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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER CHAD DUNCAN,

APPELLANT

APPELLATE CASE NO. 2023-001988

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHEROKEE

IN THE GENERAL SESSIONS
7th JUDICIAL CIRCUIT

3 STATE OF SOUTH CAROLINA,
4
5 Plaintiff,

VOLUME 1

6 vs.

CASE NO. 2020-GS-11-0294

7 CHRISTOPHER CHAD DUNCAN,
8
9 Defendant.

10 HEARING BEFORE: HONORABLE R. KEITH KELLY

11 DATE: December 11, 2023

12 TIME: 2:46 PM

13 LOCATION: Cherokee County Courthouse
14 125 E. Floyd Baker Blvd
15 Gaffney, SC 29340

16 REPORTED BY: LORA L. McDANIEL,
17 Registered Professional Reporter

18
19 APPEARANCES:

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21 KIMBERLY L. LESKANIC, DEPUTY SOLICITOR
and MATTHEW KENDALL, ASSISTANT SOLICITOR

22 ATTORNEYS FOR THE DEFENDANT
23 TRAVIS MOORE, ESQ.
24
25

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STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 THE COURT: Ladies and gentlemen, there are certain
2 questions that I'm required by State law to ask to determine
3 your qualifications to serve. And I'm going to get off script
4 just a little bit. At least one, if not two, of these
5 questions are a little personal in nature.

6 For instance, one of my questions is whether or not
7 you have a criminal history for which you could have received a
8 sentence of more than one year. The key to the question is:
9 More than one year.

10 So if you have a driving under the influence, first
11 offense, that carries up to 30 days. You don't have to tell me
12 about that nor do you have to tell the lawyers.

13 If you were young and being silly and you opened a
14 car door and took some pocket change out of a cup holder, that
15 is known as breaking into a motor vehicle. And believe it or
16 not, it carries up to five years with it. You would not have
17 received a sentence of five years. You probably would've
18 received a fine for being silly out there on that particular
19 night. Nonetheless it does carry five years with it. So the
20 key to the question is more than one year.

21 I will tell you ahead of time I already know the
22 answer to that because the rap sheet is run on jurors, and I
23 have the notes here from the Solicitor's Office.

24 The other question I have no way of knowing the
25 answer to is whether or not you are taking some medication or

1 that you are under a doctor's care and you're taking medication
2 that the doctor has instructed you not to make legal decisions,
3 don't buy or sell a house, don't buy or sell a motor vehicle,
4 don't get married while taking this medication. It affects
5 your ability to think clearly.

6 I need to know the answer to that, too, because you
7 have to be able to think clearly and so forth. Those are the
8 two questions that could be a little personal.

9 I tell you that because, at the end of my
10 question-and-answer period, I will ask anyone who needs to
11 answer something privately to come forward. That is not an
12 invitation for 45 people to come and see me. It is an
13 invitation for two or three that might need to talk to me about
14 something. And we're not here to embarrass anyone. Again,
15 we're not here to embarrass anyone.

16 If you need to come forward and usually I have two
17 or three, maybe four that will come forward, these are the
18 questions:

19 Is there a member of this jury panel who is not a
20 citizen of the United States? You must be a U.S. citizen to
21 serve on a jury. Anyone? If so, please stand. If you are
22 not, please stand.

23 Is there a member of the panel who is not a
24 resident and citizen of Cherokee County? Remember, the City of
25 Chesnee sits on the line. Sometimes we have someone who

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1 actually lives in Spartanburg County. Is there anyone here not
2 a resident or citizen of Cherokee County? If so, please stand.

3 Is there a member of this panel who is unable to
4 read, write, speak, or understand the English language? If so,
5 please stand.

6 Is there a member of this panel who has less than a
7 sixth grade education or its equivalent? If so, please stand.

8 Here's one of the questions. Is there a member of
9 this panel unable to serve this week due to a mental or a
10 physical infirmity? For example, it would prevent you from
11 serving.

12 Understand, I'm not asking you to sit in that jury
13 box for hours and hours. We break about every 90 minutes or
14 so, about every hour-and-a half or so. We take a break and let
15 you refresh yourself. Anyone? If so, please stand. Or see me
16 privately.

17 Is there any member of this panel who's been
18 convicted by a guilty plea or a trial in a state or federal
19 court of record of a crime punishable by imprisonment for more
20 than one year and your civil rights have not been restored by
21 pardon or amnesty? Punishable by more than one year means you
22 could have received a sentence of more than one year regardless
23 of what sentence you actually received. If so, please stand or
24 see me privately.

25 Is there any member of this panel who is a clerk or

1 deputy clerk of court, constable, sheriff, or other
2 commissioned law enforcement officer, a judge, county
3 commissioner, magistrate, or other county officer or employed
4 within the walls of any courthouse? If so, please stand.

5 I did not hear that. Anyone?

6 Is there a member of this panel who has previously
7 served on jury duty in circuit court during this calendar year?
8 It does not count if you served it in municipal court or
9 magistrate court or even federal court. If you served in
10 circuit court this calendar year, if so, please stand.

11 Is there a member of this panel who served as a
12 member of the Cherokee County Grand Jury during the past
13 several years? The Grand Jury sits on this side. That's why
14 there's so many chairs. Anyone been a Grand Juror in the last
15 several years? If so, please stand.

16 We now move to exemptions. Ladies and gentlemen,
17 state law provides several exemptions from jury service. An
18 exemption does not mean that you are disqualified from serving.
19 It means you choose not to serve.

20 Persons who are 65 years of age or older who wish
21 to be excused from jury duty may do so but are not required to
22 be excused. If you are 65 years of age or older and you wish
23 to be exempt, please stand.

24 Yes, sir. I believe you are 73.

25 JUROR 40: Yes, sir.

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 THE COURT: Your number again, sir.

2 JUROR 40: 40.

3 THE COURT: Would you like to be excused?

4 JUROR 40: Yes, sir.

5 THE COURT: Sir, you may turn your badge in. Thank
6 you for coming.

7 THE CLERK: Judge, if you'll inform him to go to my
8 office.

9 THE COURT: Sir, turn your badge in, go to her
10 office downstairs.

11 THE CLERK: You'll get a pay voucher and work
12 excuse.

13 THE COURT: I know we have at least one more who's
14 over 65. Thank you for staying.

15 Another exemption concerns prior jury service. No
16 person is required to serve as a juror more often than once
17 every three calendar years.

18 Is there a member of this panel who served on jury
19 duty in circuit court during the last two years and you wish to
20 be exempt? If so, please stand.

21 Persons who served as a Grand Juror -- you would've
22 been seated over here -- in the last five calendar years may be
23 exempt, if you choose to do so. Is there any member of this
24 panel who was a grand juror, who was seated over here, and you
25 wish to be exempt and you served in the last five years?

1 The next exemption concerns those who have legal
2 care, control, and custody of young children. I ask that you
3 listen carefully because it has subparts to it.

4 You may be exempt from service if you have a child
5 under the age of seven years and you have the legal care,
6 control, and custody of a child, and you are the principal
7 caregiver, and you are unable to make arrangements for adequate
8 care while serving. If this applies to you, and you wish to be
9 exempt, please stand.

10 If you are the primary caretaker of a person 65
11 years of age or older and are unable to provide adequate care
12 for that person while serving, you may be exempt. Does this
13 apply to any juror seated? If so, please stand.

14 If you are the primary caretaker of a severely
15 disabled person who is unable to care for himself or herself
16 and cannot be left unattended and you are unable to provide
17 adequate care for that person while serving, you may be exempt.
18 Does this apply to any juror this afternoon?

19 The next exemption concerns those who may be
20 attending school or working in a school in some capacity. I
21 know we have one full-time student. If this exemption applies,
22 we can transfer your service to either spring break or to the
23 summer.

24 Is there a member of the panel who is a full-time
25 student, teacher, crossing guard, bus driver, or who serves in

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1 some school-related function this week and needs to be
2 transferred? If so, please stand.

3 Is there a member of this panel who is employed
4 with the Department of Corrections at a prison and you wish to
5 be exempt, please stand.

6 I didn't hear that. Is there anyone?

7 Is there a juror who performs services for a
8 business, commercial, or agricultural enterprise, which you are
9 so essential to the operation of that business that, if
10 required to serve, the business or enterprise would close and
11 stop functioning. In other words, you are it. There is no one
12 to answer the phones, the doors are locked now. Does that
13 apply to any of you?

14 Ladies and gentlemen, that concludes the statutory
15 list of qualifications and exemptions. It may be that you are
16 qualified and no exemption applies.

17 Once again, I'll get off script. You did not know
18 60, 70, 100 days ago that you would be summoned for jury duty
19 this week. You made plans to be in Washington state or
20 Washington, D.C. either on pleasure or on business. You did
21 not know you would be summoned. Plans were made. Money was
22 paid. Hotels have been reserved. Airline tickets have been
23 purchased. And it's for this week. Would that apply to
24 anyone? If so, please stand.

25 Ladies and gentlemen, as I told you earlier, I

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1 would come down in case someone needed to answer something
2 private. My law clerk, who is seated with me to my right, and
3 I will join the lawyers. This is my court reporter. We're
4 going to stand here, and the bailiffs will send the two or
5 three or whoever we need to talk to one-by-one.

6 THE BAILIFF: 119.

7 (The following proceedings were had outside the
8 hearing of the jury panel.)

9 JUROR 119: I work at the Medicine Mart right over
10 there. I'm only one of two pharmacists for the entire
11 business. Is there any way I can be excused? It won't close.
12 It does severely impact it.

13 THE COURT: I can't do that. I just can't do that.
14 It doesn't meet anything. Thank you.

15 JUROR 119: Figure I'd would ask.

16 THE COURT: Stay with me.

17 THE BAILIFF: 55, Your Honor.

18 JUROR 55: I'm requesting just tomorrow afternoon,
19 11:00 off. My wife lost the ability to breathe on the 26th of
20 October. She has a trach in her throat right now. She was
21 under the care of ENT in Spartanburg. He cannot help her. She
22 has a growth on her voice box. It just so happened tomorrow
23 afternoon she's going to see a different ENT in Greenville. I
24 have to drive her.

25 THE COURT: If I protect you tomorrow, can you

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1 serve the rest of the week?

2 JUROR 55: Absolutely, yes; just tomorrow
3 afternoon.

4 THE COURT: Any objection from the State or
5 defense?

6 MR. MOORE: None.

7 MS. LESKANIC: No.

8 THE COURT: 55 is protected tomorrow. Thank you,
9 sir.

10 THE BAILIFF: 106, Your Honor.

11 JUROR 106: I'm a nursing/pumping mother. If I
12 could get transferred to the spring; over a year not toting
13 this around.

14 THE COURT: How old is the baby?

15 JUROR 106: Nine months.

16 THE COURT: Any objection from the State or
17 defense?

18 MR. MOORE: No.

19 MS. LESKANIC: No.

20 THE COURT: 106. When do you want to come?

21 JUROR 106: I'll be done probably in February so
22 March or April.

23 THE COURT: How about after March or April?

24 THE CLERK: Yes.

25 THE COURT: Thank you. Congratulations.

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1 THE BAILIFF: 24.

2 JUROR 24: I got what you call tremors. I have a
3 doctor's appointment Thursday.

4 THE COURT: If I protect you Thursday, can you
5 serve the rest of the week?

6 JUROR 24: Uh-huh.

7 THE COURT: Okay. Protected Thursday, Brandy.

8 (The following proceedings were had within the
9 hearing of the jury panel.)

10 THE COURT: Madam clerk, ladies and gentlemen, the
11 jury is now qualified.

12 Ladies and gentlemen, if you have a cell phone, an
13 iPad, smart tablet or something that has telecommunication
14 capability, if you have that with you today, please don't bring
15 that back to the courthouse. We don't have lockers here. We
16 can't secure it for you.

17 Those devices can be used in the courthouse, but
18 they cannot be used in the courtroom. And they're certainly
19 not allowed in the jury box or jury deliberation room. That
20 would cause what's known as a mistrial. We would have to retry
21 the case all over again.

22 If you have something that has telecommunications
23 capability, please don't bring that back into the courthouse.
24 Again, we can't store it. We can't hold it for you. I don't
25 want them in my courtroom. They are actually allowed in the

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1 courtroom; you can't use them without permission from the
2 circuit court judge.

3 I don't want anybody on the phone in here. There
4 is an Order out from our Chief Justice of the Supreme Court.
5 It's posted. It's probably on the door out there. You can
6 read the Order.

7 Also, if you have a wristwatch that tells you more
8 than the time and date -- mine tells me the time and date. And
9 my daughter gave this to me. It also counts my steps so they
10 assure I'm moving around. Nonetheless, if it does more than
11 that -- and I have no communication capability on it, it's not
12 paired with a phone or anything. I can't tell you the weather
13 or anything else. Just tells me the time and date and my
14 number of steps.

15 If you have one that does have telecommunication
16 capability, please don't bring that either. Anything that can
17 connect to the Internet or through a cellular service is
18 prohibited. These notes are so old, it also says turn off your
19 pager. Anybody has a pager, I really want to talk to you about
20 that after your service has ended.

21 It's important you have no contact with the lawyers
22 or with any of the litigants during this case or witnesses that
23 you might see. There's at least three faces out in the
24 audience that I know, and I cannot talk to you-all. I have
25 some more new pictures of grandchildren, happy to share. We

1 can't do it until your service has ended.

2 If a lawyer walks by you, does not speak, they're
3 not being rude. If I walk by you and just nod and don't speak,
4 we really can't talk as long as you're serving on the jury.

5 We thank you for being prompt in your service. We
6 ask you to continue that. When we need you, we need everyone.
7 When we don't need you, again, you'll have that magic number,
8 we won't have you here.

9 If an emergency occurs at home or work, please let
10 us know through Madam Brandy or one of her fine staff or one of
11 the bailiffs or uniform law enforcement personnel. They'll be
12 able to assist you with that.

13 As a general rule, just telling you about court,
14 I'm at the courthouse by 8:00 most mornings or slightly before
15 that this morning. I take the bench pretty much promptly at
16 9:00. The only exception to that this week that I'm aware of
17 will be Thursday morning. I'll take the bench at 10:00. I
18 will take the bench at 10:00.

19 I'm the veterans court judge. We have veterans
20 court starting at 8:45 every other Thursday, and I will have to
21 deal with that before I can take up this case or any other case
22 that we're doing.

23 We'll break for lunch somewhere between 12:00 or
24 12:30 area and resume court about an hour-and-a-half later,
25 about 90 minutes.

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1 I will not run past 5:30 unless absolutely
2 necessary. Please understand that I will run until about 5:30
3 on a daily basis, 5:15, 5:20, something like that. Give
4 everybody time to get to daycare or some of us have aging
5 parents you might need to get to adult daycare.

6 With that, I think that's about what I have.
7 Ms. Brandy, I think, we need to send them back downstairs while
8 we reset and let them use the facilities.

9 THE CLERK: Yes, sir.

10 (Off-the-record discussion.)

11 THE COURT: I was talking with the lawyers and
12 Ms. Brandy. We'll take a quick break and let you go back
13 downstairs while we reset the courtroom. We're going to
14 qualify for the next trial. The first trial up, I'll go ahead
15 and tell you what that is. First trial, indictment
16 2020-GS-11-0294. It is the State of South Carolina versus
17 Christopher Chad Duncan, who is charged with committing murder.

18 We're going to let you go with the bailiffs.

19 (The jury panel exited the courtroom at 3:06 p.m.)

20 (A recess transpired from 3:06 p.m. until 3:30
21 p.m.)

22 (The jury panel entered the courtroom at 3:30 p.m.)

23 THE COURT: Everybody ready?

24 MS. LESKANIC: State is ready, Your Honor.

25 MR. MOORE: Defense is ready, Your Honor.

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 THE COURT: Ladies and gentlemen, as I told you
2 earlier, we are about to begin the trial of the State of South
3 Carolina versus Christopher Chad Duncan in the indictment
4 2020-GS-11-0294. That stands for the year, general session, 11
5 being Cherokee County, and the case number is 0294.

6 It is alleged in this case that Mr. Christopher
7 Chad Duncan did, in Cherokee County, South Carolina, on or
8 about June 14th of 2019 commit the offense known in this state
9 as murder.

10 Ladies and gentlemen, Mr. Duncan has entered a plea
11 of not guilty. And he is presumed innocent of the allegations
12 made against him in this indictment. Again, he is presumed
13 innocent of the charge made against him. The State has the
14 burden of proving his guilt beyond a reasonable doubt.

15 I will say this more than once. This piece of
16 paper is known as a charging instrument. It is an indictment.
17 It is not evidence against him and it cannot be evidence
18 against him. It is merely a document that brings him before
19 The Court.

20 There's certain questions I'm going to ask
21 concerning this case specifically. You were previously sworn
22 and remain sworn. Do we have any voir dire from anybody before
23 I begin?

24 MS. LESKANIC: Standard, Your Honor.

25 MR. MOORE: Standard.

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1 THE COURT: Mr. Duncan, I'm going to ask, sir, if
2 you would stand, please, and face the jury just for 15 seconds,
3 20 seconds.

4 (Mr. Duncan complied.)

5 THE COURT: Okay, sir. Thank you.

6 Ladies and gentlemen, these are my questions: Is
7 there any member of this jury panel who is now or ever has been
8 related by blood or marriage to Christopher Chad Duncan? By
9 blood or marriage ever related to him. If so, please stand.

10 Is there any member of this jury panel who has a
11 personal, social relationship with Mr. Duncan? If so, please
12 stand. You know him from school, you know him from the grocery
13 store, social media. Anyone?

14 The following is a list of potential witnesses, and
15 I say potential because we never know who will or will not
16 testify.

17 Brandon Peeler, or other representatives from 911
18 Communication.

19 Edward Randall Thornburg.

20 Cecil Bell.

21 Rannie Moss.

22 Brian Mullinax.

23 Billy Anthony.

24 C.R. Frank Keller.

25 Benjamin Peterson.

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1 Brandon Gardner.

2 Matthew Wilde.

3 Kelly Rose, M.D.

4 Brent Heflin.

5 Robert Smith.

6 Rodney Bright.

7 Steve Bright.

8 Tom Cozzolli.

9 Dennis Fowler.

10 Justin Hames.

11 Jacob Mullinax.

12 Christopher Parnell.

13 Sara Duncan.

14 Jeff Duncan.

15 Malisha Smith.

16 Brandon Dorsett.

17 Dustin Smith.

18 Angil Landrum.

19 Tracy Austin.

20 Mia Caggiano.

21 Richard Burgess.

22 Is there any member of this jury panel related by
23 blood or marriage to any of the potential witnesses or ever has
24 been related by blood or marriage to any of the potential
25 witnesses, please stand.

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 Any member of the jury panel have a personal,
2 social, close relationship with any of the potential witnesses
3 on this case? If so, please stand.

4 Yes, sir. Your number.

5 JUROR 80: Juror number 80. Had a working
6 relationship. Just investigator with the Sheriff's Office.

7 THE COURT: Would that interfere with your ability
8 to be fair and impartial?

9 JUROR 80: No.

10 THE COURT: Sir, you may stay with us.

11 Yes, sir, your number, please.

12 JUROR 67: 67. I'm friends with Richard Burgess.

13 THE COURT: Would that interfere with your ability
14 to be fair and impartial?

15 JUROR 67: No, sir.

16 THE COURT: Thank you, sir, you may stay.

17 I'm going to ask the lawyers to introduce
18 themselves to you. As always, ladies first.

19 MS. LESKANIC: Thank you, Your Honor. May it
20 please The Court. Good afternoon, ladies and gentlemen. My
21 name is Kim Leskanic. I'm the Deputy Solicitor here for
22 Cherokee County.

23 MR. KENDALL: Good afternoon, ladies and gentlemen.
24 My name is Matt Kendall. I'm an Assistant Solicitor here in
25 Cherokee County.

1 MR. MOORE: Good afternoon. My name is Travis
2 Moore. I'm a partner with the law firm of Anderson & Moore in
3 Spartanburg, South Carolina.

4 THE COURT: Is there any member of this jury panel
5 who is now or ever has been related through blood or marriage
6 to any of the lawyers in this case? If so, please stand.

7 Is there any member of this jury panel who has a
8 social or personal relationship with any of the lawyers? If
9 so, please stand.

10 Is there any member of the jury panel, you,
11 yourself has ever testified in a case on behalf of the 7th
12 Circuit Solicitor's Office? Please stand.

13 Any member of the jury panel ever been asked to
14 testify or subpoenaed to testify on any case in the Anderson,
15 Moore Law Firm? If so, please stand.

16 Any member of the jury panel have a family member
17 or a close friend who was employed by the 7th Circuit
18 Solicitor's Office? Please stand. That would include
19 Spartanburg and Cherokee County.

20 Any member of the jury panel have a family member
21 or close friend employed within the law firm of Anderson &
22 Moore? If so, please stand.

23 Any member of the jury panel ever sought legal
24 advice from any of the lawyers in this case? Three lawyers.
25 Anybody ever sought legal advice whether that be for criminal

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 matter, real estate matter, car wreck, whatever it might have
2 been, you talked with them whether or not you hired them. You
3 consulted with them. If so, please stand.

4 Any member of this jury panel, you, yourself -- I
5 will not ask questions about particulars -- you, yourself were
6 the victim of a violent crime? If so, please stand.

7 Any member of the jury panel have a family member
8 or friend accused of committing a violent crime? If so, please
9 stand. Again, I will not ask particulars.

10 Is there any member of this jury panel who has
11 formed an opinion about this case, that you know anything at
12 all about this case? If so please stand.

13 I know very little about it. I just know a few
14 pieces of paper. Literally don't know anything about the case.
15 Anyone know anything about the case? If so, please stand.

16 Is there any member of this panel who is a
17 contributory, either monetarily or by your time, to groups that
18 promote law enforcement such as Mothers Against Drunk Driving,
19 the Sheriff's Association, the Troopers Association. You
20 either give money to those organization or you donate your
21 time. If so, please stand.

22 Is there any member of this jury panel know of any
23 reason why he or she should not try this case? If so, please
24 stand.

25 Anything from the State?

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 MS. LESKANIC: No, Your Honor.

2 THE COURT: From the defense?

3 MR. MOORE: No, sir, Your Honor.

4 THE COURT: It is five and ten. Madam clerk.

5 (A pause transpired).

