I think your first ruling suggested taking
14 the whole line out, so I think that's what she went to
15 prepare.

16 THE COURT: Right.

17 Okay. Can we get started with that witness even
18 though she's working on that?

19 MS. FULLER: Yes, Your Honor.

20 THE COURT: Let's have the jury, please.

21 (Whereupon, the jury returns to the courtroom at
22 11:42 AM.)

23 THE COURT: All right. Ladies and gentlemen, I am
24 very sorry for keeping you waiting back there. To put
25 it simply, sometimes some trials are more trying than

1 others. There was a legal issue that came up in the
2 case, the Court had to do a little bit of legal research
3 and I have now ruled on what was a relatively novel
4 question, at least in my experience, and so we're in a
5 position now to move forward with the case further.

6 So, Ms. Fuller, if you'd call your next witness,
7 please.

8 MS. FULLER: Thank you, Your Honor.

9 The State calls Investigator Mike Phipps.

10 (Whereupon, Michael Phipps was duly sworn by the
11 Clerk of Court.)

12 THE CLERK: Once you're seated state your full
13 name, spelling your last, please.

14 THE WITNESS: Michael Phipps, P-H-I-P-P-S.

15 MICHAEL PHIPPS,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. FULLER:

19 Q. Where are you currently employed?

20 A. With the Lexington County Sheriff's Department.

21 Q. And how long have you been employed there?

22 A. Twenty-two years.

23 Q. And what is your current position?

24 A. I'm a forensic technology examiner. I examine
25 evidence that is digital in nature in criminal

1 investigations.

2 Q. And how long have you been doing that?

3 A. It was a collateral duty for awhile while I was a
4 crime scene investigator, but about a total of ten years.

5 Q. Let's talk about that. How long were you a crime
6 scene investigator?

7 A. For fourteen years.

8 Q. And then your total amount of law enforcement?

9 A. Twenty-two.

10 Q. And you talked about the forensic technology examiner,
11 can you expand upon exactly what you do as a forensic
12 technology examiner?

13 A. We take items such as phones, computers, GPS devices,
14 DVRs, anything electronic, and we attempt to recover
15 anything that's on that that could be considered evidence
16 in a criminal investigation in a forensically sound manner.

17 Q. And what type of education or training do you have in
18 forensic technology examination?

19 A. I've attended various courses. I think upwards of
20 fourteen different courses totalling over 650 hours of
21 instruction in various aspects of digital investigations.

22 Q. And that would include specifically phone message
23 analysis and mapping and extraction of data from phones?

24 A. It does, yes.

25 Q. Approximately throughout your career how many phone

1 extractions have you performed?

2 A. I kind of don't keep track anymore, but probably in
3 excess of 800.

4 Q. And in terms of phone record analysis, how many have
5 you, I guess, interpreted or looked at or reviewed?

6 A. Probably around fifteen different cases and then
7 within those cases various numbers.

8 Q. Various phones?

9 A. Yeah.

10 Q. Okay. And have you testified in court before as an
11 expert?

12 A. I have.

13 Q. How many times?

14 A. Fourteen times.

15 MS. FULLER: Your Honor, at this time the State
16 would offer Investigator Michael Phipps as an expert in
17 forensic technology examination to include the subsets
18 of forensic extraction and also cell phone record
19 analysis and mapping.

20 MR. SPANGLER: No objection, Judge.

21 THE COURT: Thank you.

22 BY MS. FULLER:

23 Q. Investigator Phipps, do you recall reviewing cell
24 phone records in this case?

25 A. I do. Yes, ma'am.

1 Q. And to include some of those records, I'm gonna show
2 you a list of numbers and ask if -- do you recall being
3 familiar with this phone number, 803-221-5730?

4 A. Yes, ma'am.

5 Q. And do you recall being familiar with 404-695-5436?

6 A. Yes, ma'am.

7 Q. And do you recall 707-392-0402?

8 A. I do.

9 Q. Do you recall 510-875-0391?

10 A. I do, yes.

11 Q. Do you recall 404-780-9703?

12 A. Yes, I do.

13 Q. And 864-238-3791?

14 A. Yes, ma'am.

15 Q. And do you recall in the case 925-895-2790?

16 A. Yes.

17 Q. For the purposes of your testimony, I'm just gonna
18 leave this up on the easel so that it can be easily
19 referenced.

20 MR. SPANGLER: Judge, could we approach briefly?

21 THE COURT: Sure. Come on up.

22 (Proceedings held at the bench; not reported.)

23 THE COURT: Please proceed, Ms. Fuller.

24 MS. FULLER: Thank you, Your Honor.

25 BY MS. FULLER:

1 Q. And I want to show you what's been marked for ID as
2 State's 96 and ask you if you recognize this?

3 A. I do. It has my initials.

4 Q. And are these AT&T records as it relates to
5 803-318-8366?

6 A. They are, yes.

7 Q. And I believe there's already been previous testimony
8 from the victim that that was the phone that was removed
9 and also already marked for ID is that 404-695-5436 number,
10 the 707-392-0402, and that's State's 65. The previous
11 one was State's 64. Cell phone records, State's 66,
12 510-875-0391, State's 67, 404-780-9703, and State's 68,
13 864-238-3791. All of these numbers were numbers that you
14 had phone records for and had the opportunity to review in
15 this case?

16 A. Yes, ma'am, they were.

17 Q. In preparing for the trial of this case, as it relates
18 to the Sprint phone records for 707-392-0402, did you
19 prepare several exhibits for court today?

20 A. Yes, ma'am, I did.

21 Q. I'm gonna hand you what's been premarked as State's
22 119, 120, 121, 122, 123, 124, and 125, and ask you to take
23 your time and review them.

24 A. Yes, these are the exhibits I created.

25 Q. And that's as it relates to that 707 number, 392?

1 A. Yes, ma'am.

2 Q. Okay. And can you -- before we really dive into
3 it, can you explain for the jury what exactly are you --
4 what exactly do you do with cell phone records? What
5 information does it provide?

6 A. Well, your cell phone provider, Sprint, Verizon,
7 whoever it may be, of course, logs all the traffic to and
8 from your phone for purposes of billing, and under a court
9 order or a search warrant they supply those records to us
10 as law enforcement in a criminal investigation. So we'll
11 take those records, sort through them and identify numbers
12 of interest and then just list or log those -- those
13 numbers for an exhibit.

14 Q. So based on the -- do the records come to you when you
15 request them from the cell phone providers, do they come in
16 the normal format that they would look on our typical cell
17 phone bills?

18 A. Not at all. They usually come on several Excel
19 spreadsheet tables that have to be combined to make sense
20 of them.

21 Q. So you're essentially having to interpret them?

22 A. Right. Not so much interpret, but just manipulate
23 them so that you get all the information in one place at
24 one time to be able to review it.

25 Q. And you testified that these are the records that you

1 prepared?

2 A. I did.

3 MS. FULLER: At this time, Your Honor, the State
4 seeks to introduce 120 through 125 into evidence.

5 MR. SPANGLER: Judge, if we can just take a look
6 at them, please.

7 THE COURT: 119 no though, right?

8 MS. FULLER: (Shakes head.)

9 THE COURT: Got you.

10 MR. SPANGLER: No objection to those records,
11 Judge.

12 THE COURT: Those are in evidence then, 120
13 through 125.

14 MS. FULLER: Thank you, Your Honor.

15 (State's Exhibit Number 120, 121, 123, 124 and 125,
16 cell phone records, were admitted into evidence.)

17 BY MS. FULLER:

18 Q. As it relates to the 707-392 phone number, these
19 aren't the entire phone records, these are just ones we
20 asked you to prepare for court today?

21 A. Yes. Those are from the -- what's called the CDR
22 or call detail record and are filtered to show specific
23 communications between the owner of the phone's records and
24 various numbers.

25 Q. And did you eventually use some of these records to

1 create cell phone maps in this case for this court
2 proceeding?

3 A. We did.

4 Q. So first looking at State's Exhibit 121, can you
5 explain to the jury what exactly they're looking at on this
6 document?

7 A. So it's drawing from the records of the phone number
8 area code 707-392-0402 and this is filtering communication
9 between that number and the number area code 404-695-5436,
10 and in this instance it's listing all incoming calls from
11 that number in date-time sequence and the calls have, of
12 course, the number that was calling the target or the owner
13 of the record on the far left, then it's showing type of
14 call, which is usually an inbound. In this case, you'll
15 see some that indicate routed call, which can either mean
16 that the person being called, in other words, the 707
17 number who's being called was out of range, it may have
18 gone to voicemail, something like that. Then you have the
19 start and end time for the communication and then the total
20 number of seconds of that communication.

21 Q. And so that 404-695 number is the number on State's
22 Exhibit 78 that we know was associated with Justin Butler
23 in this case?

24 A. That's correct.

25 Q. Now the first start date on this record is April 23rd

1 of 2014; is that correct?

2 A. It is.

3 Q. And did you have records that preceded that start
4 date?

5 A. Of all the records that were provided to us from
6 Sprint, that's the earliest indication of communication
7 using that number.

8 Q. And just so it's clear, that's communication between
9 the 707 number and that 404 number?

10 A. It is. Yes, ma'am.

11 Q. So they started communicating on this phone on
12 April 23rd of '14?

13 A. Yes, ma'am.

14 Q. And you indicated that that was inbound, but just so
15 the jury sees the entire thing, and they'll have it, it
16 goes to a page and roughly a half. Looking at the second
17 document of State's 26 -- 121, can you explain to the jury
18 what this is?

19 A. It's the same format, but this is showing outbound
20 calls from the 707 number to the 404 number.

21 Q. And, again, that start date is April 23rd of 2014?

22 A. Yes, ma'am.

23 Q. Looking at State's 120, can you explain to the jury
24 what they're looking at here?

25 A. Again, the same Sprint records from the 707 number,

1 but this time communication between that and area code
2 404-780-9703.

3 Q. And from State's 78, that would be communication with
4 Ladondra Ellis?

5 A. Yes, ma'am.

6 Q. So that 707-392, associated with Terry McClure, these
7 are communications with Ladondra Ellis?

8 A. They are.

9 Q. And this is both the outbound and the inbound calls?

10 A. Yes, ma'am.

11 Q. And on April 26th -- or April 24th, these calls would
12 be both showing outbound for April 24th and down here from
13 here inbound on April 24th?

14 A. They do, yes.

15 Q. And these times are in what we would call military
16 time?

17 A. They are.

18 Q. So if I point to this April 24th inbound call here at
19 15:44, what time would that be?

20 A. 3:44.

21 Q. And this indicates that they actually communicated?

22 A. Right. That's the duration of the call.

23 Q. I think I'm in the wrong line. I apologize. On the
24 24th -- and this one -- I apologize. On April 24th, 16:16,
25 does this indicate that they communicated?

1 A. Yes, it does.

2 Q. As well as this line?

3 A. It does.

4 Q. And on the 26th as well?

5 A. The 26th is showing a routed call, the duration of it.
6 Again, a routed can either be to voicemail or it can still
7 make a connection. There's no true way to determine that,
8 but that would be a very long voice message if it was a
9 voice message.

10 Q. And what time was that communication?

11 A. At 7:53.

12 Q. And then looking at State's 123, again, these are
13 similar records, and this would be Terry McClure
14 communicating with this unknown Greenwood number?

15 A. They are, yes.

16 Q. And this would be communications -- did you only -- I
17 only see communications for April 26th, which is the date
18 of this incident. Did you filter that date only?

19 A. No, it was all the calls available for the call
20 records -- the Sprint call records.

21 Q. And so I believe it starts down here, 14:19. Would
22 that be 2:19 in the afternoon?

23 A. Yes, ma'am.

24 Q. And then 2:44 and then 3:46 and then 17:25. Would
25 that be 5:25?

1 A. Right. Yes, ma'am.

2 Q. And then down here for the outbound calls to that
3 number, 17:18, what time would that be?

4 A. 5:18.

5 Q. And they're actually communicating? These are all
6 connected calls?

7 A. Yeah, those are all outbound calls.

8 Q. And that would be Terry McClure calling this unknown
9 Greenwood number?

10 A. Yes, ma'am.

11 Q. Looking at these records, State's Exhibit 124, would
12 this be between Terry McClure and I see a 916-514-2961
13 number, and looking at State's 78, would that be associated
14 with Alonzo Walker?

15 A. It is. Yes, ma'am.

16 Q. And what is the start date of their communication on
17 the inbound calls?

18 A. April 8, 2014.

19 Q. And it goes some days throughout April and then here
20 on April 28th there's communication?

21 A. Yes.

22 Q. And on the 29th?

23 A. Correct.

24 Q. And these would just be the outbound calls, the rest
25 of State's 124?

1 A. Yes, they are.

2 Q. Between Terry McClure and Alonzo Walker?

3 A. That's correct.

4 Q. Now can you explain to the jury what State's 125 is?

5 A. This is a targeted filtered section of the CDR where
6 we're looking specifically at a phone number related to a
7 company called Cheap Tickets and it shows a little bit
8 of time before and after that moment where the number
9 888-922-8849 was called, which we identified as belonging
10 to the company Cheap Tickets.

11 Q. So this is Terry McClure calling that company?

12 A. It is.

13 Q. And who is he communicating with before and after
14 making that call to Cheap Tickets?

15 A. Primarily the 864-323-4419 number.

16 Q. And do you know that area code? Are you familiar with
17 it being in South Carolina?

18 A. I am, but I don't know the geographic area that it
19 covers.

20 Q. And is he also communicating with that 404 number
21 before and after?

22 A. He is, yes.

23 Q. And that's the number associated with Ladondra Ellis?

24 A. It is.

25 Q. I'm gonna show you State's 116 and I'm gonna ask you

1 if you recognize it?

2 A. I do.

3 Q. And what do you recognize that to be?

4 A. It's a map that was produced from cell phone records
5 for the area in California on April 4th.

6 MS. FULLER: At this time, Your Honor, the State
7 seeks to introduce State's Exhibit 116.

8 MR. SPANGLER: No objection, Judge.

9 THE COURT: Without objection State's 116 is in
10 evidence.

11 MS. FULLER: Thank you, Your Honor.

12 (State's Exhibit Number 116, map of Aegean Way,
13 was admitted into evidence.)

14 BY MS. FULLER:

15 Q. Looking at the map, there's an address at the top.

16 Were you given information as to that address?

17 A. I was.

18 Q. And who did that address belong to?

19 A. I was told it was -- through the course of the
20 investigation, it was determined to be Terry McClure's
21 address.

22 Q. And explain to the jury exactly what they're looking
23 at on State's 116.

24 A. The yellow dot is a cell phone tower, so when we look
25 at the call detail records we can identify the physical

1 location of a tower that a communication was routed through
2 when it was made. So during the course of the time period
3 that this map covers, there were several calls that were
4 transmitted through that tower and it's showing that tower
5 and its proximity to the 159 Aegean Way, California,
6 address.

7 Q. The second sheet of this, can you explain this to the
8 jury?

9 A. These are showing inbound and outbound phone calls
10 placed April 24, 2014, between 5:00 and 5:01 AM to -- to
11 and from two different numbers with the duration of the
12 time and all transient through the tower number 1421.

13 Q. So that 707 number associated with Terry McClure is
14 using a cell phone tower in Vacaville, California?

15 A. Right.

16 Q. I'm gonna hand you several exhibits to look at and ask
17 you to take your time and see if you recognize them.

18 A. Yes, ma'am, I do.

19 Q. And how do you recognize them?

20 A. All but one of them I created myself and the other I
21 consulted on.

22 Q. And were they prepared for trial here this week?

23 A. They were, yes.

24 MS. FULLER: At this time, Your Honor, the State
25 seeks to move these items into evidence.

1 THE COURT: What are their numbers again?

2 MS. FULLER: 83, 84, 85, 86, 87, 88, 89, 91, 92,
3 93, 94, 95.

4 MR. SPANGLER: No objection, Judge.

5 THE COURT: Without objection State's 83 through
6 95 are in evidence.

7 MS. FULLER: Thank you, Your Honor.

8 (State's Exhibit Numbers 83 through 95, cell phone
9 mapping, were admitted into evidence.)

10 MS. FULLER: And for the record these exhibits
11 were scanned in for easy display on two monitors.

12 THE COURT: Very good.

13 BY MS. FULLER:

14 Q. Can you go ahead and explain to the jury what they're
15 looking at in State's 83?

16 A. This is a map of Alabama and it's showing the mapped
17 phone calls that were to and from the phone number
18 404-695-5436 on April 24th from 8:59 AM to 3:48 PM central
19 time.

20 Q. And what exactly -- what locations were you able to
21 identify for the purposes of this map?

22 A. There's a Greyhound bus station in Athens, Alabama,
23 another Greyhound station in Birmingham, a third in
24 Gadsden, Alabama, and then an area around Anniston,
25 Alabama.

1 Q. And how are you -- what information are you using to
2 create this map?

3 A. Again, the CDR or call detail record for that 404
4 phone number. In addition to having the call logs, it has
5 specific information that gives us the physical location of
6 the tower that was used to place that call. We can then
7 take that information, determine its geographic location on
8 a map and plot it for a court exhibit like this.

9 Q. And the information displayed on the second page --
10 on the second page of this attachment, what information is
11 this?

12 A. Again, this is the -- the calls that took place with
13 the 404 number between the times 8:59 AM through 3:48 PM
14 on April 24, 2014. The left-hand column has the date and
15 time of the call, the next column over shows you the call
16 direction, whether it was an inbound, outbound or forwarded
17 call, then the numbers either to or from, the duration of
18 the call and then the tower number that was used during
19 that conversation.

20 MS. FULLER: I beg the Court's indulgence.

21 THE COURT: Yes, ma'am.

22 BY MS. FULLER:

23 Q. Now displayed on these monitors -- so here we have
24 the maps and then the call records on the monitors would be
25 associated with this map?

1 A. They are, yes.

2 Q. And looking at these call details, these are just
3 records for Justin Butler on that 404-695 number?

4 A. That's correct.

5 Q. And you were able to plot him or place him on this map
6 coming from Athens to Birmingham to another portion -- to
7 different parts of Alabama?

8 A. Right. The calls start at the top of the map in
9 Athens and then go down in time to Birmingham and up to
10 Gadsden and then down to Anniston.

11 Q. And looking at State's 84, can you explain to the jury
12 what we're looking at here?

13 A. We're looking at the calls for the 404 number in the
14 state of Georgia on April 24, 2014, from 5:45 PM through
15 6:20 PM, eastern time this time, and it's showing two calls
16 that were placed; the first being Tower 464, I believe
17 that's along I-20, and then coming into downtown Atlanta at
18 the Greyhound bus station, and that call was at 6:20 PM.

19 Q. And looking at State's 65?

20 A. This is the Sacramento airport. This is for the call
21 records for 707-392-0402 on April 24th at 6:58 AM through
22 7:27 AM Pacific time, and it's showing specifically two
23 towers close in proximity to the airport there where there
24 were four phone calls inbound and outbound with the 707
25 number.

1 Q. And, again, on these records, that 707 number is
2 communicating Justin Butler?

3 A. They are, yes.

4 Q. And this is the Sacramento airport. Now showing you
5 State's 86, what's contained here?

6 A. This is the Dulles airport in Virginia, April 24th,
7 3:45 PM through 4:11 PM eastern time. Again, the records
8 from the 707 number showing three calls that were placed
9 using towers that were either on the outskirts or right
10 within the property of the airport itself.

11 Q. I'm showing you State's 87. If you can explain to the
12 jury what they're looking at for this record -- for this
13 map?

14 A. Okay. This map is sort of a combined map. It's a map
15 for April 24th from 6:19 PM through 8:43 PM eastern time,
16 and it combines calls for both numbers, 404-695-5436, as
17 well as the 707-392-0402 number, placing those two phones
18 making calls within the same geographical area during that
19 same time period.

20 Q. So up here we're looking at the Greyhound bus station?

21 A. Right. And the blue -- Tower 395, blue in color,
22 correlates with the 404 number, would have had a call that
23 transients that 395 tower.

24 Q. And then down at the bottom of the map?

25 A. Then these are around the Atlanta airport, again,

1 color-coded to show each number, which tower was being used
2 for that particular phone number during that time period.

3 Q. Looking at the records for this map, what times do you
4 place both phone numbers at the Atlanta airport?

5 A. I'd have to see the front cover real quick again on
6 the map, please.

7 Can I approach?

8 THE COURT: Yeah, if you need to step down and get
9 a better look down there.

10 THE WITNESS: Yes, sir. Thank you.

11 THE COURT: Go ahead.

12 (Whereupon the witness steps down from the witness
13 stand.)

14 THE WITNESS: So starting with Tower 1586 right here
15 starting at 6:45 PM, at 7:27 PM they start to be -- at
16 7:27 PM they're both in the same geographic area around the
17 airport.

18 MS. FULLER: Thank you.

19 (Whereupon, the witness returns to the witness
20 stand.)

21 BY MS. FULLER:

22 Q. And then while I have this one up and you do see that
23 they're communicating with each other?

24 A. Yes, they are.

25 Q. And looking at this call at 8:22 PM, do you recognize

1 that number that the 404 number is calling?

2 A. The 5730 is VonKeith Toland's phone number.

3 Q. So that's actually reflected on Justin Butler's phone
4 record?

5 A. It is, yes.

6 Q. Now looking at State's 88, if you can go ahead and
7 explain to the jury this map.

8 A. This is the same concept. It's a combined map showing
9 both the 404 and 707 numbers this time covering from
10 April 24th at 10:26 PM through April 26th at 11:24 AM.

11 Q. And where you have -- they appear to be travelling.
12 Where do you have them travelling to?

13 A. I believe that's the Greenwood area there. I can't
14 quite see it. If you could zoom in. Yes, it's Greenwood.

15 Q. So at this point both phones have left the Atlanta
16 area and ended up in Greenwood?

17 A. Right. The phones remained in that area using those
18 three towers during that time period listed on the title.

19 Q. And that's gonna be for that entire -- from April 26th
20 at 10:25 to -- I mean, April 24th at 10:26 PM through
21 April 26th at 11:24 AM --

22 A. That's correct.

23 Q. -- they're in that Greenwood area?

24 Looking at State's 89, can you publish the dates and
25 times of this records.

1 A. This map covers April 26th at 12:39 AM -- April 25th
2 through 12:39 AM through April 26th at 11:48 AM.

3 Q. And what call records?

4 A. This one combines all four numbers listed there; 404,
5 510, 707 and 864 phone numbers.

6 Q. And what area are all four of those numbers in?

7 A. The Greenwood area.

8 Q. And this is where those phone numbers remained for
9 that time period?

10 A. They are, yes.

11 Q. And then these are the accompanying records that
12 support the map?

13 A. Yes.

14 Q. Now focussing on State's 90 -- and I'll ask you to
15 step down for this map.

16 MS. FULLER: Permission for the witness to step
17 down?

18 THE COURT: Please.

19 (Whereupon, the witness steps down from the witness
20 stand.)

21 BY MS. FULLER:

22 Q. If you could explain to the jury what they're looking
23 at on this map.

24 A. This is a map for Lexington County, South Carolina,
25 on April 26, 2014, from 12:19 PM through 5:18 PM. It lists

1 the 688 Bushberry Road address, which is VonKeith Toland's
2 residence. It also lists the address of 3835 Savannah
3 Highway, which is Toland's mom's residence, and it lists
4 the various towers and they're color-coded with the phone
5 records that would be used when those calls were made
6 through those towers. And it's showing inbound and
7 outbound calls from various numbers, again, color-coded
8 with the call duration and the tower number used.

9 So in this instance, it starts at Tower 251 and 133,
10 which are 251 and 133 here. The reason that the towers --
11 some towers actually have more than one cell phone provider
12 on them, so you can have a physical tower that has both
13 Verizon and Sprint on the same physical tower. So that's
14 the reason that you see multiple colors here is because
15 that one tower services various cell phone providers.

16 Q. I know it's on the map, but these three numbers which
17 we know are associated -- what you explained here were the
18 510 number, the 404 and 707, does this mean you're actually
19 placing them together?

20 A. Well, they're --

21 Q. -- or in the same geographical location?

22 A. It means they both -- all those made calls that
23 serviced that tower and then you would look at the time or
24 timing of the calls and, of course, if they're close in
25 proximity and it's moving, then you would assume that it's

1 a group of people moving together.

2 Q. So let's start with the early calls at -- the first
3 call being at 12:19, which is an inbound call from 864-321
4 to the 510 number, and it looks like it's on Tower 251.
5 Where would that be?

6 A. It's in the upper left-hand corner here.

7 Q. And moving along to 12:35, it's looking like the 707
8 number is on Tower 133. Where would that be?

9 A. It's a little bit further down 178. This is Highway
10 178 and I-20 here.

11 Q. And so does that seem to suggest the phones are
12 travelling down 178?

13 A. Correct.

14 Q. And looking at the next tower information at 12:40,
15 we have a call on April 26th at 12:40 PM, an outbound call
16 from 404-695, the number associated with Justin Butler, and
17 it looks like on your records to the victim in this case,
18 VonKeith Toland, and it's on Tower 523. Where would that
19 be?

20 A. Again, it's near the intersection of 178 and I-20.

21 Q. And further down we have at 12:40 and 12:47 it looks
22 like both the 707 number associated with Terry and the 510
23 number associated with Butler -- I apologize, McClure and
24 Butler, are on Tower 287?

25 A. And that's a little bit further down 178 towards

1 Pelion.

2 Q. And that would be at just before 1:00. And now we
3 have looking at -- it looks like VonKeith's other phone
4 that was missing, the 803-318-8366, there's a call at 1:01
5 on AT&T Tower C. Where would that put that phone?

6 A. That's just north of North, South Carolina, right here
7 in the right-hand edge of the screen.

8 Q. I apologize. Can you point again for the jury?

9 A. Tower C for AT&T is right here, the orange colored
10 tower.

11 Q. And then going down your info sheet looking at the
12 call, again, from Justin Butler to VonKeith on Tower 82 at
13 1:13 PM.

14 A. Again, it's almost in the same geographical area as
15 the AT&T Tower 82.

16 Q. And that's the 404 number. The 510 number at 1:27 is
17 on Tower 284?

18 A. Correct. That's right here near the town of North.

19 Q. And if you go look at your records, how long do you
20 have records placing those numbers on that 284 tower?

21 A. When do they end, is that your question?

22 Q. Yes.

23 A. It looks like the last call was at 3:12 PM on the
24 26th.

25 Q. And so from looking at your records, which they have

1 displayed on the screen, we're talking about from 1:27 PM
2 through 3:12 PM you have records placing the 510 number,
3 the 707-392 number for McClure, at that tower until
4 3:12 PM?

5 A. That's correct.

6 Q. And if you can take the jury further through the next
7 tower information you have.

8 A. After that, we're on AT&T Tower B, which, again, is
9 the orange tower here moving back towards Pelion, and
10 that's at 3:35 PM. The next will be on AT&T Tower A up
11 here near Bushberry Road and that's at 4:03 PM.

12 Q. Okay. I'm gonna stop you for a second. And you --
13 who do you have moving on that AT&T B tower at 3:35 PM?

14 A. AT&T B is the area code 803-318-8366 number.

15 Q. That's the number associated with VonKeith Toland's
16 other phone?

17 A. Yes.

18 Q. And at 4:03 PM you said the AT&T A tower. Would that
19 be this over here?

20 A. It is, yes.

21 Q. And you know the incident location in this case was
22 right there?

23 A. That's correct. 688 Bushberry Road.

24 Q. And if you were at that incident location, would that
25 be the tower you would most likely be connecting a call on?

1 A. If you're an AT&T customer, yeah.

2 Q. And do you know if the 318 was an AT&T phone record?

3 A. Yes.

4 Q. And what's the next tower information you have on
5 these records?

6 A. The next one is Tower 133 at 4:56 PM utilizing the
7 510 phone records, so that phone, 510.

8 Q. And can you point on the map where that tower is?

9 A. 133 is up here at the intersection, again, of I-20 and
10 178.

11 Q. So does that appear to be travelling back out of the
12 North, Pelion area?

13 A. Yeah, the trend was, you know, a southeasterly route
14 and now it's headed back up.

15 Q. After that, what is the next tower information you
16 have for either phone?

17 A. It moves on to Tower 29 at 5:02 and 251, which are in
18 the same geographical area, at 5:02, which is up here near
19 Batesburg-Leesville on the top.

20 Q. And what phones can you put there at 5:02?

21 A. At 5:02, we've got -- is the 404 phone number and the
22 510 phone were both travelling that way.

23 Q. After that 4:03 inbound call to the 318-8366 number,
24 did you have any other location information or usage on
25 that phone?

1 A. I did not.

2 Q. On the 404-695 number, after that 5:02 location on
3 Tower 251, which is the Batesburg area, did you have
4 anymore tower location or usage information on that phone?

5 A. I did not.

6 Q. And if you had that information, would have you
7 provided it in this presentation for court?

8 A. That's correct.

9 Q. What do you have after that 5:03 time on this map?
10 What next tower information do you have?

11 A. Well, on this map concludes that time period at the
12 Tower 251 at 5:18 PM.

13 Q. So does that indicate that -- that those phones
14 stopped in that Batesburg area for a period of time or
15 would they still have been driving through that area?

16 A. There's no way to know.

17 Q. Okay. But they're in that area from 5:02 to 5:18?

18 A. Correct.

19 Q. And using that same tower the entire time?

20 A. Correct.

21 Q. And if you were driving fifteen minutes through
22 Batesburg, would you still be hitting off that same tower?

23 A. Unless you were behind an accident or something, a
24 stopped train, probably not. You'd be far enough away from
25 it to be hitting another tower.

1 Q. So one can infer that that was a stopped location
2 potentially?

3 A. Slowed down greatly in that area.

4 Q. Next looking at State's Exhibit 91, if you can explain
5 to the jury this particular map.

6 A. This is a map for South Carolina to Georgia covering
7 April 26th through the 27th in 2014 starting at 8:25 PM
8 through 3:51 AM eastern time and it covers the 510 phone
9 and the 707 phone.

10 Q. And why don't you have information on this map at
11 8:25 for Justin Butler's other phone, the 404-695?

12 A. The cell phone provider had no more records for that
13 phone.

14 Q. And looking at this information, where do you place
15 the 707 number and the 510 number beginning on this map?

16 A. Up here in the top right around Lake Hartwell. Again,
17 that's -- I don't know what Interstate that is. 85?

18 Q. It looks like 85 South.

19 A. Yeah.

20 Q. And what major city is in the Lake Hartwell area just
21 to orient the jury?

22 A. Well, for point of reference, you have Clemson right
23 here, so it's just south of Clemson, South Carolina.

24 Q. And then for Justin Butler and Terry McClure, what's
25 the next location you have for their phones after leaving

1 that area?

2 A. Down here in Atlanta, Georgia.

3 Q. And what time do you put them back in Atlanta?

4 A. Around 9:59 PM.

5 Q. And what tower number is that?

6 A. The first one is 3186, which is the pinkish colored
7 one that you can't see.

8 Q. Oh.

9 A. Right there.

10 Q. And these records go through -- to 3:51 AM. Do they
11 just remain in that Atlanta area?

12 A. From -- so from 9:59 PM through 3:51 AM on the 27th,
13 yes, they're in that area.

14 Q. And when they first get back to Atlanta, who is Terry
15 McClure communicating with at 9:59?

16 A. Outbound call to 864-238-3791.

17 Q. And that's that unknown number in Greenwood?

18 A. It is.

19 Q. And later on at 10:53 and 10:57, what inbound calls
20 -- who's calling him at that time while he's in Atlanta?

21 A. Jason Butler. Justin Butler. I'm sorry.

22 Q. And that's at 10:12?

23 A. Yeah.

24 Q. And then at 10:53 and 10:57 --

25 A. Correct.

1 Q. -- these call?

2 A. 404-780-9703.

3 Q. And is that known to be associated with Ladondra
4 Ellis?

5 A. It is.

6 Q. The next information that you have, would that be
7 reflected here on State's 92?

8 A. It is.

9 Q. And what information -- what exactly is on -- on these
10 records?

11 A. This covers just the April 27th for the 707 phone
12 number which places that phone at the Atlanta airport at
13 12:21 PM.