6 THE CLERK: When I call your name, please come
7 forward. Bring all your personal belongings with you. You'll
8 stand in front of me. You'll face back out to the gallery. If
9 I tell you to take a seat in the jury box, you'll take a seat
10 here. If I tell you that you've been excused, you'll take a
11 seat back out in the gallery.

12 Juror 74, Sabrina Mitchem. What says the State?

13 MS. LESKANIC: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. MOORE: Please seat the juror.

16 THE CLERK: Please take a seat in the jury box.

17 Juror 80, Todd Panther. What says the State?

18 MS. LESKANIC: Please present the juror.

19 THE CLERK: Says the defense?

20 MR. MOORE: Please excuse this juror.

21 THE CLERK: You've been excused.

22 Juror 67, Adam Mayfield. What says the State?

23 MS. LESKANIC: Please present the juror.

24 THE CLERK: Says the defense?

25 MR. MOORE: Please seat the juror.

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 THE CLERK: Please take a seat in the jury box.

2 Juror 121, Dana Wilkins. What says the State?

3 MS. LESKANIC: Please excuse the juror from service
4 in this case.

5 THE CLERK: You've been excused.

6 Juror 83, Billy Pearson. What says the State?

7 MS. LESKANIC: Please excuse the juror from service
8 in this case.

9 THE CLERK: You've been excused.

10 Juror 65, Michelle Mardis. What says the State?

11 MS. LESKANIC: Please present the juror.

12 THE CLERK: Says the defense?

13 MR. MOORE: Please excuse this juror.

14 THE CLERK: You've been excused.

15 Juror 8, Cindy Brackett. What says the State?

16 MS. LESKANIC: Please present the juror.

17 THE CLERK: Says the defense?

18 MR. MOORE: Please seat the juror.

19 THE CLERK: Have a seat in the jury box.

20 Juror 58, Daniel Higginbotham. What says the
21 State?

22 MS. LESKANIC: Please present the juror.

23 THE CLERK: Says the defense?

24 MR. MOORE: Please seat the juror.

25 THE CLERK: Please have a seat in the jury box.

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 Juror 34, Michael Elmore. What says the State?

2 MS. LESKANIC: Please present the juror.

3 THE CLERK: Says the defense?

4 MR. MOORE: Please excuse this juror.

5 THE CLERK: You've been excused.

6 Juror 101, Warnesha Shippy. What says the State?

7 MS. LESKANIC: Please excuse the juror from service
8 in this case.

9 THE CLERK: You've been excused.

10 Juror 15, Adam Byers. What says the State?

11 MS. LESKANIC: Please excuse the juror from service
12 in this case.

13 THE CLERK: You've been excused.

14 Juror 81, Billy Parker. What says the State?

15 MS. LESKANIC: Please present the juror.

16 THE CLERK: Says the defense?

17 MR. MOORE: Please seat the juror.

18 THE CLERK: Please take a seat in the jury box.

19 Juror 105, Antonio Smith. What says the State?

20 MS. LESKANIC: Please present the juror.

21 THE CLERK: Says the defense?

22 MR. MOORE: Please seat the juror.

23 THE CLERK: Please take a seat in the jury box.

24 Juror 88, Haley Pettit. What says the State?

25 MS. LESKANIC: Please present the juror.

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 THE CLERK: Says the defense?

2 MR. MOORE: Please seat the juror.

3 THE CLERK: Please take a seat in the jury box.

4 Juror 119, Aileen Welsh. What says the State?

5 MS. LESKANIC: Please present the juror.

6 THE CLERK: Says the defense?

7 MR. MOORE: Please excuse this juror.

8 THE CLERK: You've been excused.

9 Juror 61, Monica Landrum. What says the State?

10 MS. LESKANIC: Please present the juror.

11 THE CLERK: Says the defense?

12 MR. MOORE: Please seat the juror.

13 THE CLERK: Please take a seat in the jury box.

14 Juror 3, Danielle Beattie. What says the State?

15 MS. LESKANIC: Please present the juror.

16 THE CLERK: Says the defense?

17 MR. MOORE: Please excuse this juror.

18 THE CLERK: You've been excused.

19 Juror 94, Matthew Robbs. What says the State?

20 MS. LESKANIC: Please present the juror.

21 THE CLERK: Says the defense?

22 MR. MOORE: Please seat the juror.

23 THE CLERK: Please take a seat in the jury box.

24 Juror 96, Michael Scott. What says the State?

25 MS. LESKANIC: Please present the juror.

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 THE CLERK: Says the defense?

2 MR. MOORE: Please excuse this juror.

3 THE CLERK: You've been excused.

4 Juror 27, Donna Daly. What says the State?

5 MS. LESKANIC: Please present the juror.

6 THE CLERK: Says the defense?

7 MR. MOORE: Please excuse this juror.

8 THE CLERK: You've been excused.

9 Juror 123, Noel Wood. What says the State?

10 MS. LESKANIC: Please excuse the juror from service
11 in this case.

12 THE CLERK: You've been excused.

13 Juror 43, Vicky Gentry. What says the State?

14 MS. LESKANIC: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. MOORE: Please excuse this juror.

17 THE CLERK: You've been excused.

18 Juror 11, Oliver Brown. What says the State?

19 MS. LESKANIC: Please present the juror.

20 THE CLERK: Says the defense?

21 MR. MOORE: Please seat the juror.

22 THE CLERK: Please take a seat in the jury box.

23 Juror 78, Barry Norton. What says the State?

24 MS. LESKANIC: Please present the juror.

25 THE CLERK: Says the defense?

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 MR. MOORE: Please seat the juror.

2 THE CLERK: Please take a seat in the jury box.

3 Juror 69, Shawn McCaul. What says the State?

4 MS. LESKANIC: Please present the juror.

5 THE CLERK: Says the defense?

6 MR. MOORE: Please seat the juror.

7 THE CLERK: Please take a seat in the jury box.

8 Next juror seated will be for alternate one. Juror

9 12, Paula Brown. What says the State?

10 MS. LESKANIC: Please present the juror.

11 THE CLERK: Says the defense?

12 MR. MOORE: Please excuse this juror.

13 THE CLERK: You've been excused.

14 Juror 115, Joyce Taylor. What says the State?

15 MS. LESKANIC: Please present the juror.

16 THE CLERK: Says the defense?

17 MR. MOORE: Please seat this juror.

18 THE CLERK: Please take a seat in the jury box.

19 Next juror seated will be for alternate two. Juror

20 6, Hunter Bolin. What says the State?

21 MS. LESKANIC: Please present the juror.

22 THE CLERK: Says the defense?

23 MR. MOORE: Please seat the juror.

24 THE CLERK: Please take a seat in the jury box.

25 THE COURT: Any matters from the State?

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 MS. LESKANIC: No, Your Honor.

2 THE COURT: From the defense?

3 MR. MOORE: No, sir, Your Honor.

4 THE COURT: Ladies and gentlemen who are not
5 selected, I can see the disappointment on your face. It's
6 early. Today is just Monday or Tuesday. What day is this?
7 It's early in the week; you have a chance yet.

8 I'm going to release you at this point in time.
9 We're going to take up some other matters for the rest of the
10 afternoon. I don't think we're going to start this trial of
11 calling witnesses this afternoon at 4:00. It will be 4:00,
12 just a little after 4:00 before we do that. We'll continue to
13 work, make sure we get the nuts and bolts and everything ready
14 to go.

15 I'm going to ask you to call that magic number
16 after 11:00 a.m. tomorrow. After 11:00 a.m. tomorrow. In the
17 event that I need you, it would be asking you to report at 1:00
18 or 1:30.

19 The recording may say you are not needed. Then you
20 call back after 6:00. Otherwise, if I do need you, it will say
21 call after 11:00 to report back in anticipation of somewhere
22 around 1:30 or 2:00 tomorrow afternoon.

23 THE CLERK: If you work in the morning, you'll go
24 and call from your place of employment. You only get a work
25 excuse for each day you physically report to the courthouse.

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 If you call in, the judge tells you he doesn't need you, you
2 should be at work. I don't want you to miss work and get in
3 trouble there. The judge, he'll give you a two-hour window to
4 get here.

5 THE COURT: Two hours or little better; sure will.
6 With that, I'm going to turn you back over to the bailiffs.
7 You're going to be free to go or we are going to work a little
8 bit and you are welcome to stay with us. This is your
9 courthouse. It is your courtroom. I have the pleasure of
10 working here and the privilege of working here. It's your
11 courtroom and your courthouse. Since you're not selected, you
12 may stay if you choose to.

13 With that, I'm going to give you a chance to leave
14 quietly now, if you would like.

15 (The jury panel exited the courtroom at 3:56 p.m.)

16 THE COURT: Ladies and gentlemen of the jury, you
17 have now been selected to be the jury in this case. I'm
18 getting ready to release you for the rest of the day. I am
19 going to ask you to be back in place by 9:00 tomorrow morning.

20 The courthouse opens at 8:30. I will already be
21 here. The lawyers will be here. It opens at 8:30. And the
22 bailiffs will tell you where they want you to report to.
23 There's a side door. Mr. Bailiff will talk with you about
24 that.

25 When I release you, I am going to ask you not to

1 come back to the courtroom. We might be talking about a couple
2 of matters of law. You 12, 14 at this point, decide matters of
3 fact. The judge decides matters of law according to the Rules
4 that we have. So it would not be proper for you to be here
5 while we have those discussions back and forth.

6 We're going to work a little while longer so that
7 we are ready tomorrow and we don't hold you up. Tomorrow when
8 you get here you can expect us to go right into opening
9 statements and then calling of witnesses.

10 We're going to work a little while this afternoon,
11 make sure we have all of that up and running. Also, make sure
12 the technology is in place. Sometimes it doesn't work. I was
13 working all day today, everything's fine. TV is working,
14 monitors working. Sometimes it doesn't, and we have to get IT
15 in here.

16 Anyway, having said that, please do not try to
17 learn anything about this case. Do not do any independent
18 investigation about this case. You and I have to learn about
19 this case in this courtroom from the score of witnesses and the
20 exhibits that may or may not be introduced into evidence.

21 You can tell someone that you're on jury duty. You
22 can't talk about the case at this point. You and I don't know
23 anything about it other than the name of the case. Really
24 about all we know.

25 Having said that, release you for the evening. Ask

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 you to be back tomorrow. Please be mindful. Once again, if
2 you have a tablet, wristwatch, cell phone, something with
3 communication capability, please don't bring it back to the
4 courthouse. Don't bring it in here. Certainly not allowed in
5 the jury box.

6 With that, ladies and gentlemen, release you for
7 the evening. Hope you have a good evening. Mr. Bailiff.

8 (The jury exited the courtroom at 4:00 p.m.)

9 THE COURT: Anything from the State that you need
10 me or defense?

11 MS. LESKANIC: I don't think so.

12 THE COURT: Anything anybody wants to put on the
13 record while we're here? I don't know that you need to.
14 Anything you need?

15 MS. LESKANIC: I don't think there is from the
16 State.

17 MR. MOORE: No.

18 THE COURT: We'll be in recess. Again, I'll be
19 here first thing in the morning if anybody needs me. Both of
20 you have my cell phone.

21 (The trial adjourned at 4:01 p.m.)

22 (STATE EXH. 1, Compact disc, was marked for
23 identification.)

24 (STATE EXH. 2, Photograph, demonstrative, marked
25 for identification.)

1 (STATE EXH. 3, Photograph, was marked for
2 identification.)

3 (STATE EXH. 4, Photograph, was marked for
4 identification.)

5 (STATE EXH. 5, Photograph, was marked for
6 identification.)

7 (STATE EXH. 6, Photograph, was marked for
8 identification.)

9 (STATE EXH. 7, Photograph, was marked for
10 identification.)

11 (STATE EXH. 8, Photograph, was marked for
12 identification.)

13 (STATE EXH. 9, Photograph, was marked for
14 identification.)

15 (STATE EXH. 10, Photograph, was marked for
16 identification.)

17 (STATE EXH. 11, Photograph, was marked for
18 identification.)

19 (STATE EXH. 12, Photograph, was marked for
20 identification.)

21 (STATE EXH. 13, Photograph, was marked for
22 identification.)

23 (STATE EXH. 14, Photograph, was marked for
24 identification.)

25 (STATE EXH. 15, Photograph, was marked for

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 identification.)

2 (STATE EXH. 16, Photograph, was marked for
3 identification.)

4 (STATE EXH. 17, 24 photographs, was marked for
5 identification.)

6 (STATE EXH. 18, Photograph, was marked for
7 identification.)

8 (STATE EXH. 19, Photograph, was marked for
9 identification.)

10 (STATE EXH. 20, Photograph, was marked for
11 identification.)

12 (STATE EXH. 21, Photograph, was marked for
13 identification.)

14 (STATE EXH. 22, Photograph, was marked for
15 identification.)

16 (STATE EXH. 23, Photograph, was marked for
17 identification.)

18 (STATE EXH. 24, Photograph, was marked for
19 identification.)

20 (STATE EXH. 25, Photograph, was marked for
21 identification.)

22 (STATE EXH. 26, Photograph, was marked for
23 identification.)

24 (STATE EXH. 27, Photograph, was marked for
25 identification.)

1 (STATE EXH. 28, Photograph, was marked for
2 identification.)

3 (STATE EXH. 29, Photograph, was marked for
4 identification.)

5 (STATE EXH. 30, Photograph, was marked for
6 identification.)

7 (STATE EXH. 31, Photograph, was marked for
8 identification.)

9 (STATE EXH. 32, Photograph, was marked for
10 identification.)

11 (STATE EXH. 33, Photograph, was marked for
12 identification.)

13 (STATE EXH. 34, Photograph, was marked for
14 identification.)

15 (STATE EXH. 35, Photograph, was marked for
16 identification.)

17 (STATE EXH. 36, Photograph, was marked for
18 identification.)

19 (STATE EXH. 37, Photograph, was marked for
20 identification.)

21 (STATE EXH. 38, Photograph, was marked for
22 identification.)

23 (STATE EXH. 39, Photograph, was marked for
24 identification.)

25 (STATE EXH. 40, List of numbers, was marked for

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 identification.)

2 (STATE EXH. 41, Photograph, was marked for
3 identification.)

4 (STATE EXH. 42, Photograph, was marked for
5 identification.)

6 (STATE EXH. 43, Photograph, was marked for
7 identification.)

8 (STATE EXH. 44, Photograph, was marked for
9 identification.)

10 (STATE EXH. 45, Photograph, was marked for
11 identification.)

12 (STATE EXH. 46, Photograph, was marked for
13 identification.)

14 (STATE EXH. 47, Photograph, was marked for
15 identification.)

16 (STATE EXH. 48, Photograph, was marked for
17 identification.)

18 (STATE EXH. 49, Photograph, was marked for
19 identification.)

20 (STATE EXH. 50, Photograph, was marked for
21 identification.)

22 (STATE EXH. 51, Photograph, was marked for
23 identification.)

24 (STATE EXH. 52, Photograph, was marked for
25 identification.)

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 (STATE EXH. 53, Photograph, was marked for
2 identification.)

3 (STATE EXH. 54, Photograph, was marked for
4 identification.)

5 (STATE EXH. 55, Photograph, was marked for
6 identification.)

7 (STATE EXH. 56, Photograph, was marked for
8 identification.)

9 (STATE EXH. 57, Compact disc, was marked for
10 identification.)

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHEROKEE

IN THE GENERAL SESSIONS
7th JUDICIAL CIRCUIT

3 STATE OF SOUTH CAROLINA,
4
5 Plaintiff,

VOLUME 2

6 vs.

CASE NO. 2020-GS-11-0294

7 CHRISTOPHER CHAD DUNCAN,
8
9 Defendant.

10 HEARING BEFORE: HONORABLE R. KEITH KELLY

11 DATE: December 12, 2023

12 TIME: 9:09 AM

13 LOCATION: Cherokee County Courthouse
14 125 E. Floyd Baker Blvd
15 Gaffney, SC 29340

16 REPORTED BY: LORA L. McDANIEL,
17 Registered Professional Reporter

18
19 APPEARANCES:

20 ATTORNEYS FOR THE PLAINTIFF
21 KIMBERLY L. LESKANIC, DEPUTY SOLICITOR
and MATTHEW KENDALL, ASSISTANT SOLICITOR

22 ATTORNEYS FOR THE DEFENDANT
23 TRAVIS MOORE, ESQ.
24
25

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1	I N D E X				
2		DIRECT	CROSS	REDIRECT	RECROSS
3	WITNESS/EXAMINATION				
4	DENNIS GARDNER				
5	BY MS. LESKANIC	65	--	--	--
6	BY MR. MOORE	--	--	--	--
7	EDWARD THORNBURG				
8	BY MS. LESKANIC	68	--	--	--
9	BY MR. MOORE	--	72	--	--
10	CECIL BELL				
11	BY MS. LESKANIC	74	--	87	--
12	BY MR. MOORE	--	84	--	89
13	RANNIE MOSS				
14	BY MS. LESKANIC	91	--	101	--
15	BY MR. MOORE	--	97	--	--
16	BRIAN MULLINAX				
17	BY MS. LESKANIC	102	--	113	--
18	BY MR. MOORE	--	109	--	114
19	BRENT HEFLIN				
20	BY MS. LESKANIC	115	--	--	--
21	BY MR. MOORE	--	--	--	--
22	BRANDON GARDNER				
23	BY MS. LESKANIC	120	--	--	--
24					
25					

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1	E X H I B I T S		
2		FOR I.D.	IN EVD.
3	COURT EXH. 1, Compact disc	45	45
4	COURT EXH. 2, Compact disc	45	45
5	COURT EXH. 3, Compact disc	45	45
6	COURT EXH. 4, Compact disc	45	45
7	COURT EXH. 5, Sunset times	45	45
8	STATE EXH. 1, Compact disc	66	66
9	STATE EXH. 2, Demonstrative photograph	70	70
10	STATE EXH. 3, Photograph	34	82
11	STATE EXH. 57, Compact disc	38	118
12	STATE EXH. 58, Compact disc	46	118
13	STATE EXH. 59, Compact disc	48	124
14	STATE EXH. 60, Compact disc	48	124
15	STATE EXH. 61, Compact disc	48	124
16	STATE EXH. 62, Compact disc	48	132
17	STATE EXH. 63, Hand-drawn diagram	48	139
18	STATE EXH. 64, Hand-drawn diagram	48	139
19	STATE EXH. 65, Photograph	48	139
20	STATE EXH. 66, Compact disc	48	158
21	STATE EXH. 67, Compact disc	46	163
22	STATE EXH. 68, Compact disc	46	166
23			
24			
25			

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 THE COURT: Good morning everyone. I'm told the
2 jurors are all hear. Anything from the State?

3 MS. LESKANIC: Yes, Your Honor. May we approach
4 just a moment.

5 THE COURT: Sure.

6 (Off-the-record discussion.)

7 THE COURT: This is the case of State of South
8 Carolina vs. Christopher Chad Duncan, case number
9 2020-GS-11-294, who's charged with murder. He has entered a
10 plea of not guilty. From the State.

11 MS. LESKANIC: Thank you, Your Honor. May it
12 please The Court. First of all, there are several statements
13 that the Defendant gave throughout this investigation while he
14 was on scene. There was a polygraph interview given in
15 Spartanburg County. Of course, everyone has been instructed
16 not to talk about that polygraph. There are interview portions
17 of that where the Defendant does give his statement of events
18 that happened on this occasion.

19 There's also an interview that took place at the
20 Defendant's home. And in all of those cases, the Defendant was
21 not yet under arrest. The first couple of statements on scene,
22 he was not Mirandized. The officers were there trying to find
23 out what happened.

24 After that he was Mirandized prior to each of those
25 interviews, but he was not in custody. He was not under

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 arrest. And the defense has not requested a Jackson v. Denno
2 hearing. I'll let Mr. Moore reply to that. It's my
3 understanding that they are not contesting whether or not he
4 was in custody nor the voluntariness of those statements. We
5 would be admitting those in the State's case.

6 THE COURT: Mr. Moore.

7 MR. MOORE: Yes, Your Honor, that's correct. We
8 have discussed these various statements and interviews given in
9 preparation for trial. We also agree that he was not in
10 custody at any point in any of these statements. We're not
11 disputing the voluntariness of the statements.

12 THE COURT: That's number one.

13 MS. LESKANIC: Thank you, Your Honor.

14 With regard to those statements, there are two from
15 Brent Heflin, who will testify. We have made minor redactions
16 where he stops talking to the Defendant and starts talking with
17 other law enforcement personnel that contain hearsay. Those
18 redactions have been made.

19 There are also redactions from the polygraph in
20 Spartanburg County. There are also redactions on the statement
21 that was given by the Defendant to Detective Gardner at his
22 home in August because he talks about probation and other
23 things.

24 We have provided the defense with a copy of those
25 redacted videos, except for the polygraph video. I still have

1 IT making the final redactions on that video. We should have
2 it by lunch time and before we get to playing that video. I do
3 have Court's exhibits, unredacted copies, of each of those
4 videos that I can place in at the appropriate time. Of course,
5 we will not mention these are redacted videos to the jury. I
6 wanted to make The Court aware of that.

7 The next issue, Your Honor, is third-party guilt.
8 The State is making a motion that there is not to be the
9 assertion of any third-party guilt in this case. The one place
10 that it comes up is the polygraph video that takes place in
11 Spartanburg when the Defendant finds out there's evidence that
12 the victim in this case had been choked.

13 He then gives this little story how this other guy
14 by the name of Eric Spencer was after him, maybe something
15 happened between them. We believe this is an assertion of
16 third-party guilt. I would be requesting permission to redact
17 that portion from the polygraph video. It's my understanding
18 that the defense does not object to that. I wanted to place
19 that on the record.

20 THE COURT: Anything?

21 MR. MOORE: That's correct, Your Honor.

22 THE COURT: Okay, that's correct.

23 MS. LESKANIC: The third matter, Your Honor, we
24 were asking The Court to take judicial notice and relay to the
25 jury the time of sunrise on Friday, June 14, 2019, the date of

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1 this incident. I printed that information off showing that it
2 was approximately 6:09 a.m. That I can hand up and make this a
3 court exhibit.

4 (COURT EXH. 5, Sunset times, was marked for
5 identification and received into evidence.)

6 MS. LESKANIC: Court Exhibit 5. And the unredacted
7 discs are Court Exhibit 1 for the first interview with Officer
8 Brent Heflin.