14 Q. And State's 93?

15 A. Again, for the 707 phone number on April 27, 2014,
16 and we're now at Charlotte Douglas airport from 3:58 PM to
17 6:39 PM.

18 Q. Were there -- between the times from the Atlanta
19 airport time and the Charlotte Douglas airport time, did
20 you have any location data?

21 A. I did not.

22 Q. What would that suggest to you?

23 A. That someone used the airport to travel to another
24 location.

25 Q. And looking at State's 94?

1 A. We're at the Sacramento airport, again, April 27th at
2 11:47 PM showing one call at that location.

3 Q. And between the period of time from the Charlotte
4 airport in State's 93 and the Sacramento airport, did you
5 have any location data during that time period?

6 A. I did not.

7 Q. And looking at State's 95, what exactly is the jury
8 looking at in this?

9 A. This is a map plotting records from U.S. Airways
10 records and United Airlines flight records and correlating
11 it with the phone number 707-392-0402 and its movements.

12 Q. And it's kind of hard to see on the overhead, but you
13 have the information matching up with those record locator
14 -- record locator information along with the movements at
15 each airport for the 707 number?

16 A. Right. The gray boxes have actual calls that were
17 listed on the previous charts for the various times and
18 I'm showing they match up with the -- the flight records
19 involved.

20 Q. Would one suggest that that phone number travelled on
21 each of those flights?

22 A. It would.

23 Q. Thank you.

24 (Whereupon the witness returns to the witness
25 stand.)

1 BY MS. FULLER:

2 Q. I'm gonna show you what's been marked as State's 114
3 subject to the Court's ruling and do you recognize this?

4 A. I do.

5 Q. And how do you recognize this?

6 A. It was an exhibit that I prepared from phone records
7 provided by the cell phone provider for phone number
8 404-695-5436.

9 Q. And that's associated with Justin Butler?

10 A. It is.

11 MS. FULLER: At this time, Your Honor, the State
12 seeks to introduce State's Exhibit 114?

13 THE COURT: All right. Subject to the earlier
14 objections and rulings, do show it to them though and
15 make sure that they're comfortable aside from those
16 objections.

17 MR. SPANGLER: No further objection to 114, Judge.

18 THE COURT: Very good. Subject to the earlier
19 objection, State's 114 will be in evidence.

20 (State's Exhibit Number 114, text message, was
21 admitted into evidence.)

22 BY MS. FULLER:

23 Q. And I'm gonna show you what's been marked for ID at
24 State's 117. Do you recognize that?

25 A. I do.

1 Q. And what do you recognize it to be?

2 A. Cell phone records for the 404-695-5436 phone.

3 Q. And this would just be the first page and the last
4 page of the cell phone records provided on the disc for ID?

5 A. It is.

6 MS. FULLER: At this time the State seeks to
7 introduce State's 117 into evidence.

8 MR. SPANGLER: No objection.

9 THE COURT: 117 in evidence.

10 (State's Exhibit Number 117, cell phone records,
11 was admitted into evidence.)

12 BY MS. FULLER:

13 Q. Looking back at State's 114, can you explain what text
14 message content these are, between who and between who?

15 A. This was an exhibit prepared to show communication
16 to and from that 404 phone number showing Justin Butler
17 and Terry McClure communicating back and forth via text
18 messaging.

19 Q. And then also?

20 A. It also covers Ladondra Ellis, Greenwood, VonKeith
21 Toland.

22 Q. And this is just select communications on that phone
23 that came with the phone records in this case?

24 A. That's correct.

25 Q. Looking at State's 117, you testified that these are

1 the records for Justin Butler's other phone, correct?

2 A. Correct. Yes, ma'am.

3 Q. And we have previous testimony that's been admitted
4 by a business record that the phone was purchased on
5 March 15, 2014. For these phone records prior to where
6 we have cell site information on April 23rd, would this
7 account for all of the usage prior to that date?

8 A. This is all the usage that the cell phone provider has
9 a record of, which --

10 THE COURT: Do you need a break?

11 One of the jurors needs a brief break. We may as
12 well go ahead and break for lunch, I guess. You've got
13 about how much longer with this witness?

14 MS. FULLER: This is the last exhibit.

15 THE COURT: The last exhibit? Okay.

16 Let's do this quick. We'll finish with the State's
17 direct, a quick five minute break, and we'll be back on
18 the record in a second, okay?

19 Let him go first. I think he needs to use the
20 restroom, all right?

21 (Whereupon, the jury retires to the jury room at
22 12:45 PM.)

23 THE COURT: You can step down and we'll finish up
24 in just a second, okay?

25 (Whereupon, the witness steps down from the witness

1 stand.)

2 (Recess taken at 12:45 PM.)

3 (Back on the record at 12:57 PM.)

4 BAILIFF: All rise. Court's back in session.

5 THE COURT: Thank you. If you'll go get the jury.

6 And, sir, if you'll come back up and have a seat.

7 (Whereupon, the witness returns to the witness

8 stand.)

9 (Whereupon, the jury returns to the courtroom at
10 12:58 PM.)

11 THE COURT: All right. The jury is back and seated.

12 Ms. Fuller, if you will, please, continue.

13 MS. FULLER: Thank you, Your Honor.

14 BY MS. FULLER:

15 Q. Investigator Phipps, looking back at State's 117, and
16 I'm gonna point to a few columns, right here under the call
17 direction from the top to approximately right here there's
18 an "F". Are you familiar with what that means?

19 A. I just know that it was not a voice call that was
20 used, so any activity that's showing prior to that point in
21 time is either data or some other type of activity.

22 Q. And it's not until we get down to April 22nd and then
23 the 23rd where you actually have more data on that phone or
24 more what are actually voice calls?

25 A. Yes, those are voice calls.

1 Q. So even though the phone was activated well before
2 this date, I think there's testimony that it was activated
3 back on March 15th, there wasn't real usage until
4 April 23rd?

5 A. That's correct.

6 Q. And looking at -- this is the last page of the record
7 that was provided. What you've testified to on the map,
8 here the last information we have -- I believe this is --
9 I apologize. This is not the last page of the record and
10 that's okay, but do you recall the last page of the record
11 that you placed on the map was that April 26th time in
12 Batesburg?

13 A. Yes.

14 Q. And we'll correct that shortly.

15 MS. FULLER: I believe no further questions.

16 THE COURT: All right. Ladies and gentlemen, we're
17 going to -- do you need to attach the final page at some
18 point?

19 MS. FULLER: He went to print it out. I actually
20 left it on the printer. I apologize.

21 THE COURT: Very good. That's fine.

22 Ladies and gentlemen, we're gonna go ahead and
23 take a break for lunch and in the interest of time we're
24 not gonna order you lunch. If you would please be back
25 in the jury room as close to 2:15 as possible, okay?

1 That will give you about an hour and fifteen minutes to
2 grab a bite.

3 It's still my sincerest hope and prayer that we can
4 finish this case today, but I don't know how often --
5 that may be a little more optimistic than I should be.

6 Anyway, don't talk about the case. Enjoy your
7 lunch. Be back in the jury room, please, at 2:15. At
8 the very least we'll finish this testimony, okay?

9 Thanks.

10 (Whereupon, the jury is excused for lunch at
11 1:01 PM.)

12 THE COURT: And you can step down. Just don't talk
13 about your testimony.

14 THE WITNESS: Yes, sir.

15 THE COURT: We'll be at ease. See you-all about
16 2:15, okay?

17 (Whereupon, a luncheon recess was taken at 1:01 PM.)

18 (Back on the record at 2:18 PM.)

19 BAILIFF: All rise. Court is back in session.

20 THE COURT: Okay. We'll go back on the record,
21 if we may, in the State versus Mr. McClure. The State
22 has given us -- or provided a new redacted version of
23 State's 4. We're gonna keep the old version in the
24 record, but it will not be going back to the jury; the
25 old version won't, the new version will.

1 Let us have the jury, please.

2 (Whereupon, the jury return to the courtroom at
3 2:20 PM.)

4 THE COURT: All right. The record will reflect
5 that the jury is back. We are still, of course,
6 involved in the examination of Mr. Phipps, so at this
7 point in time, Mr. Spangler, your examination, sir.

8 MR. SPANGLER: All right. Thank you, judge.

9 CROSS-EXAMINATION

10 BY MR. SPANGLER:

11 Q. All right. Good afternoon, Investigator Phipps. How
12 are you doing?

13 A. Fine, sir. Thank you.

14 Q. All right. So I want to just start just broadly on
15 the investigations that you do for the sheriff's
16 department. If I understood right, they involve looking
17 at all sorts of data; is that right?

18 A. Yes, sir.

19 Q. Things from cell phones, computers, any technological
20 device?

21 A. Yes, sir.

22 Q. Okay. And during those investigations, you can either
23 pull records, in this case from cell phone companies?

24 A. That's correct.

25 Q. And that also -- that involves sending off to Sprint,

1 Verizon, whoever, and they actually send you back records?

2 A. Yes, sir.

3 Q. And now those records you get from cell phone
4 companies, they include things like calls that were made
5 from the phone or to the phone?

6 A. Yes.

7 Q. Sometimes it can have text messages?

8 A. Sometimes, yes.

9 Q. And sometimes it will just show that the text message
10 was sent or received, but doesn't always have the content
11 of the text?

12 A. That's right.

13 Q. All right. And as pertinent to this case, it also
14 can show you what cell phone tower the phone was using when
15 it was doing those things?

16 A. That is correct.

17 Q. Okay. And we'll go to the cell phone towers a little
18 bit later, but when we're talking about the cell phone
19 tower it's when you make a call on your phone that's the
20 tower your phone is reaching out to, right?

21 A. That's correct.

22 Q. And typically it's the one that you're closest to
23 based on geography, right?

24 A. Typically, yes, sir.

25 Q. Okay. Now in addition to sending off to cell phone

1 companies for things, you also have some equipment over at
2 the sheriff's department that you can plug these devices
3 up to, right?

4 A. Yes, sir.

5 Q. Okay. The technology that's used, and correct me if
6 I'm wrong, is called Cellebrite?

7 A. That's one of the tools we use.

8 Q. Cellebrite is a -- correct me if I'm wrong, typically
9 you can plug a phone up to it and pull data off the phone
10 itself, right?

11 A. Correct.

12 Q. Okay. The data that we're talking about getting off
13 of a phone could include text messages?

14 A. Yes, sir.

15 Q. And the actual content of those messages?

16 A. That's correct.

17 Q. Photos that were on the phone?

18 A. Yes.

19 Q. Call logs?

20 A. Uh-huh.

21 Q. Contact lists?

22 A. Yes.

23 Q. And you'd agree with me that typically what you can
24 get from these Cellebrite reports is a lot more information
25 than the cell phone companies can give you?

1 A. That's right.

2 Q. Because you actually have the device itself that
3 you're pulling the data off of?

4 A. Right.

5 Q. Okay. Now let's talk about this case. Now we went
6 through these phone numbers on the direct examination, but
7 there were other phone numbers that you looked at when you
8 were doing your examination of evidence in this case,
9 right?

10 A. Yes, sir.

11 Q. Okay. And those numbers the State didn't put on this
12 board, right?

13 A. That's right.

14 Q. Okay. One of the numbers that you looked at was
15 803-318-8366?

16 A. I don't have a particular log showing that specific
17 number.

18 Q. Okay. This might be a better way to frame it. The
19 AT&T records, what phone number were those associated with?

20 A. We had so many phones in this case, I'm a little mixed
21 up here.

22 Q. Okay. I'll try to lead you a little bit more here.

23 A. Okay.

24 Q. The iPhone from -- or, I'm sorry, the Samsung Galaxy
25 phone belonging to VonKeith Toland, can you locate in your

1 report what the phone number was for that phone? Samsung
2 Galaxy, AT&T.

3 A. I'm showing that I examined a Samsung Galaxy Mega on
4 the AT&T network with phone number 803-404-0849.

5 Q. Okay. Let's back up just a little bit. I think
6 we're getting in the weeds here. Do you recall on direct
7 examination when you were going through the call logs
8 actually plotting a phone with the phone number
9 803-318-8366?

10 A. Yes.

11 Q. I'll see if I can find one of the logs right here.
12 All right. Do you see that phone number anywhere in the
13 documents that you've got?

14 A. Well, I see that that was a number that we were
15 researching, yes, sir.

16 Q. Okay. And you -- that phone was associated with
17 VonKeith Toland, right?

18 A. The 8366 I'm showing on Verizon, not on AT&T.

19 Q. Okay. So you have that phone as being associated with
20 Verizon?

21 A. If my notes are correct, yes, sir.

22 Q. Okay. What was that phone number again?

23 A. 803-331-8366, I believe.

24 Q. Okay. And you associated that with VonKeith Toland?

25 A. Back in 2014, yes. I haven't looked at it since then.

1 Q. Okay. Is it possible that that phone number actually
2 reads 318-8366?

3 A. That is correct, 318-8366.

4 Q. And that's a phone associated with VonKeith Toland?

5 A. Yes.

6 Q. Okay. I'm just gonna add that to this board and tell
7 me if I write this correctly. 803-318-8366; is that right?

8 A. Yes, sir.

9 Q. Okay. And in addition, you had the phone number
10 803-221-5730?

11 A. 803-321 --

12 Q. 221-5730. I think the State has it as their first one
13 up there.

14 A. Oh, yeah.

15 Q. That's just another number that's associated with
16 VonKeith?

17 A. 221-5730.

18 Q. 5730.

19 A. Yes, sir.

20 Q. Okay. So two phone numbers you found associated with
21 VonKeith Toland during your examination of phones?

22 A. Yes, sir.

23 Q. Okay. Now let's talk about the 221-5730. That phone
24 you actually had in your possession was an iPhone?

25 A. Yes, sir.

1 Q. Okay. That iPhone it was your understanding was
2 recovered as evidence in this case?

3 A. Yes, sir.

4 Q. Okay. Now on that iPhone you actually plugged it up
5 to your machine at the sheriff's department and ran a
6 report off; is that right?

7 A. Yes, sir.

8 Q. Okay. Now I want to ask if you recognize this
9 document. This is already in evidence as State's 33.
10 That's as far back as we can go. Do you recognize what
11 this is?

12 A. It appears to be call logs, but I can't see it from
13 here.

14 Q. Okay. Let me give -- may I approach the witness,
15 Judge?

16 All right. I'm handing you State's 33. Can you tell
17 me if you recognize that?

18 A. It is a call log from a physical extraction -- or from
19 an extraction from a cell phone, but without the associated
20 data. If this is something I did in 2014, I wouldn't --
21 I'm not familiar with this one page out of context with the
22 rest of the information.

23 Q. Okay. Did the State during your direct examination
24 give you the whole report for that phone?

25 A. I'm sorry, I don't understand the question.

1 Q. Did the State offer as evidence during your direct
2 examination the whole report that goes with that document?

3 A. Yes.

4 Q. They did offer that report as evidence?

5 A. Well, I don't know what phone this goes with. We --
6 we entered phone records. Now as far as the actual
7 extraction for this phone, I don't know which phone this
8 is. I can't tell from --

9 Q. From what you're looking at there?

10 A. -- a page that has nothing but some call logs listed.

11 Q. Okay. Would you recognize a copy of the extraction
12 you did on 221-5730 if I you showed it to you?

13 A. The actual disc?

14 Q. The printed report.

15 A. Yes. Of course.

16 Q. And that might help refresh your recollection about
17 what we're talking about.

18 A. Yes, sir. Of course.

19 Q. All right. If you could just take a moment,
20 Investigator Phipps, and look at that and tell me if that
21 helps you, I guess, refresh your recollection about the
22 report we're talking about.

23 A. Yes. This is the report for the iPhone 5.

24 Q. Okay. Associated with 221-5730?

25 A. Yes, sir.

1 Q. Okay. And that's a report -- and we talked about it
2 at the beginning, but that's a report that gave you access
3 to that phone's calls?

4 A. Yes, sir.

5 Q. Text messages?

6 A. Potentially.

7 Q. Potentially photographs that were in the phone?

8 A. Yes, sir.

9 Q. Things like that. And that's the number that was
10 associated with VonKeith Toland?

11 A. Yes, sir.

12 Q. Okay. Now in that document that I just handed you,
13 can you locate where the call log corresponding to this
14 case is? And specifically for April 26th of 2014.

15 A. And the date that you were interested in?

16 Q. April 26th of 2014.

17 A. At what time?

18 Q. Well, let start's -- now do you see on that list --
19 does yours have a Number 38 down on one of the rows?

20 A. An outgoing call?

21 Q. Right.

22 A. Yes.

23 Q. So let's start with that one. That is an outgoing
24 call to 9-1-1, right?

25 A. It is.

1 Q. And that call was made at what time?

2 A. At 4:23 PM.

3 Q. Okay. 4:23 PM. And what was the phone number that
4 that call came from just from that report?

5 A. The call was placed from 803-221-5730.

6 Q. 221-5730. And that report can actually tell you how
7 long that call lasted, right?

8 A. Yes, sir, it does.

9 Q. How long did that first 9-1-1 call last?

10 A. Forty-seven seconds.

11 Q. Okay. Now you'd agree with me that up in Row 36 at
12 4:26 PM there's an outgoing call from that phone?

13 A. It is.

14 Q. Okay. That's an outgoing call, but it's not to 9-1-1,
15 is it?

16 A. It is not.

17 Q. Okay. So this is now, what, about three minutes after
18 the first 9-1-1 call, it's an outgoing call to just a
19 random number in there, 613-0 -- 614-3016?

20 A. It is.

21 Q. Okay. Now if you move up to Row 34, now we're, again,
22 at 4:26. That's an outgoing call from that phone again to
23 that same number?

24 A. Yes, sir, it is.

25 Q. Okay. 4:27 we have another outgoing call, so now

1 we're four minutes after the 9-1-1. Another outgoing call,
2 but it's, again, not to 9-1-1?

3 A. That's correct.

4 Q. And we have an incoming call in Row 30, again, not
5 from 9-1-1?

6 A. Same name, yes, sir.

7 Q. Same number. And then up, Row 26, that's another
8 incoming call, somebody calling that phone at 4:30 PM?

9 A. Correct.

10 Q. Okay. Now you'd agree with me that from that phone
11 there's one call that you can see made to 9-1-1?

12 A. Yes, sir.

13 Q. And that was at 4:23?

14 A. Yes, sir.

15 Q. And then we have several calls to these random numbers
16 in the moments following that 9-1-1 call?

17 A. Yes, sir.

18 Q. Now during your investigation you also get access to
19 the text messages in that phone, right?

20 A. I do.

21 Q. Okay. And are those things that you look at during
22 your investigation?

23 A. We do.

24 Q. Okay. And the important part with it, and this might
25 clear up what was on that one-page exhibit I gave you, can

1 you go through and bookmark when you're scrolling through
2 the report certain things that are then saved at the end of
3 the report? I think they're called entity bookmarks or
4 something like that.

5 A. Yes, the software gives us the ability to tag items
6 for further review.

7 Q. Okay. Tag things that you think might be important to
8 the investigation?

9 A. Yes, sir.

10 Q. Okay. Now you tagged certain things in this case that
11 you thought were important, right?

12 A. Probably. Again, this was done in 2016.

13 Q. Okay. Are your bookmarks in that report? I think
14 typically they're found somewhere near the end.

15 A. Yes.

16 Q. Okay. Now the things that you bookmarked as being
17 important to this case, well, none of them dealt with text
18 messages involving dealing drugs, did they?

19 MS. FULLER: Objection, Your Honor.

20 THE COURT: What's the nature of the objection?

21 MS. FULLER: Hearsay. Relevance. This isn't the
22 appropriate witness. Improper character.

23 THE COURT: He's asking about things that supposedly
24 this investigator uncovered. I'm gonna give him some
25 latitude because he is on cross.

1 Go ahead, please.

2 BY MR. SPANGLER:

3 Q. Now you didn't bookmark anything as being important
4 to this case that you found from text messages talking
5 about drug dealing, did you?

6 A. I'd have to look through these just to verify them.

7 Q. Okay. Well, take your time and look at the things
8 you bookmarked.

9 A. No, sir, I don't see any.

10 Q. Okay. You didn't note anything of importance in those
11 bookmarks about firearms that were found, either pictures
12 of them or text messages about them in the phone?

13 A. No, sir, I didn't.

14 Q. Okay. You didn't mark the conversation that was about
15 selling 40 calibers, did you?

16 A. No, sir, I did not.

17 Q. Okay. Now I want to direct you -- do you recall
18 seeing a text message in that phone sent on April 22nd of
19 2014?

20 A. Is that one I bookmarked?

21 Q. It's not one that you bookmarked. I can direct you to
22 Page 351 --

23 A. Okay.

24 Q. -- and we're looking at Line 3710?

25 A. 3000...

1 Q. 710.

2 A. Okay. I'm there.

3 Q. Okay. That's an outgoing text message from this
4 phone, right?

5 A. It is.

6 Q. Okay. That means it was sent from this 221-5730
7 number?

8 A. It was.

9 Q. Okay. Now that text message, you didn't mark that as
10 being important during your investigation, did you?

11 A. No, sir.

12 Q. Okay. What's -- what's the content of that text
13 message?

14 A. It reads --

15 MS. FULLER: Objection, Your Honor.

16 THE COURT: Can I see that, please, sir?

17 THE WITNESS: (Hanging.)

18 MS. FULLER: The item is not in evidence and he's
19 attempting to publish. And it would be hearsay.

20 THE COURT: You-all approach over here for a
21 second.

22 (Proceedings held at the bench; not reported.)

23 THE COURT: Please, continue.

24 BY MR. SPANGLER:

25 Q. All right. Investigator Phipps, I'm gonna hand you

1 this back. We're still on Page 351. And I don't want you
2 to go into any of the content of that text message. What
3 was the date that text message was sent?

4 A. April 22, 2014.

5 Q. It was sent from VonKeith Toland's phone, right?

6 A. It was.

7 Q. I don't want you to say what that text message says
8 out loud. Read it silently and tell me whether you think
9 that would be significant or not in this investigation.

10 A. I have no idea.

11 Q. Okay. Did the State ever ask you about that text
12 message?

13 A. No.

14 Q. Any of the investigators in this case ever ask you
15 about that text message?

16 A. I'm -- I turn over what you see here to the
17 investigators that are more intimately familiar with the
18 investigation, so it's incumbent upon those individuals
19 that know the case and know what might be relevant to their
20 case to latch onto certain things.

21 Q. Okay. So my question, no investigators ever came and
22 spoke to you about that specific text message?

23 A. They did not.

24 Q. They did not. Okay. Now let's move on to another
25 phone that you had access to during this investigation.

1 That would have been a phone belonging to Tycus Toland.

2 A. I don't have names associated with phones. I have
3 our, you know, our model numbers, phone numbers, item
4 numbers.

5 Q. How about another -- it's another iPhone. I believe
6 it's an iPhone 4.

7 A. I've got two more iPhones. Do you happen to know the
8 number associated with it?

9 Q. The phone number 803-569-5725.

10 A. Yes, sir.

11 Q. Okay. And that's a phone you associated with Tycus
12 Toland?

13 A. An iPhone 4S.

14 MS. FULLER: Objection, Your Honor.

15 THE COURT: Overruled. Please continue.

16 BY MR. SPANGLER:

17 Q. Okay. And that's a phone that during your
18 investigation you looked into, right?

19 A. I looked at it. I don't know whose -- let me see if
20 there's any notes on it. The search warrant says it
21 belongs to Tycus Toland.

22 Q. Okay. And do you remember doing an extraction report
23 on that phone?

24 A. Yes.

25 Q. Okay. Do you have a copy of the extraction report

1 here today?

2 A. I do not.

3 Q. Okay. Would it help you speak about that report if I
4 had a copy of it?

5 A. Most certainly.

6 MS. FULLER: Objection, Your Honor.

7 THE COURT: On what grounds?

8 MS. FULLER: Relevance.

9 THE COURT: I'm assuming that he's going to work
10 that out in just a moment. He's allowed to question
11 this officer about the investigation, how deep it was,
12 how extensive it was, so that's what he's doing.

13 Continue, please.

14 MS. FULLER: Thank you, Your Honor.

15 MR. SPANGLER: May I approach the witness, Judge?

16 THE COURT: Please.

17 BY MR. SPANGLER:

18 Q. Now, Investigator Phipps, tell me if you recognize
19 this report.

20 A. I do. Yes, sir.

21 Q. Okay. That's the report on that phone we just talked
22 about, 803-569-5725?

23 A. Yes, sir.

24 Q. Okay. Now I know sometimes in the device information
25 or when you're looking at the phone information on the

1 first page you can associate it with a person or a social
2 media account, something like that. Anything like that on
3 this phone?

4 A. There are usually identifiers that may link it back to
5 a certain individual, yes, sir.

6 Q. Okay. And during this investigation I think what you
7 said is this phone belongs to Tycus Toland?

8 A. That's what the search warrant said, yes.

9 Q. Okay. I'll put that number up here, too. Could you
10 just read me that number one more time?

11 A. 803-569-5725.

12 Q. Just the last four one more time?

13 A. 5725.

14 Q. 5725. Okay. Now in that report you got access to
15 phone calls, right?

16 A. Yes, sir.

17 Q. Text messages?

18 A. Let me look at the summary sheet. Yes, sir.

19 Q. Other things in the phone, photos, things like that.
20 It was a standard examination on the phone?

21 A. Yes, sir.

22 Q. Okay. Now the call log, again, can you flip in there
23 -- and this one is hard because it doesn't have page
24 numbers on it when we printed it, but can you flip in there
25 to April the 26, 2014?

1 A. April 26th what time?

2 Q. April 26th of 2014. Just to make sure we're on the
3 same page, up at the top it says outgoing 1:35. They're
4 split up into a couple of different --

5 A. This one starts with incoming.

6 Q. Okay. Could you flip over to the page that starts
7 with outgoing. Outgoing, 1:35.

8 A. Yes, sir.

9 Q. Okay. Now that has a numbered list, 1 through 21,
10 with entries beside it with calls that were made from that
11 phone; is that right?

12 A. It does, yes, sir.

13 Q. Okay. Now that phone down on Entry Number 4 it shows
14 an outgoing call from Tycus Toland, right?

15 A. From this phone, yes.

16 Q. From that phone. That outgoing call was made on
17 April 26th, right?

18 A. It does.

19 Q. Of 2014?

20 A. Correct.

21 Q. What time was that phone call made?

22 A. That would be around 12:20 noontime. It's eastern
23 standard time for the call.

24 Q. Let's back up just a little bit here. On Cell Number
25 4, it says 4:20:06 PM.

1 A. Yes, it does.

2 Q. Okay. So that would be 4:20?

3 A. But that's listing in UTC time. This particular
4 report lists all calls in UTC, if you notice the UTC plus
5 zero out to the side. So if the call was placed in South
6 Carolina or along the east coast, the Eastern Standard
7 Time offset's minus four hours from that time.

8 Q. Okay. So when we're talking about this specific
9 phone, maybe this is what we're getting at, it made a
10 number of calls on April 26, 2014?

11 A. Yes, sir.

12 Q. Okay. Now it also shows a call made on 4-27 of 2014,
13 right? Up at the top being Cell Number 1.

14 A. An outgoing call?

15 Q. On the top of the line.

16 A. Oh, yes, sir. I see what you're saying.

17 Q. Okay. So now we have got outgoing call from Tycus
18 Toland's iPhone at 1:35 on April 27th, right?

19 A. Correct.

20 Q. You can't tell us why that call was being made, can
21 you?

22 A. No, sir.

23 Q. You can't tell us who made that call?

24 A. No, sir.

25 Q. Now did you flag that during your investigation of

1 this case?

2 A. No, sir.

3 Q. Okay. Did any investigators talk with you about that,
4 how this phone would be making calls on April the 27th of
5 2014?

6 A. Nobody asked me, no.

7 Q. Okay. Now let's move on just a little bit here.
8 There was a third cell phone that was found that was
9 submitted to you by law enforcement, right?

10 A. There are other phones, yes, sir.

11 Q. Okay. One of them was a Samsung Galaxy Mega?

12 A. Yes, sir.

13 Q. Okay. Now that phone you hooked up to your Cellebrite
14 machine, right?

15 A. Yes, sir.

16 Q. Okay. Were you able to extract any data from it?

17 A. No, sir. I mean, nothing from the phone proper. The
18 phone was password protected. At that time we had no way
19 of bypassing that password. The only thing I can gather
20 from the device was the number associated with the device.

21 Q. Okay. What number was associated with that device?

22 A. 803-404-0849.

23 Q. 0849. And you said at the time that you hooked it up.
24 That would have been back in 2014?

25 A. April 28, 2014.

1 Q. April the 28th of 2014 and you said that you couldn't
2 get in it because it was password protected, right?

3 A. Yes, sir.

4 Q. Now you'd agree with me that the software that you
5 use, Cellebrite, constantly updates with new phones that
6 they can get into, right?

7 A. Yes, sir.

8 Q. Okay. Did you know that Cellebrite updated their
9 software in June of 2016 to get into that phone?

10 A. It wouldn't surprise me, no, sir.

11 Q. Okay. Do you keep up with Cellebrite's new releases
12 of software?

13 A. All the time.

14 Q. Okay. So did you know in June of 2016 you could get
15 in that phone with their new software?

16 A. This -- as far as the volume of cases I work, once
17 it's worked unless someone comes to me and asks for it to
18 be reworked, there's no mechanism for me to have time to
19 note that okay, now we can go back into a phone we couldn't
20 get into two years, three years ago, whatever it is.

21 Q. Okay. And, Investigator Phipps, I'm not trying to
22 give you a hard time or say you're bad about your job, but
23 that's something you didn't do in this case is to go back
24 once that software was released for a Galaxy Mega and try
25 to get into that phone?

1 A. That's correct. It would require an additional
2 search warrant for someone to obtain before it could be
3 reexamined.

4 Q. Okay. And those search warrants, they come from the
5 investigators working the case, right?

6 A. Yes, sir.

7 Q. Investigators in this case never asked you to try to
8 get in that phone after that initial try back in April?

9 A. That's correct.

10 Q. Standing here today you can't tell us what's in that
11 phone.

12 A. I cannot.

13 Q. But if you went back to the sheriff's department and
14 hooked it up to your machine, you could get into it?

15 A. Most likely.

16 Q. But the State never asked you to do that, did they?

17 A. To my knowledge, no. I'm not the only examiner, sir,
18 but no one asked me.

19 Q. And let's flip to the tracking that you did on these
20 phones. Let's start with in Lexington County. Okay. So
21 you would agree with me that we're looking at multiple cell
22 phone towers here?

23 A. Yes, sir.

24 Q. And the way a cell phone tower works, and I think this
25 got a little bit confusing on the direct, but a cell phone

1 tower doesn't mean that the person is standing right at the
2 tower when they're making a call?

3 A. That's correct.

4 Q. The cell phone tower sends signal in one direction,
5 right?

6 A. Correct.

7 Q. Can you tell me how far those signals go out from each
8 tower?

9 A. It varies from tower to tower, time of day. A lot of
10 factors.

11 Q. Okay. It can be up to a mile, right?

12 A. Yes, sir.

13 Q. Okay. And the cell phone tower actually -- they're
14 three-sided, right?

15 A. Yes, sir.

16 Q. And each side sends out signal in a different
17 direction like a triangle?

18 A. It does.

19 Q. And each side the cell phone tower is listed with --
20 I believe it's a Greek letter, Alpha, Gamma, Beta?

21 A. Right. Yes, sir.

22 Q. And that allows you to narrow down which direction the
23 phone is in relation to the towers?

24 A. Sometimes, yes, sir.

25 Q. Okay. So in this case when you're putting these dots

1 on this map, that does not mean that's the location of the
2 phone that was called?

3 A. Not at all.

4 Q. Not at all. That just means the phone is somewhere
5 within the radius of that tower?

6 A. That is correct.

7 Q. Okay. And when we're talking about the towers in
8 relation to these homes that you have listed, you'd agree
9 with me the closest -- I think you said the AT&T towers are
10 in red?

11 A. Yeah, the orange color. To me it looks orange.

12 Q. And how about the blue and the pink? Those are Sprint
13 and Verizon?

14 A. I believe so, yes, sir.

15 Q. Okay. So the closest Sprint and Verizon tower to,
16 let's say, 3835 Savannah Highway, that's Tower 284?

17 A. This is only depicting towers that were in use on the
18 call detail records. There could be other towers in those
19 vicinities that weren't used, so to say the only tower is
20 a little bit of a misstatement.

21 Q. Okay. So this is the closest one in the records you
22 found?

23 A. Right. Yes, sir.

24 Q. Okay. As applicable to this case, this is the closest
25 tower to the mom's house that was communicating with a

1 phone?

2 A. Yes, sir.

3 Q. Okay. Now the closest one -- Sprint and Verizon tower
4 to 688 Bushberry, that was 287, right?

5 A. Yes, sir.

6 Q. Okay.

7 MR. SPANGLER: Judge, can I approach real quick?

8 THE COURT: Sure.

9 (Proceedings held at the bench; not reported.)

10 BY MR. SPANGLER:

11 Q. All right. Investigator Phipps, we were talking about
12 the cell phone towers. So the closest Verizon and Sprint
13 that was in play in this case was 287. That was the
14 closest to 688 Bushberry?

15 A. Yes, sir.

16 Q. Okay. Closest one to the mom's house, 284, down in
17 the corner?

18 A. Yes.

19 Q. Now you plotted these using a list of phone calls
20 that, I guess, you determined were important?

21 A. No, they're all the calls for that time period in
22 those records.

23 Q. Okay.

24 A. They weren't filtered.

25 Q. So these are the call records that we're talking

1 about. Now we're referring to Exhibit 90, Page 2.

2 A. Correct.

3 Q. And certain numbers on here you associated with Terry
4 McClure and Justin Butler?

5 A. Right.

6 Q. Okay. Now the closest tower -- and it's hard not
7 having the map up there right now, the closest tower to
8 688 Bushberry was Tower 287, right?

9 A. Okay.

10 Q. Can you tell me where on here does it show their
11 phones pinging off of 287, Tower 287?

12 A. I can't -- can you zoom in just a little bit?

13 Q. I'll try to zoom in and I'll cheat a little bit.
14 There's one up at the top.

15 A. I see two -- two hits on 287 at the top there.

16 Q. Okay. So two hits on 287, the tower closest to
17 Bushberry?

18 A. Yes, sir.

19 Q. Okay. The time on those calls is 12:40 in the
20 afternoon?

21 A. That's correct.

22 Q. I want to make sure we have our times right. That's
23 Eastern Standard Time?

24 A. Yes, sir.

25 Q. The next one is at -- what do we got there, 12:47 PM?

1 A. Yes, sir.

2 Q. Okay. Are there any other pings to those two phones
3 to that tower by VonKeith's phone?

4 A. I don't believe so, but if you'll push the chart up
5 just a little bit, I can verify. No, sir.

6 Q. Not at 4:00?

7 A. (Shakes head.)

8 Q. Is that a no?

9 A. No.

10 Q. Not at 3:30?

11 A. No, sir.

12 Q. In fact, their phones never again ping off that tower
13 closest to his house.

14 A. No, sir.

15 Q. Now let's move on just a little bit. This is
16 State's Exhibit 71, okay? So this was the map that you
17 created tracing those two phones. We're dealing with the
18 evening hours of April 26th, right?

19 A. Yes, sir.

20 Q. Through the morning, I guess, of April 27th?

21 A. That is correct.

22 Q. These are the two phones, just so we're clear for the
23 record, that you associate with Terry McClure and Justin
24 Butler?

25 A. Yes, sir.

1 Q. Those phones, what you can see, you have them pinging
2 the towers in the Upstate of South Carolina moving down to
3 Atlanta, Georgia?

4 A. Yes, sir.

5 Q. Okay. I think Ms. Fuller asked you and made the
6 inference that folks are travelling that direction based
7 on the timing of the pings?

8 A. I wouldn't call them pings. It's whenever you use
9 your phone and then it connects to a tower, then it
10 registers that tower. So it's not like it's constantly
11 reaching out to a tower and it's being recorded.

12 Q. Okay. So these are the times the phones are used that
13 they communicate with the tower? That's what we're looking
14 at?

15 A. Correct.

16 Q. And they move from Lake Hartwell down to Atlanta?

17 A. Yes, sir.

18 Q. Okay. Now do you remember plotting location data for
19 any other phone in this case? Ones that you haven't been
20 through with the State.

21 A. These -- these maps represent everything I was asked
22 to plot on the phones, yes, sir.

23 Q. Asked by the State to plot?

24 A. Right.

25 Q. Okay. And one of those numbers we went through at the

1 beginning was that 318-8366, VonKeith Toland's phone?

2 A. Right.

3 Q. Okay. And what Ms. Fuller told you on your direct
4 examination is that's a phone that was believed to be
5 stolen from the scene?

6 A. I haven't heard that testimony. I don't know.

7 Q. Okay. But you talked about that phone during your
8 direct examination, right?

9 A. Right.

10 Q. And you got records for that phone during your
11 investigation into this case?

12 A. Yes, sir.

13 Q. Would it help you in testifying about those records
14 if I showed you a copy of them?

15 A. Yes, sir.

16 Q. May I approach the witness, Judge?

17 All right. Investigator Phipps, do you recognize
18 those records?

19 A. Yes, sir. Well, I recognize them as being AT&T
20 records for the 8336 number -- or 8366 number.

21 Q. Okay. For this phone number we've been talking about,
22 318-8366?

23 A. Yes, sir.

24 Q. Okay. The phone that you associated with VonKeith
25 Toland?

1 A. Correct.

2 Q. Okay. Did you have a hard copy of that phone to
3 analyze?

4 A. A hard copy?

5 Q. Let me ask you -- that phone was not presented to you
6 as evidence in this case?

7 A. No, sir.

8 Q. Okay. Now those records that you got from AT&T, they
9 go through calls, right? Calls or text messages. I'm not
10 sure which ones you have up there. I think it says on the
11 first page up at the top voice usage or SMS texting.

12 A. Well, the first page appears to be data usage.

13 Q. Okay. So data usage for that phone?

14 A. Right.

15 Q. When we're talking about data usage, we're talking
16 about going on your phone and surfing the Web?

17 A. Yeah, usually.

18 Q. Okay. And to do that your phone has to interact with
19 a cell phone tower, right?

20 A. Correct.

21 Q. It's gonna hit off a tower just like the calls and
22 other things you plotted in this case?

23 A. Correct.

24 Q. Okay. And actually on those records it gives you
25 coordinates for the towers that phone hit off of?

1 A. Again, if I reviewed these back in the day, I don't
2 have a direct recollection of whether these are tower
3 locations or locations of the handset, but they are
4 locations.

5 Q. Okay. There's locations in the far corner?

6 A. Yes.

7 Q. Okay. Now can you look in that stack of records for
8 where they start talking about April the 26th of 2014?

9 I'll give you a hand. It's close to Page 157. I think
10 it's the second to the last page.

11 A. Let's see. The -- the pages you handed me have
12 repeating numbers.

13 Q. Okay. And it's possible I pulled this one out. This
14 is Page 157 from that. Do you agree with me that is from
15 those records?

16 A. Yes, sir.

17 Q. Okay. And over in that far corner it has the cell
18 location?

19 A. Yes, sir.

20 Q. Okay. And that's what we were just talking about.
21 You're not sure here today if it's tower location or
22 handset location, but it's a location based on these
23 records?

24 A. It is. Yes, sir.

25 Q. Okay. Now there are coordinates given for all those

1 entries there, right?

2 A. There are.

3 Q. The dates on these entries, if you look over to the
4 connection date, April the 26th of '14. That's the only
5 thing that's listed on this page are the connections for
6 April the 26th of '14?

7 A. That's correct.

8 Q. Okay. Starting at the UTC time, so 14:36:32?

9 A. Right.

10 Q. Okay. Now that phone on April the 26th, it's only
11 pinging off -- if we look at the entry on Line 2606, that's
12 three lines down, all the way from that entry down to the
13 bottom of the page that phone is listing one location?

14 A. Okay. Yes, sir.

15 Q. The coordinates for that phone for April the 26th of
16 2014 as reflected on there, all the way down to the bottom
17 of the page where it says 18:37:24, that location stays the
18 same?

19 A. Yes, sir.

20 Q. That location does not mirror this map of those two
21 cell phones moving, does it?

22 A. I don't know. I haven't analyzed that.

23 Q. Okay. Well, it's certainly not moving locations,
24 right?

25 A. I would agree. Yes, sir.

1 Q. Okay. And is that something the State asked you to
2 plot during your investigation?

3 A. They did not.

4 Q. They didn't ask you to make any maps for that location
5 data, did they?

6 A. No, sir.

7 Q. May I approach the witness, Judge? And just to
8 confirm, that phone that we were talking about staying in
9 the same location on April the 26th of 2014, that was the
10 number you associated with VonKeith Toland?

11 A. Yes, sir.

12 MR. SPANGLER: All right. Nothing further, Judge.

13 THE COURT: Redirect?

14 MS. FULLER: Thank you.

15 REDIRECT EXAMINATION

16 BY MS. FULLER:

17 Q. Investigator Phipps, the defense showed you several
18 items. I just wanted to ask you a few questions. When
19 it comes to the cell tower locations, just so it's clear,
20 the information, for example, looking at State's 90, that
21 map you created and the call detail information that goes
22 with that, you would have created this map based on all
23 of the cell phone -- cell tower information available on
24 April 26th from 12:19 to 5:18. Is that an accurate
25 statement?

1 A. It is.

2 Q. So this would contain everything that was available on
3 the phone records?

4 A. For those numbers, yes.

5 Q. So looking at this phone number, which is the
6 803-318-8366 you testified to on direct and you had some
7 questions about on cross-examination, is that 4:03 PM time
8 the accurate time of the last cell tower information you
9 had for those records?

10 A. It is.

11 Q. And when it comes to cell phone records, particularly
12 AT&T, when they submit their records to you, when they
13 respond to subpoenas -- I mean, search warrants, do the
14 records come with different sections of data information?

15 A. The records are usually supplied in multiple
16 spreadsheet form and you -- to be able to actually plot
17 the locations as far as towers for voice communication,
18 you have to take that data and kind of merge it together
19 from different sources.

20 Q. So looking at the single Page 157 the defense showed
21 you, just dealing with the last phone record, what is the
22 last time shown with information -- but you didn't plot
23 this because this isn't necessarily the call detail
24 information used to create that document, correct?

25 A. Correct.

1 Q. Okay. And what -- but just to clear things up, what
2 is the last time information is given on that document?

3 A. 18:37 UTC time on April 26, 2014.

4 Q. So what time would that be Eastern Standard in -- what
5 time would that be in Eastern Standard Time?

6 A. 14:37 hours or 2:37.

7 Q. So whichever part of AT&T's response this is, the last
8 recorded information, which this could be -- this could be
9 the phone just automatically updating, this could be any
10 type of data triggering a location at 2:37 that afternoon?

11 A. Yes, sir.

12 Q. And there's no other information on this -- this
13 portion of the record after that, correct?

14 A. That's correct.

15 Q. Also he showed you the phone -- portions of the
16 records as it relates to -- he said Tycus. I know you
17 didn't know, but you checked the search warrant and it said
18 Tycus and you said there was an outgoing call. Was that
19 also UTC time; if you recall?

20 A. I don't recall.

21 Q. Do you recall what the duration was?

22 A. I do not. I'm sorry.

23 MS. FULLER: Can I show him your -- that exhibit
24 again?

25 MR. SPANGLER: (Hanging.)

1 BY MS. FULLER:

2 Q. Now referencing the first one he showed you, which
3 was the number associated with VonKeith Toland that you
4 performed that extraction on, which is the 221-5730 number.

5 A. Uh-huh.

6 Q. And do you recall him asking you about the 9-1-1 call?

7 A. He did.

8 Q. I'm gonna have you publish all the information without
9 skipping anything starting with Line 38. What is the -- is
10 that an outgoing call?

11 A. Outgoing call to 9-1-1.

12 Q. And the time?

13 A. At 4:23 PM local Eastern Standard Time.

14 Q. The duration of the call?

15 A. Forty-seven seconds.

16 Q. Line 37.

17 A. The next is an incoming call at 4:24 PM that lasts
18 forty-one seconds.

19 Q. And who is that call from?

20 A. It's from 803-785-2244.

21 Q. Are you familiar with dispatch calls -- call numbers?

22 A. 785 is a prefix for the sheriff's department, yes.

23 Q. And how long did that call last?

24 A. Forty-one seconds.

25 Q. And then Line 36, the next call?

1 A. That's a call to ultimately 803-359 -- 803-596 --

2 Q. No, Line 36. I apologize.

3 A. Okay. I believe it's --

4 Q. Oh, I see.

5 A. I was trying to read the whole number because it's

6 clipped. Line 36 is an outgoing call to 803-614-3016

7 identified as L-U-V in the address book and it's at 4:26 PM

8 and lasts four seconds.

9 Q. Four seconds?

10 A. Four seconds.

11 Q. And you said L-U-V? Does that mean love? Is it

12 pronounced love?

13 A. Love.

14 Q. Looking at the next call, is that a missed call from

15 the same prefix as before?

16 A. It is.

17 Q. And what time is that?

18 A. Well, not the same number, but --

19 Q. The one -- the 785 that you said was a prefix for the

20 sheriff's department.

21 A. Correct, it is a prefix for the sheriff's department,

22 the 785 number, at 4:26 PM with a zero second duration.

23 Q. And the next call?

24 A. Is an outgoing call to the Luv number at 4:26 PM that

25 lasts four seconds.

1 Q. And the next call?

2 A. Outgoing to the Luv number at 4:26 that lasts zero
3 seconds.

4 Q. And the next call?

5 A. Incoming from the 785 prefix at 4:27 that lasts
6 three seconds.

7 Q. The next call?

8 A. Outgoing to 803-596-1416, identified as Ma, M-A, in
9 the address book, at 4:27 that lasts eighteen seconds.

10 Q. And the next call?

11 A. To the Luv number at 4:28 that lasts forty-five
12 seconds.

13 Q. And the next call?

14 A. Is a missed call from the 785 prefix and it is at
15 4:28 and lasts zero seconds.

16 Q. The next call?

17 A. Incoming from 785 prefix at 4:29 that lasts one minute
18 and thirty-nine seconds.

19 Q. And the 785 is associated with the sheriff's
20 department?

21 A. It is.

22 Q. And the next call?

23 A. The Ma phone number at 4:29. It's a missed call that
24 lasts zero seconds.

25 Q. And the next one?

1 A. The Luv number at 4:30 that lasts twenty-eight
2 seconds.

3 Q. And the next call?

4 A. The 785 prefix at 4:31 that lasts zero seconds.

5 Q. Is that incoming or outgoing?

6 A. That's an outgoing.

7 Q. A callback to the sheriff's department?

8 A. It is.

9 Q. And the next call?

10 A. Again, another 785 prefix that's incoming at 4:33 that
11 lasts twenty-five minutes and twenty-four seconds.

12 Q. And that's a prefix for the sheriff's department?

13 A. It is.

14 Q. So the calls are to essentially 9-1-1, someone
15 regarded at Luv in his phone and someone regarded as his
16 mother in his phone?

17 A. Yes.

18 Q. I'm gonna ask you to find that outgoing call that he
19 showed you on cross.

20 A. Did you make a note of the time or --

21 Q. It would have the last outgoing call. I'll tell you
22 the page number.

23 A. The last outgoing for the phone itself?

24 Q. Yeah, it looks like it's on Page 49. He was asking
25 you about the call that -- this last call on -- that he

1 said was on 4:27 UTC. What's the duration of that call?

2 A. Zero seconds.

3 Q. And is that a contact saved in the phone?

4 A. It is not.

5 Q. So there's no way to even know if that call was
6 actually dialed by the phone? It's not -- it's not looking
7 like a regular phone number.

8 A. Yeah, it's an odd number.

9 Q. And that record was in UTC time as well?

10 A. I believe so, yes.

11 Q. And you're familiar with the date that this incident
12 occurred was April 26th?

13 A. Correct.

14 Q. And with the 9-1-1 call being at 4:23?

15 A. Yes, ma'am.

16 Q. And law enforcement would have been on-scene and the
17 scene would have been secured?

18 A. I would assume. That's the way we do things.

19 Q. And the phone as he questioned you would have been a
20 phone that was recovered from the residence at that time --
21 from the property?

22 A. Correct.

23 Q. I believe when we were looking at this number your --
24 something I wanted to make sure I had an understanding on,
25 you were asked about -- you were asked about this tower

1 location, 287?

2 A. Yes, ma'am.

3 Q. And the phrasing was that this was the tower closest
4 to the property. Is that your testimony?

5 A. It's not physically -- rephrase your question.

6 Q. On cross the question was asked that this was the
7 tower closest to the property. I guess what I'm getting
8 at, would this just have been the tower in use at the time
9 that -- based on your call details, would that just be the
10 tower in use at the time based on the phone records you
11 have? If I'm asking it wrong --

12 A. I'm not -- the towers depicted on the map are the
13 only towers that the phones that we received records for
14 utilized, so you'd have to refer to the chart as to what
15 time that particular tower was in use.

16 Q. And I think that's what I'm getting at. It would have
17 been the tower that was utilized by the phone in the phone
18 records you received?

19 A. Correct.

20 Q. And for -- looking at the 510 number, that 3:12 time,
21 when is -- after 3:12 when is the next time the 510 number
22 is actually in use?

23 A. It is used at -- down there at 5:06 PM.

24 Q. And if it was used between 3:12 and 5:06, would you
25 have included it here?

1 A. I would have.

2 Q. And since it's not there, what does that indicate?

3 A. That it wasn't used for voice communication during
4 that time.

5 Q. Looking at -- we'll start a little higher, at the
6 404 number up here, at 1:13 PM. When is the next time the
7 404 number that was used to call VonKeith is in use that
8 day?

9 A. 5:02 PM.

10 Q. And if it had been in use between 1:13 and 5:02 PM,
11 would you have include that in this information?

12 A. I would have.

13 Q. Looking at the 707 number starting at 3:10, the 707
14 number, when is the next time it's actually in use that
15 day?

16 A. Which 707 number are you --

17 Q. I apologize. 707-392-0402, Terry McClure's phone
18 number.

19 A. At 5:18 PM.

20 Q. And I apologize for repeating the same question, but
21 from 3:10 PM to 5:18 PM, if that number --

22 A. Well --

23 Q. I apologize.

24 A. -- another phone used it. Another phone called that
25 number, but as far as that phone itself being active would

1 be at 5:18.

2 Q. So I guess it can be safe to say -- we'll do the 5:02
3 time since that was a call to it.

4 A. Right.

5 Q. But from here to, let's say, 4:23 PM, from 3:10 to
6 4:23 PM, if the 707-392-0402 phone number had been in use
7 would you have recorded that information?

8 A. I would have.

9 MS. FULLER: No further questions.

10 THE COURT: Anything on recross?

11 MR. SPANGLER: Just a brief recross, Judge.

12 THE COURT: Go ahead.

13 RECROSS EXAMINATION

14 BY MR. SPANGLER:

15 Q. Investigator Phipps, I promise this is the last time
16 I'm gonna ask you to look at these records. Just one
17 additional call.

18 May I approach the witness?

19 Looking at the records from VonKeith's phone, can
20 you tell me what was the call made immediately prior to
21 9-1-1?

22 A. At --

23 Q. The last -- the next call listed. I'm sorry. Not
24 made from.

25 A. Is a missed call from someone identified as Will B in

1 the address book at 4:02 PM.

2 Q. Is that a local area code?

3 A. 803, yes.

4 Q. Okay. Did you pass that information onto anybody
5 during this investigation?

6 A. Everything in this report was passed on.

7 Q. Okay. But that one wasn't something that you flagged
8 in those bookmarks?

9 A. No.

10 Q. Okay. I know you-all talked briefly about the cell
11 phone towers. Throughout your entire investigation on all
12 the phone records that you had, is there any evidence
13 putting them at 688 Bushberry Road that you can testify to
14 at that moment?

15 A. I have no GPS coordinates that plot them at exactly
16 that location, no.

17 MR. SPANGLER: Thank you, Judge. Nothing further.

18 THE COURT: All right, sir. Thank you very much.
19 You can step down. If you still have his records, just
20 give them back to him as you walk by.

21 (Witness excused.)

22 MR. SPANGLER: Thank you, sir.

23 THE COURT: Two additional witnesses left,
24 Solicitor?

25 MR. GRAHAM: Three, Your Honor.

1 THE COURT: Go ahead and call your next witness,
2 please.

3 MR. GRAHAM: The State calls Brian Zwolak.

4 (Whereupon, Brian Zwolak was duly sworn by the
5 Clerk of Court.)

6 THE CLERK: If you'll have a seat over there. If
7 you will state and spell your last name, please, for
8 the record.

9 THE WITNESS: I will. It's Brian Zwolak,
10 Z-W-O-L-A-K.

11 MR. FLOYD: Your Honor, may we approach on this?

12 THE COURT: Sure.

13 (Proceedings held at the bench; not reported.)

14 THE COURT: Ladies and gentlemen of the jury, I
15 need to take up a matter of law with the attorneys.
16 Adjourn to the back for a few moments and I'll have
17 you back out here as soon as possible.

18 Thank you.

19 (Whereupon, the jury retires to the jury room at
20 3:24 PM.)

21 THE COURT: All right. The jury is out. Mr. Floyd
22 reminded the Court that Mr. Zwolak is -- or the State
23 perhaps intends to elicit testimony from this witness
24 about, I guess, gang vernacular or lexicon?

25 MR. GRAHAM: Street culture and language, Your

1 Honor.

2 THE COURT: Okay.

3 Mr. Floyd, you were objecting to this?

4 MR. FLOYD: Yes, Your Honor, for several reasons.

5 One, we don't think it's an appropriate topic for expert
6 testimony. Number 2, it just speaks to the obvious.

7 Number 3, there's no evidence in the record that these
8 people were members of any gangs, so why would gang
9 culture be relevant in this case? Number 4, there's no
10 evidence that these people who are from different states
11 would use the same vernacular or language that people
12 from South Carolina would use, the same code words or
13 things like that. Number 5, Your Honor, we think it's
14 up to the jury. This is not a foreign language, it's a
15 language they understand, so they'll know the words.
16 They don't need anybody to tell them what the words
17 mean because the words are in English. It's not like
18 we've got somebody interpreting a foreign language,
19 and for all these reasons we feel this testimony,
20 which would be highly prejudicial, not be allowed in
21 the case.

22 THE COURT: All right.

23 Are you intending, Solicitor, to question him about
24 the use of certain words and phrases on the 404-695-5436
25 document?

1 MR. GRAHAM: It was -- yes, it's off -- it's text
2 off there, Your Honor. It's State's 114.

3 THE COURT: All right. Specifically what were you
4 gonna ask him? You can keep that one, if you want. I
5 have one up here.

6 MR. GRAHAM: Well, we haven't published it, so I
7 was going to publish it with him, but as far as -- so,
8 I mean, I guess, we'll just publish it, but nickle would
9 be probably one that I would ask him what nickel would
10 mean, so that would be the text at -- on 4-23 at 15:58
11 hours from Terry McClure to Justin Butler.

12 THE COURT: And nickel, what's he gonna say that
13 means? Nickelback?

14 MR. GRAHAM: I believe he's gonna say that's either
15 -- well, I mean, I can ask him if you want.

16 THE COURT: That will be good. Go ahead and do
17 that.

18 MR. GRAHAM: That might be the better way to do it.

19 THE COURT: Sure.

20 BRIAN ZWOLAK,

21 having been duly sworn, testified as follows:

22 VOIR DIRE EXAMINATION (In-Camera)

23 BY MR. GRAHAM:

24 Q. Investigator Zwolak, let me show you State's 114.
25 This is text content.

1 A. Uh-huh.

2 Q. The text at 15:58 hours from Terry McClure to Justin
3 Butler reads brah, you can bring that nickel with you
4 tomorrow.

5 What -- what does that mean?

6 A. So in my experience nickle meant either quantity
7 of something or a firearm would be the two contexts that
8 we've seen that used before. So a number, a quantity
9 for something, whether it be drugs or something else.

10 MR. GRAHAM: The next one I would ask him about,
11 Your Honor, would be at 21:19 about the whip.

12 THE WITNESS: Yeah, a vehicle.

13 MR. GRAHAM: The next one that would require
14 interpretation or I would ask for would be on 4-24 at
15 10:05 from Justin Butler to Terry McClure, the part
16 about a hammy, H-A-M-M-Y.

17 THE WITNESS: Firearm.

18 MR. GRAHAM: Those -- other than publishing them,
19 I think are the only ones that actually require
20 interpretation of words.

21 THE COURT: Okay. I presume, Mr. Zwolak, in
22 trying to cut to the chase in the interest of time
23 that you've been qualified as an expert in what fields
24 previously?

25 THE WITNESS: It was in culture, street culture

1 and language, and it was --

2 MR. GRAHAM: Judge, if I can, I've got a copy of
3 -- it's an unpublished opinion, but the non-reported
4 case on the co-defendant as well as cert being denied.
5 This issue was raised and addressed.

6 THE COURT: The last time I relied on an
7 unpublished opinion, I was reversed, but whatever.
8 Let's see what we've got here.

9 He has been -- you've been qualified how many times
10 in this area?

11 THE WITNESS: Once.

12 THE COURT: Once?

13 THE WITNESS: One time.

14 THE COURT: Was it in this trial, the Butler case?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Solicitor, to your knowledge has an
17 expert been qualified in this area or have other
18 experts been qualified in the area of street culture
19 and language in this state and, if so, how many times
20 by whom?

21 MR. GRAHAM: I'm not aware, Your Honor, one way
22 or another.

23 THE COURT: What gives me pause is, A, this is an
24 unpublished opinion from the Court of Appeals, so the
25 Supreme Court hasn't passed on it.

1 MR. GRAHAM: No, that's true. Cert was denied on
2 this, Your Honor.

3 THE COURT: Cert was denied?

4 MR. GRAHAM: Yes. It's attached to what I handed
5 up.

6 THE COURT: I'm sorry. I didn't get that far.
7 How long have you been in law enforcement?

8 THE WITNESS: About twelve years.

9 THE COURT: Twelve years?

10 THE WITNESS: Uh-huh.

11 THE COURT: And how did you acquire this knowledge
12 about street culture and their particular vernacular?

13 THE WITNESS: I've been working street crimes and
14 organized crime and gangs for about eight years now
15 between Columbia and the State and Lexington County.

16 THE COURT: So you've kind of covered this area?

17 THE WITNESS: Yeah. I actually taught at the
18 academy.

19 THE COURT: What did you teach?

20 THE WITNESS: I taught -- I taught gang
21 documentation and investigations and that's how I --
22 and in the investigations class, I taught school
23 resource officer classes in terms of street crimes
24 and gangs, I taught an organized crimes class through
25 HIDTA, and I've attended a bunch of different training

1 classes throughout the United States in gangs and
2 street crimes.

3 THE COURT: Okay. You've taught in this area.
4 Have you received any -- is most of your knowledge from
5 your work on the street or have you received any sort of
6 formal training in this particular area or conferences
7 that you've gone to?

8 THE WITNESS: It's about both. So I've gone
9 to the Regional Counterdrug Academy in Meridian,
10 Mississippi. I've done basic and advanced gang and
11 street investigations. I've taken classes through the
12 State. I'm also the training coordinator and attended
13 the South Carolina Gang Investigators Association for,
14 I want to say, six years now. And then, like I said,
15 I've taught -- I've taught a decent amount of classes
16 at the State.

17 What else? I have taken gang investigation and
18 prosecution techniques. I've taken training -- actually
19 most recently I'm on the FBI Safe Streets Task Force
20 out of Columbia, so task force officer training that's
21 covered this type of investigation.

22 THE COURT: Okay. Here's where we are, Mr. Floyd
23 and Mr. Graham. I do feel that it would be beneficial
24 to the jury for them to get some idea of what a nickel
25 is, as opposed to a five cent piece, what a whip is

1 opposed to a strap of leather, and what a hammy is
2 instead of short for hamster, okay? At least that's
3 what my daughter called it when we had one of those
4 rodents.

5 But the flip side of that is that if he testifies
6 as he has just now at -- during his qualification about
7 gang, gang, gang, gang, gang, it gives the impression
8 that this is gang, dang, gang, gang, gang related.

9 So I understand your objection. I don't want and
10 I would like to avoid the jury hearing because clearly
11 he has background enough to opine as to what these three
12 terms mean, okay, based on what he's said here, but if
13 he gets qualified in front of the jury they're gonna
14 hear over and over again about the gang conferences that
15 he went to, the street crime conferences that he went
16 to, and that's gonna give a negative inference against
17 potentially the Defendant.

18 I understand you're objecting to him testifying,
19 Mr. Floyd, and perhaps you have issues with his
20 qualification, and if that's the case I'd be more than
21 happy to let you voir dire him. What I would suggest a
22 clean way through this so that he can opine as to what
23 these words mean, because I think that's appropriate,
24 is that if you want to ask him any voir dire concerning
25 his qualifications, that's fine, but whenever the jury

1 comes back in basically I'd simply tell them subject to
2 the Defendant's objection that Mr. Zwolak has been
3 found by the Court to be an expert in the field of
4 street culture and language so can he can give opinion
5 testimony in that area. This, of course, would be
6 subject to your objection so that we avoid the gang
7 references that you are trying to prevent.

8 Because I'm with you that using that phrase or
9 that kind of nomenclature could potentially be unduly
10 prejudicial in light of the probative value of these
11 three terms being defined, so that's how I would prefer
12 to handle it.

13 Do you understand what I'm saying?

14 MR. FLOYD: Yes, Your Honor. I appreciate that
15 approach. We still don't feel that this is appropriate
16 testimony and we think the jury can interpret the
17 language, it is English, and they can interpret it as
18 they deem it fit and appropriate without someone telling
19 them what some items mean.

20 Furthermore, as to the first item of a nickel,
21 that's a text from Mr. McClure, if I heard that
22 correctly, and once he says money or drugs, well, that's
23 -- that's a comment upon Mr. McClure's character, which
24 we don't think is appropriate because he hasn't taken
25 the stand.

1 THE COURT: I understand your position, but at the
2 same time this document has been introduced as evidence
3 of conspiracy and any time that's the case in a criminal
4 trial there's gonna be some impugment of a person's
5 character any time a document like that is introduced
6 to prove the conspiracy.

7 Understanding your objections, are you comfortable,
8 Mr. Graham, with us doing it like I suggest, that I
9 simply refer -- that I simply say that this man's been
10 found to be an expert in the field of street culture and
11 language by the Court, they have an objection, and then
12 you get the definition of those three words out based
13 upon his experience? And you can hit -- you can hit
14 him with the questions of, you know, how long have you
15 worked in law enforcement, have you, you know, been
16 involved with investigations involving street culture,
17 are you familiar with that vernacular or lexicon,
18 however you want to phrase it.

19 MR. GRAHAM: Yes, Your Honor. I guess, do we
20 need to make -- for the record do we need to make a more
21 detailed proffer of his qualifications or do you feel
22 like we covered enough?

23 MR. FLOYD: We'd like that also, Your Honor, so we
24 can maybe ask him some cross.

25 THE COURT: All right. Go ahead and hit him with

1 any questions I didn't ask him then, please.

2 VOIR DIRE EXAMINATION (In-Camera)

3 BY MR. GRAHAM:

4 Q. Investigator Zwolak, where are you currently employed
5 and what do you do?

6 A. I'm currently employed with the Lexington County
7 Sheriff's Department. I'm a detective in the gang and
8 violent crimes unit.

9 Q. Prior to that, what did you do?

10 A. Prior to that, I worked at the State criminal justice
11 academy for approximately -- a little over two years. I
12 taught -- I was in the advanced training unit. I taught
13 gang investigation and gang documentation, as well as
14 assisted in the basic law enforcement training classes.