9 Court Exhibit 2 is the second interview with
10 Officer Brent Heflin.

11 Court Exhibit 3 is the polygraph interview in
12 Spartanburg County.

13 And Court Exhibit 4 is the interview with the
14 Defendant at his home in August.

15 THE COURT: Any objection to the stipulation?

16 MR. MOORE: No objection, Your Honor.

17 (COURT EXH. 1, Compact disc, was marked for
18 identification and entered into evidence.)

19 (COURT EXH. 2, Compact disc, was marked for
20 identification and entered into evidence.)

21 (COURT EXH. 3, Compact disc, was marked for
22 identification and entered into evidence.)

23 (COURT EXH. 4, Compact disc, was marked for
24 identification and entered into evidence.)

25 MS. LESKANIC: For the record, Your Honor, Court

1 Exhibit 1, the redacted copy, will be State's Exhibit 57.

2 Court Exhibit 2 will be State's Exhibit 58.

3 Court Exhibit 3 is State's 67.

4 And let me get the right number. Court exhibit 4
5 is State's 68.

6 (STATE EXH. 58, Compact disc, redacted, was marked
7 for identification.)

8 (STATE EXH. 67, Compact disc, redacted, was marked
9 for identification.)

10 (STATE EXH. 68, Compact disc, redacted, was marked
11 for identification.)

12 THE COURT: I'm just taking judicial notice of
13 this.

14 MS. LESKANIC: Yes, Your Honor.

15 THE COURT: Anything further from the State?

16 MS. LESKANIC: No, Your Honor.

17 THE COURT: From the defense?

18 MR. MOORE: I think we agreed we're going to
19 sequester witnesses.

20 MS. LESKANIC: State has no objection to
21 sequestering witnesses, Your Honor. I know we do have some
22 witnesses in the courtroom. We have not discussed
23 sequestration with them. If you can advise them of what they
24 can and cannot do, please.

25 THE COURT: If you are a witness and you are in the

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1 courtroom, the parties have agreed to sequestration. What that
2 means is you will not be allowed in the courtroom until after
3 you testify. Once you testify, you will not be permitted to
4 talk to a fellow witness about your testimony with that witness
5 who has not yet testified. Please follow the directions of
6 your respective lawyers in this case.

7 Anything?

8 MS. LESKANIC: The only thing that I would request,
9 Brandon Gardner is the lead detective in this case. We request
10 he has permission to stay. Richard Burgess is the investigator
11 with our office. He is on the witness list because he attends
12 interviews with me, and we would request he remain in the
13 courtroom as well.

14 THE COURT: Any objection?

15 MR. MOORE: No objection, Your Honor.

16 THE COURT: Ready for the jury?

17 Anything else before we swear the jury?

18 MR. MOORE: Are there any witnesses that need to
19 leave?

20 MS. LESKANIC: If you're here to testify for the
21 State, please step out of the courtroom. I think they will
22 take you downstairs, and we'll call you one-by-one.

23 (People exited the courtroom.)

24 MS. LESKANIC: I do have a few more exhibits that
25 need to be marked. I don't know if we want to take care of

1 that now so we don't have to stop, whatever works best.

2 (A pause transpired.)

3 (STATE EXH. 59, Compact disc, was marked for
4 identification.)

5 (STATE EXH. 60, Compact disc, was marked for
6 identification.)

7 (STATE EXH. 61, Compact disc, was marked for
8 identification.)

9 (STATE EXH. 62, Compact disc, was marked for
10 identification.)

11 (STATE EXH. 63, Hand-drawn diagram, was marked for
12 identification.)

13 (STATE EXH. 64, Hand-drawn diagram, was marked for
14 identification.)

15 (STATE EXH. 65, Photograph, was marked for
16 identification.)

17 (STATE EXH. 66, Compact disc, was marked for
18 identification.)

19 (STATE EXH. 67, Compact disc, was marked for
20 identification.)

21 (STATE EXH. 68, Compact disc, was marked for
22 identification.)

23 THE COURT: We'll have the jury.

24 (The jury entered the courtroom at 9:30 a.m.)

25 THE COURT: Good morning, ladies and gentlemen.

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1 Thank you for your timeliness this morning. We've been here
2 working a few minutes outside your presence. We're ready to
3 go.

4 Madam clerk, if you'll swear in the jury to try
5 this case.

6 THE CLERK: Ladies and gentlemen of the jury,
7 please stand and raise your right hand.

8 JURY MEMBERS
9 being first duly sworn.

10 THE CLERK: You may be seated.

11 THE COURT: Ladies and gentlemen, you are now the
12 jury in this case, and I will take a few moments to tell you
13 something about your duty as jurors and provide some
14 instructions. At the close of this trial I will provide more
15 detailed instructions, and those will control your
16 deliberations.

17 This is a criminal case brought by the State of
18 South Carolina. Sometimes, ladies and gentlemen, you will hear
19 me refer to the prosecution as the State or the Government.

20 Now, the Defendant in this case is Christopher Chad
21 Duncan. In the indictment, 2020-GS-11-00294, it is alleged
22 that Mr. Duncan did, in Cherokee County, South Carolina, on or
23 about June 14th of 2019 commit the criminal offense of murder
24 in that he killed Justin William Cash in violation of State
25 law. This matter was true billed by the Grand Jury and sent to

1 the court for trial.

2 I tell you and I told you yesterday, I'll tell you
3 again this morning, I charge you, Mr. Christopher Chad Duncan
4 has entered a plea of not guilty. He is presumed innocent of
5 the allegations made against him.

6 This indictment is a piece of paper. It is not
7 evidence against him. The evidence in this case will come from
8 sworn witnesses and from any exhibits that have been introduced
9 or will be introduced in this case. Again, he is presumed
10 innocent of the allegations made against him.

11 Ladies and gentlemen, South Carolina law makes you
12 the finders of the facts. You 12 alone are the finders of
13 the facts. It will be up to you to decide from the evidence
14 what the facts are. You will hear evidence, decide the facts
15 and apply those facts to the law that I give you at the close
16 of the case. And that is how you, the jury, reaches a verdict.

17 In doing so you must follow the law that I give you
18 whether you agree with it or not. Again, the evidence will
19 consist of testimony of witnesses, documents, and other items
20 received during the course of this trial.

21 Now ladies and gentlemen the same law that makes
22 you 12 the finder of the facts make me the judge of the law.
23 Our Rules of Evidence control what can be received into
24 evidence. When I say Rules of Evidence, this is what we're
25 talking about.

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1 When a lawyer asks a question or offers an exhibit
2 and the lawyer on the opposing side believes it is not
3 permitted by our Rules, the lawyer may object. This simply
4 means that the lawyer is requesting I make a decision on
5 whether a particular objection is under a particular Rule of
6 Evidence as to whether it is admitted.

7 South Carolina law forbids a trial judge from
8 making a comment to a jury about a fact in a case. Because it
9 may be necessary for me to make a comment in applying our Rules
10 of Evidence, it may be necessary for me to speak with the
11 lawyers outside of your hearing by having what is known as a
12 bench conference while you are in the courtroom.

13 A bench conference, I usually do my hands like so.
14 And in this courtroom, I will step off to my right over here,
15 away from you so that we can have that private conversation as
16 to whether or not a piece of evidence would be coming in under
17 our Rules.

18 Sometimes it is necessary for me to talk on the
19 record with the lawyers. And if so, I would excuse you from
20 the courtroom so that you would not be prejudiced by anything
21 that I might say to lawyers.

22 Now, certain things are not evidence. Statements,
23 arguments, questions, and comments by the lawyer representing
24 their parties are not evidence in this case. Objections are
25 not evidence.

1 Lawyers have a duty to their client to object if
2 they believe something is improper under the Rules. You should
3 not be influenced by an objection. If I sustain an objection,
4 you must ignore the question or the exhibit and you must not
5 try to guess what the answer might have been or what the
6 exhibit might have contained.

7 If I overrule an objection, the evidence will be
8 admitted. Do not give special attention to that particular
9 item because it drew an objection.

10 Any testimony I order stricken from the record or
11 tell you to disregard is not evidence. Anything you see or
12 hear about this case outside of this courtroom is not evidence.

13 Finally, some of you may have heard the terms
14 direct evidence and circumstantial evidence. Direct evidence
15 is testimony by a witness about what that witness personally
16 saw, heard, or did.

17 Circumstantial evidence is indirect evidence. It
18 is proof of one or more facts from which one can find or infer
19 another fact. You may consider both direct and circumstantial
20 evidence. South Carolina law permits you to give equal weight
21 to both, but it is up to you to decide how much weight to give
22 any evidence.

23 In deciding what the facts are in this case, you
24 may have to decide what testimony you believe and what
25 testimony you do not believe. You may believe everything a

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1 witness said or part of what a witness said.

2 In deciding what to believe, ladies and gentlemen,
3 you may consider the witness' ability to see, hear, or know the
4 things about what he or she is testifying to; the quality of a
5 witness' memory, the witness' manner while testifying, whether
6 or not the witness has an interest in the outcome of this case
7 or has any motive, bias or prejudice, or whether the witness is
8 contradicted by something that a witness said or wrote prior to
9 this trial.

10 It is my responsibility to rule as a matter of law
11 as to whether certain testimony is admissible. Once testimony
12 is admitted, whether or not you believe it is solely for you 12
13 to determine.

14 To ensure fairness, you, as jurors, must not talk
15 among yourselves about this case or about anyone involved in
16 the case until the case has ended and you go to the jury room
17 to decide on a verdict.

18 Do not talk with anyone else about the case or
19 anyone who has something to do with it until the trial has
20 ended and you have been discharged as a juror.

21 Anyone includes members of your family and your
22 friends. You may tell your family and friends that you are a
23 juror but do not tell them anything about this case until you
24 have been discharged as a juror.

25 Once the case is ended and you've been discharged,

1 you can talk as much about it or as little about it as you
2 choose. Do not let anyone talk to you about the case. If
3 anyone should try to talk to you, please report that to me
4 immediately.

5 Do not talk with or speak with any of the parties,
6 lawyers, or witnesses, not even to pass the time of day.
7 Because it is important that you not only do justice but that
8 you give the appearance of doing justice. If a person from one
9 side of this case sees you speaking to someone from the other
10 side, unwarranted and unnecessary suspicion about fairness
11 might be aroused.

12 If any lawyer, party, or witness does not speak to
13 you when they pass you in the hallway or in the parking area,
14 it is because they are not supposed to talk to you.

15 Do not read any news stories or articles about this
16 case or anyone involved with it or listen to any radio or
17 television reports, if any.

18 Do not do any research on the Internet about
19 anything in this case. Do not consult blogs or dictionaries or
20 any reference materials, and do not make any independent
21 investigation on your own.

22 Do not make up your mind about what the verdict
23 should be until you have retired to the jury room to discuss
24 this case with your fellow jurors.

25 I charge you again: Keep an open mind until you

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1 retire to the jury room to decide this case.

2 I am sometimes asked about note taking. You are
3 not to take notes during a trial of this case. And the reason
4 is we want you to pay close attention to each witness as he or
5 she testifies and not be fixated on making notes.

6 Now, the first step in this trial would be known as
7 opening statements. The State in its opening statement will
8 tell you about the evidence that it intends to put before you
9 so that you will have an idea about what this case is about,
10 according to the State. Just as the indictment is not
11 evidence, neither is the opening statement. Its only purpose
12 is to help you understand what the evidence will be and what
13 the State will try to prove.

14 After the State makes an opening statement, the
15 Defendant's attorney may, if he chooses, make an opening
16 statement. At this point no evidence has been offered by
17 either side.

18 Next, the State will offer evidence that it says
19 supports the charge made against this Defendant. The evidence
20 in this case will consist of testimony of witnesses and it may
21 include documents or other exhibits.

22 I remind you again that this Defendant is presumed
23 innocent, and the State must prove his guilt beyond a
24 reasonable doubt. He does not have to prove his innocence.

25 After you have heard all the evidence, the State

1 and the defense will be given time for a final argument. And
2 just as I told you about the opening statements by the lawyers
3 are not evidence, the same is true for the closing statements.
4 In closing arguments, the lawyers will attempt to summarize or
5 help you understand what was presented.

6 And the final part of the trial occurs when I
7 instruct you about the Rules of Law that you are to use in
8 reaching your verdict. After hearing my instructions, you will
9 leave the courtroom together to make your decision.

10 It is my custom to alternate between a foreman and
11 a forelady. It's time for a forelady, and I am asking this
12 person -- I'm not ordering this -- Juror Number 61, Monica
13 Landrum. Ma'am, I don't know Ms. Landrum. Would you serve as
14 forelady? You can say no.

15 JUROR 61: I'm going to decline.

16 THE COURT: Thank you. Let's see if Mr. Billy
17 Parker. Mr. Parker, where are you? Will you serve?

18 JUROR 81: I will.

19 THE COURT: Thank you, Mr. Parker. Mr. Parker, I'm
20 going to ask at the break that you always sit where this lady
21 on the very front is with the burgundy, just the first chair
22 that is right there. That is going to be the foreperson's
23 seat.

24 And I would always look to you because you become
25 the spokesperson for the jury. If something is needed by the

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1 jury, whatever it might be, you would tell me about that. You
2 and I will never meet outside. We will never meet in private.
3 We will always meet in the courtroom on the record in front of
4 the lawyers so if there's an issue we can take it up here in
5 the courtroom. If you would always sit right there.

6 You two are my alternates. If you would always sit
7 where you are. Those are the alternate chairs. Everyone else
8 is now made an honorary rotarian, meaning you can rotate left
9 and right, front seat, back seat. It doesn't matter where you
10 sit. Those three people have the assigned seats, please.

11 Anything from the State?

12 MS. LESKANIC: No, Your Honor.

13 THE COURT: From the defense?

14 MR. MOORE: No, sir, Your Honor.

15 THE COURT: Mr. Foreman, ladies and gentlemen,
16 please give your attention to the lawyers.

17 MS. LESKANIC: Thank you. May it please The Court.

18 Good morning, ladies and gentlemen. The opening
19 statement, as Judge Kelly told you, is an opportunity for me to
20 tell you what the State's evidence is, to tell you what to
21 expect in this case. As you know, it is a charge of murder.

22 The State's evidence in this case is going to show
23 you that the victim, Justin Cash, was murdered in Broad River
24 in Blacksburg on June 14, 2019.

25 We know that because after Justin's body was pulled

1 from the river, it was sent for an autopsy. Dr. Kelly Rose
2 works at Newberry Pathology. She will be here later this week
3 to testify.

4 And she did an autopsy on his body. She is going
5 to tell you, and you are going to see the multiple, numerous
6 bruises to Justin's arms, the abrasions to Justin's chest, the
7 bruising to his knees and shins. She's going to talk to you
8 about the broken rib he suffered. She's going to tell you
9 about the broken hyoid bone that normally occurs in
10 strangulations and hangings.

11 Where does it not occur? In a drowning in a river.
12 After she looked at his body, she said: This is murder. He
13 didn't just die. He was killed.

14 And who was he with? He was with that man right
15 there, Christopher Chad Duncan. That's the only person he was
16 with.

17 You are going to hear his 911 call that was made at
18 1:21 p.m. on the afternoon -- that's important -- the afternoon
19 of June 14, 2019. Because according to him, they got on the
20 river at 2:00 a.m.

21 You're also going to hear that float down the river
22 takes an hour-and-a-half. 3:30 a.m. His buddy is in trouble.
23 He calls for help at 1:21 p.m. Almost ten hours later.

24 You will hear that 911 call and you're going to
25 hear from the man who let the Defendant borrow his phone.

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1 You're going to hear from the firemen who reported to this call
2 to try to rescue Justin, but it was too late.

3 And they're going to tell you about their
4 interaction with the Defendant. And you're going to hear from
5 law enforcement. And they're going to tell you about their
6 interaction with the Defendant. Most importantly, you're going
7 to hear his statements. He talked to people on the scene. He
8 talked to investigators.

9 I want you to hear what he said. And it's not
10 offered for the truth. Because you know what's funny about the
11 truth? It doesn't change. It doesn't change. You know what
12 did? His statements. Every single time. Every single time.
13 I want you to listen to his statements because some of it are
14 small things. My paddles floated down the river.

15 We didn't find paddles.

16 That's because they're made of metal. They sank.

17 We had little bitty lights. We couldn't see what
18 was going on. We didn't have any lights at all. Then there is
19 the big change.

20 Because at first, I couldn't get to my buddy. He's
21 in the water. I couldn't get to my buddy. One time. One.
22 One time I got his shirt. It was a little bit of tension and
23 his body bumped my raft and I lost him. That's the truth.
24 That's the whole truth. That's everything that happened.

25 Until Brandon Gardner spoke with Dr. Rose, found

1 out about the broken hyoid bone. Doesn't happen in drownings.
2 Investigator Gardner went back to him: We have evidence of
3 choking.

4 Oh, well. You know why? 'Cause he came up to the
5 boat, and I did grab him. And I grabbed him as much as I
6 could. And as hard as I could. I tried to pull him on the
7 boat. I even held him down. That part is true.

8 He's going to tell you about the two of them
9 meeting up at Broad River bridge and 29 at 1:00 in the morning
10 on June 14th. That is true. We have phone records to
11 substantiate that. They met at 1:00 in the morning.

12 After that, phone communication on both devices
13 ceases forever. His story then begins that we started rafting
14 down the river. We are on a raft. Justin falls off the raft.
15 Then he gets on a pool float.

16 And when you're listening to his statements, it may
17 sound like Broad River is really rough. I don't know if any of
18 you are familiar with Broad River. We have a video. I can
19 show you Broad River. Sounded like it was pretty rough.

20 He put his friend on a pool float. It's not rough.
21 He says that's his friend had taken drugs. Justin did have
22 drugs in his body. He had methamphetamine and GHB. And I
23 asked Dr. Rose about that. And I will ask her about that when
24 she's on the stand. And she said, yes, he did. That didn't
25 kill him.

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1 He's going to say that Justin fell off this raft
2 because he's so high on GHB. And then he fell off this pool
3 float and just couldn't get to him. I'll have to get to him
4 because you'll find out his hyoid bone is broken and has
5 bruises all over his body.

6 You will hear the Defendant tell that he stopped at
7 a house on the river for help. His buddy is in bad shape. He
8 never says he's drowning, never says he's unconscious. He's in
9 dire straits.

10 He stops at this house on the riverbank, knocks on
11 the door. The man is there. There's a woman there. There's a
12 child there. They will not come to the door.

13 Crime scene investigator Billy Anthony is going to
14 tell you he went to the bank of that house and he took
15 photographs. I think there are 20-something photographs. Zero
16 evidence anybody stepped foot on that muddy, murky bank except
17 for Mr. Keller, who lives at that house, his dogs and some
18 deer.

19 There's no indication of a boat being there. No
20 indication of Mr. Duncan being there, asking for help. That's
21 what the evidence will show.

22 Murder is the unlawful killing of another with
23 malice aforethought. And the judge will explain that, and I
24 will go into that more during closing arguments. Murder
25 doesn't require premeditation, doesn't even require motive. It

1 requires that you don't have a right to kill somebody if you
2 have hatred in your heart when you do it.

3 I submit to you, when you hold somebody under water
4 until they take their last breath, there's not much more hatred
5 that can be shown to another human being.

6 There were two people that went down -- I won't say
7 down the river -- to the river. You'll decide if they went
8 down the river. Two people went to the river that night when
9 they met at 1:00 in the morning. 12 hours and 21 minutes
10 later, that Defendant called 911. Because he came back. And
11 Justin did not.

12 And you're going to hear his stories. Listen to
13 those stories. Then look at the bruised, broken body of Justin
14 Cash, and that will tell you the truth. The truth is murder.
15 Thank you.

16 MR. MOORE: Good morning. My name is Travis Moore.
17 I represent Chad Duncan. And there's a lot of evidence in this
18 case the State just told us we're going to hear. We'll see.

19 There's some very important things that I want you
20 to think about, about this trial and keep in mind as you hear
21 the evidence and you listen to the witnesses.

22 First of all, I want to say thank you for being
23 here. I know this is not easy. I know you get that thing in
24 the mail that says: You're on jury duty. That's one thing.
25 And I saw y'all sitting out there yesterday during

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1 qualification. I saw the judge tell you what kind of case this
2 was.

3 And some of you had some expressions on your face
4 which tells me that you realize how serious and how important
5 this is. It is important to the victim's family. It's
6 important to the State. It's important to Mr. Duncan. What
7 you're doing here is very, very important. I hope you
8 appreciate that.

9 A lot of people say we have the best justice system
10 in the world. I tend to agree with that. It's not perfect,
11 but it's definitely the best in the world. One of the reasons
12 it's the best system in the world is because of people like
13 you.

14 When the Government accuses a citizen of committing
15 any crime, minor or serious, and that citizen says I did not do
16 that, then the burden is on the Government to prove to each one
17 of you beyond a reasonable doubt that, that individual citizen
18 did it. And they have to do that through evidence that
19 satisfies each and every one of you. Leaves little to no doubt
20 in your mind that what they alleged happened, happened. Not
21 judges. Judges don't get to decide that. Lawyers don't get to
22 decide that. You get to decide that.

23 That's what makes the system so great. It's
24 working all across this country right now, in all different
25 types of cases.

1 Obviously, this case is the most important case
2 being tried to the people present in this courtroom. I am
3 going to ask that you give your undivided attention to every
4 witness. Watch them as they testify. Listen to what they say
5 and what they don't say.

6 Be fair. Be open minded. Be fair to the State.
7 Be fair to the Defendant. Don't make any decisions, like the
8 judge instructed you, until it's time. You know very little
9 about the case. It's not until the end of the trial that
10 you'll have all the evidence to make that decision. I know
11 it's a tough thing to do. But you have to do it. You took an
12 oath to do it, and we expect you to do it. And we all need you
13 to do it.

14 There is absolutely no dispute, none whatsoever,
15 that Justin Cash tragically passed away on the Broad River on
16 the night of June 14, 2019. That is not disputed.

17 There is no dispute the Defendant, Chad Duncan, was
18 with him on that night. Not disputed.

19 What the State alleges is that he willfully and
20 intentionally murdered him. That's disputed. That's what this
21 trial is about.

22 Thank you so much for being here. Thank you for
23 your attention.

24 THE COURT: Solicitor.

25 MS. LESKANIC: Thank you, Your Honor. The State

DENNIS GARDNER DIR BY MS. LESKANIC

1 calls Dennis Gardner, Cherokee County 911.