15 Q. Prior to that what did you do?

16 A. I was with the Columbia Police Department from '07
17 through 2015. While employed there, I worked patrol on
18 the north side of the city. I was also assigned to the
19 property crimes investigations unit on the north side of
20 the city and then I was promoted to detective and I was
21 placed in the gang unit in 2011.

22 Q. So when talking about the type of language here --
23 and we talked about street language --

24 A. Uh-huh.

25 Q. -- how many years have you had personal contact with

1 you speaking with people who communicate in this way?

2 A. Since I got on the street in Columbia, so I'd say,
3 you know, between eleven and twelve years.

4 Q. How many conversations would you have had that dealt
5 with this?

6 A. Hundreds, if not more.

7 Q. That includes interviews?

8 A. That includes interviews and investigations in
9 interview rooms to interviews on the street to interviews
10 in detention centers. Around the state, too, not just in
11 the Columbia area.

12 Q. So for basically your entire law enforcement career,
13 twelve years?

14 A. Yeah. Yes, sir.

15 Q. Thousands of interviews with individual people?

16 A. Yes.

17 Q. In addition to that, do you also -- during that time
18 period, have you invested your time into social media that
19 would relate to street language and culture?

20 A. Yeah. Yes, sir. Between property crimes, as well as
21 my time in violent crime and gang units, we use -- utilize
22 social media on a regular basis. I've also attended
23 classes dealing with social media and new platforms, as
24 well as some older platforms utilized throughout my career.

25 Q. In addition, music videos, rap videos where this

1 language is utilized, have you paid attention to that over
2 your entire career?

3 A. Yes, sir. Yeah, we use -- we use that in various
4 aspects.

5 Q. Still current on that today?

6 A. As of, yeah, a couple of days ago.

7 Q. Specifically to street language and culture, besides
8 your experience, your work experience, do you have any
9 formal training dealing with those issues?

10 A. Yes. So I took the state classes to include criminal
11 gang overview, law enforcement. I took a law enforcement
12 response to gangs in the community, graffiti recognition
13 class, street crimes class. I took basic gang school, I
14 took advanced street gang investigations and regional gang
15 training and narcotics training at -- in Meridian,
16 Mississippi. I've attended conferences in the Lowcountry
17 for rural gangs in the Lowcountry dealing with Georgia and
18 South Carolina, investigation and prosecution techniques
19 class that was put on not dealing with not just gangs but
20 street crime investigations. I'm a trained trainer, so
21 I've taken the law enforcement deterrents of terrorist and
22 street crime stuff for the academy, as well as HIDTA
23 classes. I've taken human trafficking classes which would
24 deal with your social media platforms and stuff like that.
25 I've also been a member of the International Outlaw

1 Motorcycle Gang Investigators Association for the last
2 three years and attended conferences around the country and
3 cyber investigations classes that was taught by HIDTA.
4 Task force officer training in Nashville through the FBI
5 where we went over various forms of, you know, social media
6 training and cyber investigations. And then at most of
7 these conferences I've also taught the classes as well.

8 Q. And all of those classes would have had some component
9 dealing with street culture and language?

10 A. Yeah, all of them. All of them touch on that type of
11 stuff, yes, sir.

12 Q. And when we're talking about -- we're not talking that
13 the language that we're speaking about is exclusive to only
14 gang members, correct?

15 A. Absolutely not, no. No, it's not just -- it's not
16 exclusive to gang members at all.

17 MR. GRAHAM: Your Honor, I believe that's
18 sufficient for the record.

19 Thank you.

20 THE COURT: Any voir dire that you want to touch
21 on, Mr. Floyd?

22 MR. FLOYD: Yes, Your Honor.

23 VOIR DIRE EXAMINATION (In-Camera)

24 BY MR. FLOYD:

25 Q. Officer Zwolak --

1 A. Yes, sir.

2 Q. -- you mentioned that you -- you were assigned to the
3 gang unit?

4 A. Yes, sir.

5 Q. When was that?

6 A. Back in 2015 was when I was first assigned to the gang
7 unit.

8 Q. So you were assigned to the gang unit after this
9 incident; is that correct?

10 A. Yeah. Yes.

11 Q. And you were --

12 A. No, I'm sorry. 2011 I was assigned to the gang unit.
13 2015 I went to the criminal justice academy.

14 Q. Okay. Because you -- you testified 2015 a while ago.

15 A. I apologize. I've done a lot.

16 Q. Now how many -- and you've only been accepted as an
17 expert one time?

18 A. Yes, sir. I've testified on multiple occasions but
19 actually qualified one time.

20 Q. And that one time was in the co-defendant's trial in
21 this incident?

22 A. Yes, sir.

23 Q. And you've had no other times that you've ever been
24 offered as an expert or qualified as an expert; is that
25 correct?

1 A. That's the only time I've been qualified, yes, sir.

2 Q. Have you ever been offered as an expert before?

3 A. No, I've testified multiple times but never qualified.

4 I was involved in most of the investigations, so most of
5 the stuff that I was doing was -- I was there and I was
6 doing it, so I was an investigating officer.

7 Q. So you weren't using your, quote, expertise in these?

8 A. It was stuff that I did and witnessed and was there
9 for, yes, sir.

10 Q. Now you mentioned you've listened to a lot of rap
11 videos?

12 A. Uh-huh.

13 Q. Can you tell me one rap video where the word "hammy"
14 was used?

15 A. I would have to go back. I want to say that in the
16 previous one we listened to a video that was sent over from
17 California where that terminology was used. It was hamma,
18 not hammy, but it was a variation of the word.

19 Q. So you've never used -- you've never heard the word
20 "hammy" used in a rap video, have you?

21 A. I can't say that for certain. I have heard that
22 terminology used to reference a firearm before in my
23 career.

24 Q. Where did you hear it?

25 A. I can't -- I've interviewed tons and tons of people.

1 Q. So you can't tell us where you heard it from?

2 A. Not a specific -- not a specific instance.

3 Q. You're telling us you've heard it?

4 A. Yes.

5 Q. Just like you said you've listened to all these rap
6 videos --

7 A. Correct.

8 Q. -- but can't name one now that's ever used the term
9 "hammy", can you?

10 A. It was hamma. It was a variation of the name.

11 Q. Have you ever heard the word "hammy" used?

12 A. No.

13 Q. Is there a dictionary that they give of these terms?

14 A. It changes on a daily basis almost. It's all about --
15 about current stuff and context.

16 Q. Now you mentioned nickel. Nickel can have lots of
17 different meanings, can't it?

18 A. I've heard it used two different ways. I've heard it
19 used to reference a firearm and I've also heard it used for
20 quantity. Not necessarily narcotics, but a quantity.

21 Q. It could be like a five hundred dollar bill or a five
22 dollar bill; is that correct?

23 A. Quantity. Yes, sir.

24 Q. Or five grams of this or five ounces of that?

25 A. Quantity. Yes, sir.

1 Q. So it doesn't always have to mean anything illegal,
2 does it?

3 A. No.

4 Q. Now are there differences regionally in the way terms
5 are used?

6 A. Yes.

7 Q. Have you ever done a conference out in California?

8 A. I've been to Washington, west coast. I've been to
9 Arizona for conferences.

10 Q. But never California?

11 A. Well, at those conferences there's been multiple
12 people from California.

13 Q. Okay. But you've never attended a conference in
14 California?

15 A. Not actually in the state of California, no.

16 Q. And you've only been admitted as an expert one time?

17 A. Correct, one time.

18 Q. With the co-defendant's trial; is that correct?

19 A. Correct.

20 MR. FLOYD: Hold on just a minute, will you?

21 THE COURT: Have you ever been -- has any party
22 ever sought to have you qualified as an expert and the
23 Court refused to qualify you?

24 THE WITNESS: No. No, Your Honor.

25 THE COURT: Solicitor, the context of the Butler

1 decision, I'm looking at that last paragraph, and it
2 says the State presented Zwolak's testimony to counter
3 Butler's assertion that he was not involved in a plan
4 to rob the victims and to show a scheme, et cetera,
5 et cetera, between Butler and McClure.

6 Is that in the same -- are you intending to elicit
7 from this witness the same sort of stuff that you were
8 eliciting in the previous trial about these terms or is
9 it --

10 MR. GRAHAM: I'm sorry, can you point me -- I'm
11 having a little trouble finding where you're looking.

12 THE COURT: The very last paragraph in the opinion.

13 MR. GRAHAM: Butler does not point to any specific
14 part or --

15 THE COURT: No, I'm wanting to make sure that the
16 reasoning behind using this expert in this case and in
17 Butler's case was the same. Did you put him up here to
18 explain this document, the one involving --

19 MR. GRAHAM: Yes.

20 THE COURT: Okay. I assume it was after Mr. Butler
21 had testified or --

22 MR. GRAHAM: No, it was in our case in chief, I
23 believe, just like now.

24 THE COURT: All right. So you used it kind of
25 offensively to negate the possibility that he would

1 say there was no association between the two of us,
2 we're just good buddies?

3 MR. GRAHAM: Yes, because actually he -- Mr. Butler
4 came up and gave an alternate explanation for hammy.

5 THE COURT: Oh, so he did testify?

6 MR. GRAHAM: He did testify, so we put it in our
7 case in chief and then Mr. Butler testified at his trial.

8 THE COURT: And you brought him back to explain --

9 MR. GRAHAM: No, he had already testified and said
10 what it was.

11 THE COURT: All right. He already testified about
12 what a hammy was?

13 MR. GRAHAM: Yes.

14 THE COURT: Okay. And Judge McMahon qualified him
15 as an expert in this area and you are; is that right?

16 MR. GRAHAM: Yes, sir.

17 THE COURT: And you're correct, cert was denied,
18 so I guess if the Supreme Court would have found fault,
19 they would have done it.

20 I shall rely on the unpublished Court of Appeals
21 opinion because I do believe the individual here has
22 sufficient expertise under Rule 702 to give expert
23 testimony under -- as far as what nickle, whip, and
24 hammy mean.

25 Mr. Floyd, your points about specific definitions,

1 the way this language changes, I think that goes to
2 -- to weight perhaps, but maybe not necessarily to
3 admissibility. I don't know what these terms mean.
4 Apparently he's more familiar with them than I am.
5 I'll qualify him as a witness, but I'm gonna do it
6 the same way that I suggested so that we avoid any
7 implication of prejudice that was present in the Brown
8 case -- or in the Butler case, okay?

9 MR. FLOYD: Your Honor, please note our objections.

10 THE COURT: Your objection is continuing and you
11 do not need to renew it when I inform the jury that
12 he's being qualified in this particular area. You are
13 protected for the record, so you do not need to renew
14 that you're objecting both on relevance and qualification
15 and even the need for the expert's testimony in the
16 first place.

17 MR. FLOYD: Your Honor, is there something we can
18 use other than the term "street culture"? Because that
19 in itself has some bad connotation.

20 THE COURT: How about urban culture? Is that better,
21 urban?

22 MS. FULLER: No, don't do that.

23 THE COURT: No? That's worse?

24 MS. FULLER: Yes. Not that. Just don't --

25 THE COURT: Just what?

1 MS. FULLER: Sorry. It just wouldn't be
2 appropriate.

3 (Pause in proceedings.)

4 THE COURT: I understand now. Thank you.

5 I'll have a cigarette. You-all think about that
6 and somebody get a thesaurus out and figure out some
7 other word we can use.

8 I understand now. Thank you.

9 We're at ease for about five minutes.

10 (Recess taken at 3:52 PM.)

11 (Back on the record at 4:01 PM.)

12 THE COURT: Okay. I don't know what you-all came up
13 with in lieu of street culture and in the for what it's
14 worth category, to the extent I may have suggested urban
15 without knowing that that had negative connotations or
16 was inappropriate, maybe that buttresses the need for
17 someone to explain what these words mean, but so far we've
18 got slang and language. What we've come up with were
19 modern, colloquial idioms, uncommon idiomatic expressions
20 and unconventional expressions.

21 Do you-all have anything better other than street
22 culture and language? I don't know. Other thoughts?
23 We're gonna need someone to define an idiom for the jury
24 probably, but...

25 MR. FLOYD: Unconventional is fine with us,

1 Judge.

2 THE COURT: Unconventional expressions?

3 MS. FULLER: (Shakes head.)

4 THE COURT: Unconventional common expressions?

5 Unconventional -- unconventional language expressions?

6 MR. GRAHAM: I don't even know what that means,

7 Judge.

8 THE COURT: Non-King's English. I mean, street
9 is not inherently offensive and maybe -- maybe it does
10 convey the right --

11 MS. FULLER: I think street culture. It is what
12 it is. I mean --

13 MR. FLOYD: Now -- go ahead. I'm sorry. I didn't
14 mean to interrupt you.

15 MS. FULLER: No, I -- I think we lose the point
16 of the expert qualification by trying to change it.

17 THE COURT: We lose the gist of the --

18 MS. FULLER: Right. I was doing just like a quick
19 search on like what the Federal courts do since they
20 have gang -- real gain statutes and they literally just
21 tender them as gang experts. So I think by us going the
22 extra --

23 THE COURT: Mile to say --

24 MS. FULLER: -- street culture I think that's -- I
25 think that's appropriate since it passed muster with the

1 Court of Appeals and cert was denied. I don't see a
2 problem with it.

3 THE COURT: Okay. He'll be qualified as an expert
4 in the field of street culture, language and slang. How
5 about that? And subject to your objection.

6 MR. FLOYD: Right. And we prefer urban to street.

7 MS. FULLER: No.

8 THE COURT: Apparently urban is off limits and my
9 clerk can explain to me in greater detail later why, so
10 we're gonna stay away from urban. So street culture,
11 language and slang is what he's gonna be qualified as
12 an expert in, okay?

13 Let us have -- the jury is still smoking.

14 All right. Step down and you will need to come
15 back up and get sworn.

16 MR. GRAHAM: Your Honor, the witness can stay on
17 the stand.

18 THE COURT: Yeah, he was already called and sworn.
19 Correct. I'm sorry.

20 While we're waiting on the jury, come over here
21 for a sidebar.

22 (Proceedings held at the bench; not reported.)

23 (Whereupon, the jury returns to the courtroom at
24 4:07 PM.)

25 THE COURT: Ladies and gentlemen of the jury,

1 thank you for your continued patience. The witness who
2 has just been called, Mr. Zwolak, ladies and gentlemen,
3 has been found to be an expert by the Court in street
4 culture, language and slang, and the State, I do
5 anticipate the eliciting some questions from him in
6 that area. Of course, his opinion is evidence that
7 you can use as you think is appropriate, okay?

8 Mr. Graham, you can continue, sir.

9 MR. GRAHAM: Thank you, Your Honor.

10 BRIAN ZWOLAK,
11 having been previously sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. GRAHAM:

14 Q. Investigator Zwolak, you've been in law enforcement
15 for twelve years?

16 A. Yes. Yes, sir.

17 Q. And during that time period, you've had experience
18 with street culture and slang; is that correct?

19 A. Yes, I have.

20 Q. And that would include speaking with people,
21 interviews?

22 A. Yeah, I've conducted hundreds of interviews in various
23 different capacities, whether on the street or in interview
24 rooms.

25 Q. Additionally -- I'm sorry. I didn't mean to cut you

1 off.

2 A. No, you're fine.

3 Q. Additionally, that would include current music lyrics,
4 rap music and the like, correct?

5 A. Yes.

6 Q. Have you had a chance to look over State's 114?

7 A. Yes, I have.

8 Q. Okay. I'm gonna give you a copy of it.

9 MR. GRAHAM: Your Honor, may I publish?

10 THE COURT: You may.

11 BY MR. GRAHAM:

12 Q. So 114 was introduced earlier with Mike Phipps and it
13 was the text that was obtained off the 404 number that was
14 associated with Justin Butler. You're familiar with that,
15 yes?

16 A. Yes.

17 Q. So we'll just -- this is the first time the jury has
18 seen this, so we're just gonna step through it and there
19 are a few words that I'd like your help understanding.

20 A. Yes, sir.

21 Q. So if we start at the very first line, the date
22 is the 23rd, 2:04 in the afternoon, from the 707 number
23 associated with Terry McClure, to the 404 number associated
24 with Justin Butler. Would you read the content of the
25 text?

1 A. You want to -- who's this is what it says.

2 Q. Stepping on down the same day, one minute later from
3 Justin Butler's phone to Terry McClure's phone, the answer?

4 A. Jona.

5 Q. Stepping down to the third, the same time, from Terry
6 McClure back to Justin Butler?

7 A. It says I'm in class, bra -- which is like brother --
8 call you in an hour.

9 Q. Stepping down to the next one, which is still on the
10 23rd, from Justin Butler to Terry McClure?

11 A. Bet. Should be okay, sure.

12 Q. The next line down, the response from Terry McClure
13 back to Justin Butler?

14 A. This your line. Asking if this is the number.

15 Q. The next one, which is the same date, a few -- one
16 moment later from Justin Butler to Terry McClure.

17 A. Yeah, new new. Yes, new number.

18 Q. Stepping down, the same conversation, the same day,
19 the same time.

20 A. 'Aite, which is yes.

21 Q. Now moving down to the same day, but 3:58 in the
22 afternoon, from Terry McClure to -- yes, 3:58 from Terry
23 McClure to Justin Butler?

24 A. Bra, can you bring that nickle with you tomorrow.

25 Q. Let me ask you a question. As an expert in the

1 field of street language and culture, the term "nickel",
2 N-I-C-K-E-L, do you have an opinion of what that word can
3 mean?

4 A. So I've seen it in my experience used to -- as far as
5 amount or a firearm. I've seen it used in both -- in both
6 ways.

7 Q. So an amount or a firearm?

8 A. Yes.

9 Q. So that would be like a nickel-plated firearm?

10 A. Yeah. Yes, silver firearm. Yeah.

11 Q. Stepping down to the next entry, 4:01 on the 23rd from
12 Justin Butler to Terry McClure.

13 A. So when we get to South -- SC, I got you for sho. So
14 when we get to South Carolina, I got you.

15 Q. So the next --

16 MR. FLOYD: Your Honor, I'm gonna object. There's
17 no need for anybody to interpret. The jury can read it
18 themselves.

19 THE COURT: As it relates to the specific
20 definitions that we were discussing, I think whip and
21 hammy and nickel were the ones that you were wanting to
22 focus on, perhaps we could refocus on those, please.

23 BY MR. GRAHAM:

24 Q. The 4-23-2014 at 21:19, 9:19 PM, Justin Butler sends
25 a text to Terry McClure.

1 A. Yes.

2 Q. What's a whip?

3 A. I know that to be a vehicle.

4 Q. A vehicle?

5 A. Uh-huh, a car.

6 MR. GRAHAM: Your Honor, I -- can I have him
7 publish it and just only translating the words that we
8 discussed?

9 THE COURT: Well, I mean, it's up there. It can be
10 read by everybody. I'd rather you kind of focus on what
11 we spoke about in voir dire.

12 MR. GRAHAM: Thank you, Your Honor.

13 BY MR. GRAHAM:

14 Q. Investigator Zwolak, 4-24-14, 10:05 AM, Justin Butler
15 to Terry McClure.

16 A. Uh-huh.

17 Q. The last part in there says I got a hammy with me.
18 What's your opinion of hammy, H-A-M-M-Y?

19 A. So I've heard on multiple occasions hammer, hamma to
20 be used to be a firearm, so I take that as a -- as a
21 variation of that term, meaning firearm.

22 MR. GRAHAM: Your Honor, I think those were the
23 three specific terms. Thank you, Your Honor.

24 Thank you, Mr. Zwolak.

25 THE WITNESS: Thank you.

1 THE COURT: Mr. Floyd.

2 CROSS-EXAMINATION

3 BY MR. FLOYD:

4 Q. Good afternoon, Officer Zwolak.

5 A. Good afternoon, sir.

6 Q. You've been qualified as an expert one other time; is
7 that correct?

8 A. That is correct.

9 Q. And have you ever been offered as an expert other than
10 that one particular time?

11 A. I've testified in a bunch of cases, but just this and
12 another previous time as an expert.

13 Q. When you say other times, you mean like what you saw,
14 what you did?

15 A. Being involved in cases, yes, sir.

16 Q. Like a regular detective?

17 A. Yes, sir.

18 Q. Now you mentioned a hammy is a variation of words that
19 could mean a gun; is that correct?

20 A. In my opinion, yes, sir.

21 Q. In your opinion?

22 A. Uh-huh. Yes, sir.

23 Q. Because these terms change from week to week, day to
24 day almost, don't they?

25 A. Yes, they can.

1 Q. And they vary from region to region, don't they?

2 A. They can. In this instance -- in the previous case
3 we talked about, there were music videos as well that I
4 listened to from that region where hamma was referred to
5 as a firearm in the music video. So hammy I take is a
6 variation of that, as well as I've heard it used in South
7 Carolina.

8 Q. Let me -- let me clarify that with you.

9 A. Uh-huh.

10 Q. These rap videos --

11 A. Uh-huh.

12 Q. -- hammer was the word, not hammy?

13 A. H-A-M-M-A, yes, sir.

14 Q. Hamma?

15 A. Right.

16 Q. Hamma was the word for gun?

17 A. Yes, sir.

18 Q. Not hammy; is that correct?

19 A. Correct.

20 Q. In fact, hammy could mean something entirely
21 different, couldn't it?

22 A. I guess it could, yes. In my experience, that's what
23 it's been used as.

24 Q. Well, no, in your experience hamma has been used for
25 gun, not hammy; is that right?

1 A. That's a variation of the word, yes, sir.

2 Q. You've never known hammy to be used as a gun, have
3 you?

4 A. No.

5 Q. Now let's talk about the word nickel.

6 A. Yes, ma'am.

7 Q. A nickel is often used in rap videos, isn't it?

8 A. Well, I've heard it used in various contexts talking
9 to people. Rap video is not, you know...

10 Q. Doesn't nickel always mean a .45?

11 A. It can. A nickel --

12 Q. It usually does, doesn't it?

13 A. I've also heard it used for an amount, so an amount
14 of money, an amount of narcotics. I've also heard it used
15 for a gun that's silver, in that context as well.

16 Q. It's usually used as a .45?

17 A. I've heard it used in all those when we're talking
18 about as far as the slang.

19 Q. In fact, nickel could just mean \$500, couldn't it?

20 A. It could.

21 Q. It could be mean \$5.00?

22 A. It could.

23 Q. So you don't really know what's meant. All you're
24 doing is telling the jury how the term is sometimes used in
25 urban culture?

1 A. Correct, and in context, yeah, with what was in there.
2 Yes, sir.

3 Q. Is this one sheet of paper the only evidence they've
4 asked you to look at?

5 A. This is -- the one I have up here? Yeah, this is the
6 sheet I have. There was -- there was another set -- set of
7 stuff that I'd looked at previously, but this is what I
8 have now.

9 MR. FLOYD: Thank you. I have no further questions.

10 THE COURT: All right, sir. Thank you. You can
11 step down.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 THE COURT: Call your next witness, please.

15 MR. GRAHAM: The State calls Detective Brent Pucci.

16 (Whereupon, Brent Pucci was duly sworn by the
17 Clerk of Court.)

18 THE CLERK: Thank you. If you'll have a seat over
19 there and state your name and spell your last, please,
20 for the record.

21 THE WITNESS: Yes. My name is Brent Pucci, P, as
22 in Paul, U-C-C-I.

23 BRENT PUCCI,

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. GRAHAM:

2 Q. Where are you employed -- is it investigator?

3 A. I'm a sergeant now.

4 Q. Sergeant Pucci, where are you employed?

5 A. I work for the City Fairfield out in California as a
6 police sergeant and I supervise a street enforcement team.

7 Q. And how long have you been in law enforcement?

8 A. Twenty-six years.

9 Q. And back in May of 2014, did you have an opportunity
10 to be involved with an interview with the Defendant, Terry
11 McClure?

12 A. Yes, I did.

13 Q. And, in fact, did you advise him of his Miranda
14 rights?

15 A. Yes, sir, I did.

16 Q. Where did -- the interview occurred at the Fairfield
17 Police Department?

18 A. Yes, sir. Correct.

19 Q. And did Mr. McClure appear to be under the influence
20 of alcohol or drugs?

21 A. No, sir.

22 Q. And have you had an opportunity to review State's
23 Number 3?

24 A. Yes, sir, I have.

25 Q. And does that fairly and accurately depict you

1 advising Mr. McClure of his rights?

2 A. That's correct.

3 Q. Do you remember the date that that occurred on?

4 A. Yes, sir.

5 Q. What was the date?

6 A. It was May 8th of 2014.

7 Q. May 8th of 2014.

8 MR. GRAHAM: Your Honor, the State would move
9 State's 3 into evidence.

10 THE COURT: Subject to all pre-trial objections
11 and rulings, State's 3 is in evidence.

12 (State's Exhibit Number 3, Miranda Warning from
13 Interview, was admitted into evidence.)

14 MR. GRAHAM: Permission to publish?

15 THE COURT: You may.

16 (Whereupon, State's Exhibit Number 3 was played.)

17 BY MR. GRAHAM:

18 Q. State's 3 that we just published, that was your voice
19 and Mr. McClure's voice?

20 A. Yes, sir.

21 Q. And you advised him of his rights, correct?

22 A. Yes, sir.

23 Q. What were the rights that you advised him of?

24 A. That he has the right to remain silent, anything that
25 he says can and will be used against him in a court of law,

1 that he has the right to an attorney and that if he wishes
2 he could have an attorney with him both before and during
3 any questioning and, lastly, that if he cannot afford an
4 attorney one will be represented free of charge to him.

5 Q. And the other voice on there besides yours, that voice
6 was Mr. McClure, correct?

7 A. Yes, sir. Correct.

8 Q. And he said he understood those rights, didn't he?

9 A. Yes, sir, he did.

10 Q. Any -- any interaction that you had with him make you
11 think that he didn't understand his rights?

12 A. No, sir.

13 Q. Any interaction that you had with him make you
14 think that a conversation that he had with Detective
15 Trojanowski after this advisement of rights was not freely
16 and voluntarily made on Mr. McClure's part?

17 A. No, sir.

18 Q. Did you threaten him in any way to get him to talk to
19 Detective Trojanowski?

20 A. No, I did not.

21 Q. Did you promise him anything to get him to talk with
22 Detective Trojanowski?

23 A. No, sir.

24 Q. To the best of your knowledge in your interactions
25 with Mr. McClure on May 2018, did he freely and voluntarily

1 waive those rights and he knew what he was doing?

2 A. Yes, sir, he did.

3 MR. GRAHAM: That's all the question. Thank you,
4 Sergeant.

5 MR. SPANGLER: No cross, Judge.

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

7 THE WITNESS: Thank you, Your Honor.

8 (Witness excused.)

9 THE COURT: Call your next witness, please.

10 MR. GRAHAM: The State calls Steve Trojanowski.

11 (Whereupon, Steven Trojanowski was duly sworn by
12 the Clerk of Court.)

13 THE CLERK: If you'll have a seat over there,
14 please. State your full name and spell your last for
15 the record.

16 THE WITNESS: Good afternoon. My name is Steven
17 Trojanowski. That's T-R-O-J-A-N-O-W-S-K-I.

18 STEVEN TROJANOWSKI,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GRAHAM:

22 Q. What is -- you're in law enforcement, correct?

23 A. Yes, sir. I'm a police officer with the City of
24 Fairfield, county of Salano, state of California.

25 Q. How long have you been in law enforcement?

1 A. I have been a post-certified police officer actively
2 working for twenty-three years.

3 Q. And you know Terry McClure?

4 A. Yes, sir.

5 Q. Do you know where Terry McClure's address was back in
6 April, May of 2014?

7 A. In 2014, he lived on Aegean Way in the city of
8 Vacaville.

9 Q. And did you receive a request from Detective Mefford
10 to attempt to conduct an interview with Terry McClure?

11 A. Yes, I did.

12 Q. And, in fact, were you able to conduct an interview
13 with him?

14 A. Yes, I conducted an interview at the Fairfield
15 Police Department's major crimes building in the city of
16 Fairfield, California.

17 Q. And Mr. McClure spoke with you?

18 A. Yes, sir.

19 Q. And that was videotaped; is that correct?

20 A. Yes, sir, it was.

21 Q. Let me show you State's Number 4 and ask if you
22 recognize that?

23 A. This is a -- this is a CD-ROM disc. It has my
24 signature on it, dated 10-24 of 2019.

25 Q. Did you promise Mr. McClure anything to get him to

1 speak with you?

2 A. No.

3 Q. Did you threaten him in any way?

4 A. Not at all.

5 Q. Did he appear to be under the influence of alcohol or
6 drugs when you spoke with him?

7 A. No.

8 Q. To the best of your knowledge with your interactions
9 with Mr. McClure that day, was it freely and voluntarily on
10 Mr. McClure's part?

11 A. Absolutely.

12 MR. GRAHAM: Your Honor, the State would introduce
13 State's 4 into evidence.

14 THE COURT: Subject to all pre-trial rulings
15 and objections, State's 4 is in evidence, and you may
16 publish.

17 (State's Exhibit Number 4, redacted interview,
18 was admitted into evidence.)

19 Ladies and gentlemen, I'll let you know that I've
20 asked the Solicitor to edit this CD of the interview of
21 Mr. McClure, and what he's done -- there may be breaks
22 in there, but what I've asked him to do is in the
23 interest of time and brevity to eliminate any irrelevant,
24 immaterial chitchat-type stuff, okay? So if you notice
25 a break in there, it's not like somebody's trying to

1 keep something from you. It's just that I asked them
2 to get to the point of what the interview is about and
3 that's why you'll see kind of maybe some breaks in the
4 tape, okay?

5 You may publish.

6 MR. GRAHAM: Thank you, Your Honor.

7 BY MR. GRAHAM:

8 Q. Prior to publishing, let me ask some questions.
9 You've had an opportunity to review the interview, correct?

10 A. Yes, sir.

11 Q. And you were provided specific information from
12 Detective Mefford about the case that we're here on this
13 week?

14 A. Yes, prior to conducting my interview I had received
15 information from Detective Mefford, which I used in order
16 to conduct an investigation -- or, I'm sorry, the
17 interview.

18 Q. So in addition to the information that you were
19 supplied by Sergeant Mefford, did you also use other
20 interview techniques?

21 A. Yes.

22 Q. And so when I say interview techniques, what does that
23 mean?

24 A. Many times when interviewing a criminal suspect, I
25 may play along as if I'm aware of information that I am

1 not really aware of and what I'm looking for is an
2 affirmative response or an admission. At times I will
3 provide information to the person I'm interviewing,
4 essentially lying to them, telling them information that's
5 incorrect. And, again, this is an attempt to obtain
6 admissions or denials of things that may or may not have
7 happened during a specific crime.

8 Q. So you took specific information that was provided to
9 you, used that information and came up with some of your
10 own as well?

11 A. Yes.

12 Q. You asked at the beginning of the interview whether
13 Mr. McClure had gone to Atlanta on the 24th, correct?

14 A. Yes, sir.

15 Q. And what was his response?

16 A. No.

17 Q. When you pushed him a little bit, did he ultimately
18 admit that he did go to the Atlanta area?

19 A. Yes.

20 Q. And where did he tell you that he went in the Atlanta
21 area?

22 A. He initially told me he flew from San Francisco.
23 After I began to -- spoke about airplanes and their
24 manifests, he corrected it saying that he had flown out of
25 the city of Sacramento.

1 Q. And did he ultimately tell you that he went to
2 Clarkston?

3 A. Yes, he did.

4 Q. Which is an area outside of Atlanta, correct?

5 A. Yes, sir.

6 Q. And about that time did you ask him whether he met up
7 with -- with a friend of his?

8 A. Yes, I did.

9 Q. And to do that you showed him a picture; is that
10 correct?

11 A. Yes, sir.

12 Q. Let me show you State's Number 5 and ask if you
13 recognize that?

14 A. I do recognize that. That is a photograph of a person
15 by the name of Justin Butler.

16 Q. And you know Mr. Butler?

17 A. I do know Mr. Butler from being a policeman.

18 Q. And this is a photograph of him and -- this is a
19 photograph of Mr. Butler?

20 A. Yes, it is.

21 Q. And it's a photograph that you used in your
22 conversation with Mr. McClure?

23 A. That is correct.

24 MR. GRAHAM: Your Honor, the State would offer
25 State's 5 into evidence.

1 THE COURT: Without objection?

2 MR. FLOYD: Your Honor, may we approach?

3 THE COURT: Sure.

4 (Proceedings held at the bench; not reported.)

5 THE COURT: Mr. Graham, ask another question.

6 Please move on.

7 State's 5 is in evidence.

8 MR. GRAHAM: Thank you, Your Honor.

9 (State's Exhibit Number 5, a photograph, was
10 admitted into evidence.)

11 BY MR. GRAHAM:

12 Q. So when you showed him the photograph of Justin
13 Butler, did he identify the individual in the photograph?

14 A. Yes, he identified him as Justin.

15 Q. Okay. Did he tell you what Justin's last name was?

16 A. No, he did not.

17 Q. At some point did you ask him if he saw Justin in
18 Atlanta?

19 A. Yes, I did.

20 Q. And what was his response?

21 A. He denied it.

22 Q. Did you ask Mr. McClure what his nickname was?

23 A. Yes.

24 Q. And what did he tell you?

25 A. Bundy, as in Al Bundy.

1 Q. Did you specifically ask him whether he went by the
2 nickname of L?

3 A. Yes, and he denied it.

4 Q. Did you ask him about a cell phone number?

5 A. Yes, sir.

6 Q. And what number or partial number did he begin to
7 supply you?

8 A. He began to supply me a -- I think it's a 510 area
9 code before I interrupted him.

10 Q. If I said 925-895?

11 A. That would be correct.

12 Q. Did you specifically ask him about the 707-392-0402
13 number?

14 A. Yes, I did.

15 Q. And what was his response?

16 A. He denied owning that number or knowing that number.

17 Q. In fact, did he actually say how many numbers he had?

18 A. (Nods head.)

19 Q. Do you remember what his response was?

20 A. I don't recall.

21 Q. But it would be on the video?

22 A. Yes, sir.

23 Q. Did you ask him if he stayed in the Atlanta or the
24 Clarkston area the whole time of his time in Georgia?

25 A. Yes.

1 Q. And what was his response?

2 A. Yes, and he also acknowledged that he'd only gone
3 about ten minutes away.

4 Q. So he said he only went five or ten minutes away from
5 Clarkston, Georgia?

6 A. Yes.

7 Q. Did you specifically ask him if he'd ever heard of a
8 city called North?

9 A. He told me he had never heard of that city.

10 Q. I'm gonna show you what's been marked as State's 8 and
11 ask if you recognize that?

12 A. Yes.

13 Q. And is that also a photograph that to your
14 understanding was of 688 Bushberry Road, the location
15 involving the murder and attempted murder that we're here
16 on this week?

17 A. Yes, sir. It's the address that I got from Detective
18 Mefford and because I'm not from the area, nor am I
19 familiar with it, I used Google Maps or Google Earth in
20 order to pull up a photograph of the area for reference.

21 Q. And did you use this in your interview with
22 Mr. McClure?

23 A. Yes, I did.

24 MR. GRAHAM: Your Honor, the State would offer
25 Number 8 into evidence.

1 MR. SPANGLER: No objection, Judge.

2 THE COURT: That was State's what?

3 MR. GRAHAM: 8, Your Honor.

4 THE COURT: It's in evidence.

5 (State's Exhibit Number 8, a photograph, was
6 admitted into evidence.)

7 BY MR. GRAHAM:

8 Q. Did you show that photograph to Mr. McClure?

9 A. Yes, sir.

10 Q. Did you ask him if he had ever been there?

11 A. Yes, and he denied it.

12 Q. Did you also show him another photograph that was
13 supplied to you by Detective Mefford with Tycus Toland and
14 VonKeith Toland in this case?

15 A. Yes, I did.

16 MR. GRAHAM: Your Honor, the State would offer
17 Number 11 into evidence.

18 MR. FLOYD: Your Honor, may we approach on this?

19 THE COURT: Sure.

20 (Proceedings held at the bench; not reported.)

21 THE COURT: Objection sustained. State's 11 is not
22 in evidence.

23 MR. FLOYD: Thank you, Your Honor.

24 BY MR. GRAHAM:

25 Q. Did you show Mr. McClure a photograph that had

1 VonKeith Toland and Tycus Toland in it?

2 A. Yes, I did.

3 Q. Did you ask him if he knew those two people or had
4 ever seen them before?

5 A. Yes, I did.

6 Q. And what did he say?

7 A. He denied knowing either of them.

8 Q. After you showed that photograph to him, what, if
9 anything, did you tell them about the -- the bigger of the
10 two brothers, about VonKeith Toland?

11 A. So I confronted him about the photograph and I told
12 him that I believed that he did know who those persons were
13 and that he knew who they were because one of them had
14 survived.

15 Q. When you told him that one of them was still alive,
16 up to that point had you told him anything about either
17 VonKeith Toland or Tycus Toland being shot?

18 A. No.

19 Q. Prior to telling him, what, if anything, did he ask
20 you about the bigger guy in the picture, VonKeith Toland?

21 A. Something similar to what, did he get shot?

22 Q. So he asked you if he got shot and you hadn't told him
23 anything about a shooting, had you?

24 A. That is correct.

25 MR. GRAHAM: Thank you, Detective.

1 Your Honor, I'm gonna go ahead and publish it at
2 this time.

3 THE COURT: Please go right ahead.

4 (Whereupon, State's Exhibit Number 4 was played.)

5 MR. GRAHAM: Thank you, Detective Trojanowski.

6 Please answer any questions the defence has for
7 you.

8 THE COURT: Mr. Spangler.

9 CROSS-EXAMINATION

10 BY MR. SPANGLER:

11 Q. All right. Good afternoon, Detective Trojanowski.

12 A. Good afternoon.

13 Q. Just a couple of questions for you. I think you said
14 one of your interview tactics includes deception; is that
15 right?

16 A. Yes, sir.

17 Q. Okay. And that's something that you employed in that
18 interview at points, right?

19 A. Yes, sir.

20 Q. Okay. Now that interview lasted, the video portion
21 that we saw, for about twenty-one minutes. I think it was
22 twenty-one minutes and twenty-two seconds.

23 A. Yes, sir.

24 Q. Okay. Terry, he spoke with you for that entire
25 period, right?

1 A. Yes.

2 Q. Okay. He was answering your questions during that
3 period, right?

4 A. Yes. Some of it was unintelligible, but, yes, he did
5 answer them.

6 Q. Okay. Now when you were talking about places that he
7 had been, I think he had some trouble naming the certain
8 places or responding to the questions about certain
9 locations, right?

10 A. Yes, sir.

11 Q. Now you'd agree with me that it's not uncommon for
12 someone not to know the names of little towns throughout
13 South Carolina, right?

14 A. Absolutely. Yes, sir.

15 Q. Okay. You're from California. You probably before
16 getting involved with this case didn't even know a place
17 called North, South Carolina, existed?

18 A. Correct.

19 Q. Now you talked a little bit in that interview about
20 DNA, right?

21 A. Yes, sir.

22 Q. You said that touch DNA -- I guess it was something
23 that you were familiar with?

24 A. Yes, sir.

25 Q. That if somebody's there, I think what you said in the

1 interview was that if you were there we'll find your touch
2 DNA, right?

3 A. Yes, sir.

4 Q. Okay. Now in this case you're not privy to any of the
5 findings of the DNA, right?

6 A. I had very limited information about the investigation
7 and I'm not aware of there being any DNA profiles matched
8 in this case.

9 MR. SPANGLER: Thank you. Nothing further, Judge.

10 THE COURT: Sir, thank you very much.

11 You can step down.

12 THE WITNESS: Yes, sir.

13 (Witness excused.)

14 MR. GRAHAM: Nothing else, Your Honor.

15 THE COURT: All right. The State rests?

16 MR. GRAHAM: The State rests, Your Honor.

17 THE COURT: Ladies and gentlemen, here's the deal.

18 I'm gonna let you go to the back for a few moments and
19 the first assignment that I'm gonna have you do -- I'm
20 not sure how much longer we would go tonight. If we
21 were to continue going, I anticipate that maybe
22 perchance, big question mark, you-all could perhaps
23 start your deliberations around 6:30 or 7:00 if we
24 continue moving forward on this case.

25 I'm not sure about that at all though, okay? So

1 I want you, Madam Forelady, to take a survey. If
2 people have things that they've got to get done, maybe
3 they have to do, maybe have small kids that you've got
4 to take care of or something like that, take a survey
5 on whether you-all want to keep going tonight or whether
6 you want to reconvene tomorrow morning at 9:00. You
7 may be a little bit more refreshed, a little bit more
8 alert. Either way, I'll do whatever you want assuming
9 that we are in a position to continue to move forward,
10 okay?

11 So adjourn to the back. Don't start talking about
12 the case yet and just let the bailiff know what the
13 decision is; whether to keep going or call it a day.

14 (Whereupon, the jury retires to the jury room at
15 5:03 PM.)

16 THE COURT: While they're making that decision,
17 the record will reflect that Mr. Floyd did make a motion
18 for a mistrial at the bench when Mr. Trojanowski was
19 asked about how he knew Mr. McClure in this case.

20 Do you want to put that on the record?

21 MR. FLOYD: Yes. In fact, Your Honor, it was
22 about how he knew Justin Butler, and my understanding
23 from my recollection is that he responded he knew him
24 through his police work.

25 THE COURT: With Justin Butler?

1 MR. FLOYD: That was Justin Butler.

2 THE COURT: You're right.

3 MR. FLOYD: So we move for a mistrial because that
4 would indicate or imply to the jury that he had been in
5 trouble with the law. He is the alleged conspirator,
6 co-defendant, of Mr. McClure.

7 THE COURT: All right. I may have misheard that
8 then or maybe I misspoke or maybe I didn't get enough
9 carbs at lunch, but I thought that it was the other way
10 around with Mr. McClure.

11 You-all heard Butler, too, though?

12 MS. FULLER: It was only Butler, Your Honor. He
13 didn't say McClure.

14 THE COURT: Okay.

15 All right. Did you-all want to speak to that
16 Solicitor?

17 MR. GRAHAM: Briefly, Your Honor.

18 He stated, if I remember correctly, that he knew
19 Mr. Butler through being a police officer. He didn't
20 say that he was a criminal, he didn't say that he
21 arrested him, he didn't say whether he was a victim of
22 a crime, a witness in a crime or at a fund-raiser or
23 whatever, so I don't think there's any prejudice, and
24 even if so, he didn't mention Mr. McClure.

25 THE COURT: I would tend to agree. I'm gonna

1 deny the motion for a mistrial. I don't think that the
2 comment was so inflammatory or so damning to warrant
3 upsetting four days -- four very long days of trial, and
4 so I will decline to grant a mistrial, but, of course,
5 your motion is noted.

6 I do assume, Mr. Floyd, that you do move for a
7 directed verdict, you renew all prior objections, all
8 prior motions for mistrial and all pre-trial motions?

9 MR. FLOYD: That's correct, Your Honor.

10 THE COURT: In the light most favorable to the
11 State, the Court does find there's sufficient direct
12 and circumstantial evidence to warrant sending this
13 matter further.

14 When we had a sidebar a moment ago or before --
15 before Mr. Pucci testified, you indicated to me,
16 Mr. Floyd, that it was your expectation that you-all
17 would not present a defense; is that correct?

18 MR. FLOYD: That's correct, Your Honor. Although
19 I do need to speak with Mr. McClure some more on that
20 part.

21 THE COURT: Okay. Maybe five minutes or so while
22 they're still talking about it. We'll take a break and
23 you can have a conversation with him about that.

24 Of course, I assume that you'll advise him, and
25 he's within earshot of me, but obviously I haven't

1 gone over his criminal history, I don't know what that
2 is, what that's about. Obviously if he chooses not
3 to testify or present a defense, you-all get last
4 argument. I assume you've explained to him the
5 procedural advantages of that and everything?

6 MR. FLOYD: Yes, sir.

7 THE COURT: Very good. You-all have a few more
8 moments to take a break and talk about that and we'll
9 be back on the record shortly.

10 (Recess taken at 5:07 PM.)

11 (Back on the record at 5:22 PM.)

12 (Whereupon, the jury returns to the courtroom at
13 5:22 PM.)

14 THE COURT: All right. Ladies and gentlemen,
15 thank you for your continued attention in this case and
16 your forelady has told me that you'd like to reconvene
17 tomorrow morning at 9:00, so that's exactly what we
18 shall do. At that point in time we will be continuing
19 with the trial of this case. I do anticipate having
20 this case to you for your deliberations, knock on wood,
21 sometime in the morning tomorrow.

22 So with that, if you will just adjourn for the
23 evening. Again, don't talk about the case with anyone.
24 Please be back here at 9:00 in the morning and I will
25 have you out here ASAP, okay?

1 Have a great night, enjoy yourselves and drive
2 safely. See you in the morning, okay?

3 (Whereupon, the jury was excused for the day at
4 5:23 PM.)

5 THE COURT: The jury is out.

6 Mr. Floyd, you and Mr. Spangler have had a chance
7 to speak with Mr. McClure. It's still his desire to
8 not present a defense?

9 MR. FLOYD: Yes, Your Honor. I've explained to
10 him you will probably question him about that.

11 THE COURT: If I may briefly, I'd like just to do
12 that for the record.

13 Mr. McClure, you can stay seated if you -- or
14 whichever is more comfortable, stand. Just raise your
15 right hand. I have some questions I do need to ask you
16 under oath, okay?

17 (Whereupon, Terry Renee McClure was duly sworn
18 by the Court.)

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, Mr. McClure, you understand --
21 you can have a seat, sir, if you'd be more comfortable.

22 You realize at this point, Mr. McClure, the State
23 has rested and if you wish you and your attorneys would
24 be able to present a defence in this case, and part of
25 any defense could, of course, be your testifying in this

1 trial.

2 You understand, as I'm sure Mr. Floyd and
3 Mr. Spangler have explained to you, that obviously no
4 one can compel you to be a witness in any criminal case
5 where you yourself are a defendant. Do you understand
6 that, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: That means that I can't force you to
9 testify, certainly the solicitor cannot, your attorneys
10 cannot even make you testify if you don't want to.

11 Now at the same time, if you want to testify you'd
12 be free to do so. Understand that you'd have to answer
13 any relevant question put to you by either side. So if
14 the question's relevant, you'd have to give an answer as
15 to that question.

16 And, additionally, I don't know what kind of
17 criminal history that you have, but if you have any
18 crimes either in this state or some other state
19 involving dishonesty or potentially crimes that carry
20 the possible punishment of more than a year in prison
21 and those crimes occurred within the last roughly
22 ten years, then it's possible that the solicitor would
23 be able to question you about those crimes just for the
24 purpose of impeaching your credibility.

25 Do you understand that, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now your Fifth Amendment right to
3 testify, Mr. McClure, is a personal one. It belongs
4 to you and only you. Only you can waive it. I would
5 strongly recommend that you discuss with your attorneys
6 or have any additional discussion with your attorneys
7 that you might want to in order to make up your mind on
8 whether to testify or not. Obviously, if you choose
9 not to testify, your attorney gets last argument and
10 strategically most trial attorneys, lots of trial
11 attorneys, perhaps even the majority of trial attorneys,
12 do value the last word to the jury, okay? So that has
13 some value if you choose not to present a case.

14 But, again, whether or not you choose to testify
15 or present a case is entirely your decision.

16 Do you understand all that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Mr. Floyd has indicated to me that
19 as of right now you do not want to testify; is that
20 correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: The way that I will handle this,
23 Mr. McClure, is if you change your mind overnight --
24 because obviously your case -- your side hasn't rested.
25 If you change your mind over the night, I'll ask that

1 you simply communicate that to Mr. Floyd or Mr. Spangler
2 in the morning and we can take it up then again, but as
3 of right now I'm gonna assume that you're choosing not
4 to testify and I'll let them tell me in the morning if
5 you happen to change your mind and decide to take the
6 stand.

7 Can we leave it at that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: That's fair?

10 THE DEFENDANT: (Nods head.)

11 THE COURT: All right. Housekeeping-wise, I think
12 the clerk indicated that -- or the court reporter
13 indicated that maybe there was one or two exhibits that
14 -- that maybe we need to locate.

15 THE COURT REPORTER: I think we've got them.

16 THE COURT: Okay. Perhaps I'm incorrect then.

17 All right. We'll adjourn for the evening. Have a
18 great night.

19 Obviously, Mr. Graham, you'll go first tomorrow
20 with closing, et cetera. You know the routine.

21 MR. GRAHAM: Thank you, Your Honor.

22 THE COURT: Oh, the other thing, my clerk has
23 e-mailed those instructions to you. Please look at
24 those tonight. If there are any changes, additions,
25 subtractions, whatever, go ahead and communicate those

1 to me, include me on that e-mail chain, and if there
2 are objections to it or problems with it, let's go ahead
3 and have that discussion this evening. I doubt I'll be
4 up past 10:00, but to the extent that we can have that
5 discussion tonight, maybe we can hit the ground running
6 in the morning, okay?

7 You-all have a pleasant evening.

8 (Whereupon, the proceedings were concluded for
9 October 24, 2019, at 5:29 PM.)

10 (The following proceedings were held October 25,
11 2019, beginning at 9:09 AM.)

12 BAILIFF: All rise. Court is now in session. The
13 Honorable Frank Addy presiding.

14 THE COURT: Thank you. Be seated, please.

15 All right. If we may, we'll go back on the record
16 in the State v. Mr. McClure, who's present, of course,
17 with counsel.

18 I did have some discussions with my law clerk on my
19 ride in this morning. Unfortunately, my e-mail wasn't
20 working well last night and actually wasn't working at
21 all at the house, started working this morning, but we
22 did have some discussions with the -- about the jury
23 instructions.

24 Counsel for the defense did make a request for an
25 instruction on, I assume, voluntary manslaughter. Is

1 that correct, Mr. Floyd?

2 MR. FLOYD: That's correct, Your Honor.

3 THE COURT: I'm not making the Defendant's -- or
4 the State's argument for them, but I'm kind of struggling
5 to see where there's sudden heat of passion in this
6 particular case. I think the testimony of the primary
7 witness in this case was that this was kind of out of
8 the blue, no real argument taking place prior to the
9 shooting.

10 Can you point me to a case or something that would
11 support a voluntary instruction under these facts or --

12 MR. FLOYD: Well, Your Honor, we'd think that same
13 evidence of it being out of the blue, no warning kind of
14 situation, no provocation situation, then there must be
15 an absence of malice with that type of action.

16 THE COURT: All right. I appreciate your position.
17 Your objection's noted. I'm simply gonna charge --
18 assuming for the moment that where we left off yesterday
19 still stands and your client doesn't intend to testify,
20 my intention is simply to instruct on murder alone.

21 Additionally, I did remove any express or implied
22 language from the instructions that you-all received
23 last night. The express and implied malice was kind of
24 a lead-up to the part about inference of malice from use
25 of a deadly weapon and since that's no longer the law of

1 the State as of about two months ago, I simply removed
2 any reference to that from the instructions on malice
3 and so the instructions now end with the paragraph
4 malice aforethought does not require that malice exist,
5 et cetera; therefore, there must be combination of the
6 previous evil intent and the act, so that paragraph is
7 the last part of the malice instruction.

8 And I eliminated -- had him eliminate the nighttime
9 burglary from the burglary instructions that were sent
10 to you last night because there's no evidence that this
11 incident may have occurred during the nighttime.

12 And I am having him fix in a moment -- there was a
13 typo on the possession of a weapon charge, so he'll be
14 fixing that. I'm gonna instruct that, of course, murder
15 and burglary first degree are violent crimes.

16 Any other thoughts?

17 MR. GRAHAM: Judge, I understand why you deleted
18 one of the paragraphs on malice. I'm not sure why you
19 deleted the last paragraph. That is still the law.

20 THE COURT: Which part do you want?

21 MR. GRAHAM: That malice may be inferred from
22 conduct showing a total disregard for human life. If
23 facts are proved beyond a reasonable doubt sufficient
24 to raise an inference of malice to your satisfaction,
25 the inference would simply be an evidentiary fact to be

1 considered by you along with the other evidence and
2 you may give it the weight you should decide.

3 MS. FULLER: I thought the Court was just
4 addressing the inference by a deadly weapon, not the
5 entire lead-up to it.

6 THE COURT: Read that one again to me.

7 THE COURT REPORTER: Slower.

8 MR. GRAHAM: I can hand it up to you.

9 THE COURT: Yeah, that would be -- never mind. My
10 clerk pulled up the old one. I've got it.

11 MS. FULLER: And I think, too, Your Honor, the
12 statute is still malice aforethought, either express or
13 implied, so I think you can still draw an inference.

14 MR. FLOYD: Of course, Your Honor, it's our
15 position that the Burdette case is a definite trend
16 toward the elimination of inferences as being burden
17 shifting.

18 THE COURT: I don't know that it's so much burden
19 shifting as it is they're -- they're asking the courts
20 to no longer instruct on what they consider to be
21 factual issues.

22 MS. FULLER: Right.

23 THE COURT: I agree that malice can be inferred
24 from conduct showing a total disregard for human life.
25 The classic example that we had in law school was kind

1 of like the Charlottesville situation where a guy
2 decides to run his truck into a group of people. The
3 malice is very general in that sort of a situation, but
4 it could be inferred from the fact that you're using a
5 car to drive it into a crowd of people which indicates
6 a disregard for human life.

7 I'm gonna have my clerk put that instruction back
8 in. I think you're correct in the sense that as far as
9 the attempted murder instruction is concerned you have
10 multiple shots being fired into the victim, which could
11 indicate the intent to kill necessary -- the specific
12 intent to kill necessary, the specific malice that's
13 necessary for the attempted murder charge. But, of
14 course, that's subject, of course, to your objection,
15 Mr. Floyd.

16 MR. FLOYD: Thank you, Your Honor.

17 THE COURT: I understand your position, but I think
18 the State is correct on that point.

19 MS. FULLER: Thank you.

20 And then, Your Honor, just the other two, just
21 going through, I think the -- I guess it's your call.
22 I think the Defendant would be entitled to the statement
23 of the defendant charge in the identification, just the
24 standard charge since photo lineups were introduced and
25 the statement was published.

1 What's your normal stance on that?

2 THE COURT: The portion of the instruction that
3 reads that the jury must determine whether the statement
4 is freely and voluntarily given, that kind of a thing?

5 MS. FULLER: Yes, Your Honor.

6 THE COURT: Do you-all want that? I didn't know
7 that you really wanted to draw attention to the statement
8 is kind of what I was thinking when I asked my clerk --

9 MR. FLOYD: No, we don't request that, Your Honor.

10 THE COURT: I didn't think that was --

11 MS. FULLER: Okay.

12 THE COURT: Anything else you were thinking of
13 though, Ms. Fuller?

14 MS. FULLER: It was just going to the statement
15 of the Defendant and identification based on evidence,
16 but if the defense doesn't request it -- I don't think
17 it's any error not to charge it, but I know it's
18 standard charges.

19 THE COURT: My thinking is that they for very
20 valid reasons probably -- I mean, they made the
21 objection to the -- to the Miranda aspect of that
22 statement, that issue would be preserved, and there's
23 no suggestion -- their argument on the statement is more
24 of a technical legal point on the timing of the Miranda
25 not being given the second time that the officer

1 interviewed the Defendant and not necessarily that the
2 Defendant's will was overborne in some way, shape or
3 form by the conduct of the officer, so I don't think --
4 I understand tactically and legally why the defense
5 would not request that instruction.

6 Okay. Any other thoughts?

7 MS. FULLER: No, Your Honor.

8 THE COURT: Are you still gonna close for the
9 State?

10 MR. GRAHAM: (Nods head.)

11 THE COURT: And I assume, Mr. Floyd, you're gonna
12 close for the defense? Or you're gonna close,
13 Mr. Spangler?

14 MR. SPANGLER: Yes, Judge.

15 THE COURT: When I bring the jury out, I'll simply
16 turn to the defense and, Mr. Floyd, you can rest for the
17 record and it's understood that all motions are renewed,
18 et cetera.

19 So anything prior to bringing the jury back out?

20 MR. GRAHAM: Judge, do you mind if I go ahead
21 and turn the projector on?

22 THE COURT: No, go right ahead. I'm gonna go ahead
23 and let my clerk make those corrections, so we'll take
24 five minutes so we can print that out again without the
25 printer going off and disturbing anyone's closing, okay?

1 So a quick five minutes while he finishes that.

2 We'll be right back. Thank you.

3 (Recess taken at 9:18 AM.)

4 (Back on the record at 9:26 AM.)

5 BAILIFF: Court is back in session.

6 THE COURT: Please have a seat. Everyone is
7 present. Let's have the jury, please.

8 (Whereupon, the jury enters the courtroom at
9 9:27 AM.)

10 THE COURT: All right. The record will reflect
11 that the jury is back and seated. Thank you for being
12 here on time, ladies and gentlemen. We were dealing
13 with a few housekeeping matters.

14 We're still, of course, involved in the trial
15 of the State versus Mr. McClure, so at this point,
16 Mr. Floyd, Mr. Spangler.

17 MR. FLOYD: Your Honor, the defense rests.

18 THE COURT: All right. Ladies and gentlemen,
19 we've reached that portion of the trial where you've
20 received all the evidence that you're gonna have in
21 order to judge this case and in a moment the attorneys
22 are gonna make their closing arguments to you.

23 I'll remind you that what the lawyers say during
24 their closing argument, of course, is not evidence.
25 It's merely their contention as to what has been proven

1 and what hasn't been proven. Again, you have to judge
2 the case based on the evidence, the exhibits and the
3 testimony which has been presented here in court, okay?

4 Even though their arguments are not evidence, you
5 should, of course, still pay attention to their arguments
6 because it's their contention as to what, again, has been
7 proven or has not been proven, all right?

8 The procedure that we'll use is Mr. Graham
9 will go first on behalf of the State, followed by
10 Mr. Spangler and then you'll receive my instructions
11 on the law, okay?

12 With that, Mr. Graham, you are acknowledged for
13 your closing, sir.

14 MR. GRAHAM: Thank you, Your Honor.

15 Cold-blooded, calculated, cowardly. Those are the
16 actions of Terry McClure on that April 26, 2014. You
17 heard the opening statements, you've seen and heard all
18 the evidence, and after the closings you'll get to
19 deliberate.

20 In the defense's opening, they said it was our
21 job to prove our case, and that's right. Beyond a
22 reasonable doubt we have to prove the elements of each
23 and every crime that he's charged with and you have to
24 find in each and every element beyond a reasonable doubt
25 that we proved it for him to be guilty.

1 So what's he charged with? Possession of a firearm
2 during the commission of a violent crime. That's the
3 testimony you heard. He had a gun. He shot a gun. So
4 the commission or intent to commit a violent crime and
5 I believe the judge will tell you that murder is a
6 violent crime. If you find him guilty of murder, then
7 he's guilty of this. Attempted murder is a violent
8 crime. Burglary first is a violent crime.

9 What is burglary first? Entering a dwelling
10 without consent with the intent to commit a crime
11 therein. So if you believe that VonKeith Toland told
12 Terry McClure it was okay to go in the house, he's not
13 guilty. The back door ripped out, the glass broken, the
14 house in disarray. That's not consent.

15 For burglary first he also had to be one of these
16 other ones here. He's either armed with a deadly weapon,
17 and that's the testimony you heard; that he caused
18 physical injury to a person who is not a participant in
19 the crime, Tycus and VonKeith. That's the testimony you
20 heard. That's the evidence you saw. Using the gun, a
21 dangerous instrument.

22 Attempted murder. VonKeith Toland. The attempting
23 to kill another person with malice aforethought. And
24 the judge is gonna tell you what malice aforethought
25 is. This crime actually requires the State to show you

1 specific intent. Specific intent means he intended to
2 kill VonKeith Toland. So you look at his actions, you
3 look at what he'd done. What did he do before? He
4 killed Tycus. The cowardly bullet to the back of his
5 head. No chance to defend himself. So when he turned
6 the gun on VonKeith Toland, what was his intent? Firing
7 five rounds at him, leaving him for dead. VonKeith
8 needing to be life-lined, multiple surgeries, in the
9 hospital for weeks, lucky to be alive. Using a gun.
10 Why would you use a gun if you didn't intend to kill
11 somebody?

12 But the State has that burden, so in your
13 deliberations you have to discuss when he pulled the gun
14 on VonKeith Toland did he have specific intent to kill
15 him? I submit he did.

16 Murder. The killing of another person with malice
17 aforethought, either express or implied. A bullet to the
18 back of the head. Cold-blooded, calculated, a cowardly
19 deed. Could it be anything else but murder?

20 So the defense asked questions, they brought up
21 points, and what they want to do is tear away pieces of
22 the case that the State put up to make you think is that
23 enough for reasonable doubt. They get to go last. I
24 don't know what they're gonna say, but I can guess.

25 So let's talk about some of the things they might

1 say. Where's the motive? Why would Terry McClure and
2 Justin Butler, why would they do this? We may never
3 know the truth. Is there more to it than what we've
4 heard? I don't know. What we know is what you've
5 heard.

6 VonKeith told you that he had been a drug dealer,
7 that he had gone to prison for it, and he knew them
8 from the past. Maybe they still thought he was a drug
9 dealer. That would go along with VonKeith saying
10 where's the money, where's the drugs when they pointed
11 the gun at him. Maybe VonKeith was dressed fancy, maybe
12 he was wearing gold chains, maybe he was flashing cash
13 when they played cards at his mother's house.

14 Do you really think that they came from Alabama
15 buying Greyhound tickets and from California with flights
16 and a rental car to buy a car? Does that make sense?
17 Or is that just an excuse? Of course, Terry McClure said
18 he wasn't there.

19 They want to point out in questioning that, I
20 guess, there weren't crawl marks, there weren't blood, so
21 VonKeith must be a liar. His clothes were under the
22 house with marijuana in them and with over a thousand
23 dollars in cash, so somehow he's trying to hide that
24 from the police because he left it there. If you think
25 that's reasonable doubt, then you give it reasonable

1 doubt.

2 But does that really make a difference? Does it
3 really matter when VonKeith Toland points the finger and
4 says that's the man that shot my brother, that's the man
5 that shot me? Does that really matter? Is VonKeith
6 Toland lying about that? No evidence, nothing about why
7 he would lie about why he picked out the Defendant as
8 the shooter of his brother, the killer of his brother,
9 and the shooter of himself. Nothing.

10 Questions about a white guy in the CAD, the
11 computer-aided dispatch. His mom called in and said
12 that VonKeith said a white guy did it. You heard the
13 9-1-1 call. VonKeith said who did it, the two guys who
14 were at my mother's house, the people I know from Zo
15 from Cali, the people that were here to buy the car.
16 Do you really think that he called his mother and said
17 hey, mom, some random white guy did it and I'm gonna
18 blame the other two? You give that whatever weight you
19 think it's worth. Maybe, just maybe, his mom got
20 confused. Maybe he said it was the guys who came to buy
21 the white car. We'll never know.

22 But the defense is gonna argue to you, they're
23 gonna bring up all these points, all the things that
24 could have been done better, all these phones that
25 weren't dumped. It's our job to prove who did it, not

1 who didn't do it. When you listen to their argument
2 think about smokescreens, think about diversions, think
3 about red herrings pointing you into the wrong direction.
4 The evidence. Follow the evidence and the evidence is
5 gonna lead you to the guilt of Terry McClure. One piece
6 after another after another.

7 They want to hit law enforcement up because there
8 wasn't a written statement from VonKeith, that he didn't
9 write down what happened. What we do know is that he
10 picked out Terry McClure on May 10th from a photo lineup
11 and he didn't even know the name Terry McClure. The
12 police found that through the investigation of the case.