2 THE CLERK: Please raise your right hand. Place
3 your left hand on the Bible.

4 DENNIS GARDNER
5 being first duly sworn, testified as follows:

6 THE COURT: Sir, tell us who you are and spell your
7 last name for madam court reporter, please.

8 THE WITNESS: I am the director of Cherokee County
9 911. My name is Dennis Gardner, G-A-R-D-N-E-R.

10 THE COURT: Thank you. Solicitor.

11 DIRECT EXAMINATION

12 BY MS. LESKANIC:

13 Q. Director Gardner, you work at Cherokee County 911
14 Communications?

15 A. Yes, ma'am.

16 Q. What are your duties there?

17 A. I receive the tele-operations of 911.

18 Q. Does 911 record and store 911 phone calls? Can you
19 tell the jury a little bit about how that works when a call is
20 made to 911.

21 A. Yes, ma'am. We have a recording system on our
22 phone lines. As soon as the phone rings, it picks up -- sounds
23 a little crazy, but it actually backs up two seconds from
24 before the phone rang, and it records all the phone calls. It
25 also records the numbers that called.

DENNIS GARDNER DIR BY MS. LESKANIC

1 Q. Are the calls automatically recorded? Somebody has
2 to do something to start that?

3 A. No, ma'am. It's all done by Carolina Recording,
4 which is our recording company. It's all automatic.

5 Q. Are these calls kept in the regular course of
6 business of 911 Communications?

7 A. Yes, ma'am.

8 Q. How long do y'all keep these calls?

9 A. We're required to keep them at least 90 days. We
10 can go back to 2018, late '18.

11 Q. Are you aware of a 911 call being recorded for this
12 case that occurred on June 14, 2019?

13 A. Yes, ma'am. We submitted a copy to you.

14 MS. LESKANIC: Your Honor, may I approach?

15 THE COURT: Sure.

16 BY MS. LESKANIC:

17 Q. I'm going to show you what's marked State's Exhibit
18 1. Is this a copy of the 911 call that was provided to our
19 office relating to this case?

20 A. Yes, ma'am, it's initialed by my deputy director.
21 He has decided to leave us. That's his initials on it rather
22 than mine.

23 Q. What are his initials?

24 A. BP. Brandon Peeler.

25 MS. LESKANIC: Your Honor, at this time we would

DENNIS GARDNER DIR BY MS. LESKANIC

1 offer State's 1 for admission.

2 MR. MOORE: Without objection.

3 THE COURT: Without objection, State's 1 is
4 admitted.

5 (STATE EXH. 1, Compact disc, was entered into
6 evidence.)

7 MS. LESKANIC: Your Honor, at this time I would ask
8 to publish to the jury.

9 THE COURT: Yes, ma'am.

10 (Audio played. Not transcribed.)

11 BY MS. LESKANIC:

12 Q. Director Gardner, that call came in at 1321; is
13 that military time?

14 A. Yes, ma'am.

15 Q. Does that equate to 1:21 p.m.?

16 A. Yes, ma'am. After lunch.

17 Q. 1:21 in the afternoon is when that call came in?

18 A. Yes, ma'am.

19 MS. LESKANIC: Thank you. Please answer any
20 questions that Mr. Moore has for you.

21 MR. MOORE: No questions, Your Honor.

22 THE COURT: Thank you. Sir, you may step down.
23 Please be careful.

24 (The witness exited the stand).

25 THE COURT: Is he excused?

DENNIS GARDNER DIR BY MS. LESKANIC

1 MS. LESKANIC: Yes, Your Honor.

2 THE COURT: Any objection?

3 MR. MOORE: No objection.

4 THE COURT: Mr. Gardner, you can stay or go,
5 whichever you choose.

6 THE BAILIFF: He's going to stay, Your Honor.

7 MS. LESKANIC: State calls Edward Thornburg.

8 (Mr. Thornburg entered the courtroom.)

9 THE CLERK: Please raise your right hand. Place
10 your left hand on the Bible.

11 EDWARD THORNBURG
12 being first duly sworn, testified as follows:

13 THE CLERK: Watch your step.

14 THE COURT: Sir, if you'll tell us who you are and
15 spell your last name for my court reporter, please.

16 THE WITNESS: My name is Edward Thornburg,
17 T-H-O-R-N-B-U-R-G.

18 THE COURT: Solicitor.

19 DIRECT EXAMINATION

20 BY MR. LESKANIC:

21 Q. Good morning, Mr. Thornburg.

22 A. Good morning.

23 Q. It is my understanding that the Defendant used your
24 telephone to call 911?

25 A. Yes, ma'am.

DENNIS GARDNER DIR BY MS. LESKANIC

1 Q. That was back on June 14, 2019?

2 A. Yes, ma'am.

3 Q. Could you please tell the ladies and gentlemen of
4 the jury how you came to interact with Mr. Duncan and how he
5 came to use your phone that day.

6 A. Me and my son was actually coming back from Rock
7 Hill. We come up River Drive. And as I was coming up the dirt
8 road, I just happen -- as I come to the stop sign, just
9 happened to look back. I seen somebody against the car, which
10 I can't honestly say if he was waving at me or not. I just
11 knew that he looked like he was in trouble or was upset. I
12 didn't know if he had car trouble or not.

13 I just pulled back over there and asked him if he
14 need to use a phone or anything. He said he did need to use a
15 phone, 'cause his buddy was missing. I let him use my phone to
16 call 911.

17 Q. How did he appear to you?

18 A. He was -- he appeared he had been crying. He was
19 kind of emotionally upset. I think he was a little damp, wet.
20 He looked -- physically he was all right. He just looked
21 upset.

22 Q. Where his car was parked, was it off the side of
23 River Road?

24 A. Yes, ma'am.

25 Q. Did he step out into the middle of River Road?

DENNIS GARDNER DIR BY MS. LESKANIC

1 A. No, he was next to his car. He never -- I was
2 coming down River Road, and my truck isn't quiet. And I'm
3 usually playing when I come on that road anyway. There's no
4 way he couldn't have heard me coming up the road. He wanted to
5 jump out in front of me and get my attention, he could have. I
6 can't honestly say that he would've got my attention if I
7 hadn't looked back and seen him anyway.

8 Q. Have you looked at a map that you could use to show
9 the jury where you drove up River Road?

10 A. Yes, ma'am.

11 Q. Would that assist you in showing them where you
12 came from?

13 A. Yeah.

14 Q. Is this the map that you have seen, Mr. Thornburg?

15 A. Yes, ma'am.

16 Q. This would assist you in showing the jury where you
17 drove up River Road --

18 A. Yes, ma'am.

19 Q. -- and saw the Defendant?

20 MS. LESKANIC: Your Honor, at this time we offer
21 State's 2 for admission.

22 MR. MOORE: No objection.

23 THE COURT: Without objection. State's 2 is
24 admitted.

25 (STATE EXH. 2, Demonstrative photograph, was

DENNIS GARDNER DIR BY MS. LESKANIC

1 entered into evidence.)

2 BY MS. LESKANIC:

3 Q. Mr. Thornburg, can I get you to step down. Using
4 State's Exhibit 2, can you kind of point out -- and I can give
5 you a pointer, if you need it, or you can use your finger.
6 With this pointer, if you push the button right there, it puts
7 a light. And --

8 A. This is River Road right here; right?

9 Q. Yes, sir.

10 A. We was coming from this direction (indicating).

11 Q. If you could step to the side. I want to make sure
12 that everyone on the jury can see.

13 A. We come up to here to come across. As I got right
14 in here (indicating), he was parked right over here to the
15 side, on edge of the road. As I pulled up to the stop sign --
16 I don't know if he was actually waving me down or not; I can't
17 remember.

18 I know I stopped at the stop sign, looked back.
19 That's when I seen him. I just backed over there and asked him
20 if he wanted to use my phone or anything, if he had car trouble
21 or what was his problem.

22 Q. So you came up River Road, which is a gravel road?

23 A. Yes, ma'am.

24 Q. Are you somewhat familiar with River Road?

25 A. Yeah, I've been down it several times.

DENNIS GARDNER DIR BY MS. LESKANIC

1 Q. Is it a heavily traveled road, to your knowledge?

2 A. No, very seldom anybody ever on it. That's why I
3 play a lot on it.

4 Q. What is this road that intersects with River Road?

5 A. Highway 29.

6 Q. How far was he from Highway 29?

7 A. He was probably 15, 20 yards from it.

8 Q. Are you familiar with Highway 29?

9 A. Yes, ma'am.

10 Q. Is that a heavily trafficked road?

11 A. Yeah, it's always busy.

12 Q. Lots of traffic coming 25 to 30 yards away from
13 where you find him standing?

14 A. Yes, ma'am.

15 Q. He doesn't jump out in front of your truck and say:
16 I need help, or I need to use your phone?

17 A. No, ma'am.

18 MS. LESKANIC: You can have a seat back, Mr.
19 Thornburg.

20 I think that's all the questions I have. If you
21 would please answer any questions Mr. Moore has for you.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. MOORE:

25 Q. Just very briefly, Mr. Thornburg. You said that it

DENNIS GARDNER DIR BY MS. LESKANIC

1 looks like he had been crying when you got there?

2 A. Yes, sir.

3 Q. Was there any indication -- did y'all talk about
4 how long he had been there?

5 A. I asked him what his problem was, if he was having
6 car trouble or what. He told me him and his buddy had went
7 swimming or tubing or something, I don't remember exactly. His
8 buddy went under. He couldn't find him. That was all I
9 remember.

10 Q. You just let him use your phone to call 911?

11 A. Yes, sir.

12 Q. Did you notice if he had any bruises or abrasions
13 or scratches or anything on him?

14 A. No, sir.

15 Q. You didn't notice, or he didn't have any?

16 A. I did not notice.

17 Q. He essentially looked like he had been crying, was
18 damp and wet. Was there anything else you remember about his
19 appearance?

20 A. He was just upset.

21 MR. MOORE: Thank you.

22 THE WITNESS: Yes, sir.

23 THE COURT: Anything at all?

24 MS. LESKANIC: No, Your Honor.

25 THE COURT: Sir, you may step down. Please be

CECIL BELL DIR BY MS. LESKANIC

1 careful.

2 THE WITNESS: Thank you, sir.

3 THE COURT: Is he released?

4 MS. LESKANIC: Mr. Thornburg, you may stay or go,
5 whichever you choose.

6 THE WITNESS: Thank you.

7 (The witness exited the stand).

8 MS. LESKANIC: State calls Cecil Bell.

9 (Mr. Bell entered the courtroom.)

10 THE CLERK: Please raise your right hand.

11 CECIL BELL

12 being first duly sworn, testified as follows:

13 THE COURT: Mr. Bell, tell us who you are and spell
14 your last name for my court reporter, please.

15 THE WITNESS: My name is Cecil Bell. Last name
16 B-E-L-L.

17 THE COURT: Thank you. Solicitor.

18 DIRECT EXAMINATION

19 BY MS. LESKANIC:

20 Q. Good morning, Mr. Bell. How are you?

21 A. Fine, thank you.

22 Q. You were working with the volunteer fire department
23 with Blacksburg back in June 2019; is that correct?

24 A. That's correct.

25 Q. Are you still working with them?

CECIL BELL DIR BY MS. LESKANIC

1 A. Yes, ma'am.

2 Q. Were you called out to the Broad River for a
3 potential drowning on that day?

4 A. Yes, ma'am.

5 Q. Could you please tell the ladies and gentlemen of
6 the jury how you get that call and about your response, what
7 you saw.

8 A. Initial call comes through 911 dispatch. And they
9 tone out a particular station, which ours is Station 9. And
10 they give you a location which that was in our district. And
11 they did tone it out as a possible drowning. It was at Broad
12 River and River Road.

13 Q. Do you drive a fire engine, or do you have a truck?
14 How did you arrive on scene?

15 A. In my personal pickup.

16 Q. What did you see when you arrived at 29 and River
17 Road?

18 A. When I got there, there was already probably a few
19 of the firemen there. There was a vehicle parked there. And
20 they was talking to an individual, which I can't recall how he
21 looks. Apparently was someone there.

22 We were, in our minds, when we got the call initial
23 drowning, that's what you're heading for because here is Broad
24 River. We thought the drowning was right there at the bridge.
25 After talking to a certain individual there, they said, no,

CECIL BELL DIR BY MS. LESKANIC

1 it's farther on down. At that point we left there and
2 proceeded on down River Road.

3 Q. When you went to River Road, did you have anybody
4 with you?

5 A. Yes, ma'am. We had -- at that time I didn't know
6 that this was the guy that was on the raft, tubing or whatever.
7 Some of the guys asked him if he wanted to ride on the back of
8 my truck. So I was by myself. He got on the back. All of us
9 proceeded down River Road. And we came into Cherokee Falls
10 Road.

11 At that time, we turned right and went down -- call
12 it a firecracker plant or whatever there. There is a dam
13 there. And at that time, one or two time going down the road I
14 would lean out and ask this guy or this person was he okay. He
15 said yeah.

16 We pulled up there and he said this is not the
17 place. So we're going to move on down. We'll go down to the
18 next place.

19 Radio contact with some of the other firemen, we go
20 into a different district. We got that far down, we were in
21 Station 7 district. This changes the main from Station 9 over
22 to Station 7.

23 And at that point in time, I'm not sure who was on
24 radio, the word was mentioned ballfield. We thought maybe that
25 this -- what we were assuming a drowning or somebody, you know,

CECIL BELL DIR BY MS. LESKANIC

1 washing down the river. There's a lot of thoughts go through
2 your mind when you get a call like that.

3 The main thought we have is for that particular
4 victim or patient, that's what we were thinking. Were they on
5 a tube, were they on a boat, were they on a raft, whatever.
6 Were they moving? Did they fall off the raft? All this takes
7 place, you know, as we were thinking, going down the road where
8 they could end up.

9 So with this person that we picked up there at 29
10 and river bridge, when we pulled up there, the statement was
11 made that it was farther on down. There was a ballpark
12 mentioned. The only ballfield or ballpark that we knew of
13 there, we had to go on up the road a little bit and turn right.
14 I believe that's Peeler Road. There is a ball complex there.
15 And we didn't stop there and nothing was said.

16 At that time they were communicating with Station
17 7, and they were going to set up a command post further on down
18 the river, which that's kind of what you do if you have a
19 person in the water. Maybe that person is moving. Or the body
20 is moving, if it's in that case. So you go further down than
21 what we were thinking there at Broad River and 29.

22 So we went all the way down to what we call Pick
23 Hill. It was probably a road command was -- I can't recall who
24 was command -- said that they were going -- we were going back
25 up. I think there was nothing mentioned from the guy that I

CECIL BELL DIR BY MS. LESKANIC

1 had on the back of the truck that, that was the location. If
2 he did, I don't recall it.

3 So we turn our trucks. The firemen that was with
4 us, we went back up to what's called Herbie's or the
5 firecracker plant. I think we termed it a couple different
6 things. We got back up there. I pulled my truck over, and
7 this guy got off the back. There was a lot of firemen and some
8 deputies that were there at that time. That's where we were
9 going to set up command.

10 And he got off the truck, and he walked out towards
11 the point where we kind of went out that way, too. There's a
12 little point kind of goes out towards the river. There's, I
13 believe, a little creek that goes in, comes into the river
14 right there.

15 From that point I never did see him anymore. I
16 think he talked with some deputies. And at that time I believe
17 they removed him from there. I'm assuming take him over to a
18 squad car. Basically, that's all we heard of him.

19 Wasn't too long after that they relocated -- not
20 relocated but located a body. And we were there when they
21 brought this body out.

22 Q. The guy that was with the guy that is lost?

23 A. Yes.

24 Q. Got him in the back of your pickup truck?

25 A. Yes, ma'am.

CECIL BELL DIR BY MS. LESKANIC

1 Q. If you could, could you step down. I'm going to
2 show you State's Exhibit 2. You kind of show the jury where
3 you-all would have driven. We have this marked 29 and River
4 Road here.

5 I guess, make sure that everyone -- Your Honor,
6 could you ask if everyone can see with the place of the
7 mapping?

8 THE COURT: Everyone see? Okay, they can see.

9 MS. LESKANIC: Thank you, Your Honor.

10 THE WITNESS: This is Highway 29 and River Road
11 (indicating). This is where the initial call came in for us to
12 locate. And it's like a possible drowning, I think that's the
13 way it was given out.

14 We arrived here (indicating). This person was
15 right here, and there was a vehicle there (indicating). And
16 some of our guys had already gotten there. I was in my
17 personal vehicle. I can't recall how many of our initial
18 engines that were there. Right there (indicating) is where we
19 started. Some of them was questioning him, said it was farther
20 on down.

21 My truck just happened to be sitting in the right
22 place because I was going to travel on down anyway. They said
23 it was further on down the river.

24 BY MS. LESKANIC:

25 Q. Where did you drive?

CECIL BELL DIR BY MS. LESKANIC

1 A. We came down -- this is River Road (indicating).
2 Came all the way down to Cherokee Falls Road. At the
3 intersection right here (indicating) we took a right. And it
4 goes into -- I believe this is Herbie's Fireworks. Right there
5 is where we made a stop (indicating), and we communicated there
6 and said further on down.

7 Q. The guy on the back of your truck, you stop when
8 you get down here?

9 A. Yes, ma'am.

10 Q. And ask if this is the place to be?

11 A. Right.

12 Q. And the response is?

13 A. It's farther on down. It was around a ballpark or
14 ballfield.

15 Q. Is there a ballfield on the map?

16 A. It would've had to been off Peeler Road. It would
17 probably been -- we came up and took another right. I can't
18 exactly see. Is that Peeler Road? It should be right in there
19 (indicating).

20 Q. Maybe this open area?

21 A. Yes, ma'am.

22 Q. That's a ballfield that you thought he may be
23 talking about so y'all continued on --

24 A. That's it.

25 Q. -- from the boat landing?

CECIL BELL DIR BY MS. LESKANIC

1 A. Yes, ma'am.

2 Q. And the dam here and continued down to Pick Hill?

3 A. Yes, ma'am.

4 Q. When the Defendant was on the back of your truck,
5 what was his demeanor?

6 A. Well, I couldn't tell much. I think I recall he
7 did -- he was smoking. I think he did that. Of course, it was
8 hot. I had my windows down. I did ask him -- like I said a
9 while ago, I asked him once or twice was he okay on the back.

10 Q. Did he seem to be okay? Was he crying or upset?

11 A. I couldn't tell if he was. I really -- I didn't
12 recall if he was.

13 Q. Once you get down to this location and you start
14 driving away from the firecracker plant, does he tap on the top
15 of your truck or holler out that you need to stop --

16 A. No.

17 Q. -- or anything? How far a drive is it from the
18 firecracker plant to Pick Hill, approximately?

19 A. Probably three or four miles, give or take.

20 Q. During that time, there was no indication that you
21 were headed in the wrong direction?

22 A. No, ma'am. We were in communication with the ones
23 that was already down there. That would've been Station 7.

24 Q. You get down to Pick Hill and something happens.
25 Everybody decides to come back to this location?

CECIL BELL DIR BY MS. LESKANIC

1 A. Yes, ma'am.

2 Q. Is that where command was eventually set up?

3 A. Eventually. I think we talked with some officers
4 down there. And they said it's not this far down, we're going
5 back to the firecracker plant. That's where the instant
6 command would've been set up. That's where we turned around,
7 came back to there.

8 Q. Is it from this location at that boat landing where
9 they were able to retrieve the body?

10 A. Yes, ma'am.

11 Q. Thank you. You can have a seat back.

12 I am going to show you what's been marked State's
13 Exhibit 3. You kind of recognize the area shown in this? Just
14 tell me whether or not you recognize the area down here.

15 A. This is probably the firecracker plant right here
16 (indicating).

17 Q. Okay. Will this also show the creek area that you
18 were talking about?

19 A. Yes, ma'am. Broad River came right across there
20 (indicating). The creek should've been right up there because
21 it was in a curve with the bridge there.

22 MS. LESKANIC: Your Honor, at this time I offer
23 State's Exhibit 3 for admission.

24 THE COURT: Any objection?

25 MR. MOORE: No objection, Your Honor.

CECIL BELL DIR BY MS. LESKANIC

1 THE COURT: Without objection. It's admitted.

2 (STATE EXH. 3, Photograph, was entered into
3 evidence.)

4 MS. LESKANIC: May I publish?

5 THE COURT: Yes.

6 BY MS. LESKANIC:

7 Q. Mr. Bell, this is just a little bit closer up. You
8 said this area down here would be the firecracker plant?

9 A. Yes, ma'am.

10 Q. And then the creek -- I know the jury couldn't
11 see -- you said goes along here?

12 A. Yes, ma'am. It comes out into Broad.

13 Q. So this is the original location that you-all drove
14 down to here. And Defendant said: That's not where we need to
15 be. Keep going?

16 A. Yes, ma'am.

17 Q. That creek is right there along the boat landing?

18 A. Yes, ma'am. That's probably -- I think that's
19 called Dolittle Creek. I believe that's the name of the little
20 creek that dumps into Broad right there.

21 Q. Are you familiar with this area here?

22 A. That looks like it was across from the Herbie's,
23 which is, I guess you call it a residential place. I know
24 there's a church just across the road, some more houses on out
25 toward the bridge that crosses over Dolittle.

CECIL BELL CROSS BY MR. MOORE

1 Q. Right there at the landing there's the firecracker
2 plant, there's the dam, there's a church?

3 A. Yes.

4 Q. And there's a bunch of houses on all those roads;
5 is that correct?

6 A. Yes, ma'am.

7 MS. LESKANIC: Thank you very much. Please answer
8 any questions Mr. Moore has.

9 THE COURT: Mr. Moore.

10 CROSS-EXAMINATION

11 BY MR. MOORE:

12 Q. Good morning. Just have a couple questions for
13 you. Won't be but a minute.

14 I want to make sure I understood your testimony
15 correctly. You said you don't recall what he looked like or
16 his appearance that day, the Defendant?

17 A. No, sir. That's been --

18 Q. I know.

19 A. And our thoughts and concerns was really on a
20 victim being in the water. That's basically what we were. No,
21 sir, I can't recall.

22 Q. I got you. I'm not asking you to make it up
23 either. I'm just asking. I want to make sure I understood you
24 correctly.

25 I have a question about the map. Let me put this

CECIL BELL CROSS BY MR. MOORE

1 back up here. If you don't mind stepping down. I had a
2 question about what you were pointing out on here.

3 Now, you said at some point either the radio or the
4 Defendant mentioned something about near a ballfield, a road
5 near a ballfield; is that correct?