13 They may argue and you heard questions about well,
14 Terry McClure used his real name. Well, he has to use
15 his real name to fly. You have to use your real name
16 and ID to get a rental car. You have to have an ID to
17 get Greyhound bus tickets. But you sure know that
18 VonKeith Toland didn't know their real names. Why didn't
19 they tell him their real names? They said well, it's
20 not illegal to have a minute phone, a prepaid phone, a
21 burner phone, and it's not. There's valid reasons for
22 having them. Some people have bad credit, some people
23 just want to have that kind of phone, you don't have to
24 register it, and that's your choice, but what can it be
25 used for? It can be used for illegal activities where

1 you can't be traced, just like in this case. And we'll
2 talk about those phones. We'll talk about when they were
3 obtained and how they were used.

4 There were questions about DNA not found in the
5 house, and there wasn't, and you heard testimony about
6 that. Nobody took swabs in the house, nobody saw blood
7 in the house. They looked for fingerprints in the house.
8 Everything was smudged. No good prints. Nothing that
9 they could take that would have been of benefit.

10 There was even questioning about the shell casings
11 found in the yard. You've got four that crime scene
12 Investigator Gilland, the guy with the long beard, told
13 you where he found them. Those were all in the backyard
14 -- around the side of the house in the backyard where
15 VonKeith told you that he was shot and he ended up
16 crawling under the house when they went in. All four
17 of these match a gun that was never recovered.

18 Another shell in the backyard. Let's talk about
19 smokescreens, let's talk about red herrings, let's talk
20 about reasonable doubt. Another shell. VonKeith says
21 he thinks it was fired by his wife -- his fiancée New
22 Year's Eve. Maybe it was. Maybe this is a shell from
23 a different time. We don't know. If you want to get
24 into the aging of shells, what a shell looks like,
25 they're made of brass, they're made of nickel, they're

1 made of things to resist corrosion. If you want to
2 think that's reasonable doubt, you give it what weight
3 you think it is.

4 We talked about the gun found under the bed in
5 VonKeith's bedroom, a Glock Model 22. Well, goodness,
6 there was a gun. VonKeith's got blood -- his blood on
7 the handrail. He said he crawled. VonKeith must be a
8 liar. He must have put his hand on there and gone in
9 the house. He wants to go hide this gun because this
10 gun fired this bullet, but then where did he go from
11 there? What's the next step? We're gonna jump to
12 VonKeith shot himself five times? If you think that
13 makes sense, you give it the weight you think it
14 deserves.

15 VonKeith shot his brother Tycus in the back of the
16 head and then shot himself, somehow went back in the
17 house and put the gun in the house with no magazine
18 because somehow he's hidden the magazine, but yet there's
19 no blood in the house. If you really think that's what
20 happened, you think that's a real possibility of what
21 happened, he's not guilty.

22 Reasonable doubt doesn't mean all doubt. It's the
23 reasonable ones. It's not every possible scenario.
24 It's the ones with the real possibility. So when you're
25 hearing their arguments, think about that. Is it a real

1 possibility or are they just pointing out things? Are
2 they just trying to distract you from what the evidence
3 shows?

4 Testimony about Tycus's phone making phone calls
5 after the scene is secured. Well, somebody must have
6 been lying I guess is the implication. You give it the
7 weight you think it deserves. Reasonable doubt means
8 you're firmly convinced after hearing the testimony,
9 after reviewing all this evidence, you're firmly
10 convinced of his guilt. Only if there's a real, real
11 probability of something else happening did we not
12 prove our case. Smokescreen. Distraction. Road signs
13 pointing in the wrong direction. Focus on the evidence.

14 Terry McClure was interviewed. He was interviewed
15 by the police in California after a request by Sergeant
16 Mefford and was given information. Let's talk about the
17 things they talked about. You can go back and watch that
18 tape. You saw it yesterday. It starts off I need to
19 talk to you about a trip going to Atlanta. No, man, I
20 didn't go to Atlanta. May 8th. Why would he say he
21 didn't go to Atlanta? Ask yourself. Ask yourself on
22 each one of those points that he lies about why. It's
23 because he knew what he did. If he didn't know, if he
24 was innocent, I went to Atlanta, yeah. That's not what
25 he said. When pushed about, you know, airlines he

1 starts talking about flying out on a different airline,
2 then he starts talking about going to Clarkston, Georgia,
3 outside of Atlanta. It wasn't Atlanta. I misunderstood.
4 I went to Clarkston. Asked multiple times if he was
5 with Justin Butler. Multiple times he said he didn't.
6 If he wasn't worried about being put together with
7 Justin Butler in Pelion at 688 Bushberry Road, why would
8 he have lied about being with Justin Butler? Because
9 he was there. Because he pulled the trigger. Because
10 he killed Tycus. Because he shot VonKeith and left him
11 for dead. That's why. The police onto him and he's got
12 to figure out what to say. Deny. Deny. Deny.

13 I didn't go to Atlanta. I stayed in Clarksville
14 -- Clarkston. I wasn't with Justin Butler. My nickname
15 is Bundy. L? No, that's not my nickname. I'm not L.
16 Well, we know Ladondra Ellis, the girl who picked up
17 Justin Butler said L asked me to do it. If you look at
18 the text messages between the 404 burner phone and the
19 707 burner phone, Justin Butler says hello, this is L's
20 brother. He told me you were expecting my call. So
21 why would he be worried about denying that his nickname
22 was L unless it linked him to this case? No reason to
23 lie. Or is there?

24 He said he had -- what's your telephone number?
25 He starts off saying 925-895, and then the officer asks

1 him about the 707 number. What's he say? That's not
2 my number. I don't have that number. Denying the
3 number because he knew it linked him to this case, he
4 knew it linked him to this crime. That's not my number.
5 In fact, he said I only had one number. If you listen,
6 you'll hear it. I only had one phone. We know that's
7 a lie. Lying to cover this cold, calculated, cowardly
8 deed.

9 I stayed in Clarkston the whole time. It's like
10 maybe five or ten miles, ten minutes away. Never heard
11 of North, South Carolina, never heard of Pelion, South
12 Carolina, didn't go to those places, but somehow that
13 707 number travelled with him and only him on that
14 airline from Sacramento to Dulles to Atlanta to
15 Greenwood to Pelion to North, back to Atlanta, back to
16 Charlotte and back to Sacramento. All at the same time
17 it flies with him, but that's not his phone. You give
18 that weight whatever you think it's worth. You give his
19 denial the weight you think it's worth.

20 He was showed a photograph of the house by the
21 detective. Looking down that long road, he said I'm
22 never there, I haven't seen it. Somehow his phone was.
23 Somehow VonKeith Toland says he was. Somehow his
24 fingerprint was. The eight matching points, better
25 than DNA Jim Hickman says. He's been doing this for

1 forty something years. So if he's not there, how did
2 his fingerprint get on the car? If he wasn't doing
3 anything wrong, why do you deny being there? If he was
4 there legitimately looking at a car and wasn't part of
5 what happened and wasn't the cause of what happened,
6 why would he have lied to the police when asked, an
7 opportunity to tell the story? I was there. Yeah, I
8 know that guy. We left. I don't know what you're
9 talking about. That's not what he told the police,
10 is it? His fingerprint's there, his phone's there,
11 he was there, VonKeith says he was there. You know,
12 basically you've got to say VonKeith is a liar. VonKeith
13 lied. For some unknown reason he points the finger at
14 Terry McClure and Justin Butler and says those are the
15 people who broke into my house. That's the man who
16 killed my brother. That's the man who shot me and left
17 me for dead. He has to be lying about that.

18 The detective shows him the photograph of Tycus and
19 VonKeith and he says I don't know those people. I've
20 never seen them before. If he didn't know they were
21 dead, why would he deny knowing them? If he hadn't
22 done something wrong, why would he have said I don't
23 know them? But he lied.

24 Listen really closely to the interview after that
25 point. The detective said the big guy was alive. He

1 didn't die. Listen to what Terry McClure says. What's
2 that mean, he didn't die? What's that supposed to
3 mean? He got shot? Nobody said anything about shooting.
4 Who said anything about shooting first? Terry McClure.
5 Because he knew. Because he pulled the trigger. Because
6 he was there.

7 Let's talk about the timeline a little bit. Let's
8 talk about phones and airline tickets. The records
9 said that that 404 number that was purchased in Muscle
10 Shoals, Alabama, was purchased on March 15, 2014. An
11 unregistered minute phone. Terry McClure activates the
12 707 number April 4th. We know that Terry McClure booked
13 the round flight trip on April 22nd. We know it cost
14 \$679.50. And the only reason that we've got in evidence
15 is that Justin Butler wanted to buy a car. He even
16 denies that he went anywhere. His story is to the police
17 that he went to Atlanta to visit a friend and stayed in
18 Clarkston. \$679.50. The day after he purchased those
19 tickets, Butler uses that 404 number, messages Terry
20 McClure on that 707 number. April 24th, you've got
21 Terry McClure taking those airline flights. You've got
22 Justin Butler getting Greyhound bus tickets. They both
23 go to Atlanta. At 8:11 PM on the 24th, that's when
24 Terry McClure gets that blue Santa Fe SUV. That's when
25 he's driving away. You know what happens next? Twelve

1 minutes later Justin Butler contacts VonKeith for the
2 first time.

3 They're already here. They're in Atlanta. They're
4 driving toward South Carolina, driving toward Greenwood,
5 and they call VonKeith. Not before they came saying
6 hey, we need a car, can you help us. They came with the
7 plan in their head. In fact, if we look at the texts --
8 and you'll have those back there, State's 114, and I ask
9 you to go through and read it. This is the text content
10 between those two phones and also VonKeith. Terry McClure
11 texts on the 23rd before they leave, Question: You can
12 bring that nickel with you tomorrow. It's either an
13 amount or it's a gun. It's hard to take a gun on a plane.
14 You've got to get a gun somewhere if you're gonna do a
15 robbery, if you're gonna shoot somebody, if you're gonna
16 kill somebody. Bring the nickel with you. The answer:
17 When we get to South Carolina, I've got you for sho.

18 They travel to Greenwood, South Carolina. You can
19 look on the maps at all the times and you can see the
20 travel and the dates and all that time. That was the
21 investigative work done by Sergeant Mefford. That's
22 what led to the identification of both of these men.

23 If you look on here, on the 24th at 10:05, the day
24 they're travelling, have somebody pick me up from the
25 bus station, I'm gonna meet you there, I've got a hammy

1 with me. DO you think they're talking about a ham
2 sandwich or do you think they're talking about a gun?
3 You give it the weight you think it deserves.

4 The 25th, he asks VonKeith in phone calls what's his
5 mom's address. VonKeith texted it to him. Invites the
6 killers into their house.

7 State's 90. This is the map that shows the phone
8 activity for VonKeith's phone, for the 404 phone that
9 goes with the burner phone of Justin Butler, this 510
10 number, the real one, and the 707 number. You've got
11 mom's house, you've got them hitting off of towers, but
12 Terry McClure says he wasn't there.

13 You've got VonKeith's house. The AT&T in red is
14 VonKeith's number. The pink. If you look on the back
15 side, those are all the calls that occurred during this
16 time period for the 510, the 404, 707, and for VonKeith's
17 phone. These are anything that had a data location. So
18 it if there's gaps, it means the phone's not being used.

19 Terry McClure and Justin Butler are in the middle of
20 a murder, a shooting, a burglary, and they're not making
21 calls during that time. You see them before and you see
22 them after. But they're there.

23 The color of the tower goes along with the color of
24 the phone numbers, so that's the tower that phone number
25 is using. When you see it's blue, 510. When you see

1 it's green, the 221. That's how this works if you want
2 to look and figure out where people are.

3 At 3:10 PM on the 26th, McClure and Butler's phones
4 are at momma's house. They're hitting on those two
5 towers; 82 and 284. That goes along with the testimony
6 you heard. It goes along with what VonKeith said, it
7 goes along with what Ishi said, it goes along with what
8 the sister Tyvana said. The timeline when they were at
9 the house and what they were doing. Because it's not
10 just VonKeith that puts them in South Carolina, it his
11 cousin Ishi. He identified Terry McClure right here in
12 the courtroom. That's the man that I played cards with.
13 His hand was shaking. He thought it was odd. It's
14 because he knew what he was gonna do. He had the gun
15 with him. They came here to kill, to shoot, to rob, to
16 steal. Invited them to his momma's house.

17 You think about that. You know what you're coming
18 to do and you go into somebody's house and you sit at
19 their table. If that's not malice, I don't know what is.

20 4:03 PM, VonKeith's phone, that's the phone that
21 was stolen, the phone that disappears, that's the last
22 location. It may be data location, but that's the last
23 cell tower location for calls was at his home at 688
24 Bushberry Road. 4:03. Nothing after that. That's when
25 he's shot. That's when the phone's taken from him.

1 4:23 PM a 9-1-1 call is made by VonKeith on that
2 other phone. Twenty minutes. Twenty minutes while he's
3 under the house hiding, praying they'll go away, praying
4 that his brother is still alive. Twenty minutes to crawl
5 after he hears them peel out and leave at a high rate of
6 speed, crawling out the front pinning and finally making
7 it to call 9-1-1.

8 And they want to ask questions about who he's
9 calling. Who's he calling? Ma, Luv. Those are the
10 contacts of both the people he's calling. He's calling
11 the sheriff's department, he's calling 9-1-1, his
12 fiancée, and his mother thinking he's going to die.
13 Somehow that makes him a liar, somehow that makes him
14 bad. You give it the weight you think it deserves.

15 5:02 to 5:18 PM this is where the 510, the 404 and
16 the 707 is. Batesburg going across I-20 leaving the
17 scene of the crime. They're there. Their phones put
18 them there. Ishi puts them there, Tyvona puts them
19 there and VonKeith says that's the man. He killed my
20 brother and he shot me. No doubt. 100 percent.

21 9:59 PM you see the 510. That's Butler's number,
22 I think to John McCoy is how that one is registered, and
23 the 707 phone, the one he says he doesn't have, back in
24 Atlanta. They both travel back. You can look at those
25 charts if you want. You've heard the testimony. They

1 both go home.

2 May 8th VonKeith was shown that photograph lineup
3 with Justin Butler and picks him out. There's no
4 question. May 10th the police, Roy, develops Terry
5 McClure as a suspect. You know, the Instagram photo is
6 what started it, isn't it? Zo from Cali. One of his
7 family members identified Zo, looked on Instagram and
8 said oh, my gosh, that's the guy who was at our house,
9 so the police, Roy, starts his investigation. Nobody
10 had a photo of Terry McClure. VonKeith didn't know
11 his name. It was the investigative work that led to
12 him and is it just a coincidence that there's a phone he
13 denies that travelled when he travelled? Is it just a
14 coincidence that he got a rental car, a Santa Fe, blue,
15 and that's the description that the family gave you? Is
16 that just a coincidence or is that because that's what
17 happened?

18 These questions about well, you know, nothing was
19 stolen from the house. VonKeith told you they said
20 where's the money, where's the drugs. We know when they
21 broke that back door, if you believe VonKeith, that's
22 what they were going in to find. That's why they busted
23 into that house, looking for money, looking for drugs.
24 VonKeith says I had cameras. Roy Mefford said there were
25 cameras. VonKeith says my DVR was stolen. That's what

1 those cords are, from the DVR that was stolen.

2 You go back and look at the extraction. This came
3 in when VonKeith testified at the very beginning. It
4 shows you the times of the phone calls and texts, the
5 text asking for the car, the car with the fingerprint
6 on it, and they don't start until they're here.

7 VonKeith said that he crawled to the Honda. You
8 can look at the diagram. That means he's got to come
9 out of the underpinning, he's got to go past that
10 handrail, past his brother. He got over to the car
11 and called 9-1-1. It looks like blood. But he didn't
12 leave any in the house somehow or he cleaned it up even
13 though he almost died from five shots.

14 Smokescreens, illusions, signs to the wrong road.
15 Focus on the evidence. Listen to his lies. Listen to
16 his lies. His lies convict him because there isn't a
17 reason to lie unless he's trying to cover up what he
18 did. From the facts, from the evidence, that's where
19 your verdict comes. Your verdict's supposed to speak
20 the truth.

21 He said his name was Terry McClure in that
22 interview. Some people call him Bundy. He denied that
23 he was L. Today I ask you to give him a new name. What
24 he is, what he did. Murderer. The evidence points at
25 Terry McClure. The testimony points at Terry McClure.

1 Everything that the defense says when they come up
2 I won't have to a chance to respond to, but all they're
3 trying to do is take away pieces and parts of this
4 identification. VonKeith Toland circled Number 5 and
5 he said that's the man that killed my brother. You're
6 looking into the eyes of a killer.

7 Thank you.

8 THE COURT: Thank you, Mr. Graham.

9 Mr. Spangler, you're recognized for your closing,
10 sir.

11 MR. SPANGLER: Thank you, Judge.

12 MR. GRAHAM: Your Honor, would you like me to move
13 this?

14 THE COURT: Probably, yes, it may be better for
15 Mr. Spangler or easier for him if you did.

16 Thank you.

17 MR. SPANGLER: All right. May it please the Court?

18 THE COURT: Yes, sir.

19 MR. SPANGLER: Members of the jury, unanswered
20 questions. Folks, that's what we're left with here at
21 the end of the State's case. Unanswered questions
22 about the most basic and important things in this
23 investigation. What gun was used in this shooting?
24 What time did the shooting take place? Who was there?
25 And the most important question of all, who pulled that

1 trigger?

2 Now throughout this trial the State, they've hung
3 their hat on the testimony of one man. That's what this
4 case boils down to; whether you believe VonKeith Toland
5 or not about what happened that day.

6 Now it's not my job or Mr. Floyd's job to say that
7 anything that happened that day was anything short of
8 tragic because this is a tragedy. One person was
9 killed, another person was severely injured. A family
10 for five and a half years have been searching for
11 answers. It is tragic. But what the State can't
12 reconcile are the holes in the story that VonKeith
13 Toland is telling. Holes that come out when you match
14 it up with the crime scene investigation. Issues with
15 the story that just come from our common sense.

16 And by bringing these charges against VonKeith
17 [sic], the State, they took on a burden. We call that
18 their burden of proof. Their legal responsibility.
19 Their duty.

20 Now this week they had the responsibility of
21 convincing all twelve of you beyond a reasonable doubt
22 not just that Terry was in South Carolina at some point,
23 not just that he went to the mother's house and test
24 drove a car. That wasn't what they had to prove. They
25 had to prove that he was there at 688 Bushberry Road

1 pulling the trigger on that gun.

2 Now as Wayne told you at the beginning of this
3 case, Terry has the presumption of innocence, and that
4 presumption is something that each and every one of us
5 have, and it's important because it's the presumption of
6 innocence that says if the State wants to accuse someone
7 of a crime, bring them into this courtroom, try to have
8 them labeled a murderer, subject them to criminal
9 penalties, well, the State has to do their job; dispel
10 all reasonable doubt from their case. And even at this
11 point in the trial from the moment that Terry walked in
12 those doors on Monday to right this very moment, you
13 have to look at him and say he is innocent and that
14 cloak of innocence, that presumption of innocence, is
15 only pulled off once the State has convinced each and
16 every one of you not just that he was in South Carolina,
17 not just that he test drove a car, not just that he was
18 maybe evasive or nervous or misrepresented some things
19 with the police. Because that's not what we're here
20 about. That presumption of innocence is only taken away
21 when they convince you that he was there pulling that
22 trigger.

23 Now I want you to keep that presumption of innocence
24 and the responsibility on the State to convince you
25 beyond a reasonable doubt, keep that in mind as we talk

1 through the evidence.

2 Now we heard that this -- this case had started with
3 a car sale. VonKeith Toland took the stand and told you
4 he had these two individuals, Justin Butler and Terry
5 McClure, come and meet him at his mother's house.

6 Now that's where the case starts to get a little bit
7 weird when you think about it. They were coming to buy
8 a car. Why did he invite them to his mother's house?
9 The car certainly wasn't there. And you heard that
10 there was a family gathering going on at the house.
11 There was eight to nine family members in there.
12 VonKeith told you he invited them in, they sat down,
13 played cards with the family. And what Mr. Graham
14 categorized that as is malicious, sitting down with the
15 family and two folks are gonna kill them, but does that
16 make any sense to you? That two people that they want
17 you to believe drove from Alabama, flew from California,
18 would sit down with eight to nine potential witnesses,
19 with the people they were planning on hurting, get all
20 these people to see their face? That just doesn't make
21 any sense. What it sounds like is exactly what it started
22 off as. A used car deal.

23 But then the story gets even a little bit weirder,
24 right, because we hear VonKeith actually leaves these
25 two people in his house with his family. That's what

1 his sister said. That VonKeith at some point left that
2 house. Terry and Justin, undisputed they're there with
3 the whole family. Nothing happens. Nobody saw any
4 guns, nothing is taken. There was the point that
5 somebody said they saw his hand shaking, but on that
6 cross-examination we showed that that wasn't told to the
7 police five and a half years ago when they were asking
8 them about what happened. That was never mentioned.
9 The first time that that hand shaking came out was up
10 on the stand this week.

11 But then it gets even weirder. That someone else
12 leaves the house. Timothy Darby, an uncle. So two
13 grown men are leaving and leaving Terry McClure and
14 Justin Butler sitting there with cousins, wives, I think
15 a child was in the house. What is happening? What is
16 going on? That just doesn't make any sense.

17 Now, folks, we get to the point where the three
18 leave the house, and that's undisputed. Three vehicles
19 left that house. Justin Butler and Terry McClure in a
20 Hyundai. You heard Tycus Toland -- for some reason we
21 didn't hear any testimony he was involved in this car
22 sale, but VonKeith wanted him to come along. So he
23 leaves in another car and VonKeith leaves in another
24 car. So we've got three vehicles leaving and, folks,
25 that's the point where we hit a fork in the road on

1 this case because that's the point where the only
2 eyewitness that the State can give you to everything
3 that happened after that point is VonKeith Toland.
4 The State's banking on you buying his story about what
5 happened after they left because no one else can confirm
6 it.

7 Now you heard that -- the testimony was shaky, but
8 you heard some witnesses say they left about 2:00, 2:30.
9 I think Solicitor Graham said it was closer to 3:00,
10 3:30, so we don't really know when they left the house.
11 But what we do know, the next thing we know for sure
12 with certainty, is a 9-1-1 call was made at 4:23 PM.

13 Now, folks, the State, they talked to you about
14 that 9-1-1 call, and you'll get a chance to listen to
15 it, and what you'll hear is VonKeith making that call
16 saying that he'd been shot, but he gives the wrong
17 address. You'll hear the operator, the dispatcher,
18 asking who shot you, what's going on, then the line goes
19 dead. And there was some back and forth with me and
20 Investigator Mefford about did he hang up, did 9-1-1
21 hang up. I submit to you-all that it doesn't make sense
22 that 9-1-1 would hang up on somebody who's calling that's
23 just been shot. Well, what common sense tells us is that
24 VonKeith hung up that phone.

25 Now you hear subsequent calls to 9-1-1 and what the

1 State did is they kind of jumped around up there. They
2 showed you a portion of one them, then paused it, jumped
3 it to the next one. All the calls are on it. And,
4 importantly, you'll hear 9-1-1 trying to call him back
5 over and over and over again. No answer. Finally, they
6 get him back on the line and EMS gets out there and right
7 at the very end of this tape, I think the State stopped
8 it before we got to that point, I understand why, it's
9 because you can hear folks on that line asking him who
10 shot you; black male, white male, Hispanic male. No
11 answer. They ask him several more times. You can hear
12 VonKeith talking. He's speaking with the people there,
13 but he won't answer that question. But that's something
14 the State, they didn't want you to listen to that part,
15 but it's on this disc that you'll have back in the jury
16 room if you do want to hear all the times he hung up
17 and was evasive. Now it doesn't mean he wasn't shot.
18 It just means that the story he's telling has got some
19 issues with it.

20 Now we heard a lot about this address 688 Bushberry
21 Road. All right. In looking at State's 13, this is
22 688 Bushberry. You-all will probably never forget that
23 address after this week you've heard it so many times.
24 You heard about what this looks like. It's a house, a
25 mobile home, sitting way off the road. You can't see it

1 from Bushberry Road. A long dirt driveway that goes all
2 the way back. Just a pretty simple mobile home back
3 there around which there's a six-foot privacy fence that
4 encircles it.

5 You heard that when law enforcement got there,
6 there were a bunch of dogs tied up outside. The
7 testimony was four to five dogs. Some of them Pit
8 Bulls. You heard there were cameras set up all around
9 the perimeter of it. What was going on at that house?
10 It's a question the State couldn't answer. Why all the
11 security way out there, a house you can't even see from
12 the road? That's a question that we still are waiting
13 on the answer to.

14 Now VonKeith Toland was the first witness that we
15 heard from during this trial all the way back on Tuesday.
16 I mean, to be frank with it, his testimony is the most
17 important thing in this case for the State. He's the
18 only person here that can say they saw Terry McClure
19 pull the trigger on that gun. The only person. But on
20 the stand you heard his version. That there was a
21 shooting, that his brother was shot in the back of the
22 head at very close range, that he ran around the back
23 of the house, he was shot several more times, and then
24 climbed under. He stripped off all his clothes and then
25 crawled out to that Honda. That's the story that he

1 told you. That's the story that we have to go with.
2 But when we start comparing that story to what was found
3 at the scene, that's where those issues just arise.

4 Now we hate to say that it's not the truth, but
5 these things, they can't be reconciled. Because what
6 the State told us is that although he says he called
7 out from under this house, every single investigator,
8 every single one, told you they did not see any blood
9 trails in that front yard. He had stripped off all his
10 clothes. He'd been shot five times, that's undisputed,
11 and what he told you-all is he was crawling around all
12 the way out from the house to that Honda where he was
13 found. Not one drop of blood in a trail. No crawl
14 marks. Nothing like that. We've all been to the beach.
15 If you crawl on the sand, there's got to be something
16 there. You-all can see the sandy soil in this area of
17 Pelion. Why is there nothing there? It doesn't make
18 any sense.

19 Now what VonKeith told you is that he didn't go
20 back in the house, that he was underneath and he crawled
21 out to the Honda. Now investigators -- there we go, but
22 investigators told you that what you see, that dark spot
23 on the handrail, that's blood. There was no testimony
24 about him going back in the house. He told us on the
25 stand he was underneath the house. He didn't go anywhere

1 else. Suspected blood on that handrail. How could that
2 get there? And it's not our job as the defense to
3 answer that question. That's the State's job, that their
4 responsibility. As we stand here at the end of evidence
5 not one witness could tell you why there is suspected
6 blood on that handrail. No one. That's a question
7 that you-all will have to think about back in the jury
8 room when you're evaluating VonKeith's testimony. Was
9 he telling the whole truth about what happened there?
10 Because, folks, I submit to you if there were
11 misrepresentations about these kind of things, why
12 couldn't there have been misrepresentations about what
13 happened? Who was there? Who was pulling the trigger?
14 Unanswered questions that the State has not been able to
15 resolve for us.

16 Now going right along with the blood on there, the
17 DNA analyst from the State, she told you whose blood
18 that was. Lilly Gallman got up, I believe it was either
19 yesterday or the day before, and she said that swab from
20 that suspected blood was from VonKeith Toland. That's
21 what her testimony was. That suspected blood, the swab
22 that was taken from it, belonged to VonKeith Toland. No
23 dispute. And, importantly, what she couldn't tell you
24 was that any DNA from Terry McClure was found in that
25 house. Think about that for a second. Nowhere. Nowhere

1 at the residence was DNA found. Nothing tagging Terry
2 McClure down.

3 Now what we heard is that there was a fingerprint
4 matched to Terry McClure in that white Infinity. That's
5 undisputed. We're not saying that Mr. Hickman's analysis
6 was wrong, we're not saying that he did a bad job with
7 it. It was Terry McClure's fingerprint inside of the
8 white Infinity, consistent with test driving a car.
9 You see Terry. He's a big guy. If you open the door to
10 the car, you're putting your palm on it. That's not an
11 issue.

12 But you-all know cars, they move. We don't know
13 when that white Infinity was parked there. We don't know
14 where the test drive in this case began. What VonKeith
15 told you is that it started at 688 Bushberry, but all
16 that has been called into question. Where did Terry
17 McClure and Justin Butler start this test drive? We
18 don't know. All we know is that the Infinity ended up
19 in that -- in that front yard. But nowhere else on the
20 scene, not in the rear of the house, not in the front of
21 the house are there any other fingerprints. You-all saw
22 all the cabinets that were opened up. You-all saw the
23 bedroom all ransacked. Not one fingerprint. Not one.
24 When you go back there, ask yourself is there any
25 evidence that Terry McClure was anywhere except for that

1 white Infinity because there's not.

2 Now we talked a little bit about fingerprints.

3 Mr. Hickman got on the stand and the State examined him
4 about the fingerprints that he took, the ones he found
5 at the scene. Now what they didn't go into on their
6 direct examination are the prints he found not matching
7 Terry McClure. Think about that. On their direct
8 examination, they asked him about this print. He did
9 a PowerPoint that was pretty neat looking, pretty
10 interesting, but this is the one they showed you. It
11 wasn't until our cross-examination that, well, it came
12 out there were other prints found there. We heard that
13 fingerprints, they can get smudged, some of them aren't
14 good for comparisons, but the ones he found must have
15 been fresh enough to compare, to get a lift off of. He
16 found fingerprints belonging to three other people. He
17 said Dominique Duckson, Travarius Pugh, Rashawn Gatson.
18 Did you-all hear anybody follow-up with those people?
19 Other than us questioning him about those names, had
20 any other investigator told them that they called those
21 people to see why were their fingerprints out there at
22 the scene?

23 MR. GRAHAM: Your Honor, I'm sorry to object.
24 He's talking about third-party guilt and we had
25 addressed that earlier I thought.

1 THE COURT: I don't take his argument as involving
2 third-party guilt.

3 You may proceed.

4 MR. SPANGLER: Thank you, Judge.

5 Folks, no follow-up. That's what we're getting at.
6 No follow-up when other fingerprints are found. It's a
7 question that can't be answered. Why didn't they look
8 into it? Who are these people? Here today we don't
9 know.

10 Now we move on to the shell casings and there's
11 been a little bit of dispute about how many shots were
12 fired because we heard that VonKeith Toland was shot
13 five times and his brother was shot once. That's what
14 Solicitor Graham told you. Five times VonKeith Toland
15 was shot, but we only have five shell casings. There
16 would have been one other shell casing, Tycus Toland.
17 It was a semiautomatic pistol. What happened to that
18 shell casing? We can't find it.

19 Now there was some back and forth about the shell
20 casings that were found. You heard that four of them
21 matched one gun. Four shell casings fired by one
22 firearm. The State never located that gun. But what
23 you also heard was that the Winchester bullet, well,
24 that was fired by a gun that they did find. That was
25 fired by this Glock 22 that was found under the bed in

1 VonKeith's bedroom. No dispute about that. This shell
2 casing was fired by that gun.

3 Now the State tried to explain it and have VonKeith
4 say that, well, his girlfriend was outside firing the
5 gun at New Year's. There was some back and forth of
6 was it target practice, was it not, was it a New Year's
7 shooting. Folks, the investigator, I believe his name
8 was James Green, he told you-all that shell casing out
9 there belonging to this gun it looked exactly the same
10 age as the other ones. Well, what Mr. Graham told you
11 about tarnish and these are meant to be resistant, that
12 is not what he said on the stand. What he said is that
13 these things wear and tear. If they're out exposed to
14 the elements, you can tell, but this one he said looks
15 just like all the other ones. Fresh. In addition, you
16 heard that that shell casing, although it had supposedly
17 been there for a long time, it wasn't kicked under the
18 soil, sand hadn't moved over it, it was there for the
19 naked eye. It just doesn't make sense. It also doesn't
20 make sense that somebody would be right beside their
21 home firing off a gun just for fun. That does not make
22 sense. Or that somebody would be doing target practice
23 standing beside their home and firing one bullet. That
24 just doesn't make any sense.

25 Now the State's explanation for the gun that was

1 found, there are bigger issues with that. Because what
2 VonKeith told you was that he purchased this before he
3 went to prison. It had been in the house for a long
4 time under the bed, that his girlfriend now had it for
5 home protection, okay? The gun, there was some testimony
6 whether it had dust on it or not. There was no dust on
7 it. It was just laying right under the bed. If that
8 gun was for home protection, do you-all think it would
9 be ferreted away under the bed where you've got to flip
10 up a mattress to get it or would it be beside the bed,
11 somewhere that it could easily be reached? If it's for
12 home protection, why is there no magazine in it? A
13 question the State they cannot answer. All we're left
14 with is a gun and a shell casing that were found at the
15 scene that the State they told you they never followed
16 up on. What their investigator did tell us though is
17 that the bullet that was recovered from Tycus's head
18 could have been fired by that gun. And we're not saying
19 that it was, but it's insane. Why was that not followed
20 up on? This gun they find in the house could have been
21 responsible for the shooting, but there's no follow-up
22 on it. Did you-all hear from the girlfriend? The State
23 could have called her as a witness to say yeah, that gun
24 is for home defense. That gun, I went outside on New
25 Year's and fired it. You-all didn't hear that, did you?

1 Now we heard about the ammunition that was found
2 inside the home. And it's hard to see, but this is the
3 only picture the State gave you. You can see way up in
4 the corner of State's 27 there's a box of Winchester
5 ammunition. The crime scene investigator told us that
6 40 Smith & Wesson caliber bullets were missing from that
7 box, it was not full, and what Investigator Mefford told
8 you is that, well, he can't remember if they were hollow
9 points or not like the one that was pulled from the
10 head of Tycus. He told us that if it was that would be
11 something important that he'd followed up on, but he
12 just doesn't know. He couldn't answer that question.

13 Now the State discussed in their closing argument
14 motive. What was the motive for what took place there,
15 and that's another question that can't be answered, all
16 right? If it's a robbery, why are none of the cars
17 taken? If they were going to steal the white Infinity,
18 you-all heard the keys were left there in the engine
19 block, were found at the scene, the white Infinity key
20 was recovered, and the car was still there. Why wasn't
21 the car taken? Okay. The Honda key, that was there.
22 The Honda wasn't taken. Over \$1,200 in cash in the
23 pockets of VonKeith Toland. Well, that was left there.
24 A bag of marijuana was left there. Other than some
25 shaky testimony on the DVR or recording devices, what

1 was taken from the home during this robbery? What was
2 the motive?

3 Folks, I'd submit to you that the test drive calls
4 the robbery motive all into question. Because think
5 about it, the test drive that took place. We're not
6 saying it didn't, but what VonKeith Toland told you is
7 that in the front seat of that car Justin Butler and
8 Terry McClure. VonKeith is in the back seat. They're
9 driving down the road. What better time to pull off a
10 robbery than when you've got him by himself? It's two
11 on one. You're driving down in the middle of nowhere,
12 Bushberry Road, but that's not what you heard happened.

13 Folks, none of it makes sense. The motive, the
14 fact that nothing was missing from the home. What the
15 State can't tell you is that this was anything other
16 than a test drive. The fingerprint found in the car
17 corroborates that. The lack of any fingerprints at the
18 residence corroborates that.

19 Now we heard a little bit about travelling. There
20 was a lot of testimony about Greyhound buses, flights,
21 rental cars, things like that, and you heard that Terry
22 McClure and Justin Butler they didn't try to conceal
23 their identities when they were checking into those
24 places. They used their real names, didn't try to use
25 a fake ID, anything like that, paid with a credit card.

1 Does that sound like two people that are trying to
2 conceal something because they're flying across the
3 country to pull off this major heist? That doesn't make
4 sense.

5 Now Solicitor Graham talked a lot about the
6 interview and the interview is what it is. You-all saw
7 Terry sit down with the investigator, but what you heard
8 during the trial is that the investigators they'd
9 previously spoken with Justin Butler. Do you-all think
10 Terry had an idea of wow, we're getting looked at for
11 a murder in South Carolina? You don't think that would
12 be a reason for him to be maybe nervous going in there,
13 evasive, maybe not letting on everything. He knew that
14 he was being accused of a murder on the opposite side of
15 the country.

16 Now we talked a lot about the investigation that
17 law enforcement did into this case. Solicitor Graham
18 brought it up at the beginning of his closing argument,
19 but you-all heard there was evidence that someone else
20 made a 9-1-1 call in relation to this case and identified
21 the shooter as a white man. That's undisputed. You-all
22 heard that that caller was the mother. You-all know
23 from the phone records we went through yesterday that
24 VonKeith was in touch with his mother moments after the
25 shooting. Now right now that's what we've got. The

1 State, well, they didn't follow up on that tip. No
2 investigation into whether a white person was the actual
3 shooter. And what the State didn't do this week is call
4 Yvonne Toland to the stand and let her explain to you why
5 she made that statement. That's something they could
6 have done. But, no, they didn't put her on the stand to
7 explain that. So all we're left with is that statement;
8 someone calling 9-1-1 telling law enforcement that a
9 white person was responsible.

10 Now we went through the cell phones, and there
11 was a lot of testimony going back and forth and back
12 and forth, but we do take issue with the argument that
13 these cell phone records put Terry McClure out at
14 688 Bushberry Road because they don't. The testimony
15 from Investigator Phipps was that those are tower
16 locations. That's not the location of an actual phone.
17 Those towers can stretch out for up to a mile he said
18 and your phone would still ping off that tower. Now
19 what you-all heard is that not one piece of cell phone
20 evidence, all this data, all the maps, I think there was
21 five or six maps put out there, not one of them can put
22 that phone at 688 Bushberry Road. Not one of them.

23 Now we questioned Investigator Phipps a little bit
24 about his investigation. He told you-all that sometimes
25 he gets actual cell phones from the scene, and that

1 happened in this case. He plugs them up to his machine
2 and he can get actual text messages, data, calls, things
3 like that. They showed him some copies of his reports.
4 Now what we know is that he recovered a cell phone
5 belonging to VonKeith Toland from the scene. That's
6 what he told us. He plugged it up to his machine and he
7 ran a report.

8 Now, folks, this is what the State gave you as a
9 part of that report. We're looking at State's 33.
10 You-all saw the big report we were questioning with,
11 but that's all the State gave you from that phone. A
12 document that has been so heavily redacted and chopped
13 up he could not tell what it was. Until we gave him
14 the full report, he couldn't even identify it. Why
15 don't we have the whole cell phone report in evidence?
16 What is in there? Folks, that's a question we can't
17 answer.

18 And we heard about another cell phone that was
19 found at the scene, a Samsung Galaxy Mega. You heard
20 that phone found, plugged up to his machine back in
21 2014, couldn't get into it, and that's fair. But what
22 he told you on the stand is that today if he went back
23 and plugged it in it's very likely he could get into it
24 with the new updates in the software. They didn't do
25 that. What was in that phone? Who did that phone belong

1 to? He had a phone number for it. Did you-all hear
2 anything about tracking that phone number? Nothing.
3 Just another lead that went unfollowed. A cell phone
4 that we don't have any evidence from that was found at
5 the scene.

6 Now, folks, the State, they have the burden in
7 this case of convincing you beyond a reasonable doubt
8 not just that Terry was there or that he went on a test
9 drive or that he was in the white Infinity or that maybe
10 he was evasive or misrepresented things with the police.
11 Because he's not charged with giving false information
12 to the police. That would be a different case. He's
13 charged with murder and what the State had to convince
14 you of is that not just that he was there, but that he
15 was there and that he pulled the trigger.

16 As we stand here at the end of the case, all of
17 those unanswered questions increases a reasonable doubt.
18 The cash and the marijuana left at the house, the cars
19 and the car keys left at the house, the Glock 40 caliber,
20 the Winchester ammunition, the fact that Terry's DNA was
21 not found at the scene, the fact that no fingerprints
22 from Terry were found inside the house or anywhere around
23 the house, only in the car. The cell phones, they can't
24 put him at the house. The phone that they found, well,
25 there is no report from it. We don't know what was in

1 that phone. The firearm that we know somebody's lying
2 about. They found the shell casing. It looked like the
3 other ones. The 9-1-1 call identifying the white man
4 that was not followed up on. What does that leave us
5 with? That leaves us with the story of one man, of
6 VonKeith Toland's story.

7 Folks, it is tragic what happened, but that story
8 cannot be squared up with the facts. Something tragic
9 did happen, a shooting did occur, but what the evidence
10 tells us is that it could not have happened in the way
11 VonKeith Toland presented to you. The story they tried
12 to sell you on the stand just couldn't happen like that.

13 You heard about the blood found or the suspected
14 blood found on the handrail belonging to him, you-all
15 heard about the absence of evidence in the front yard,
16 the crawl marks and the trails, you-all heard about the
17 story that he told explaining that gun, a gun he wasn't
18 even supposed to have under his bed. You-all heard a
19 story about a Dodge Challenger. That first he lied to
20 the police about the Dodge Challenger and then changed
21 his story because he thought he was protecting his
22 brother. That was something that was never followed up
23 on. He admitted that he misrepresented it, but that was
24 it. You-all heard that he had to be given immunity in
25 this case. Immunity for that firearm and relating to

1 drugs at the residence. You-all heard that his phone
2 and the content in it, there was no follow-up. We got
3 into a little bit of text messages in that phone and
4 Wayne asked him about certain ones that related to drug
5 dealing, one about he said somebody trying to sell him
6 firearms. You don't hear anything about the State
7 following up on those things. Absolutely not. They
8 didn't follow up on it, they didn't give you the report
9 from that phone so you could see it yourselves, and
10 that's what we're left with. It's just another
11 unfollowed lead.

12 Just a moment, Your Honor.

13 Folks, I'm not gonna keep you here very much longer.
14 We've been here all week. You're tired of hearing my
15 voice, you're probably tired of seeing me at this point.
16 I just want to talk to you a little bit about what the
17 law says. The judge is gonna instruct you on the law
18 and what he's gonna tell you is that the credibility of
19 witnesses, that is something that's up to you. Whether
20 you believe them or not. The fact that a witness has
21 maybe a criminal record, that's something that could be
22 considered. The fact that there might be inconsistencies
23 with the witness's story or the witness's evasiveness on
24 the stand. Those are things that you can consider when
25 believing or disbelieving testimony. Just because you

1 heard it from the stand does not mean you have to believe
2 it.

3 Now when we talk about reaching a verdict, the word
4 "verdict" means to speak the truth, and that's what
5 you're being asked to do, to speak the truth about this
6 case. To speak the truth as to whether the State proved
7 their case beyond a reasonable doubt. And we all know
8 that sometimes speaking the truth is not the easiest
9 thing to do, it's not always the popular thing to do,
10 and speaking the truth is not always something that
11 makes us feel good, and that's why it's the truth. And
12 that's what you're tasked with doing in this courtroom
13 is speaking the truth as to whether you are convinced
14 beyond a reasonable doubt, not just that Terry McClure
15 was in South Carolina, not just that he test drove a
16 car, but that he was at 688 Bushberry Road and that he
17 pulled the trigger on that gun six times. That's what
18 the State had to convince you about Terry.

19 Now I submit to you that right now we're still
20 left with those unanswered questions. All this evidence,
21 look at it when you get back there. The clerk will
22 bring it back and you can look at each piece of it. Ask
23 questions about it. Try to find answers to the questions
24 we've brought up, but, folks, I submit to you you won't
25 be able to because the State has not met their burden.

1 They had to prove that he maliciously took the life of
2 someone else, that he shot someone else, but right now
3 what you're left with is the word of one man. That's
4 VonKeith Toland. Do you believe him or are there holes?

5 I ask you to think about those things when you go
6 back there. Think about your duty to speak the truth
7 in this case. Think about Terry McClure because right
8 now, right at this very moment, he's presumed innocent
9 and what you're tasked with doing is answering the most
10 important question in his life.

11 Thank you. Nothing further.

12 THE COURT: Thank you, Mr. Spangler.

13 Ladies and gentlemen, in my estimation you've been
14 sitting there for roughly an hour and twenty minutes,
15 hour and a half. Does anyone need a brief break before
16 I instruct you on the law? This will take about fifteen
17 minutes for me to do. Fifteen, twenty minutes. Do
18 you-all need a break? No takers? Okay. Very good.

19 Now, ladies and gentlemen, it now becomes my
20 obligation to instruct you on the law that applies in
21 this particular case and I will tell you that the way
22 this was done when I first started practicing law
23 twenty-seven years ago is that the judge would basically
24 sit up here and read to you from seventeen pages of the
25 law taken from all the law books that are behind me and

1 like most law students it took me three years to learn
2 what I'm gonna tell you in fifteen or twenty minutes.
3 I always found that a little bit silly and I think the
4 tradition of the judge reading -- just reading the
5 instructions to the jury, I think that probably came
6 from a time when most people in this state couldn't read
7 themselves.

8 So what I'm telling you, ladies and gentlemen,
9 is I'll give you a copy of these instructions that
10 you can refer to during the course of your deliberations
11 in the jury room, okay? Please, of course, pay
12 attention to the instructions as a whole and don't
13 simply pay attention to one portion of the instructions
14 to the detriment of some other part and do return
15 these instructions to me when you've finished your
16 deliberations.

17 Madam Forelady, if you have any questions about
18 the law that applies in this case, simply write me a
19 note, let me know what it is you're struggling with,
20 and I'll try and help you with whatever legal question
21 you have. However, I instruct you that if you have a
22 factual question, odds are I'm not gonna be able to
23 assist you, okay? You'll have to judge the case based
24 upon the evidence that's been received and the testimony
25 as you recall it being. We can replay testimony if

1 need be however, but you will need to judge the case
2 based solely on the testimony and I can't help you with
3 any sort of factual question that you may have that
4 might arise during your deliberations.

5 Now, again, ladies and gentlemen, the indictments
6 in this case charge Mr. McClure with the offenses of
7 murder, attempted murder, burglary first degree, and
8 possession of a weapon during the commission of a
9 violent crime. I remind you that the fact that
10 Mr. McClure was arrested, charged and indicted is not
11 evidence and, of course, cannot be considered by you as
12 evidence of guilt; nor do these indictments create any
13 inference or presumption of guilt. Again, these are
14 merely the documents by which these cases are brought
15 into court.

16 Now each indictment in this case alleges different
17 offenses against the Defendant. Again, the charges are
18 murder, attempted murder, burglary first degree, and
19 possession of a weapon during the commission of a violent
20 crime. Because each indictment charges a separate and
21 distinct offense, you must decide each charge separately
22 on the evidence and the law applicable to it unaffected
23 by your decision as to the other charges. The Defendant
24 may be convicted of or acquitted on any or all of the
25 offenses charged and you would be asked to write a

1 separate verdict of guilty or not guilty for each separate
2 charge.

3 Now, again, ladies and gentlemen, Mr. McClure has
4 plead not guilty to these charges and that places the
5 burden on the State to prove his guilt. I instruct you
6 that a person charged with committing a criminal offense
7 in this state is never required to prove himself innocent.
8 It's an important rule of law that a defendant in a
9 criminal trial no matter what the seriousness of the
10 charge may be will always be presumed to be innocent
11 of the crime for which the indictments were issued unless
12 guilt has been proven by evidence satisfying you of that
13 guilt beyond a reasonable doubt.

14 Ladies and gentlemen, the presumption of innocence
15 does not end when you begin your deliberations; rather,
16 it accompanies the Defendant throughout the trial until
17 you reach a verdict of guilt based on evidence satisfying
18 you of his guilt beyond a reasonable doubt.

19 The presumption of innocence is often described as
20 being similar to a robe of righteousness that's placed
21 about the defendant's shoulders and remains with him until
22 it's stripped from him by evidence satisfying you of his
23 guilt beyond a reasonable doubt. Again, the presumption
24 of innocence is not merely a legal theory, it's not just
25 a legal phrase, it's a substantial right to which everyone

1 is entitled unless you, the jury, are satisfied from the
2 evidence of his guilt beyond a reasonable doubt.

3 Well, what is a reasonable doubt in the law? A
4 reasonable doubt is the kind of doubt that would cause
5 a reasonable person to hesitate to act. The State has
6 the burden of proving the Defendant's guilt beyond a
7 reasonable doubt. Some you may have served as jurors
8 in civil cases where you were told that it's only
9 necessary to prove that a fact is more likely true
10 than not true, such as by the greater weight or the
11 preponderance of the evidence. In criminal cases, the
12 State's proof has to be more powerful than that. It
13 must be proof beyond a reasonable doubt.

14 Proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced of the Defendant's guilt.
16 Now there are very few things in this world that we know
17 with absolute certainty. In criminal cases the law does
18 not require proof that overcome every possible doubt.
19 If based on your consideration of the evidence, you're
20 firmly convinced that the Defendant is guilty of the
21 crimes charged, you should find him guilty. If, on the
22 other hand, you think there's a real possibility that the
23 Defendant is not guilty, you should you give him the
24 benefit of the doubt and find him not guilty.

25 Again, ladies and gentlemen, during this trial you

1 and I have certain duties to perform and understand as
2 the trial judge it's been my responsibility to preside
3 over the trial of this case and rule on the admissibility
4 of evidence offered. Understand that you're to consider
5 only the competent evidence before you, so any testimony
6 which was stricken you have to disregard that testimony
7 because you're to consider only the testimony presented
8 from the witness stand, as well as any exhibits which
9 have been made a part of the record in this case and any
10 stipulations of the attorneys.

11 I also have the job to charge you the law and as
12 the presiding judge I'm the sole judge of the law. It's
13 your duty to accept and apply the law as I state it to
14 you now. So if you already have some idea as to what
15 the law is or what the law ought to be and this idea does
16 not agree with what I tell you the law is, you have to
17 abandon this idea because you're sworn to accept and to
18 apply the law exactly as I state it to you now.

19 Again, ladies and gentlemen, you are the sole and
20 exclusive judges of the facts. A trial judge is not
21 permitted to intimate, state, comment on or make any
22 statement to a trial jury about the facts in a case.
23 Because you are the sole judges of the facts, you're not
24 to infer from what I've said during the progress of this
25 trial in ruling upon the admissibility of evidence or

1 otherwise or anything that I say to you now that I have
2 any opinion about the facts in this case. Ladies and
3 gentlemen, the law does not permit me to have any opinion
4 about the facts in this case. This is a matter solely
5 for you to determine. As jurors, it's your duty to
6 determine the effect, value, weight and truth of the
7 evidence presented during this trial.

8 Now, ladies and gentlemen, typically there are
9 two types of evidence which are presented during a trial;
10 direct evidence and circumstantial evidence. Direct
11 evidence directly proves the existence of a fact and
12 does not require deduction, such as testimony by an
13 eyewitness. It's evidence which immediately establishes
14 the main fact to be proven. Circumstantial evidence is
15 proof of a chain of facts and circumstances indicating
16 the existence of a fact. I instruct you that crimes may
17 be proven by circumstantial evidence. The law makes no
18 distinction between the weight or value to be given to
19 either direct or circumstantial evidence; however, to
20 the extent the State relies on circumstantial evidence,
21 all the circumstances must be consistent with each other
22 and when taken together point conclusively to the guilt
23 of the accused beyond a reasonable doubt. If these
24 circumstances merely portray the Defendant's behavior
25 as suspicious, then the proof has failed. Again, the

1 State has the burden of proving the Defendant guilty
2 beyond a reasonable doubt and this burden rests with the
3 State regardless of whether the State relies on direct
4 evidence, circumstantial evidence or some combination of
5 the two.

6 Now, necessarily, ladies and gentlemen, you have
7 to determine the credibility of witnesses who have
8 testified and, again, you are the sole and only judges
9 of credibility in this case. Credibility simply means
10 believability. It becomes your duty as jurors to
11 analyze and to evaluate the evidence and determine which
12 evidence convinces you of its truth. In determining the
13 believability of witnesses, you may believe one witness
14 over several witnesses or several over one. You may
15 believe a part of the testimony of a witness and reject
16 the remaining part of the testimony of that same witness.
17 You may believe the testimony of a witness in its
18 entirety or reject it in its entirety. You may consider
19 whether any witness has exhibited to you any interest,
20 bias, prejudice or other motive in this case. You may
21 also consider the appearance and the way the witness acts
22 while they were on the witness stand.

23 Now, ladies and gentlemen, I instruct you that an
24 individual or someone who has a past criminal record is
25 competent to testify during a trial. A past record does

1 not affect the ability of that witness to testify. The
2 past record may only be considered by you, if at all,
3 in determining the witness's believability. Remember,
4 you're the sole judges of the facts in this case and of
5 the believability of any and all of the witnesses who
6 have testified.

7 Now, ladies and gentlemen, I instruct and emphasize
8 that the fact that the Defendant did not testify is not
9 a factor to be considered by you in any way in your
10 deliberation and in your consideration on the question
11 of the guilt or the innocence of the Defendant. It must
12 not be considered by you in any manner whatsoever. The
13 Defendant has the constitutional right to remain silent
14 and the assertion of this right must not be considered
15 by you in your deliberations. Under your oath, you're
16 to draw no conclusion whatsoever from the fact that the
17 Defendant in this case did not testify. The fact that
18 he did not testify should not even be discussed in the
19 jury room. Again, the burden of proof, as I've stated
20 to you, is on the State. The Defendant is not required
21 to prove his innocence. The burden of proof remains on
22 the State to prove guilt beyond a reasonable doubt.

23 As I've explained previously, ladies and gentlemen,
24 normally the rules of evidence do not permit witnesses
25 to testify as to opinions or conclusions. But an

1 exception to this rule exists for expert witnesses. A
2 witness who by education and experience has become an
3 expert in some art, science, profession or calling may
4 state an opinion as to relevant and material matters in
5 which the witness claims to be an expert and they may
6 also state the reasons for their opinion. You should
7 consider any expert opinion in this case and like any
8 other evidence give it the weight you think it deserves.
9 If you decide that the opinion of an expert witness is
10 not based on sufficient education and experience or if
11 you conclude that the reasons given in support of the
12 opinion are not sound or if the opinion is outweighed by
13 other evidence, you may disregard the opinion entirely.
14 An expert witness's testimony is to be given no greater
15 weight than that of any other witness simply because
16 the witness is an expert. Further, you're not required
17 to accept an expert's opinion even though it is not
18 contradicted.

19 Now, ladies and gentlemen, the Defendant in this
20 case is charged with murder. To prove this charge, the
21 State must prove beyond a reasonable doubt the Defendant
22 killed another person with malice aforethought. Malice
23 is defined as hatred, ill will or hostility towards
24 another person. It's the intentional doing of a wrongful
25 act without just cause or excuse and with an intent to

1 inflict an injury or under circumstances that the law
2 would infer an evil intent. Malice aforethought does
3 not require that the malice exists for any particular
4 time before the act is committed, but malice must exist
5 in the mind of the Defendant just before and at the time
6 of the act being committed; therefore, there must be a
7 combination of the previous evil intent and the act.
8 Malice may be inferred from conduct showing a total
9 disregard for human life. If facts are proven beyond
10 a reasonable doubt sufficient to raise an inference of
11 malice to your satisfaction, this inference would simply
12 be an evidentiary fact to be considered by you along with
13 the other evidence in the case and you may give it the
14 weight you decide it should receive.

15 The Defendant's also charged with attempted murder.
16 In order to prove this crime, the State must prove the
17 Defendant attempted to kill another person with malice
18 aforethought, either express or implied, as I have just
19 defined it for you. The State must prove beyond a
20 reasonable doubt the Defendant had the specific intent
21 to kill a person. A specific intent to kill is necessary
22 to convict the Defendant for attempted murder. Intent
23 means intending the result which actually occurred, not
24 accidentally or involuntarily. Intent may be shown by
25 acts and conduct of the Defendant and other circumstances

1 from which you may naturally and reasonably infer intent.
2 Intent may be inferred when it is demonstrated the
3 Defendant voluntarily and willfully commits an act the
4 natural tendency of which is to destroy another's life.

5 The Defendant's also charged with burglary. The
6 State must prove beyond a reasonable doubt that the
7 Defendant entered a dwelling without consent. Under
8 the law a dwelling is defined as any building or portion
9 of a building in which a person ordinarily sleeps. A
10 building constructed as a dwelling that's never been
11 occupied can't be considered a dwelling for purposes of
12 burglary, but a building is a dwelling even if the
13 residents are temporarily absent from that building. In
14 order to prove the Defendant entered the dwelling, the
15 State does not have to show that the Defendant's entire
16 body entered the dwelling. The smallest entry is
17 sufficient and may be any part of the body such as a
18 hand or a foot or a hidden instrument like a hook or
19 some other instrument. In addition, the State does not
20 have to prove that force was used to gain entry.

21 Next the State must prove beyond a reasonable doubt
22 that the Defendant intended to commit a crime, either a
23 felony or a misdemeanor, at the time of the entry. Mere
24 entry into a dwelling without consent is not burglary.
25 If the intent to commit a crime is formed after the

1 entry, again, it's not burglary. On the other hand, if
2 the Defendant intended to commit a crime at the time of
3 the entry, it is a burglary even if this intent was
4 abandoned after the entry. It does not matter that the
5 intended crime was not completed. Again, intent may be
6 shown by acts and conduct of the Defendant and other
7 circumstances from which you may naturally and reasonably
8 infer intent.

9 Finally, the State must prove beyond a reasonable
10 doubt either one of two things: While entering the
11 dwelling, the -- well, sorry -- when entering, while
12 in the dwelling or when fleeing, the Defendant or an
13 accomplice was armed with a deadly weapon or explosive.
14 A deadly weapon is defined as any particle, instrument
15 or substance which is likely to cause death or great
16 bodily harm. Whether an instrument has been used as a
17 deadly weapon, of course, depends on the facts and
18 circumstances of each case.

19 The following are examples of instrumentalities
20 which may be deadly weapons: Pistol, shotgun, rifle,
21 dirk, dagger, knife, slingshot, metal knuckles, razor,
22 firebomb, gasoline, Molotov cocktail or lighter fluid.
23 I instruct you that a gun may be a deadly weapon even if
24 it's not operable. Or the State may prove that when
25 entering, while in the dwelling or when fleeing the

1 Defendant or an accomplice caused physical injury to
2 anyone not participating in the crime.

3 Finally, ladies and gentlemen, the Defendant's
4 charged with the offense of possession of a weapon
5 during the commission of or attempt to commit a violent
6 crime. The State must prove beyond a reasonable doubt
7 the Defendant was in possession of a firearm or visibly
8 displayed what appeared to be a firearm during the
9 commission of a violent crime. Again, a firearm is what
10 I've described previously. It can be a machine gun,
11 automatic rifle, revolver, pistol, or any weapon which
12 will, is designed to or may be readily converted to
13 dispel a projectile.

14 In order to find the Defendant guilty of possession
15 of a weapon during the commission of a violent crime,
16 you must first find the Defendant guilty of either
17 committing a violent crime or attempting to commit a
18 violent crime. I instruct that under the laws of the
19 state murder, attempted murder and burglary first degree
20 are violent crimes. The State must prove beyond a
21 reasonable doubt that the weapon further advanced or
22 helped in the commission of the crime.

23 Madam Forelady and ladies and gentlemen of the jury,
24 there are four possible verdicts in this this case, and
25 I've prepared this verdict form, Madam Forelady, for you

1 to use in guiding your deliberation and rendering your
2 verdict, okay? It's amazingly simple, you're a smart
3 person, I'm sure you'd understand, but the law makes me
4 explain it anyway, all right?

5 The first sentence here makes the following
6 statement: We, the jury, in the above-captioned case on
7 the charge of murder of Tycus Toland, unanimously find
8 Terry Renee McClure, and then there are two mutually
9 exclusive options; either not guilty or guilty, okay?
10 If you find that the State of South Carolina has failed
11 to meet its burden of proving the Defendant's guilt
12 beyond a reasonable doubt on the charge of murder, you
13 would initial not guilty and then go down to the
14 attempted murder charge, okay?

15 If, however, you find that the State has met its
16 burden of proving the Defendant's guilt beyond a
17 reasonable doubt on the charge of murder, initial next
18 to guilty and then proceed to the attempted murder
19 charge, okay?

20 It's the exact same thing for all other questions
21 there, all four charges, all right? Do the exact same
22 procedure for all four of those.

23 Ladies and gentlemen, your verdict has to be a
24 unanimous one. That means that all twelve of you agree.
25 We do not have majority verdicts in South Carolina. A

1 few states still do permit majority verdicts. Those
2 states are doing it wrong, all right? So, again, all
3 twelve of you have to agree on each and every verdict
4 that's rendered on all separate -- four separate charges.

5 When you've reached a verdict on all four charges,
6 Madam Forelady, simply knock on the door, let the bailiff
7 know. I'll get everybody else in here, get everyone
8 reassembled, and we'll get you back in here as soon as
9 possible to render that verdict.

10 Now if at any time it's necessary for you to
11 communicate with the Court, Madam Forelady, simply do it
12 by way of writing a note. Again, I can help you with
13 the law, but not the facts. If at any time though you
14 communicate with me, I do not at any point in time want
15 to know what the numerical division of the jury is. So
16 if you're six to six, seven to five, eleven to one, one
17 way or another, don't give me any of that information.
18 That's something that I don't need to be privy to at any
19 point in time, so never communicate with me any sort of
20 numerical split among the jury.

21 Ladies and gentlemen, you've been chosen as fair
22 and impartial individuals in this case. What that means
23 is that you've got no friends to reward, you have no
24 enemies to punish. Your job it is to render a verdict
25 based solely on the evidence and on the law as I have

1 instructed you.

2 In a moment, Madam Forelady, I'm gonna ask that
3 you and the rest of the jury panel -- the jury rather,
4 including the alternate, return to the jury room for
5 just a few moments, but don't begin your deliberations
6 yet, okay? Your cue to begin deliberations will be my
7 asking the alternate to step out, your receipt of these
8 instructions, the verdict form, and all the evidence.

9 Speaking of some of the evidence, I know that there
10 were some CD-ROMs with the video and I believe some audio
11 9-1-1 recordings. Those were introduced into evidence.
12 If you decide that you want to view those in the jury
13 room, just let the bailiff know, give her a note or tell
14 her that you want to look at that, and what we can do is
15 send a laptop back there for you-all to play that again.
16 If you want to, you can watch it again with all twelve
17 of you watching at the same time. We'll have to bring
18 you out here and simply put it up on the screen, but if
19 you're comfortable doing so and comfortable watching it
20 back there or listening to the audio back there, I'll
21 simply send a clean computer that doesn't have any
22 Internet access or anything on it back there and you-all
23 can use that laptop to watch the video.

24 It's ten after eleven now. Normally I would order
25 lunch for you, but based upon the fiasco that happened

1 on Wednesday, if I were to order lunch for you it would
2 probably be delivered around suppertime. So if you're
3 still deliberating at 1:00, what I'll do is bring you
4 back out here, we'll take a lunch break and have you
5 come back around two or two-fifteen, okay? Just I think
6 that may be the most time effective way to do that.

7 And, again, if for some reason whenever you render
8 your verdict or if you knock on the door and there's
9 some delay in me getting you out here, it's because I'm
10 gonna be conducting other hearings on other cases out
11 here so I have to maybe finish with those or get to a
12 convenient break and get everybody reassembled. So if
13 there's any delay in getting you back out here, that's
14 what's happening, okay?

15 With that, all thirteen of you, if you would adjourn
16 to the jury room. Don't start your deliberations yet.
17 You know what your cue is to begin deliberations, okay?

18 (Whereupon, the jury retires to the jury room at
19 11:10 AM.)

20 THE COURT: The jury is out. No exceptions or
21 additions from the State?

22 MR. GRAHAM: No, Your Honor.

23 THE COURT: With the exceptions of the matters
24 already requested this morning, Mr. Floyd, any exceptions
25 or additions?

1 MR. FLOYD: No, Your Honor. Just the inference of
2 malice and the last part.

3 THE COURT: Very good. Same rulings as before.

4 Let's make sure that we're absolutely certain as
5 to what is going back, so I've got a list and my clerk
6 has kept a running list, and I'm sure that the court
7 reporter has a running list. And this is mine if you
8 need it to look at, okay?

9 (Pause in proceedings.)

10 (Whereupon, the alternate juror was dismissed.)