6 A. Yes, sir.

7 Q. I know you said y'all were on River Road. Are you
8 familiar with this ballfield right here, this sports complex?

9 A. Yes, sir. It is on the other side of the river,
10 which would've been a good ways from where we were.

11 Q. Right. Where's the other ballfield?

12 A. When you come past wherever it is, that's Cherokee
13 Falls Road. And you go past the plant and turn. It will be
14 Peeler Road. I can't exactly see.

15 We turned right on Peeler Road. Go out there just
16 a little ways, there is a complex there. I think it used to
17 belong to the plant for community ballfield, stuff like that.

18 Q. Have you been to this complex before?

19 A. I have. Been a good while.

20 Q. Are you familiar, there's a road that runs from
21 this complex down to the river?

22 A. I'm assuming there is.

23 Q. I got you. I'm not asking you to make it up
24 either. Between the complex you're talking about down there
25 and this one right here on the map, which one is closer to the

CECIL BELL CROSS BY MR. MOORE

1 river?

2 A. It would've been this one over here (indicating).
3 I mean, it's a couple hundred yards right off the river.

4 Q. Which one is closer to Highway 29?

5 A. Well, it would be this one (indicating). It's on
6 the other side of the bridge.

7 Q. That's all I have on the map.

8 Do you think -- I know you don't recall exactly
9 what he looked like or what he may have said that day. You do
10 recall a ballfield. Do you think there's a chance he was
11 talking about that ballfield?

12 MS. LESKANIC: Objection; speculation.

13 THE COURT: Re-word.

14 BY MR. MOORE:

15 Q. Did y'all go to the other ballfield?

16 A. No, sir.

17 Q. Did you go to the ballfield I just pointed out on
18 the map?

19 A. Yes, we went to the one off Peeler Road.

20 Q. I think I got you confused.

21 A. Because -- well, I'll let you ask me. I was going
22 by speculation, too, I guess.

23 Q. Let's both just take a pause. I'll ask another
24 question. Maybe. Maybe I won't ask one.

25 I thought I heard you in your testimony answering

CECIL BELL CROSS BY MR. MOORE

1 the Solicitor that the ballfield came over the radio; is that
2 true or not?

3 A. Now it's assumption because there was so much radio
4 traffic.

5 Q. Got you.

6 A. That it would've been, I don't know.

7 Q. I got you. I just want to know if the ballfield as
8 an area in this incident came over the radio or came from the
9 Defendant or came from both, if you recall. If you don't,
10 that's okay.

11 A. I would say probably come from all. I also going
12 to say I don't recall. It was mentioned because I don't know
13 why we would've went on around to the ballfield.

14 Q. I got you.

15 A. We were instructed to do, to check that area.

16 Q. I got you.

17 MR. MOORE: Beg The Court's indulgence, Your Honor.

18 THE COURT: Yes, sir.

19 (A pause transpired).

20 MR. MOORE: No further questions, Your Honor.

21 THE COURT: Thank you.

22 MS. LESKANIC: Briefly, Your Honor.

23 THE COURT: Yes.

24 REDIRECT EXAMINATION

25 BY MS. LESKANIC:

CECIL BELL REDIR BY MS. LESKANIC

1 Q. I won't keep you up here all day. Would you step
2 down one more time.

3 A. Okay.

4 Q. Mr. Moore asked you about these ballfields. I
5 think that's Ford complex?

6 A. Yes, ma'am.

7 Q. Would you travel down River Road to get to these
8 ballfields?

9 A. No, ma'am.

10 Q. Where would you have to go to get to these
11 ballfields, come down?

12 A. Across Bald River Bridge.

13 Q. You guys met him up here?

14 A. Yes.

15 Q. And you would've had to take a left on 29, go
16 across the bridge and then take a left on Victory Trail and
17 head down?

18 A. Yes, ma'am.

19 Q. Did the guy that got in the back of your truck tell
20 you to do that?

21 A. No, ma'am.

22 Q. Thank you.

23 MS. LESKANIC: That's all I have.

24 THE COURT: Anything?

25 MR. MOORE: Briefly.

CECIL BELL RECROSS BY MR. MOORE

1 RECROSS-EXAMINATION

2 BY MR. MOORE:

3 Q. You just said the Defendant did not tell you to
4 take those directions to the other side of the river. Are you
5 certain the Defendant didn't tell you that it was in the river
6 across from the ballfield?

7 A. I can't recall that statement, no, sir.

8 (A pause transpired.)

9 MR. MOORE: No further questions.

10 THE COURT: Sir, you may step down. Please be
11 careful.

12 MS. LESKANIC: May he be excused, Your Honor?

13 THE COURT: Any objection?

14 MR. MOORE: No objection, Your Honor.

15 THE COURT: Mr. Bell, you may stay or go, whichever
16 you choose.

17 (The witness exited the stand.)

18 MS. LESKANIC: State calls Rannie Moss.

19 THE COURT: Solicitor, let's take a break.

20 Mr. Foreman, ladies and gentlemen, I told you
21 yesterday we're going to run about 90 minutes. We've been here
22 since 9:00, couple minutes till then. You've been here just
23 over an hour. On our schedule this is our morning break.

24 I have to ask this question. I hope the answer is
25 no. Is there a juror who smokes and you want to smoke?

CECIL BELL RECROSS BY MR. MOORE

1 Because I have to have you escorted outside the building.
2 Couple of you. Three or four. Well, the bailiffs will take
3 care of that or the officers.

4 THE CLERK: Yes, sir, we'll take care of it.

5 THE COURT: It's not allowed in the building. They
6 will have to stay with you while you smoke in a designated
7 area, wherever that might be.

8 Anyway, having said that, we're going to take our
9 morning break. This is going to be good 15, 20-minute break.
10 If you need coffee, water, use the rest room facility, whatever
11 you might need. And we'll resume the trial. Then we'll run
12 between 12:00 and 12:30 and break for lunch at that point.

13 Don't talk about the case. You're on break. This
14 is work. The last thing you want to do is talk about work on
15 your break. Mr. Foreman, take the jury out, please.

16 (The jury exited the courtroom at 10:38 a.m.)

17 THE COURT: Anything from State or defense before
18 we break?

19 MS. LESKANIC: Not from the State, Your Honor.

20 MR. MOORE: No, sir, Your Honor.

21 THE COURT: Be back here five till the hour,
22 something like that.

23 (A recess transpired from 10:38 a.m. until 11:01
24 a.m.)

25 THE COURT: I'm told all the jurors are back from

RANNIE MOSS DIR BY MS. LESKANIC

1 smoke break. Everybody ready? State? Defense?

2 MS. LESKANIC: We're checking one video; wanted to
3 make sure it was the correct exhibit before we put it in.

4 (A pause transpired).

5 MS. LESKANIC: State is ready. Thank you.

6 THE COURT: We'll have the jury.

7 (The jury entered the courtroom at 11:02 a.m.)

8 THE COURT: Ladies and gentlemen, Mr. Foreman,
9 everybody okay?

10 THE FOREPERSON: Yes, sir.

11 MS. LESKANIC: May it please The Court. The State
12 calls Rannie Moss.

13 (Mr. Moss entered the courtroom.)

14 THE CLERK: Come on around. Raise your right hand.
15 Place your left hand on the Bible.

16 RANNIE MOSS

17 being first duly sworn, testified as follows:

18 THE COURT: Sir, if you'll tell us who you are and
19 spell your last name for the court reporter, please.

20 THE WITNESS: Rannie K. Moss, II, M-O-S-S.

21 THE COURT: Solicitor.

22 DIRECT EXAMINATION

23 BY MS. LESKANIC:

24 Q. Good morning, Mr. Moss. I want to take you back --
25 you know the reason you're here, June 14, 2019. Were you

RANNIE MOSS DIR BY MS. LESKANIC

1 called out to Broad River on that day?

2 A. Yes, ma'am.

3 Q. In what capacity?

4 A. Through the fire department for a possible drowning
5 victim.

6 Q. What fire department did you work for?

7 A. Blacksburg Fire Department.

8 Q. As a volunteer?

9 A. Yes, ma'am.

10 Q. Do you still work there?

11 A. No, ma'am.

12 Q. When you received the call, where were you told to
13 respond?

14 A. West Cherokee Street and Little Hope Road at the
15 bridge.

16 Q. That's kind of the bridge of 29, there's Little
17 Hope and River Road?

18 A. Yes, ma'am.

19 Q. Were you in a personal vehicle or a fire engine?

20 A. I was in Engine 93.

21 Q. What did you see when you arrived at that location?
22 What was going on?

23 A. We pulled up on the scene. There was a male
24 standing about 25 yards down the River Road. We pulled up. He
25 was looking off towards the river. I got out, approached him.

RANNIE MOSS DIR BY MS. LESKANIC

1 He didn't come to me. I asked him did he call 911. He
2 verified that he did.

3 Q. Do you know what happened after that?

4 A. I'm trying to replay it all in my head. So he
5 verified that he did call 911. I asked him who was in the
6 river. He said his buddy was in the river.

7 And I asked him how long it had been since he had
8 seen his buddy. I don't remember the response to that. I do
9 know it was a while. I don't remember exactly how long it was.

10 Q. Were you trying to get information from him to
11 figure out where to go --

12 A. Yes, ma'am.

13 Q. -- to try to find this person?

14 A. Yes, ma'am.

15 Q. After speaking with him, did you go somewhere?

16 A. Yeah. We actually put him on the back of a pickup
17 truck. He had said he remembered -- the last place he
18 remembered seeing his buddy was when they had passed a
19 ballfield.

20 We put him on the back of a pickup truck, proceeded
21 to go down to River Road. We went all the way back to, all the
22 way through it. We took a right on Cherokee Falls Road. We
23 crossed -- right before you get to the firecracker plant
24 there's a pull-off where there's a boat landing. We pulled
25 over there and asked him was this the spot. He said he had

RANNIE MOSS DIR BY MS. LESKANIC

1 gotten out of the river, walked all the way back to 29 before
2 he could get somebody to call for 911.

3 Q. What did you ask him?

4 A. We pulled over there. I asked him is that the spot
5 that he got out of the river. He said: No, it was further
6 down. And he kept saying it was at a ballfield.

7 The only next ballfield from there would be after
8 you pass the firecracker plant and take a right. I don't
9 remember the name of that road right off. You can't see it
10 from the river either.

11 So we went that route. And we got to it. He said:
12 No, that's not it. It was farther down.

13 In my head I'm replaying ballfield, where else
14 could it be? Because you can't see no ballfields off the
15 river. And then they got -- in my head, I kept calling them on
16 the radio that he said -- that he had seen him last at the
17 ballfield. And then we had done crossed over the dam. In my
18 head, I'm thinking: So is this victim crossed over the dam or
19 floated through the dam on a kayak?

20 We proceeded to 99, to that dam. And then that's
21 when he told us it wasn't that one either.

22 Q. I'm going to have you step down, if you don't mind.
23 I'm going to put up what's been marked State's Exhibit 2 and
24 let you look at this map. Can you identify, I guess, Little
25 Hope Road and River Road and 29. I guess turn yourself so you

RANNIE MOSS DIR BY MS. LESKANIC

1 can show the ladies and gentlemen of the jury.

2 A. Where's 29 here? Is that 29? I ain't got my
3 reading glasses. Nope.

4 Yeah, here's Little Hope Road and 29.

5 Q. Can you step back just a little bit so you can show
6 the jury where you're pointing.

7 A. We come in off 29, off Little Hope. Following the
8 River Road all the way back through to Cherokee Falls Road and
9 turned to come out at the firecracker plant. If you proceed --
10 this map doesn't go all the way to -- this map doesn't go all
11 the way to 99, to the dam.

12 Q. What is this area here?

13 A. This is the firecracker plant.

14 There's a landing right before you get to the
15 firecracker plant over here (indicating).

16 Q. Is there a creek there as well?

17 A. There are. It cuts back up into here (indicating).

18 Q. Did you drive the fire engine down to the
19 firecracker plant?

20 A. Yes, ma'am. We actually pulled over at the boat
21 landing and sit there for probably three minutes.

22 Q. The guy on the back of the pickup truck was asked:
23 Is this where you got out of the river?

24 A. That is correct.

25 Q. And his response was?

RANNIE MOSS DIR BY MS. LESKANIC

1 A. No. It was not.

2 Q. You don't know where to go for this body, is that
3 correct, unless somebody tells you?

4 A. That's correct.

5 Q. You're going places based on information you're
6 receiving from the guy who lost his friend, from the Defendant?

7 A. Yes, ma'am.

8 Q. Here's some ballfields. How do you get to these
9 ballfields?

10 A. Off of 329 on Gaffney side of the river.

11 Q. Opposite side of the river?

12 A. Right.

13 Q. Can you get there from River Road?

14 A. No, not on Blacksburg side.

15 Q. If somebody is familiar with that area, would they
16 know you can't get there on River Road?

17 A. Yes, ma'am.

18 Q. Is there a ballfield down here by the firecracker
19 plant?

20 A. There's one on the backside, on the little road
21 that cuts over. You can't see it from the river either.

22 Q. You can have a seat back. Thank you, Mr. Moss.

23 If you recall, do you recall the Defendant's
24 behavior or demeanor when y'all were going down River Road to
25 the firecracker plant?

RANNIE MOSS CROSS BY MR. MOORE

1 A. So I drove the engine. I pulled up in the engine.
2 His demeanor like -- part of the engine got out. And I had to
3 walk to him, probably a good 50 feet to him. And to me, if it
4 was my friend in the river, I would've been screaming and
5 hollering when the fire truck pulled up. To me, his demeanor
6 was not like panicked or in a hurry for me to be there.

7 Q. When you pulled up, he doesn't approach you. You
8 have to approach him?

9 A. That's correct.

10 Q. Everybody goes down to Pick Hill, 99, I think you
11 testified to?

12 A. Yes, ma'am.

13 Q. Went on down the river. Something happens down
14 there. And it's decided that they do need to move back up to
15 the firecracker plant where you had just been?

16 A. That's correct.

17 Q. Is it at that location that the body was recovered
18 from the water?

19 A. At the firecracker plant, yes, ma'am.

20 MS. LESKANIC: Thank you. Please answer any
21 questions Mr. Moore has.

22 CROSS-EXAMINATION

23 BY MR. MOORE:

24 Q. Just a few questions for you, Mr. Moss. Do you
25 remember if the Defendant was damp or wet when you approached

RANNIE MOSS CROSS BY MR. MOORE

1 him initially?

2 A. Yes, I do.

3 Q. He was?

4 A. He was dry.

5 Q. He was dry?

6 A. Yeah. I even made that statement to the colleague
7 who was with me in the pickup truck.

8 Q. Who was that colleague?

9 A. Cecil Bell. Before I put him on the back of
10 Cecil's truck to ride down to River Road.

11 Q. Do you recall -- did it look like he was upset or
12 been crying or anything?

13 A. He did not look upset at all. I do recall that.

14 Q. Do you recall if he had any bruises or scratches or
15 abrasions that you remember, that stood out to you?

16 A. No, sir.

17 Q. I want to show you something on this map the
18 Solicitor just showed you. If you could look at this with me.
19 If you don't mind stepping down. Sorry to make you keep going
20 up and down.

21 A. You're fine.

22 Q. Are you familiar with this baseball field?

23 A. Yes.

24 Q. Have you ever been to it before?

25 A. Yes.

RANNIE MOSS CROSS BY MR. MOORE

1 Q. You have been to it?

2 A. Yes.

3 Q. Are you familiar there's a road to that baseball
4 field that goes to the river?

5 A. That's correct, on the Gaffney side.

6 Q. You're calling this is the Gaffney side. That's
7 what you mean when you say Gaffney side?

8 A. That's correct. I think it's West End Lane. It's
9 a little gravel dirt road. Actually has a metal gate across
10 it.

11 Q. If you were on the river, could you access that
12 ballfield if you went upstream?

13 A. There was no stream that goes up to that.

14 Q. I'm talking about like to the bank, to that little
15 dirt road that you're talking about.

16 A. Yes. That's probably three-quarter mile walk over
17 the river to that ballfield.

18 Q. Y'all went down to the firecracker plant. Your
19 testimony is that because the Defendant said it was closer to
20 the ballfield; correct?

21 A. Right.

22 Q. Y'all kept going down further to a ballfield; is
23 that correct?

24 A. Correct.

25 Q. At some point somebody decided y'all had gone too

RANNIE MOSS CROSS BY MR. MOORE

1 far and went back up to the firecracker plant; is that right?

2 A. That's correct.

3 Q. Was it because, at some point, y'all realized y'all
4 were talking about two different ballfields?

5 A. No. It was because we had realized, if they had
6 put in at 29 and floated down the river, from the time he had
7 called that in, that the body or if it was a body or a person,
8 had not had time to get across the dam at Cherokee Falls.

9 Q. Did not have the time to get there?

10 A. That's right.

11 Q. It was like -- we're done with the map. If you
12 want to sit back down, I'll follow-up on that question.

13 Y'all had done some type of time analysis to
14 realize that a potential body put in at 29 could not have
15 reached that point?

16 A. We was more or less into the search mode now. To
17 back up from start and go from there. It was more into a grid
18 search.

19 Q. Got you.

20 Just to clarify, to your recollection, he was dry
21 and did not look like he had been upset or crying?

22 A. That's correct.

23 Q. You discussed that with your fellow firefighter,
24 Mr. Bell; is that correct?

25 A. That's correct.

RANNIE MOSS REDIR BY MS. LESKANIC

1 Q. Thank you.

2 MS. LESKANIC: Briefly, Your Honor.

3 THE COURT: Yes.

4 REDIRECT EXAMINATION

5 BY MS. LESKANIC:

6 Q. I just want to clarify one thing, Mr. Moss. The
7 question that was asked of the Defendant, was it, is this where
8 we firefighters need to put in, or was the question, is this
9 where you, Defendant, got out of the water?

10 A. No. We had asked him several times if that's where
11 he got out of the water.

12 Q. And his answer was?

13 A. It was no.

14 MS. LESKANIC: Thank you.

15 THE COURT: Anything else?

16 MR. MOORE: No, sir, Your Honor.

17 THE COURT: Sir, you may step down. Please be
18 careful.

19 (The witness exited the stand.)

20 THE COURT: Release him?

21 MS. LESKANIC: Yes, to be excused, Your Honor.

22 THE COURT: Any objection?

23 MR. MOORE: No objection, Your Honor.

24 THE COURT: Mr. Moss, you may stay or go, whichever
25 you choose.

BRIAN MULLINAX DIR BY MS. LESKANIC

1 THE WITNESS: Thank you.

2 MS. LESKANIC: State calls Brian Mullinax.

3 (Mr. Mullinax entered the courtroom.)

4 THE CLERK: Raise your right hand.

5 BRIAN MULLINAX

6 being first duly sworn, testified as follows:

7 THE COURT: Sir, tell us who you are and spell your
8 last name for the court reporter.

9 THE WITNESS: Brian Mullinax, M-U-L-L-I-N-A-X.

10 THE COURT: Thank you. Solicitor.

11 DIRECT EXAMINATION

12 BY MS. LESKANIC:

13 Q. Good morning, Chief Mullinax. How are you?

14 A. I'm doing good.

15 Q. You are currently the chief of police in
16 Blacksburg; is that correct?

17 A. Yes, ma'am.

18 Q. Back in June of 2019, were you working with the
19 Cherokee County Sheriff's Department?

20 A. Yes, ma'am.

21 Q. In what capacity?

22 A. I was a patrol supervisor on the road.

23 Q. Were you also the captain of the CKC Fire
24 Department back in June 2019?

25 A. Yes, ma'am.

BRIAN MULLINAX DIR BY MS. LESKANIC

1 Q. Law enforcement and volunteer firemen?

2 A. Volunteer, yes, ma'am.

3 Q. Were you called out to Broad River, Highway 29,
4 River Road on June 14, 2019 or get a call about a possible
5 drowning?

6 A. Yes. CKC Fire Department was dispatched to a
7 drowning. What we did, we had all of our firemen respond to
8 the CKC Fire Department. That way we could load up all of our
9 equipment and our boats.

10 Q. Is CKC typically in charge of water rescue in
11 Cherokee County?

12 A. We're the only water rescue fire department in the
13 county.

14 Q. This area, Highway 29 bridge, all the way down to
15 the firecracker plant, this whole area is located in Cherokee
16 County?

17 A. Yes, ma'am.

18 Q. All of the firemen meet and then you dispatched out
19 to the location?

20 A. Yes, ma'am. We met at the fire department. And
21 then we were told it was below the ballfield. To us, the
22 ballfield is on Peeler Road. We responded to Pick Hill, which
23 is off of 99 Island Road. We responded down there because
24 that's the best access to get into the river to go upriver.

25 Q. What do you start to do? Do you ever go or do you

BRIAN MULLINAX DIR BY MS. LESKANIC

1 initially go to the firecracker plant?

2 A. No, ma'am.

3 Q. You initially find out below the ballfield. If you
4 could step down.

5 State's Exhibit 2, can you show the jury on this
6 map the location of the ballfield, I guess, you are.

7 A. The ballfield we're referring to is right here
8 (indicating), which is below the dam.

9 Q. What's this over here?

10 A. That is the Ford complex.

11 Q. Can you see the Ford complex from the river?

12 A. No, ma'am.

13 Q. Would you get to the Ford complex by traveling down
14 River Road?

15 A. No, ma'am.

16 Q. You get information -- and you may have a seat.
17 Thank you.

18 You received information that y'all need to respond
19 below the ballfield, and so you go to Pick Hill to set up?

20 A. Yes, ma'am.

21 Q. Is the Defendant then brought there by some other
22 firemen with Blacksburg Fire Department?

23 A. Yes, ma'am.

24 Q. Does something transpire there between you and the
25 Defendant?

BRIAN MULLINAX DIR BY MS. LESKANIC

1 A. So when I arrived on scene, we start getting our
2 equipment ready. We were called out as a drowning. We got
3 drags that we drag the river with. We're starting to get all
4 that together, putting our boats in, prepping, getting in the
5 water. I speak with the Defendant. He tells me that he put in
6 at 29 at the bridge, which is further up.

7 Q. Does he approach you to give you this information,
8 or do you approach him to ask him questions?

9 A. I approached him just to find out what area we
10 needed to start searching on the river.

11 Q. He's the only one that would know?

12 A. Yes, ma'am.

13 Q. You don't know where to start unless he tells you?

14 A. Exactly.

15 Q. You ask him, in general, what?

16 A. I ask him where did they put in the river at. And
17 that's when he tells me they put in at the bridge on 29. I
18 asked him then, I said: Did you cross over the dam or get out,
19 go around the dam?

20 He said: No, we never crossed over a dam.

21 I tell him we are at the wrong location. That's
22 when we moved back up to the dam at Cherokee Falls.

23 Q. How did he respond to your question?

24 A. He was there -- he got frustrated because he said
25 they done been up there, it was the wrong place. He was

BRIAN MULLINAX DIR BY MS. LESKANIC

1 getting frustrated with our questions. We were just trying to
2 get information to find out where we needed to start searching.

3 Q. When you say, I think we need to be back at the
4 firecracker plant, how does he respond to that?

5 A. He tells me that they've already been up there.
6 And that's the wrong location.

7 And that's when Mr. Bell, who was with him, said:
8 They come by there. They showed him that location. He said
9 that was the wrong location to them.

10 Q. You, as the captain, did you make a decision that
11 would be the correct location?

12 A. Yes, ma'am. If they didn't cross the dam, we had
13 to go back to that location and go up the river from there.

14 Q. Is that, in fact, what was done?

15 A. Yes, ma'am.

16 Q. When y'all put in the river at the firecracker
17 plant and went upstream, was the body located?

18 A. Yes, ma'am.

19 Q. Are you familiar with the Broad River, particularly
20 this section from Highway 29 down to the firecracker plant?

21 A. Yes, ma'am. I grew up down there in Cherokee
22 Falls.

23 Q. What's the river like for somebody who's never been
24 out there?

25 A. Just a slow moving river. It's shallow. A lot of

BRIAN MULLINAX DIR BY MS. LESKANIC

1 places you can walk across the river.

2 Q. Slow. Shallow. Is it smooth bottom, rocky bottom?

3 A. It's rocky bottom.

4 Q. It's a slow, shallow, rocky, I guess somewhat Broad
5 River?

6 A. Yes, ma'am.

7 Q. Need you to step down one more time. This area
8 here, are you familiar with that?

9 A. Yes, ma'am.

10 Q. Could you tell the jury what that is.

11 A. It's an old mill, but it's turned into a
12 firecracker plant now. Basically what they do, they bring in
13 fireworks from overseas. They repackage them. It's an old
14 mill village down here (indicating).

15 Q. Was it an operating firecracker plant or business
16 back in June 2019?

17 A. Yes, ma'am.

18 Q. Do you have any idea what time they open?

19 A. Around 7:00, 8:00. I'm not exactly sure. It's
20 around that time.

21 Q. What about all of these roads?

22 A. These are old -- what they call Mill Hill houses.
23 It's residential.

24 Q. Are they abandoned?

25 A. No, ma'am.

BRIAN MULLINAX DIR BY MS. LESKANIC

1 Q. Were they abandoned in June of 2019?

2 A. No, ma'am.

3 Q. Was there a church down there?

4 A. Yes, ma'am.

5 Q. Multiple roads, multiple houses?

6 A. Yes, ma'am.

7 Q. And the firecracker plant?

8 A. Yes, ma'am.

9 Q. Are there any of those things walking up River
10 Road?

11 A. River Road is a dirt road, so there's nothing on
12 that road.

13 Q. No houses?

14 A. No, ma'am.

15 Q. No churches?

16 A. No, ma'am.

17 Q. No businesses that are open?

18 A. No, ma'am.

19 Q. Isolated?

20 A. Yes, ma'am.

21 Q. Do you recall the Defendant's demeanor other than
22 frustrated with your questioning -- let me ask this first.

23 Have you responded to other drownings?

24 A. Yes, ma'am.

25 Q. Have you seen how people respond when a loved one

BRIAN MULLINAX CROSS BY MR. MOORE

1 is lost in the water?

2 A. Yes, ma'am.

3 Q. How was the Defendant's response compared to what
4 you have seen either previously or since then?

5 A. At the time he was calm, just talking normally to
6 people. He got frustrated when we started questioning about
7 where did he put in, where do we need to go when we was trying
8 to get information from him. He gets frustrated with us
9 questioning him.

10 When I made the decision to go back to the dam in
11 Cherokee Falls, that's when he gets really frustrated. He
12 said: We've already been there, that's not the right place.

13 Q. When you're setting up at Pick Hill, does he tell
14 you: This is the wrong place?

15 A. No, ma'am.

16 Q. He's just hanging out?

17 A. Yes, ma'am.

18 Q. Frantic?

19 A. No, ma'am.

20 MS. LESKANIC: Thank you. Please answer any
21 questions that the defense has.

22 CROSS-EXAMINATION

23 BY MR. MOORE:

24 Q. I want to make sure I understood your testimony,
25 Chief. Were you -- I'm trying to understand the questions that

BRIAN MULLINAX CROSS BY MR. MOORE

1 y'all were asking him. Were y'all asking him where you last
2 saw him or where he put in?

3 A. No, sir. We asked him -- like I said, when I first
4 got down there, we were setting up all of our equipment. Then
5 I went to find out where they put in the river at and where he
6 was seen at. When I asked him, I said where did you put in at,
7 he said: At the bridge at 29, right below that.

8 And then I asked him: Did you cross over the dam?
9 'Cause I knew there was a dam between where we were at and 29.
10 So I asked him: Did you cross over the dam?

11 He said: No, we didn't cross over a dam.

12 I said we're in the wrong place. We've got to move
13 up to go up from the dam up.

14 Q. Y'all were below the dam, downstream from the
15 dam --

16 A. Yes, sir.

17 Q. -- when you asked him where he put in. And did
18 they go over the dam or not?

19 A. Yes, sir.

20 Q. At that point that information told you that y'all
21 needed to move back upstream towards the firecracker plant?

22 A. Yes, sir.

23 Q. He had just told y'all or told somebody, apparently
24 was frustrated by saying y'all were at the wrong place?

25 A. When I told him that we needed to move back up to

BRIAN MULLINAX CROSS BY MR. MOORE

1 the firecracker plant, that's when he said: We've already been
2 up there, that's the wrong place. Apparently that's where
3 Mr. Bell and them had took him.

4 Q. Right. Are you familiar with this other ballfield?

5 A. Are you talking about the Ford complex?

6 Q. Yes.

7 A. Yes, sir.

8 Q. Are there any roads that access the river there?

9 A. Right below that there is. Wolf Den.

10 Q. That goes out to Goat Island or near Goat Island?

11 A. Yes, sir.

12 Q. Have you ever personally floated the river?

13 A. Not personally, no, sir. I've been in a boat, but
14 I've never floated.

15 Q. I got you. I know a lot of people get into that.
16 If you're growing up there, if you ever floated.

17 A. No, sir, I haven't personally.

18 Q. I heard your description of the river. Slow
19 moving. Sandy? Rocky? Have you been in it?

20 A. It's rocky. It's got a lot of sediment in it, lot
21 of rocks, gets mud and stuff on them. It's a rocky bottom.

22 Q. Do many people actually float that part of the
23 river?

24 A. Yes, sir. People float it all the time.

25 Q. Where do they typically put in and get out, do you

BRIAN MULLINAX CROSS BY MR. MOORE

1 know?

2 A. There's places like where he put in, where he said
3 he put in on 29, they float down to Cherokee Falls to the dam.
4 And then there's a place below Cherokee Falls down at the
5 ballfield that I was referring to on Peeler Road that people
6 will put in there. They will float down to 99 out of there.

7 Q. Did you notice if the Defendant was wet or damp or
8 dry?

9 A. I cannot recall, sir.

10 Q. Did it look like he had been upset or crying at any
11 point?

12 A. No, sir, it did not appear.

13 Q. Did you get there before or after Mr. Bell got
14 there?

15 A. It would've been after because all of our firemen
16 went to the fire department to get ourselves together.

17 Q. That makes sense. They had already ridden River
18 Road in his truck before you got there; correct?

19 A. That's what I was told when I got to Pick Hill boat
20 access.

21 Q. I just want to make sure I understand this. He
22 told you they put in at Highway 29 and they did not cross
23 Cherokee Falls dam. That is what he told you?

24 A. Yes, sir.

25 Q. That's the information that you used to determine

RANNIE MOSS REDIR BY MS. LESKANIC

1 y'all need to move back upstream from Pick Hill?

2 A. Yes, sir.

3 Q. Isn't it true, when you were at Pick Hill, he never
4 even got out of the truck; it was a very brief stop there?

5 A. He was in the truck when I spoke with him. They
6 told me he was in the truck.

7 Q. The back of the truck? The bed of the truck or the
8 cab?

9 A. To be honest, I can't remember exactly where he was
10 at in the truck. I spoke with him. I was the officer in
11 charge at the Pick Hill Fire Department.

12 Q. You spoke with him there. Then y'all moved back to
13 the boat ramp at the firecracker plant?

14 A. Yes, sir.

15 MR. MOORE: Thank you.

16 THE COURT: Yes.

17 MS. LESKANIC: Briefly.

18 REDIRECT EXAMINATION

19 BY MS. LESKANIC:

20 Q. Mr. Moore mentioned Goat Island, and he also
21 mentioned Wolf Den, which are -- can you step down and show the
22 jury where Wolf Den and Goat Island are located.

23 A. This would be Goat Island here (indicating). And
24 this is Wolf Den Road (indicating), which is right below the
25 Ford complex. Dirt road travels down to the river. And access

RANNIE MOSS RECROSS BY MR. MOORE

1 there to get on Gaffney side of the river.

2 Q. Goat Island, are these three --

3 A. Yes, ma'am.

4 Q. -- pieces of land. And Wolf Den, is that Wolf Den
5 Lane?

6 A. Yes, ma'am.

7 Q. Looks like. Mr. Moore mentioned that to you. You
8 can have a seat.

9 Did the Defendant tell you, you needed to go to
10 Goat Island?

11 A. No, ma'am.

12 Q. Did the Defendant tell you, you needed to go to
13 Wolf Den?

14 A. No, ma'am.

15 MS. LESKANIC: Thank you.

16 RECROSS-EXAMINATION

17 BY MR. MOORE:

18 Q. Are you aware if the Defendant told you or anyone
19 else you needed to go back towards the ballfield?

20 A. When they mentioned ballfield to us, that's why I
21 said earlier, when they say ballfield, to us that's the
22 ballfield on Peeler Road.

23 MR. MOORE: Thank you.

24 THE COURT: Sir, you may step down. You may step
25 down. Release or stay?

BRENT HEFLIN DIR BY MS. LESKANIC

1 MS. LESKANIC: State calls --

2 THE COURT: Release or stay?

3 MS. LESKANIC: He's released, Your Honor.

4 MR. MOORE: No objection.

5 THE COURT: You may stay or go, whichever you
6 choose.

7 (The witness exited the stand.)

8 MS. LESKANIC: State calls Brent Heflin.

9 (Mr. Heflin entered the courtroom.)

10 THE CLERK: Please raise your right hand.

11 SGT. BRENT HEFLIN

12 being first duly sworn, testified as follows:

13 THE CLERK: Step around.

14 Step up to the witness stand.

15 THE COURT: Sir, tell us who you are and spell your
16 last name for the court reporter.

17 THE WITNESS: I am Sergeant Brent Heflin,
18 H-E-F-L-I-N.

19 THE COURT: Thank you. Solicitor.

20 DIRECT EXAMINATION

21 BY MS. LESKANIC:

22 Q. Good morning, Officer Heflin. Were you called out
23 to a potential drowning back on June 14, 2019 in Cherokee
24 County at Highway 29 and Broad River?

25 A. Yes, ma'am.

BRENT HEFLIN DIR BY MS. LESKANIC

1 Q. Where did you first respond?

2 A. Where I first responded was -- I don't know. I got
3 the -- I have an address that's close to 1406 Cherokee Falls
4 Road, which is near what I call a fireworks plant. It's a
5 little boat ramp. That's where I responded.

6 Q. What was going on essentially when you arrived
7 there?

8 A. When I arrived, I believe there was already -- I
9 know there was fire department on scene. And most likely EMS.
10 And everyone was just trying to figure out what was going on.

11 Q. At that point had they set up command at the
12 firecracker plant? Were they putting in boats to try to locate
13 the missing person?

14 A. Yes, ma'am. I believe DNR was on scene or at least
15 showed up shortly after with a boat. And they were working on
16 getting it into the water at that point.

17 Q. Was the Defendant on scene?

18 A. Yes, ma'am.

19 Q. Did you have an opportunity to talk to him while
20 you were on scene?

21 A. I did.

22 Q. What were you trying to get from him?

23 A. At first, basically, just an overview of what's
24 going on. So I got him to kind of tell me his story of what
25 happened, and at the same time I was getting his information

BRENT HEFLIN DIR BY MS. LESKANIC

1 for the record purposes.

2 Q. At that time had y'all found Justin's body? Are
3 you aware of whether or not the body had been found at that
4 point?

5 A. When I initially got there, I don't believe we had
6 found a body. I can't tell you at what point we did find the
7 body. I was there for that, when the body got brought up.

8 Q. Did you have essentially two interactions with the
9 Defendant while you were on scene?

10 A. Yes, ma'am.

11 Q. Were you equipped with a body-worn camera at that
12 time?

13 A. Yes, ma'am.

14 Q. Were those interactions recorded on your camera?

15 A. Yes, ma'am.

16 Q. I'd like to show you --

17 MS. LESKANIC: If I may approach, Your Honor.

18 THE COURT: Yes.

19 BY MS. LESKANIC:

20 Q. State's Exhibit 57 and 58. Are those the two
21 portions of your body cam video that were recorded that day of
22 your interaction with the Defendant?

23 A. Yes, ma'am.

24 MS. LESKANIC: Your Honor, at this time we would
25 offer State's 57 and 58 for admission.

BRENT HEFLIN DIR BY MS. LESKANIC

1 THE COURT: Any objection?

2 MR. MOORE: No objection, Your Honor.

3 THE COURT: 57 and 58, without objection.

4 (STATE EXH. 57, Compact disc, was entered into
5 evidence.)

6 (STATE EXH. 58, Compact disc, was entered into
7 evidence.)

8 MS. LESKANIC: May I publish?

9 THE COURT: Yes.

10 MS. LESKANIC: State will start with State's
11 Exhibit 57.

12 (Video played. Not transcribed.)

13 MS. LESKANIC: Now I'm going to play State's
14 Exhibit 58.

15 (Video played. Not transcribed.)

16 MS. LESKANIC: That's all I have. If you would,
17 please, answer any questions Mr. Moore may have.

18 MR. MOORE: No questions, Your Honor.

19 THE COURT: Sir, you may step down. Is he excused?

20 MS. LESKANIC: Yes, Your Honor.

21 May we approach very briefly?

22 (The witness exited the stand.)

23 (Off-the-record discussion.)

24 THE COURT: Mr. Foreman, ladies and gentlemen,
25 talking with the lawyers about timing. The next witness is

BRENT HEFLIN DIR BY MS. LESKANIC

1 going to be a longer witness. We're getting close to lunch
2 hour. I'm in agreement with the lawyers, we probably ought to
3 break now. It's 11:45.

4 I'm going to ask you to come back by 1:15. Gives
5 90 minutes for everybody to walk to their car, get some lunch,
6 come back. That will give you a good lunch break.

7 I am going to be back in place at 1:15. I usually
8 bring my lunch. Be back in place at 1:15, please. Don't talk
9 about the case. Really don't try to do anything, any
10 investigation about the case. Again, you and I have to learn
11 about it right here in the courtroom.

12 Mr. Foreman, if you'll take the jury out.

13 (The jury exited the courtroom at 11:48 a.m.)

14 THE COURT: Anything from the State or defense?

15 MS. LESKANIC: Not from the State.

16 MR. MOORE: No, Your Honor.

17 THE COURT: About 1:15.

18 (A luncheon recess transpired from 11:48 a.m. until
19 1:23 p.m.)

20 THE COURT: Anything from the State or defense?

21 MS. LESKANIC: Not from the State.

22 MR. MOORE: Not from the defense.

23 (The jury entered the courtroom at 1:23 p.m.)

24 THE COURT: Mr. Foreman, everything good with the
25 jury?

BRANDON GARDNER DIR BY MS. LESKANIC

1 THE FOREPERSON: Yes, sir.

2 THE COURT: I forgot to say earlier this morning,
3 I'll say it now. Anyone who wants to stand at some point --
4 you'll see me do it. You're welcome to do so. Don't block the
5 view of fellow jurors.

6 Solicitor.

7 MS. LESKANIC: Thank you, Your Honor. May it
8 please The Court. The State calls Brandon Gardner.

9 THE CLERK: Raise your right hand.

10 BRANDON GARDNER

11 being first duly sworn, testified as follows:

12 THE COURT: Tell us who you are and spell your last
13 name for madam court reporter, please.

14 THE WITNESS: I'm Brandon Gardner, G-A-R-D-N-E-R.

15 THE COURT: Solicitor.

16 MS. LESKANIC: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MS. LESKANIC:

19 Q. Where are you currently employed?

20 A. Currently work for the South Carolina Department of
21 Natural Resources.

22 Q. What are your responsibilities there?

23 A. Currently I'm assigned to the tugboat program,
24 Teach One, Make One. We give opportunities to children who
25 never had the opportunity before, take them hunting on the

BRANDON GARDNER DIR BY MS. LESKANIC

1 weekends, that's my main responsibility. Also do enforcement
2 of game and fish regulations within the state.

3 Q. Were you with the Cherokee County Sheriff's
4 Department back on June 14th of 2019?

5 A. I was. I was assigned to the investigations unit.

6 Q. Being assigned to investigations, will you tell the
7 jury exactly what that means. What do you get called in to do?

8 A. We're responsible for investigating any offenses or
9 arrests or anything that needs to be investigated from stolen
10 items, homicides, to child abuse. Anything that would require
11 further investigation from the deputies.

12 Q. When a 911 call typically comes in, deputies
13 respond out. Then if there's more work to be done, it may be
14 assigned to an investigator like yourself?

15 A. That's correct.

16 Q. How did you get called out to the river on June 14,
17 2019?

18 A. I was eating lunch, got a call from my supervisor
19 of a possible drowning at Broad River.

20 Q. Is it typical for an investigator with the
21 Sheriff's Department to respond to a drowning?

22 A. It is.

23 Q. Why is that? What would your role be for a
24 drowning?

25 A. To assist with the other agencies that are there.

BRANDON GARDNER DIR BY MS. LESKANIC

1 Also, any drowning within the State Department of Natural
2 Resources respond to it to do a drowning report. During that
3 investigation, any foul play, anything that seems to need
4 further investigation, the Sheriff's Office will take it over
5 and begin the investigation.

6 Q. When officers first get on scene and it seems like
7 an accidental drowning, then the Department of Natural
8 Resources will handle that?

9 A. As well as the Sheriff's Office. The Department of
10 Natural Resources does a report for the drowning. There will
11 be incident reports filed at the Sheriff's Office.

12 Q. In this case, did you do further investigation?

13 A. I did.

14 Q. Why is that?

15 A. Frankly, from the beginning of the investigation,
16 things didn't make sense. It made us curious of what did
17 happen and the possibility of foul play was in the case.

18 Q. Were you able to see Justin's body when it was
19 removed from the water?

20 A. I was.

21 Q. Did it have markings that were concerning to you?

22 A. Very much so.

23 Q. When you -- did you respond to the firecracker
24 plant at the dam where everybody has talked about?

25 A. When I -- that's the first place I went that I

BRANDON GARDNER DIR BY MS. LESKANIC

1 think has been referred to as Herbie's Firecracker plant; to
2 that landing right there beside the firecracker plant.

3 Q. When you arrived there, were they already putting
4 boats in or had Justin's body been recovered?

5 A. There were still boats possibly being put in the
6 water. I had been notified that they had located his body
7 before I arrived on scene.

8 Q. Did you see the Defendant on scene?

9 A. I did.

10 Q. Did you have an opportunity to talk with him while
11 on scene?

12 A. I did.

13 Q. During those conversations, were you either with an
14 officer who was equipped with a body-worn camera, or did you
15 borrow that body-worn camera so that those interactions are
16 recorded?

17 A. Yes, I used Deputy Heflin's body camera.

18 MS. LESKANIC: May I approach, Your Honor?

19 THE COURT: Yes.

20 BY MS. LESKANIC:

21 Q. I'd like to show you what's been marked as State's
22 Exhibit 59, 60, 61. Please look at those.

23 A. Yes, ma'am.

24 Q. Do you recognize those?

25 A. That's the body camera footage from Deputy Heflin's

BRANDON GARDNER DIR BY MS. LESKANIC

1 body camera.

2 Q. These are three videos from the scene at the
3 firecracker plant at the landing on June 14th?

4 A. Yes, that's correct.

5 MS. LESKANIC: Your Honor, at this time I would
6 offer 59, 60, and 61 for admission as evidence.

7 THE COURT: Any objection?

8 MR. MOORE: No objection, Your Honor.

9 THE COURT: They are admitted.

10 (STATE EXH. 59, Compact disc, was entered into
11 evidence.)

12 (STATE EXH. 60, Compact disc, was entered into
13 evidence.)

14 (STATE EXH. 61, Compact disc, was entered into
15 evidence.)

16 MS. LESKANIC: May I publish?

17 THE COURT: Yes.

18 MS. LESKANIC: Thank you. I'll start with State's
19 59.

20 BY MS. LESKANIC:

21 Q. While that's pulling up, let me just ask you:
22 These interviews, did they occur after the interviews that we
23 already watched with Deputy Heflin?

24 A. Yes.

25 Q. We had the two interviews with Deputy Heflin that

BRANDON GARDNER DIR BY MS. LESKANIC

1 we heard before lunch. Then these interviews pick up after
2 that?

3 A. That's correct.

4 (Video played. Not transcribed.)

5 BY MS. LESKANIC:

6 Q. Is that the first time you ever met the Defendant?

7 A. Yes.

8 Q. That was your first interaction with him?

9 A. Yes.

10 Q. When he got into your truck, was he wet?

11 A. Not that I recall. He was dirty, not muddy or wet.
12 I'm pretty particular, OCD about things. If he would've been,
13 I probably would've laid a towel down or something on my seat.
14 He was dirty.

15 Q. Dirty but not wet or muddy?

16 A. That's correct.

17 Q. Based on that interview, where did he start
18 rafting?

19 A. At the bridge on 29. Broad River at the bridge on
20 29.

21 Q. The day before?

22 A. He went to Drayvo the day before. Justin had
23 dropped him off at Drayvo, and he had floated to 29; the bridge
24 on 29 probably.