11 (Whereupon, the evidence and the verdict form was
12 submitted to the jury at 11:28 AM.)

13 (Recess taken at 11:28 AM.)

14 (Back on the record at 12:25 PM.)

15 THE COURT: Let me -- before we go on, find the
16 lawyers on the case we're trying, please, and let him
17 know we've got a question. Kind of a question.

18 (Pause in proceedings.)

19 (Court's Exhibit Number 11 was marked for
20 identification.)

21 (Back on the record at 2:43 PM.)

22 BAILIFF: All rise. Court is back in session.

23 THE COURT: All right. We will go back on the
24 record -- oh, no, we won't. There we are.

25 We will go back on the record in the State versus

1 Mr. McClure. The jury has informed me that they've
2 reached a verdict in this case.

3 Anything prior to the jury being received in the
4 courtroom from the State?

5 MS. FULLER: Nothing from the State, Your Honor.

6 THE COURT: Nothing from the defense?

7 MR. SPANGLER: Nothing, Judge.

8 THE COURT: All right. Just a brief, real quick,
9 and please accept this as a kind word of caution, when
10 the verdict is read, and I don't know what is the
11 verdict is, I have no idea what it is, I know that this
12 has been an intense and emotional trial this week and I
13 want to compliment everyone on their composure and their
14 ability to maintain their composure.

15 So if you're here on behalf the either side, the
16 victims' or the Defendant's, just please let's make sure
17 that we maintain that composure when the verdict is read.
18 These people have been drafted, they didn't volunteer
19 for this duty, and whatever their verdict is it must be
20 treated with respect. So that means no showings of
21 approval, no showings of disapproval, and if you can't
22 control yourself when the verdict is read, just feel
23 free to quietly stand and exit through the back of the
24 courtroom without causing any disturbance, okay,
25 please?

1 With that, let's have the jury.

2 BAILIFF: Are you ready, Your Honor?

3 THE COURT: I am. Thank you.

4 (Whereupon, the jury returns the courtroom at
5 2:47 PM.)

6 THE COURT: All right. The record will reflect
7 that the jury is back and seated.

8 Madam Forelady, I'm told that the jury has reached
9 a verdict in this case; is that correct?

10 FOREPERSON: Yes, sir.

11 THE COURT: And all twelve of you agree on each
12 count?

13 FOREPERSON: Yes, sir.

14 THE COURT: If you would hand the verdict form,
15 please, to the bailiff.

16 BAILIFF: (Handing.)

17 THE COURT: Madam Clerk, if you'll publish,
18 please.

19 THE CLERK: Indictment 2017-GS-32-01007,
20 2017-GS-32-01008, 2017-GS-32-01495, and 2017-GS-32-01497,
21 the State versus Terry Renee McClure.

22 We, the jury, in the above-captioned case on the
23 charge of murder of Tycus Metricus Toland, unanimously
24 find Terry Renee McClure guilty.

25 We, the jury, in the above-captioned case on

1 the charge of attempted murder of VonKeith Toland,
2 unanimously find Terry Renee McClure guilty.

3 We, the jury, in the above-captioned case on
4 the charge of burglary first degree of 688 Bushberry
5 Road in Lexington County, South Carolina, unanimously
6 find Terry Renee McClure guilty.

7 And we, the jury, in the above-captioned case on
8 the charge of possession of a weapon during a violent
9 crime; to wit, murder, attempted murder and/or burglary
10 first degree, unanimously find Terry Renee McClure
11 guilty.

12 It is so signed Lisa Oakey, foreperson, October 25,
13 2019.

14 Madam Forelady, ladies and gentlemen of the jury,
15 if these are your verdicts, please indicate each of you
16 by raising your right hand.

17 All hands raised, Your Honor.

18 THE COURT: The record will reflect all twelve
19 hands went up.

20 Anything prior to discharge of the jury from the
21 State?

22 MS. FULLER: Nothing from the State, Your Honor.

23 THE COURT: From the offense?

24 MR. FLOYD: Your Honor, we would request polling.

25 THE COURT: All right. Very good.

1 Ladies and gentlemen of the jury -- and,
2 Mr. McClure, if you would, just stand. They need to
3 place you in cuffs, please.

4 Ladies and gentlemen of the jury, in a moment the
5 clerk of court's gonna call your names individually.
6 When your name is called, she's gonna ask you a question;
7 is this your verdict and is it still your verdict.
8 Simply reply as appropriate, okay?

9 Madam Clerk, if you will call the roll.

10 THE CLERK: Yes, sir.

11 If you'll please hold your hand up when I call
12 your name so I can recognize you, please.

13 Lisa Oakey, as to the verdicts, were these your
14 verdicts? And are they still your verdicts?

15 JUROR NUMBER 150: Yes, ma'am.

16 THE CLERK: Alexander Hibbs, as to the verdicts,
17 were these your verdicts? Are they still your verdicts?

18 JUROR NUMBER 99: Yes, ma'am.

19 THE CLERK: Keri Hunter, as to the verdicts, were
20 these your verdicts? Are they still your verdicts?

21 JUROR NUMBER 108: Yes, ma'am.

22 THE CLERK: Phillip Parker, as to the verdicts,
23 were these your verdicts? Are they still your verdicts?

24 JUROR NUMBER 153: Yes, ma'am.

25 THE CLERK: Harry Baker, as to the verdicts, were

1 these your verdicts? Are they still your verdicts?

2 JUROR NUMBER 9: Yes, ma'am.

3 THE CLERK: Roger Steele, as to the verdicts, were
4 these your verdicts? Are they still your verdicts?

5 JUROR NUMBER 192: Yes, ma'am.

6 THE CLERK: Brian Rosier, as to the verdicts, were
7 these your verdicts? Are they still your verdicts?

8 JUROR NUMBER 167: Yes, ma'am.

9 THE CLERK: Gary Worden, as to the verdicts, were
10 these your verdicts? Are they still your verdicts?

11 JUROR NUMBER 220: Yes, ma'am.

12 THE CLERK: Willie Robinson, as to the verdicts,
13 were these your verdicts? Are they still your verdicts?

14 JUROR NUMBER 166: Yes, ma'am.

15 THE CLERK: Allison Edwards, as to the verdicts,
16 were these your verdicts? Are they still your verdicts?

17 JUROR NUMBER 64: Yes, ma'am.

18 THE CLERK: Kathryn Zellers, as to the verdicts,
19 were these your verdicts? Are they still your verdicts?

20 JUROR NUMBER: 225: Yes, ma'am.

21 THE CLERK: Katherine Stewart, as to the verdicts
22 -- excuse me -- as to the verdicts, were these your
23 verdicts? Are they still your verdicts?

24 JUROR NUMBER 194: Yes, ma'am.

25 THE CLERK: All jurors polled, Your Honor.

1 THE COURT: The jury having been polled, the
2 verdicts stand.

3 Anything prior at this point, Mr. Floyd, from the
4 jury?

5 MR. FLOYD: Nothing further, Your Honor.

6 THE COURT: Ladies and gentlemen of the jury, I
7 want to thank you for your service this week and your
8 patience with us as we went through this. I told you
9 it wasn't gonna be like the movies, it wasn't gonna be
10 like books, it's gonna be real life and this is real
11 life, okay?

12 It's what I do day in and day out and sometimes I
13 kind of forget what it's like for people to come in here
14 and have to go through this process as jurors. I want
15 to thank you for your service and I will let you know
16 that you're getting a letter from me or you will be
17 getting a letter from me next week expressing my
18 appreciation for your working with us this week and
19 your -- doing your public service, your public duty.

20 The letter's purpose -- the letter also has an
21 ulterior purpose. Certainly it's to thank you, but
22 more importantly it's to solicit feedback. So if
23 there's anything that you liked about jury service, I
24 would like to know. If there's anything that you did
25 not like about it, anything that you did not appreciate,

1 felt like could be run better, could be done better, I
2 definitely want to know, okay? I am extremely
3 thick-skinned. You cannot hurt my feelings. So if
4 there's anything that you did not like, I need to know
5 so that I can change it, okay? So please feel free to
6 communicate with me. You'll have all my contact
7 information. I look forward to hearing from you if
8 there's anything you liked or more importantly if
9 there's anything that you didn't like.

10 Again, you have my sincerest appreciation. At
11 this point in time, ladies and gentlemen, what the
12 Court's going to do is take a brief break so that the
13 solicitor can prepare the sentencing sheets and any
14 victims who want to speak or any members of the victims'
15 want to speak so they can be brought forward. So we'll
16 be at ease for five minutes. If you want to stay for
17 sentencing, you're certainly welcome to do so. The only
18 thing is for security reasons I'm gonna ask that you
19 get -- that you take a seat in the general area back
20 there, probably somewhere -- there'll be a back row.
21 One of the bailiffs will pick a back row where you-all
22 can sit and observe sentencing if you wish to do so.

23 At this same time, if you don't want to stay for
24 sentencing, if you've had enough of this courtroom, I
25 certainly understand and you are free to go, okay?

1 With that, you do have my appreciation. Your check,
2 I assume, is in the mail?

3 THE CLERK: It will be.

4 THE COURT: The check will be in the mail, all
5 right? It's not gonna be a lot of money, so do
6 something nice for yourselves with it, all right?
7 Don't use it to pay the utility bill.

8 Again, thank you for your patience here this week.
9 I appreciate everything that you-all have done. Have a
10 great weekend, take care of yourselves, and I hope to
11 see you-all again under less formal circumstances, okay?

12 If you will adjourn to the back and if you care
13 to stay the bailiff will indicate which rows of seats
14 are for you.

15 And I need you, Madam Forelady, to actually sign
16 the indictments.

17 (Whereupon, the jury was excused at 2:54 PM.)

18 THE COURT: We'll be at ease for a few moments and
19 I'll entertain, of course, renewal of all motions and
20 motion for new trial, okay? I'll give you five minutes
21 while you-all figure out who's going to speak on his
22 behalf, okay, please?

23 We're at ease.

24 (Recess taken at 2:55 PM.)

25 (Back on the record at 3:05 PM.)

1 BAILIFF: All rise.

2 THE COURT: Thank you. Please have a seat.

3 Mr. Floyd, Mr. Spangler, I assume that the defence
4 does move for a new trial and renews all pre-trial
5 motions and motions made during the course of the trial
6 and renews all objections?

7 MR. FLOYD: Yes, Your Honor. We may also file a
8 written motion.

9 THE COURT: Very good.

10 All right. Same rulings as before. Motion for
11 new trial is denied.

12 Solicitor, do you want to -- before I hear from the
13 mother of the decedent and the victim who survived, did
14 you want to apprise me of Mr. McClure's prior criminal
15 history?

16 MS. FULLER: Yes, Your Honor. Thank you.

17 Your Honor, Mr. McClure out of California he has
18 prior convictions as an adult, 2008, convicted person,
19 possession of a firearm, which is essentially our violent
20 felony statute. He has a robbery second degree where he
21 received five years. He was paroled early, which Your
22 Honor is aware of. 2009 he had possession of controlled
23 substance. That was while he was actually in prison.
24 And he had a companion battery of prisoner charge that
25 was dismissed at the time. 2015 he has a possession of

1 a weapon by person convicted of a felony, as well as
2 violation of parole.

3 Your Honor, I do have his juvenile record for
4 Your Honor to consider. I can hand it up or publish.

5 THE COURT: Since it's -- since it's confidential
6 under South Carolina law, perhaps you should hand it up,
7 please.

8 MS. FULLER: Thank you, Your Honor.

9 And then also, his prior conduct. As you're aware,
10 Your Honor, this happened on April 26, 2014, and then on
11 May 1st of 2014, once he got back to California he did
12 have that drive-by shooting charge. In that situation,
13 he was charged with multiple counts and eventually he
14 only pled to that 2015 possession of a weapon by a
15 person convicted of a felony. The attempted murders,
16 the drive-by shooting charge, they did not proceed on
17 that in California.

18 THE COURT: I've reviewed his juvenile record.
19 Did the State want this to be sealed and made a part of
20 the record or did you simply want this back?

21 MS. FULLER: Your Honor, I think we should go
22 ahead and seal it and make it a part of the record
23 because I think it's appropriate for your consideration
24 in sentencing.

25 THE COURT: All right. The Court will seal this

1 at a later point in time.

2 Mr. Graham.

3 MR. GRAHAM: Your Honor, there's two family members
4 that would like to address the Court.

5 THE COURT: Certainly. If they'd just come forward
6 and give me their names, please, before they speak.

7 MR. GRAHAM: Your Honor, we have Ms. Ray Mack, who
8 is step-mom, but I don't know that the step's really in
9 there, and then we have Yvonne Toland Salley, who's the
10 mother of Tycus and VonKeith.

11 I think Ms. Mack would like to address the Court
12 first.

13 MS. MACK: Good afternoon. Excuse my voice. We
14 waited five years. Tycus Toland, we called him Tike. He
15 was kind, soft-spoken. He would literally give you the
16 shirt off his back. All we have to do is just ask him.
17 What happened to him, it was...

18 THE COURT: Just take your time, ma'am. You've got
19 all the time in the world, okay?

20 MS. MACK: There was really no need for that to
21 happen to him. He had a future. He had an eight month
22 old baby who is now six. He is here today six years
23 old. He should not have to go through life without his
24 dad. We lost a good son. He was a good man. He wasn't
25 about street life or none of that. He was about family.

1 He was a good brother, a good friend. He would do
2 anything you asked of him. Anything. All he wanted to
3 do was just live in peace and just raise his child and
4 be a good fiance. He had a fiancée. They were planning
5 -- making wedding plans. And the day he was killed, it
6 was his grandmother's 94th birthday. That day will be
7 marked forever. It's no longer a happy day for us. We
8 were having the birthday party for his grandmother, but
9 instead he was being killed. That day is forever just
10 too much. Our family has changed forever and it's not
11 right, it's not fair. His own sister and brother could
12 not be here because they couldn't stand to stay in the
13 same room as him. They couldn't take it.

14 I just ask that you give him the maximum that you
15 can possibly give him because Tycus, Tike, was only
16 twenty-nine years old. That's all he was. He didn't
17 even get a chance to -- to begin living yet. And then
18 his son, his son's got to go for now on without his dad.
19 So his grandfather now has to step in and be a dad and
20 that -- that's not right. That was his first child. He
21 should be here, not in the grave. He should be here with
22 us. It's just not right.

23 I beg that you give him the maximum. I'm sorry,
24 you know, that he got to go through that, but right now
25 that's just not my concern. My concern is Tycus Toland,

1 Junior, and what we have to tell him when he gets older
2 because right now he's too young. He's sitting in there
3 now playing video games. He doesn't know what's going
4 on. It's not right.

5 Thank you.

6 THE COURT: Thank you very much, ma'am.

7 VICTIM ADVOCATE: Your Honor, Ms. Yvonne is not
8 gonna be able to speak, but she reiterates everything
9 that has been said.

10 MR. GRAHAM: Your Honor's aware that Mr. Butler's,
11 the co-defendant's case, was tried and convicted of all
12 the same charges in 2016. He's currently serving a
13 fifty-five year sentence.

14 Your Honor heard the facts this week and you heard
15 how cold-blooded the killing of Tycus was and taking all
16 that in we'd ask that you sentence him to an appropriate
17 sentence.

18 THE COURT: Thank you, Mr. Graham.

19 I assume your comments encompass the comments of
20 law enforcement. I know the California -- the members
21 of that community had to probably fly back today, but
22 your comments encapsulate their feelings as well?

23 MR. GRAHAM: (Nods head.)

24 THE COURT: All right. Mr. Floyd, Mr. Spangler,
25 I'm happy to hear anything in mitigation and certainly

1 anything that Mr. McClure may want to say.

2 MR. FLOYD: Thank you, Your Honor.

3 Mr. McClure is thirty-one years of age. He was
4 actually attending college when this incident occurred.
5 I think you saw that on one of the text messages. He
6 has two children; a thirteen-year-old and a ten-year-old.
7 He lives with them and their mother and supports them.

8 We understand what the jury has said and we know we
9 have no basis to challenge what the jury has said, we
10 have to accept it.

11 We ask Your Honor to be as reasonable as you can,
12 as merciful as you can, as Mr. McClure also has a family
13 dependent upon him and it's obvious that he will not get
14 back -- get back to them in a long time, if ever, and we
15 appreciate whatever mercy you can show him.

16 THE COURT: Thank you, Mr. Floyd.

17 THE DEFENDANT: I'm not being respectful. My
18 -- my condolences. My heart goes out to the mother and
19 the rest of the family.

20 Thank you.

21 THE COURT: Thank you, sir.

22 All right. Well, first, Ms. Mack and Ms. Salley,
23 Ms. Mack, you -- you asked the question about what are
24 you gonna tell Tike Jr. about his father that he never
25 knew, and I don't know what to tell you, but if I were

1 in your shoes, ma'am, I would probably just tell him that
2 his father was one of the finest gentlemen that you ever
3 knew and that he should be proud to have his name and
4 that should be enough, okay, ma'am?

5 I can't tell you how sorry I am for what you-all
6 have had to experience, for everything that your family
7 has had to go through, and I'm terribly sorry truly to
8 have met you-all under these circumstance. I do pray,
9 however, that you-all can find peace at some point in the
10 future, at least find peace remembering -- remembering
11 him.

12 Mr. McClure, I have taken a number of things
13 into consideration in the sentence that I've imposed
14 here, sir, and I will tell you that it's always been
15 my philosophy that I'm punishing the crime and not
16 necessarily punishing the individual because in my
17 experience even people who commit the most heinous of
18 offenses have some redeeming qualities.

19 But, Mr. McClure, one of the things that the Court
20 has to take into account in any sentence is the way that
21 an individual has lived their life and I know that the
22 officers from California were happy to come out here
23 and stay here for this week because they had concerns
24 about you and based upon your prior record and your
25 involvement -- and your involvement with crime out in

1 California, as well as certain aspects of your juvenile
2 record which the Court finds very troubling, I must say,
3 Mr. McClure, that for somebody who's only thirty-one
4 years of age your criminal history is -- is -- it's
5 abysmal, sir. It reflects an individual who, quite
6 candidly, I think is very, very dangerous, and for that
7 reason, Mr. McClure, on the indictment 1008 and 1497,
8 it's the sentence of the Court that you be committed to
9 the Department of Corrections for the balance of your
10 natural life, sir.

11 On the attempted murder charge, the sentence is
12 thirty years, the charges -- and the sentences shall
13 run concurrently with each other.

14 So, Mr. McClure, you will be placed in a position
15 where you cannot do any one on the streets any more
16 harm. I will tell you, sir, you have ten days to file
17 any notice of intent to appeal these proceedings and you
18 have one year after the exhaustion of that appeal to
19 file any action for post-conviction relief.

20 Mr. McClure, I wish you luck, sir. Take care.

21 The record in this matter is closed.

22 (Whereupon, the proceedings were concluded at
23 3:22 PM.)
24
25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete transcript of record of
all the proceedings had and the evidence introduced in
the trial of the captioned case in Circuit Court on
October 21st-25th, 2019.

This transcript may contain quoted material.
Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

May 6, 2020

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

WITNESSES

Lexington County Sheriffs Department

B. T. Garrick

Law Enforcement Case #: 14007290

DSG

ARREST WARRANT NUMBER

2014A3210200769

ACTION OF GRAND JURY

TRUE BILL

Sherry R. Ferguson
Foreperson of Grand Jury

Date: *5-8-17*

VERDICT

Guilt
Lisa D. Oakley
Foreperson of Petit Jury
Date: *Oct 25, 2019*

DOCKET NO. 2017GS3201007

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2017

THE STATE
vs.

Terry Renee McClure

CDR #: 3410

Indictment for

Murder / Attempted Murder

§ 16-03-0029

S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Murder / Attempted Murder

§ 16-03-0029

That **Terry Renee McClure**, together with Justin Antonio Butler, did in Lexington County, South Carolina, on or about April 26, 2014, with the intent to kill the victim, **Vonkeith Toland**, willfully, feloniously, and with malice aforethought shoot the victim in the torso with a pistol, seriously wounding the victim, such act constituting the crime of attempted murder in violation of Section 16-3-29 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DEPUTY SOLICITOR

WITNESSES

Lexington County Sheriffs Department

B. T. Garrick

Law Enforcement Case #: 14007290

DSG

ARREST WARRANT NUMBER

2014A3210200770

ACTION OF GRAND JURY

TRUE BILL

Sheryl R. Jacobson
Foreperson of Grand Jury

Date: *5-8-17*

VERDICT

Lisa J Oakley
Foreperson of Petit Jury
Date: *Oct. 25, 2019*

DOCKET NO. 2017GS3201008

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2017

THE STATE
vs.

Terry Renee McClure

CDR #: 0116

Indictment for

Murder

§ 16-03-0010

S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Murder

§ 16-03-0010

That **Terry Renee McClure** together with, Justin Antonio Butler, did in Lexington County, South Carolina on or about April 26, 2014, unlawfully, willfully, feloniously, and with malice aforethought kill the victim, **Tycus Metricus Toland**, by shooting the victim in the head with a pistol, and the victim died on or about April 26, 2014, in Lexington County as a proximate result thereof, in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

WITNESSES

Lexington County Sheriffs Department

B. T. Garrick

Law Enforcement Case #: 14007290

DSG

ARREST WARRANT NUMBER

2014A3210200771

ACTION OF GRAND JURY

TRUE BILL

Sheryl R. Ferguson
Foreperson of Grand Jury

Date: 5-8-17

VERDICT

Stacy
Lisa D Oakley
Foreperson of Petit Jury

Date: Oct 25, 2019

DOCKET NO. 2017GS3201495

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2017

THE STATE

vs.

Terry Renee McClure

CDR #: 0549

Indictment for

**Weapons / Possession of a weapon during
a violent crime**

§ 16-23-0490

S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Weapons / Possession of a weapon during a
violent crime

§ 16-23-0490

At a Court of General Sessions, convened on April 2017, the Grand Jurors of Lexington County present upon their oath:

That **Terry Renee McClure** did in Lexington County, South Carolina on or about April 26, 2014 knowingly and willfully possess a firearm or visibly display what appeared to be a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to wit: murder, attempted murder, and/or burglary first degree, in violation of Section 16-23-490 of the South Carolina Code of Laws (1976), as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Don C. Galt
DEPUTY SOLICITOR

WITNESSES

Lexington County Sheriffs Department

B. T. Garrick

Law Enforcement Case #: 14007290

DSG

ARREST WARRANT NUMBER

2014A3210200772

ACTION OF GRAND JURY

TRUE BILL

Sherrill R. Ferguson
Foreperson of Grand Jury
Date: 5-8-17

VERDICT

Lisa D Oakey
Foreperson of Petit Jury
Date: Oct. 25, 2017

DOCKET NO. 2017GS3201497

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2017

THE STATE

vs.

Terry Renee McClure

CDR #: 0079

Indictment for

Burglary First Degree

§ 16-11-0311

S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Burglary First Degree

§ 16-11-0311

At a Court of General Sessions, convened on April 2017, the Grand Jurors of Lexington County present upon their oath:

That **Terry Renee McClure** , together with Justin Antonio Butler did in Lexington County, South Carolina on or about April 26, 2014, willfully and unlawfully enter the dwelling of Vonkeith Toland at 688 Bushberry Road, without consent and with the intent to commit a crime therein, and when in effecting entry or while in the dwelling or in immediate flight thereof, he was armed with a deadly weapon, and/or caused physical injury to a person who was not a participant in the crime, and/or used or threatened the use of a dangerous instrument, and/or displayed what was or what appeared to be a pistol, revolver, or other firearm, in violation of Section 16-11-311 (A)(1)(a)(b)(c)(d) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

Terry Renee McClure

AKA:

Race: Black Sex: M Age: 31

DOB: [REDACTED] 988 SS#: [REDACTED]

Address: 1006 Johnson St.

City, State, Zip: Fairfield, CA 94533

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Attempted Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS3201007

A/W#: 2014A3210200769

Date of Offense: 4/26/2014

S.C. Code § : 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$

TOTAL \$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

☐ Appointed PD or appointed other counsel,§Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2159

Sentence Date: 10-25-19

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.Terry Renee McClure

AKA:

Race: Black Sex: M Age: 31DOB: 1988 SS#: 11020Address: 1006 Johnson St.City, State Zip: Fairfield, CA 94533DL#: 11020 SID#: 11020*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS3201008A/W#: 2014A3210200770Date of Offense: 4/26/2014S.C. Code § : 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State,

ATTEST:

Justin Ful
SolicitorSC Bar# 11020

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDoc.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Probation) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ _____

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Clerk of Court/ Deputy Clerk Stacy JohnsonCourt Reporter: Stacy Johnson

SCCA/217 (04/2018)

☐ Appointed PD or appointed other counsel,§ Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.Presiding Judge Justin FulJudge Code: 2159Sentence Date: 10-25-19

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.Terry Renee McClure

AKA:

Race: Black Sex: M Age: 31DOB: 1988 SS#: [REDACTED]Address: 1006 Johnson St.City, State, Zip: Fairfield, CA 94533DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or deathin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor100630
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100

§ 14-1-211(A)(2) (DUI Surcharge) \$100

§ 56-5-2995 (DUI Assessment) \$12

§ 56-1-286 (DUI Breath Test) \$25

Proviso (Public Def/Probation) \$500

§ 14-1-212 (Law Enforce. Funding) \$25

§ 14-1-213 (Drug Court Surcharge) \$150

§ 50-21-114 (BUI Breath Test Fee) \$50

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS3201495A/W#: 2014A3210200771Date of Offense: 4/26/2014S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor100630
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100

§ 14-1-211(A)(2) (DUI Surcharge) \$100

§ 56-5-2995 (DUI Assessment) \$12

§ 56-1-286 (DUI Breath Test) \$25

Proviso (Public Def/Probation) \$500

§ 14-1-212 (Law Enforce. Funding) \$25

§ 14-1-213 (Drug Court Surcharge) \$150

§ 50-21-114 (BUI Breath Test Fee) \$50

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: No sentence because a lifesentence was imposed on17-GS-32-1497 and 17-GS-32-1008☐ Appointed PD or appointed other counsel,

§ Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2159Sentence Date: 10-25-19

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

Terry Renee McClure

AKA:

Race: Black Sex: M Age: 31DOB: 1988 SS#: [REDACTED]Address: 1006 Johnson St.City, State, Zip: Fairfield, CA 94533DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree15-11fe
IN THE COURT OF GENERAL SESSIONSINDICTMENT/CASE#: 2017GS3201497A/W#: 2014A3210200772Date of Offense: 4/26/2014S.C. Code § : 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar# 100730

Defendant

Attorney for Defendant

SC Bar# 11650WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 1/1 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDoc.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

PTUP _____
_____ days/hours Public Service EmploymentObtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,§ Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2159Sentence Date: 10-25-19

State's Exhibit 4

State's Exhibit 4, the redacted interrogation video, has been transported to, and is on file with, the SC Court of Appeals Clerk of Court's Office.

State's Exhibit 114

(404) 695-5436 Text Messages

Date	Time	From	Name	To	Name	Content
4/23/2014	14:04	7073920402	Terry McClure	4046955436	Justin Butler	Who dis
4/23/2014	14:05	4046955436	Justin Butler	7073920402	Terry McClure	J0na
4/23/2014	14:06	7073920402	Terry McClure	4046955436	Justin Butler	Im n class bra. Call u n hr
4/23/2014	14:14	4046955436	Justin Butler	7073920402	Terry McClure	Bet
4/23/2014	14:14	7073920402	Terry McClure	4046955436	Justin Butler	Dis yo line?
4/23/2014	14:15	4046955436	Justin Butler	7073920402	Terry McClure	Yep new new
4/23/2014	14:15	7073920402	Terry McClure	4046955436	Justin Butler	Aite
4/23/2014	15:58	7073920402	Terry McClure	4046955436	Justin Butler	Bra u can bring dat nickle wit u 2marro?
4/23/2014	16:01	4046955436	Justin Butler	7073920402	Terry McClure	Wen we get t0 sc l g0t u fa sh0
4/23/2014	16:02	7073920402	Terry McClure	4046955436	Justin Butler	Aite
4/23/2014	21:19	4046955436	Justin Butler	7073920402	Terry McClure	A nigga she g0 get da whip bef0re u gt there r naw kus by da time u get there they g0 be closed unless they get it fr0m the airport
4/23/2014	21:20	7073920402	Terry McClure	4046955436	Justin Butler	Ima check
4/23/2014	22:36	4046955436	Justin Butler	7073920402	Terry McClure	Watz da w0rd
4/23/2014	22:52	7073920402	Terry McClure	4046955436	Justin Butler	6783380838.....datz ma sis num. Her name kia
4/23/2014	22:53	4046955436	Justin Butler	7073920402	Terry McClure	Wass that 4
4/24/2014	3:24	7073920402	Terry McClure	4046955436	Justin Butler	Aye?
4/24/2014	8:00	4046955436	Justin Butler	7073920402	Terry McClure	Up
4/24/2014	10:05	4046955436	Justin Butler	7073920402	Terry McClure	A bl00d have da bitch kum get me 1st 4rm da bus stati0n
4/24/2014	10:06	7073920402	Terry McClure	4046955436	Justin Butler	ima fa sh0 beat u there n l g0t hammy wit me
4/24/2014	11:29	4046955436	Justin Butler	7073920402	Terry McClure	Aite
4/24/2014	15:42	7073920402	Terry McClure	4046955436	Justin Butler	Sent me da bitch number
						4047809703...ladondra...im sendn her urs now..
4/24/2014	16:46	4046955436	Justin Butler	4047809703	Ladondra Ellis	Hell0 this L br0ther he t0ld me u were expecting my call
4/24/2014	17:46	4046955436	Justin Butler	8642383791	Greenwood Acc owner?	wen I get cl0se and ima h0ur away s0 if u c0uld kall me wen u gt a chance
4/24/2014	17:49	4046955436	Justin Butler	4047809703	Ladondra Ellis	They said we sh0uld be there b0ut 30 minz pr0bley a lil b4 dat
4/24/2014	17:55	8642383791	Greenwood Acc owner?	4046955436	Justin Butler	
4/24/2014	17:56	4046955436	Justin Butler	8642383791	Greenwood Acc owner?	
4/24/2014	18:06	8642383791	Greenwood Acc owner?	4046955436	Justin Butler	
4/24/2014	18:06	8642383791	Greenwood Acc owner?	4046955436	Justin Butler	
4/24/2014	18:07	4046955436	Justin Butler	8642383791	Greenwood Acc owner?	
4/24/2014	18:08	4046955436	Justin Butler	8642383791	Greenwood Acc owner?	
4/24/2014	18:09	4046955436	Justin Butler	4047809703	Ladondra Ellis	I sh0uld be there n 5minz
4/24/2014	18:44	8642383791	Greenwood Acc owner?	4046955436	Justin Butler	
4/24/2014	18:45	4046955436	Justin Butler	8642383791	Greenwood Acc owner?	
4/25/2014	12:22	8032215730	Von Keith Toland	4046955436	Justin Butler	3835 savannah hwy
4/25/2014	12:22	8032215730	Von Keith Toland	4046955436	Justin Butler	North sc 29112

R:911



(404) 695-5436 Text Messages

Date	Time	From	Name	To	Name	Content
4/25/2014	12:52	8032215730	Von Keith Toland	4046955436	Justin Butler	Cum tommor cuz
4/25/2014	12:56	4046955436	Justin Butler	8032215730	Von Keith Toland	Damn big kuz im On this freeway n0w u want me t0 jus g0
4/25/2014	20:42	4046955436	Justin Butler	8642383791	Greenwood Acc owner?	t0 da mall Out there n chill 4a min I knw im last minute wit ya

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
In the Court of General Sessions

The Honorable Frank Addy, Jr., Circuit Court Judge

Appellate Case No. 2019-001865

State of South Carolina Respondent

v.

Terry Renee McClure Appellant

CERTIFICATE OF COUNSEL

The undersigned hereby certifies this Record on Appeal contains all material proposed to be included by the parties and not any other materials.



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mrobins@stromlaw.com

Attorneys for Appellant

June 16, 2021
Columbia, SC

RECEIVED

Jun 16 2021

SC Court of Appeals