25 Q. That's where he and Justin met at the bridge at 29?

BRANDON GARDNER DIR BY MS. LESKANIC

1 A. Correct.

2 Q. He told you it took forever to load everything up,
3 whatever they were taking down the river?

4 A. He did.

5 Q. The sun was up when he got to the house on the
6 river?

7 A. Yes, pretty adamant the sun was up. He could see.

8 Q. He had to walk all the way back, right, from the
9 bottom --

10 A. Yes, he said --

11 Q. -- back to River Road?

12 A. He walked all the way from where he put his boat,
13 all the way back to the car, River Road or 29, excuse me.

14 Q. Step down for just a second.

15 Do you know where his raft was located?

16 A. I do.

17 Could you point out for the jury where his raft ended up being
18 located

19 A. Right here is the firecracker plant (indicating).
20 There's a creek that goes all the way back in there. It goes
21 all the way back in there. The raft was all the way at the end
22 or not end of the creek but a good little ways up the creek.

23 Q. He had to get out somewhere here. That's where his
24 boat was found?

25 A. It was.

BRANDON GARDNER DIR BY MS. LESKANIC

1 Q. What's all this?

2 A. A bunch of residences. There's a fireworks stand
3 here. Bunch of Mill Hill houses are right up there on top, not
4 really a hill. They're all right in there (indicating).

5 Q. He told you that he had to walk -- where would've
6 he'd walked back to get help?

7 A. He would've walked from here (indicating) to River
8 Road, all the way back to there.

9 Q. Are you familiar with River Road?

10 A. I am.

11 Q. Paved or gravel?

12 A. Gravel.

13 Q. Houses and businesses?

14 A. There's nothing. It's all woods.

15 Q. Much traffic?

16 A. Not very much at all.

17 Q. And this is not an old abandoned neighborhood?

18 Active neighborhood in June of 2019?

19 A. No. People were living there.

20 Q. Firecracker plant up and running?

21 A. It was.

22 Q. Thank you.

23 Did you talk to him again on scene?

24 A. I did.

25 Q. And that video was also recorded?

BRANDON GARDNER DIR BY MS. LESKANIC

1 A. Yes, ma'am.

2 MS. LESKANIC: I'm going to play, with The Court's
3 permission, State's Exhibit 60.

4 THE COURT: Yes, ma'am.

5 (Video played. Not transcribed).

6 BY MS. LESKANIC:

7 Q. So the Defendant told you that he is on this river
8 every other weekend?

9 A. He did.

10 Q. Is that correct?

11 A. That's correct.

12 Q. How did he say he got to the house?

13 A. The dingy he was on, he somehow got it over there.
14 He jumped on the bank and slid down the bank and walked to the
15 door and knocked on the door.

16 Q. When he got in your truck, you said no mud?

17 A. No mud.

18 Q. He said that he swam in the water to get to the
19 house?

20 A. He did.

21 Q. Then he had to get off and pull his boat at the
22 dam?

23 A. Correct.

24 Q. I'll have you step down again.

25 Would you please show the jury where the house on

BRANDON GARDNER DIR BY MS. LESKANIC

1 the river was located that we're talking about.

2 A. (Indicating).

3 Q. Who lives there?

4 A. I'm sorry. I do not recall his name. I have it in
5 my notes.

6 Q. That's fine. You've spoken to the homeowner?

7 A. I have.

8 Q. Where does the Defendant say he last saw Justin?

9 A. In front of the island. Right in there
10 (indicating).

11 Q. So he swims to the house?

12 A. Correct.

13 Q. Justin is standing here?

14 A. Yes.

15 Q. Then what does he do when he leaves the house?

16 A. He said he tried to use that cooler lid to paddle
17 over there to him; was unable to.

18 Q. He swam to the house?

19 A. Correct.

20 Q. By the dam, what did he do?

21 A. Not sure how he got over to the creek. After this
22 interview or during that last interview, he said he took a
23 stick and tried to go back upriver after waiting a few minutes.
24 Was unable to, so he come back and got his dingy all the way
25 back up in the creek to get on the road and walked back to the

BRANDON GARDNER DIR BY MS. LESKANIC

1 vehicle.

2 Q. Did he also say that he had to get off and pull his
3 boat?

4 A. He did.

5 Q. He gets off his boat to swim to the house. Gets
6 off his boat to get by the dam and up the creek. And he last
7 saw Justin right there, and he got on his boat?

8 A. Yes.

9 Q. He wasn't wet when he got into your truck?

10 A. Not when he got in my vehicle.

11 MS. LESKANIC: State's Exhibit 61 with The Court's
12 permission.

13 THE COURT: Yes, ma'am.

14 (Video played. Not transcribed).

15 MS. LESKANIC: I know that's very short.

16 BY MS. LESKANIC:

17 Q. Do you recall what he's telling you there?

18 A. The paddles -- excuse me. The paddles will be near
19 where they put in the river at, 29 on the bridge. They were
20 makeshift paddles or flippers.

21 Q. They would be there unless they what?

22 A. Floated on down the river.

23 Q. Did you find any paddles?

24 A. I did not.

25 Q. Do you know if a cooler was located?

BRANDON GARDNER DIR BY MS. LESKANIC

1 A. No one on scene ever saw a cooler ever.

2 Q. Tent?

3 A. No, ma'am.

4 Q. Sleeping bag?

5 A. No, ma'am.

6 Q. Blanket?

7 A. No, ma'am.

8 Q. Were you convinced that this was an accidental
9 drowning after you finished your conversations with the
10 Defendant on scene at the firecracker plant landing?

11 A. I was not.

12 Q. So what did you do?

13 A. Brought him back to the office to talk to him some
14 more to try to make sense of what occurred.

15 Q. Still, during your investigation, you asked him to
16 come back to your office to conduct --

17 A. An interview.

18 Q. -- more thorough interview than you can do on
19 scene?

20 A. Absolutely.

21 Q. He comes back?

22 A. He does.

23 Q. Was that interview recorded?

24 A. It was.

25 MS. LESKANIC: May I approach?

BRANDON GARDNER DIR BY MS. LESKANIC

1 THE COURT: Yes.

2 MS. LESKANIC: Thank you, Your Honor.

3 BY MS. LESKANIC:

4 Q. I'm going to show you what's been marked as State's
5 Exhibit 62. Do you recognize that?

6 A. It's the footage from the interview that was done
7 inside my office at the Sheriff's Office.

8 MS. LESKANIC: Your Honor, at this time we offer
9 State's Exhibit 62 for admission.

10 THE COURT: Any objection?

11 MR. MOORE: No objection, Your Honor.

12 THE COURT: Without objection; admitted.

13 (STATE EXH. 62, Compact disc, was entered into
14 evidence.)

15 MS. LESKANIC: I would like to publish. This is a
16 longer video. I don't know if The Court wants to take --

17 THE COURT: We're good. Thank you.

18 MS. LESKANIC: Thank you.

19 (Video played. Not transcribed.)

20 THE COURT: Mr. Foreman, ladies and gentlemen of
21 the jury, we're going to take a short break. We had a request
22 to take a break. Personal comfort for someone.

23 Don't talk about the case whatsoever. You may use
24 a few minutes to refresh yourself. We'll be back in about 10,
25 maybe 15 minutes. Mr. Foreman.

BRANDON GARDNER DIR BY MS. LESKANIC

1 (The jury exited the courtroom at 2:30 p.m.)

2 MS. LESKANIC: I paused the video.

3 THE COURT: If my math is correct, it's about
4 another hour-and-a-half. I will tell everyone in the
5 courtroom, please use this time to refresh yourself before we
6 come back. Will be back 15 till.

7 MS. LESKANIC: The entire video, Your Honor, is two
8 hours and 44 minutes. We have played 21 minutes of that. So
9 we have 2 hours and 20 minutes.

10 THE COURT: Little over two hours?

11 MS. LESKANIC: Yes, sir.

12 THE COURT: The number on the right, far right is
13 the total time?

14 MS. LESKANIC: Yes, sir.

15 THE COURT: Everybody take this time to refresh
16 yourself.

17 (A recess transpired from 2:30 p.m. until 2:49
18 p.m.)

19 THE COURT: We'll have the jury.

20 (Jury entered the courtroom at 2:49 p.m.)

21 THE COURT: Mr. Foreman, everything good with my
22 jury?

23 THE FOREPERSON: Good.

24 THE COURT: Thank you. Solicitor.

25 (Video played. Not transcribed).

BRANDON GARDNER DIR BY MS. LESKANIC

1 THE COURT: Mr. Foreman, ladies and gentlemen of
2 the jury, thank you for your patience and your attention this
3 afternoon. I told you I wouldn't keep you past 5:15. I'm
4 going to be just within the bracket at 5:15.

5 We're going to recess for the day, of course. Have
6 a good evening. Don't talk about the case. Don't think about
7 the case. You're at work and you're going home now. Don't try
8 to do any investigation on your own.

9 I need you back here in the morning, ready to work
10 at 9:00 a.m. Courthouse opens at 8:30. I'm sure the bailiffs
11 are using the same entrance. They will be waiting for you.
12 And you can get in the courthouse at 8:30. I hope you get some
13 coffee this morning. They make good coffee around here. I
14 think Ms. Brandy had some fritters.

15 THE CLERK: Donuts, yes, sir.

16 THE COURT: I didn't make it across the hall to get
17 one. Maybe tomorrow. Anyway, I'll see you tomorrow morning at
18 9:00 in here. Thank you.

19 (The jury exited the courtroom at 5:14 p.m.)

20 THE COURT: We're going to be in recess until 9:00.
21 Again, the courthouse opens at 8:30. Ask everybody to stay in
22 place for just a minute or two. I want the jurors to leave
23 before anybody else leaves.

24 (The trial was adjourned at 5:15 p.m.)

25

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHEROKEE

IN THE GENERAL SESSIONS
7th JUDICIAL CIRCUIT

3 STATE OF SOUTH CAROLINA,
4
5 Plaintiff,

VOLUME 3

6 vs.

CASE NO. 2020-GS-11-0294

7 CHRISTOPHER CHAD DUNCAN,
8
9 Defendant.

10 HEARING BEFORE: HONORABLE R. KEITH KELLY

11 DATE: December 13, 2023

12 TIME: 9:13 AM

13 LOCATION: Cherokee County Courthouse
14 125 E. Floyd Baker Blvd
15 Gaffney, SC 29340

16 REPORTED BY: LORA L. McDANIEL,
17 Registered Professional Reporter

18
19 APPEARANCES:

20 ATTORNEYS FOR THE PLAINTIFF
21 KIMBERLY L. LESKANIC, DEPUTY SOLICITOR
and MATTHEW KENDALL, ASSISTANT SOLICITOR

22 ATTORNEYS FOR THE DEFENDANT
23 TRAVIS MOORE, ESQ.
24
25

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 I N D E X

2 DIRECT CROSS REDIRECT RECROSS

3 WITNESS/EXAMINATION

4 DENNIS GARDNER

5 BY MS. LESKANIC 65, 138 -- 220 --

6 BY MR. MOORE -- 179 -- --

7 BENJAMIN PETERSON

8 BY MS. LESKANIC 230 -- 243 --

9 BY MR. MOORE -- 238 -- 246

10 C.R. KELLER

11 BY MS. LESKANIC 250 -- -- --

12 BY MR. MOORE -- 259 -- --

13

14 E X H I B I T S

15 FOR I.D. IN EVD

16 STATE EXH. 40, List of numbers 37 234

17 STATE EXH. 63, Hand-drawn diagram 48 139

18 STATE EXH. 64, Hand-drawn diagram 48 139

19 STATE EXH. 65, Photograph 48 139

20 STATE EXH. 66, Compact disc 48 158

21 STATE EXH. 67, Compact disc 48 163

22 STATE EXH. 68, Compact disc 48 166

23 STATE EXH. 69, USB disc 168 169

24 STATE EXH. 70, Photograph 152 152

25 STATE EXH. 71, Photograph 152 152

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1	STATE EXH. 72, Photograph	152	152
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3	COURT EXH. 6, Stipulation	228	228
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DENNIS GARDNER DIR BY MS. LESKANIC

1 THE COURT: Anything from the State?

2 MS. LESKANIC: Nothing. We're ready.

3 THE COURT: From the defense?

4 MR. MOORE: No, Your Honor.

5 THE COURT: Bring in the jury.

6 MS. LESKANIC: Would you like Detective Gardner to
7 retake the stand?

8 THE COURT: Yes. Come on back up.

9 (The jury entered the courtroom at 9:14 a.m.)

10 THE COURT: Good morning, Mr. Foreman. Everybody
11 good?

12 THE FOREPERSON: Yes, sir.

13 THE COURT: Everybody get some coffee?

14 THE FOREPERSON: Yes, sir.

15 THE COURT: Solicitor.

16 MS. LESKANIC: May it please The Court.

17 DIRECT EXAMINATION CONTINUED

18 BY MS. LESKANIC:

19 Q. Detective Gardner, when we left off with your
20 testimony, we had finished watching your interview with the
21 Defendant in your office on the day of this incident, June 14,
22 2019. During that interview, there were several drawings that
23 you went over with the Defendant; is that correct?

24 A. That's correct.

25 MS. LESKANIC: May I approach the witness, Your

DENNIS GARDNER DIR BY MS. LESKANIC

1 Honor?

2 THE COURT: Yes, ma'am.

3 BY MS. LESKANIC:

4 Q. I'm going to show you State's Exhibit 63, 64, and
5 65. Can you please tell me if you recognize them.

6 A. Those are the three drawings that were done that
7 day in the office.

8 Q. Has anything been changed on these since that time?

9 A. No, ma'am.

10 MS. LESKANIC: Your Honor, at this time we would
11 offer State's 63, 64, and 65 for admission into evidence.

12 THE COURT: Any objection?

13 MR. MOORE: No objection.

14 THE COURT: Without objection, they are admitted.

15 (STATE EXH. 63, Hand-drawn diagram, was entered
16 into evidence.)

17 (STATE EXH. 64, Hand-drawn diagram, was entered
18 into evidence.)

19 (STATE EXH. 65, Photograph, was entered into
20 evidence.)

21 BY MS. LESKANIC:

22 Q. Just briefly, I'm going to put up State's Exhibit
23 63. Can you just tell us what we're looking at here.

24 A. That was his drawing of the river. That's his
25 recollection of the events that took place.

DENNIS GARDNER DIR BY MS. LESKANIC

1 Q. Who drew this map?

2 A. Chad did.

3 Q. So he knew where to place the islands and where to
4 put the rocks and the curvature of the river? He did that?

5 A. Yes, ma'am.

6 Q. And then 64 is the next exhibit. What is this?

7 A. That was during the interview, the second drawing.
8 You know, he kept scribbling on when he was telling his
9 recollection of the events that took place.

10 Q. This map reflects his recollection of what happened
11 on the water?

12 A. Yes, ma'am.

13 Q. State's Exhibit 65, we can't see that very clearly
14 here. If you can tell the jury what this is. They'll have
15 that in the deliberation room with them.

16 A. It's kind of tough to see on the map. That was a
17 print off from Google Earth. That's the last map that I
18 provided him. He had a red -- I gave him a red pen. There's
19 little X's. I was asking him if he can remember certain events
20 he told me took place. Tough to see there. There's some red
21 X's he drew on the map.

22 Q. If you step down and look at that, would you be
23 able to point those X's out to the jury?

24 A. Yes, ma'am.

25 MS. LESKANIC: Your Honor, may he step down to do

DENNIS GARDNER DIR BY MS. LESKANIC

1 that?

2 THE COURT: Yes, ma'am.

3 Please keep your voice up for madam court reporter.

4 THE WITNESS: Yes, sir.

5 There's a -- the bridge is going to be right here
6 (indicating).

7 Right there (indicating), that's the first X where,
8 you know, he mentioned they started having problems.

9 Right there (indicating) is where the shoals are,
10 the rocky area. You can see some X's he put there.

11 On the map it looks like it's power lines. That is
12 pipelines that go under the water. They're buried right there.
13 When he was referring to the pipelines, they're there
14 (indicating). I know it's hard to see.

15 There's a mark he put there where he had tried to
16 throw -- I apologize. I don't know if that's where he had
17 tried to throw the rope or where he bumped up. He said he
18 bumped up on his raft and got hung up on some more rocks there.
19 Right there (indicating). I know it's tough to see. Is there
20 a way we can make it lighter?

21 Q. I don't think we can. We're going to use the large
22 map in just a moment.

23 A. Right there where my finger is (indicating), that's
24 where he said he saw him last, right in front of the islands.
25 The islands are right here (indicating). And house is right

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1 there (indicating). I believe that's the only -- there's an X
2 right there (indicating) where he would've made it to the
3 landing and where he said he used a stick to try to get back up
4 the river going this way (indicating).

5 Q. Thank you. If you will not get back in the witness
6 chair. I'm going to talk to you about the larger exhibit.

7 So it's clear, looking at State's Exhibit 2, I have
8 clipped to it State's Exhibit 65 that you just went over.
9 Could you start now on this map -- and let me ask you, first of
10 all, is this a heavily populated section of the river?

11 A. It is.

12 Q. As far as houses?

13 A. There's only one house on that stretch of the river
14 that you can see from the river.

15 Q. Where is that house located?

16 A. It's going to be right here (indicating).

17 Q. Where was the Defendant's vehicle found?

18 A. Right near the intersection right there
19 (indicating).

20 Q. Where did they, according to him, where did they
21 put into the water?

22 A. According to him, the victim, Justin, would've met
23 him on the bridge here (indicating). And they put in right
24 below the bridge. There's a place you can kind of walk. If
25 you pull right beside the bridge, you can kind of walk down in

DENNIS GARDNER DIR BY MS. LESKANIC

1 here (indicating) and access the river.

2 Q. There is access to go down to the river. Is that a
3 place that people do sometimes put in rafts or canoes or
4 something to float the Broad River?

5 A. To my knowledge it is.

6 Q. Are you familiar with the water levels down at the
7 bridge?

8 A. Yes, ma'am.

9 Q. Deep? Shallow? How would you describe it?

10 A. It's shallow. I've hunted this river, you know,
11 throughout my life. In this area, if you do access the
12 Herbie's ramp, it's a ramp. It's rough. It's not up to par,
13 so to speak. You can put a boat in.

14 My knowledge of the river, the deepest area is
15 right here at the dam, which is almost in every river just
16 because the water there is going to come deeper.

17 Through here (indicating), typically, it's tough to
18 make it past this area right here (indicating). It's so
19 shallow if you're in a boat. The channel, the main channel
20 kind of comes down this way (indicating). Right here there's
21 some rocks (indicating). It is shallow. There's shoals here
22 (indicating). And there's some shoals here (indicating). By
23 shoals, it's just rocky area. It's a tough stretch of the
24 river to get a boat in unless it's like a surface drive boat or
25 disk drive boat or anything like a two-iron or outboard.

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1 Unless the river is extremely up, you're going to
2 destroy your prop or the foot of your boat trying to get up
3 through there. I kind of refer to it, it's almost like, most
4 days, unless there's not something where we have like a bad
5 storm with a ton of water, the river flows at almost the pace
6 of like a lazy river, a river that I would get on or anybody
7 would get on like at a resort or something just to float. It's
8 not a white water type style river.

9 Q. Going back, they got on, according to the
10 Defendant's story, at the bridge at 29?

11 A. Yes, ma'am.

12 Q. How deep is the water in that area like right there
13 up against the bank?

14 A. Two foot. It's shallow right there.

15 Q. Where did he say the paddle and the fishing rod and
16 the tent, maybe sleeping bags, pillows went? Where did all of
17 that get knocked off initially?

18 A. The best way I could understand was that it got
19 right here (indicating) when he said Justin tried to get on
20 the raft. He slipped.

21 And then somewhere he put an X here (indicating)
22 where they were having trouble. He kept mentioning like the
23 weeds and stuff here (indicating) where he would've -- when he
24 went to get Justin and all their stuff got thrown off, would
25 have been right in here (indicating). Right near the bank

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1 right where they put in at.

2 Q. Initially when you asked him, I believe he said at
3 the bridge everything got knocked off?

4 A. Initially, yes, ma'am.

5 Q. That's initially. That's where I want to start. I
6 want to go through this kind of piece by piece.

7 A. Okay.

8 Q. Initially everything gets knocked off right there
9 at the bridge?

10 A. That's correct.

11 Q. The paddle during this interview does not float.

12 A. Right.

13 Q. And fishing rods, he said he wanted those also. Do
14 you fish?

15 A. I do.

16 Q. Do fishing rods float?

17 A. Some of them.

18 Q. If they have the reel attached would they float?

19 A. No. They would sink. Most of them would.

20 Q. This is water that you can stand in?

21 A. It is.

22 Q. I assume it's water you can reach down and pick
23 things up out of?

24 A. I would assume so, too, yes, ma'am.

25 Q. We dropped our paddle --

DENNIS GARDNER DIR BY MS. LESKANIC

1 A. Yes.

2 Q. -- and it sunk. We dropped our fishing rods, and
3 they sank and the tent. All of that is right there under the
4 bridge?

5 A. Yes.

6 Q. Yes, later in the interview there were things
7 knocked off under the bridge. There were things knocked off
8 later?

9 A. Yeah. Somewhere he mentioned like in the shrubbery
10 or bushes right in here (indicating).

11 Q. Where were those things initially in his statement,
12 do you remember?

13 A. On the raft.

14 Q. When they loaded them initially?

15 A. On the raft. The dingy, his boat. I kind of got
16 it confused. During the interview I thought he said they put
17 them on Justin's float. I was confused why he would put those
18 items on the float and not on the dingy.

19 Q. Did he tell you that Justin had them?

20 A. Yeah, some of them he said he had.

21 Q. He said Justin had them. Justin is on the float.
22 When you confronted him with that --

23 A. Correct. He told me they were on the dinghy.

24 Q. It didn't make sense for them to be on the float,
25 sleeping bags and pillows?

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1 A. Right.

2 Q. Bunch of stuff gets knocked off here?

3 A. Yeah.

4 Q. Did you find anything there? Did your crime scene
5 investigator find anything there?

6 A. They did not.

7 Q. Then later things get knocked off a little bit
8 further down?

9 A. That's correct.

10 Q. Everything is off the boat?

11 A. Yeah, everything.

12 Q. And then walk us through what he says happened the
13 best you can tell during this interview.

14 A. So right here (indicating) in the curve he has an X
15 mark about right here (indicating) where he said trouble
16 started happening. And that he saw that Justin, you know,
17 several different times it was he was incoherent or acting like
18 a child swimming, never unconscious. He just couldn't get him
19 to do what he asked him to do. So they started having
20 problems. He noticed it here (indicating). This is where the
21 rocks are. There is shoals right through here (indicating),
22 right after this turn some shoals.

23 During this interview that he, at one point in
24 time, his dinghy got hung up on the rock and somehow Justin
25 made it to him. And when Justin hit his dinghy, he was able to

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1 grab his shirt, he says not good. Just barely grabbed it. And
2 the force of Justin hitting his raft pushed him on down the
3 river.

4 Again, those are the pipelines. There's three of
5 them. They made it through the pipelines. And he marks right
6 below the pipeline kind of like where they split (indicating).

7 And during that interview I was trying to figure
8 out where he said he threw a rope to him once. If I remember
9 correctly, I think he said he threw the rope to him right
10 after -- he bumped up against him. He couldn't get him when he
11 barely touched his shirt. He tried to throw a rope to him, it
12 kind of split.

13 In here (indicating) he says on the map he drew,
14 they kind of separated. His dinghy floated this way
15 (indicating) and Justin kind of went the opposite way. They
16 kind of split.

17 Then he says that he made it, he made it to the
18 house here (indicating). And got up the bank somehow. It is
19 extremely muddy bank there. Got up to the bank to the house.
20 He says that he knocked on the door. I think he said twice.
21 He heard people talking in there. One subject, I think he said
22 a male subject in the house said: Don't answer the door.

23 He saw a boat somewhere on the property. He turns
24 around, and whether it be on the porch -- he says he couldn't
25 remember exactly whether on the porch or walked away back from

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1 the porch, he saw Justin standing somewhere in front of the
2 island. He was adamant because of the angle where he was at,
3 he couldn't tell if he was right here, here (indicating). He
4 was somewhere in this area (indicating). And he was standing
5 up.

6 Says that he tried to take the cooler, I suppose
7 was still on the boat. He broke both lids off of it. I guess
8 I'm assuming. It was one of the coolers that has two lids or
9 he broke it in half. He throws one. I couldn't never
10 understand where he threw them, the cooler, his lid. He said
11 he threw one to Justin at some point.

12 Right here (indicating) he said that he tried to
13 use the cooler lid to float, to paddle to Justin here
14 (indicating) where Justin was standing but wasn't able to
15 because he said the current here (indicating) and his raft was
16 too strong.

17 He says that when he's floating down through here
18 (indicating) -- he did say it was daytime here where he could
19 see, you know, it was 5:00. It was daytime, he states. He
20 says he floated here, never could see Justin. He clarifies he
21 could see through some of it.

22 He gets to here (indicating). I apologize. He did
23 say here he had to get off the raft to swim a couple times to
24 get to there (indicating).

25 He says he makes himself, you know, once you get

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1 down to here, he was able to get to here (indicating) on the
2 raft. And states that he stayed there for around an hour.

3 At some point in time during that, he found a
4 stick. He says he was going to try to make it back up the
5 river with a stick, using a stick to pull himself. That
6 someone -- it's very hard to see. You can see the dirt right
7 there (indicating) is like the ramp. He says he was somewhere
8 in this area (indicating) when he talked to an individual that
9 had the cast on that said something about going out of town. I
10 think it was Colorado that he mentioned.

11 He says he tried to go up the river some. And then
12 he comes back, and he gets back in the creek. This is a very
13 shallow creek. You can run a boat in it, to a certain extent.
14 If you trim the motor all the way up in a jon boat, not a big
15 boat, maybe like a 12, 14-foot jon boat, you can put up through
16 this creek. It's very narrow.

17 He got off a couple times, he said, to get up
18 through there. Once he tied his boat up in this creek back in
19 here (indicating), and he says he slipped couple times trying
20 to get up there. And then he walked, you know, all the way
21 back to the vehicle there (indicating).

22 Q. During this interview, he told you that he had
23 little bitty lights?

24 A. He did.

25 Q. He had lights but he couldn't focus them on Justin?

DENNIS GARDNER DIR BY MS. LESKANIC

1 A. That's correct. He said he couldn't get them
2 focused when everything was going on to see what's happening.

3 Q. But he had lights?

4 A. He had lights.

5 Q. Did y'all find any lights on the boat?

6 A. There was a lamp with no bulb. There was no
7 flashlights.

8 Q. No working lights?

9 A. That's correct.

10 Q. During this interview, you ask him how he's able to
11 get to Justin the one time; right? And that's when he says --
12 had he previously told you about getting hung up on a rock?

13 A. No, ma'am. It was hard for me to understand this
14 interview. I do kayak some. Even though the water was slowly
15 moving, how he was able to make himself back up to Justin. And
16 eventually he told me that he got hung up on a rock and Justin
17 actually flowed to him on a rock he was hung up on. He was
18 able to barely grab ahold of his shirt.

19 About that time is when Justin hit the dinghy and
20 it forced him off of it. He says Justin stayed on the rock,
21 and he done that a couple times. He would just sit on a rock.

22 Q. Getting to him and touching him was how many times?

23 A. He states in this interview it was once. It was by
24 the shirt.

25 Q. And that's it? You were clear about that?

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1 A. I felt like we asked him numerous times how many
2 times he touched him. He said it was once.

3 Q. I want to show you what's marked as State's Exhibit
4 70 and 71 and 72. If you would, just look at those. Tell me
5 if you can recognize those and talk about them.

6 A. Yes, ma'am.

7 MS. LESKANIC: Your Honor, at this time I'd offer
8 70, 71, 72 for admission in evidence.

9 THE COURT: Any objection.

10 MR. MOORE: No objection, Your Honor.

11 THE COURT: Without objection. They are admitted.

12 (STATE EXH. 70, Photograph, was marked for
13 identification and entered into evidence.)

14 (STATE EXH. 71, Photograph, was marked for
15 identification and entered into evidence.)

16 (STATE EXH. 72, Photograph, was marked for
17 identification and entered into evidence.)

18 BY MS. LESKANIC:

19 Q. Looking at State's Exhibit 70, what do we see here?

20 A. That's the bridge we keep referring to on Broad.

21 Q. You may need to come back here, Detective Gardner.
22 You can use a pen or that light if you want to use a pen. Show
23 them where the bridge at 29 is.

24 A. That's the bridge at 29 there (indicating).

25 Q. Where is River Road?

DENNIS GARDNER DIR BY MS. LESKANIC

1 A. River Road goes this way (indicating).

2 Q. Where was the Defendant's car -- excuse me, it was
3 the victim's car? Where was the victim's car found where the
4 Defendant was standing next to it?

5 A. It was in this area here like near the turnoff
6 (indicating).

7 Q. So the little half cul-de-sac?

8 A. Yes, ma'am, right there (indicating), right in
9 there.

10 Q. That's where he is standing by his car?

11 A. According to the gentleman who let him use his
12 phone, yes.

13 Q. Then I'm going to show you State's 71. On this,
14 can you show the jury where the house is on the river.

15 A. It's right here (indicating).

16 Q. That is the house that the Defendant says he went
17 to for help?

18 A. Yes.

19 Q. It's a muddy bank?

20 A. It is.

21 Q. Nobody would help him?

22 A. He said he heard a female child. I think he said
23 the male told them -- he heard him say: Do not open the door.

24 Q. Where on this map, in general, did he say Justin
25 may have been standing the last time he saw him?

DENNIS GARDNER DIR BY MS. LESKANIC

1 A. In this area here (indicating). He was adamant by
2 his angle. He was coming back here (indicating). He doesn't
3 know if he was here, here, (indicating) somewhere in front of
4 the islands.

5 On this map it takes -- that's all water. It looks
6 like there's land. The water is so shallow typically in that
7 area. It's very, very shallow in this area here (indicating).
8 I'm talking like half a foot shallow

9 Q. What is this right here, this part?

10 A. That's an island.

11 Q. Is it under water?

12 A. It's not. It's tough to depict from a map. It's
13 not like a marshy, swampy type island. It's actually elevated
14 a little bit like a knoll.

15 Q. Do people ever camp there or you could get off
16 there?

17 A. You could get off there. I've never saw anybody
18 camp there. You can definitely get off there.

19 The center island here (indicating) is sometimes
20 under water, if the water gets up some. Both of the bigger
21 islands, they're always exposed for the most part.

22 Q. Here's my question. The house is here?

23 A. Yes, ma'am.

24 Q. The raft, I assume, is somewhere in this location?

25 A. I would assume.

DENNIS GARDNER DIR BY MS. LESKANIC

1 Q. He said that he could not come back up this way to
2 get to Justin; is that correct?

3 A. That's what he said.

4 Q. The water starts taking him down?

5 A. He said that the water near the bank was not moving
6 very fast. Once he got out in it, the current was so strong he
7 was not able to use his paddle to paddle to Justin.

8 Q. This entire strip, so the entire way down --

9 A. He was not able to make it over to those islands.

10 Q. Did he say that he tried?

11 A. No. He says he tried to make it to Justin and
12 couldn't.

13 Q. He tried to come back this way and could not?

14 A. Right.

15 Q. Once he's going down, there's this entire piece of
16 land there?

17 A. Right. During the interview, that's one of the
18 questions I asked, how he was able to manipulate the raft from
19 here to here (indicating). And though he couldn't manipulate
20 from here to here (indicating), how he couldn't make it over to
21 the island to get to Justin.

22 Q. I'm going to show you State's Exhibit 72. And what
23 does this show us?

24 A. It shows us from --

25 Q. Can you see the house on this map?

DENNIS GARDNER DIR BY MS. LESKANIC

1 A. Yes, ma'am. Well, yeah, it's right here
2 (indicating). It's almost right at the base of the map key
3 (indicating).

4 Q. Where did he say he floated down? He couldn't get
5 back to Justin. Where does he float?

6 A. I don't know exactly where he thinks he would've
7 been, if he made it over here. He says he floats all the way
8 (indicating).

9 Q. What's this right here?

10 A. That's the dam right there.

11 Q. What is water doing there?

12 A. It's not moving there unless those gates would've
13 been open. At the time it's water just kind of standing there.
14 I mean, still water.

15 Q. Which is a broader piece to have to use a cooler
16 lid to paddle with? From here or here?

17 A. I would assume, you know, the water is going to be
18 moving here (indicating). Here (indicating) it's going to be
19 still where you're going to have to have something to get your
20 boat, raft, whatever, from here to here (indicating). You're
21 going to have to manipulate it somehow.

22 Q. Where did Justin say he sat for an hour?

23 A. The landing is right here (indicating). I can't
24 really see that creek on this one as good. He says he got in
25 this area here (indicating), and he talked to the gentleman who

DENNIS GARDNER DIR BY MS. LESKANIC

1 pulled up and got down in here (indicating). Talked to him and
2 he tried to use a stick to go back upriver. Says he wasn't
3 able to. He wasn't strong enough, I believe.

4 And he manipulates the raft somehow to get it all
5 the way back up to the creek, to this area here (indicating)
6 where he got off and started walking.

7 Q. He talks to a man long enough to find out that man
8 is taking a trip to Colorado?

9 A. That's what he stated, yes, ma'am.

10 Q. He did not ask to use his phone?

11 A. He did not.

12 Q. He did not ask for a ride in his truck?

13 A. Says he did not. He says he wasn't concerned at
14 that time.

15 Q. At the end of that interview -- you can go have a
16 seat back in the witness stand, please. Thank you.

17 At the end of that interview, the DNR officer had
18 made a decision to charge the Defendant with not having life
19 jackets. Were any life jackets found?

20 A. None that I'm aware of.

21 Q. So when you finished talking to him that day,
22 closed the investigation, were you satisfied?

23 A. I still wasn't satisfied. Still couldn't
24 understand all the events that took place.

25 Q. Did you go and talk with him again the next

DENNIS GARDNER DIR BY MS. LESKANIC

1 morning?

2 A. Yes, ma'am, on that Saturday morning I did.

3 Q. He was at the detention center at that time?

4 A. He was.

5 Q. Was that interview recorded?

6 A. It was.

7 Q. Let me show you what's been marked State's Exhibit
8 66. See if you recognize that.

9 A. Copy of the footage from my body camera on that
10 interview, June 5th.

11 MS. LESKANIC: Your Honor, at this time we offer
12 State's Exhibit 66 for admission.

13 THE COURT: Any objection.

14 MR. MOORE: No objection.

15 THE COURT: Without objection. It's admitted.

16 (STATE EXH. 66, Compact disc, was entered into
17 evidence.

18 MS. LESKANIC: May I publish?

19 THE COURT: Yes, ma'am.

20 (Video played. Not transcribed.)

21 MS. LESKANIC: I think it takes about two minutes
22 or so to get him. I'm just going to move this forward a little
23 bit.

24 (Video played. Not transcribed).

25 BY MS. LESKANIC:

DENNIS GARDNER DIR BY MS. LESKANIC

1 Q. At the time of the interview, did you have the
2 autopsy report back?

3 A. I did not.

4 Q. He told you he didn't need to change anything about
5 that statement he gave you in his office?

6 A. That's right. That's what he said.

7 Q. In the office he was able to get to Justin, tried
8 to get him on the boat one time. Tension on his shirt, bumped
9 off the boat.

10 A. Correct. That's what he stated during that
11 interview.

12 Q. And the next day nothing changed?

13 A. He said nothing changed.

14 Q. In 2019, their plan in Cherokee County was to call
15 an Uber to pick him up from the bottom?

16 A. That's what he stated.

17 Q. He told you during the interview that Justin had
18 brought him some jogging pants?

19 A. He said shirts and jogging pants.

20 Q. And he said he had to get into the water?

21 A. He did.

22 Q. Several times?

23 A. Several times.

24 Q. So these soaking wet muddy jogging pants just
25 weren't on the raft?

DENNIS GARDNER DIR BY MS. LESKANIC

1 A. They were not on the raft.

2 Q. During the interview there is some talk about text
3 messages and toxicology. As far as text messages, were you
4 able to secure the phone records for Justin's phone?

5 A. Eventually, yes.

6 Q. If you'll explain that.

7 A. Made a mistake. To be honest, it's a mistake I
8 shouldn't have made. I run that program for the Sheriff's
9 Office. When we done the search warrant, you send it to the
10 provider. If you have a cell phone that is inoperable, more
11 than likely you can't get information off of that cell phone.
12 If they're water damaged or if there's been damage
13 to the board, you can't plug it in a cell phone or any other
14 device like that. You can send a search warrant to the
15 provider. A way that you do that, there's different items you
16 can use to find out by using a phone number, what provider they
17 use.

18 For his phone, it was AT&T that I thought the
19 search warrant should go to. We got that back and determined,
20 hey, it should've been Sprint. It was two different providers.
21 You get text messages had been sent. You can't see what was on
22 those text messages.

23 Not to say -- every provider is different. I can't
24 tell you the rhyme or reason about it. Sometimes if you send,
25 like, if you had a provider search warrant right away, the

DENNIS GARDNER DIR BY MS. LESKANIC

1 quicker is better always. You may get some information from
2 the provider; you're not going to get every text message ever
3 been on that phone. It's going to be those current ones, if
4 you are able to get them.

5 Due to me sending the search warrant to the wrong
6 provider, all we got were messages were sent. We don't know
7 what context or content those messages had.

8 Q. Later you found out that it should've been sent to
9 Sprint. And did you send another search warrant and get more
10 complete records but not text content?

11 A. That's correct. Not to say that we wouldn't have
12 gotten it if we would've sent it to Sprint first. I think
13 would've had a better opportunity to get them back if they
14 would've been sent to the right provider.

15 Q. You get the phone records for Justin's phone?

16 A. I did.

17 Q. Were you able to then determine the telephone
18 number that he was in constant contact with and get the phone
19 records for that phone number also?

20 A. Yes, ma'am.

21 Q. Was that data then used with cell towers to
22 determine that those two phones essentially met up at Broad
23 River and 29 around 1:00 a.m. on June 14, 2019?

24 A. That's correct.

25 Q. We don't know the contents of the text messages.

DENNIS GARDNER DIR BY MS. LESKANIC

1 We know those two phones got together around that area at 1:00
2 a.m. on the 14th?

3 A. That's correct.

4 Q. Did you ask the Defendant about what's on the text
5 messages? He wanted you to get messages between the two of
6 them; right?

7 A. Yes, ma'am.

8 Q. He knows what they're texting about?

9 A. Right.

10 Q. What did he tell you they were texting about?

11 A. He says -- I asked him what would be on there. He
12 says about meeting at the river, possibly a video. I think he
13 was referring to some of the drug use when he said video. He
14 wouldn't go into detail what else was on there.

15 Q. It would've been communication that he had with
16 Justin?

17 A. I would've thought so, yes, ma'am.

18 Q. You inquired about that?

19 A. I did.

20 Q. Did you observe any injuries to the Defendant
21 during your talk with him on scene?

22 A. I did not observe any injuries during the interview
23 in my office. He said something about a tooth. Briefly said
24 he had done it to himself. I did not observe any injuries to
25 him.

DENNIS GARDNER DIR BY MS. LESKANIC

1 Q. After this interview, are you case closed?

2 Accidental drowning?

3 A. Uh-uh. There's still more investigation needs to
4 be done.

5 Q. At that point did you ask for an investigator in
6 Spartanburg to interview him?

7 A. I did.

8 Q. I'm going to show you what's been marked State's
9 Exhibit 67. Tell us what that is.

10 A. It's a copy of the footage from the interview that
11 was done in Spartanburg County.

12 MS. LESKANIC: Your Honor, at this time we would
13 offer State's Exhibit 67 for admission.

14 THE COURT: Any objection?

15 MR. MOORE: No objection, Your Honor.

16 (STATE EXH. 67, Compact disc, was entered into
17 evidence.)

18 MS. LESKANIC: May I publish?

19 THE COURT: Yes, ma'am.

20 (Video played. Not transcribed.)

21 THE COURT: Mr. Foreman, ladies and gentlemen, I
22 tried not to interrupt that video, we ran just a few minutes
23 long. Let's take a morning break. Good 15, 20-minute break.
24 Those that smoke want to smoke, they will escort you like they
25 did yesterday.

DENNIS GARDNER DIR BY MS. LESKANIC

1 Don't talk about the case. Refresh yourself, and
2 we'll see you 15 past the hour.

3 (The jury exited the courtroom at 10:58 a.m.)

4 THE COURT: Let's be in recess until 15 past the
5 hour. Detective, you know you can't talk to anybody about your
6 testimony.

7 THE WITNESS: Yes, sir.

8 (A recess transpired from 10:58 a.m. until 11:19
9 a.m.)

10 THE COURT: State ready?

11 MS. LESKANIC: Yes.

12 THE COURT: Defense?

13 MR. MOORE: Yes.

14 THE COURT: Let's have the jury.

15 (The jury entered the courtroom).

16 THE COURT: Mr. Foreman, everybody good?

17 THE FOREPERSON: Yes, sir.

18 THE COURT: Thank you. Solicitor.

19 MS. LESKANIC: May it please The Court.

20 BY MS. LESKANIC:

21 Q. Investigator Gardner, the interview that we just
22 watched out of Spartanburg County, that occurred on June 20th
23 of 2019; is that correct?

24 A. Yes.

25 Q. And did your investigation continue even after that

DENNIS GARDNER DIR BY MS. LESKANIC

1 interview?

2 A. It did.

3 Q. Did you have communication with the pathologist,
4 Dr. Kelly Rose?

5 A. I did.

6 Q. Did you invite her to come and actually float down
7 the Broad River, on this section?

8 A. I did.

9 Q. Did she accept that invitation?

10 A. She did.

11 Q. Did she float down the river on June 27, 2019?

12 A. We didn't float down the river. We got on the
13 river in boats.

14 Q. Did you go to this area? Or tell us about that.

15 A. As I mentioned before, you can make it past those
16 islands if you put in at the Herbie's plant. You can make it
17 to those islands. That's about as far as you can go due to the
18 shallowness and rockiness of the river past that. You can't
19 really make it further than that.

20 We met Dr. Rose, we had two different boats. We
21 put in Herbie's fireworks plant. We went upriver in front of
22 the islands there.

23 Q. Then did you continue to talk to her about her
24 findings and what her autopsy report was going to say?

25 A. I did.

DENNIS GARDNER DIR BY MS. LESKANIC

1 Q. And then after you spoke with her about her
2 findings, did you go and speak with the Defendant again?

3 A. I did.

4 Q. Was that on August 9th of 2019?

5 A. Yes, ma'am.

6 Q. Where did that take place?

7 A. At the residence on Red Rock.

8 Q. Where he was staying at the time?

9 A. Correct.

10 MS. LESKANIC: Your Honor, may I approach?

11 BY MS. LESKANIC:

12 Q. I'm going to show you what's been marked as State's
13 Exhibit 68. See if you recognize that.

14 A. DVD of my body camera interview at his house.

15 MS. LESKANIC: At this time I would offer State's
16 Exhibit 68 for admission.

17 MR. MOORE: No objection.

18 THE COURT: Without objection. State's Exhibit 68
19 admitted.

20 (STATE EXH. 68, Compact disc, was entered into
21 evidence.)

22 MS. LESKANIC: May I publish?

23 THE COURT: Yes, ma'am.

24 (Video played. Not transcribed.)

25 BY MS. LESKANIC:

DENNIS GARDNER DIR BY MS. LESKANIC

1 Q. Following this interview, did you go back to
2 Justin's car?

3 A. I did.

4 Q. Did you find the light bulb with a clear substance
5 in it?

6 A. I did.

7 Q. Did you send that to SLED drug analysis?

8 A. We did.

9 Q. Did it come back positive as containing GHB?

10 A. It did.

11 Q. He had a key --

12 A. He did.

13 Q. -- to the Prius that was sitting out on River Road?

14 A. He did.

15 Q. During the course of your investigation, did you
16 ask two other officers, Rodney and Steve Wright, who work with
17 the Cherokee County Sheriff's Department, if they would float
18 down Broad River to record that?

19 A. I did.

20 Q. What did you do before you asked them to do that?
21 Did you try to get any calculations?

22 A. We had spoke to a gentleman at the dam to get
23 the -- I don't know the correct terminology -- the flow rate of
24 the dam that can be calculated miles per hour, how fast the dam
25 was moving. Talked to him.

DENNIS GARDNER DIR BY MS. LESKANIC

1 Understanding, to my knowledge, those flow charts
2 are going to differ every day, maybe not much. It's hard to
3 keep it identical. Too many other, the rain or pooling
4 water -- not pooling water. We try to go on a date similar as
5 possible to the date the incident happened.

6 Q. Did they record their trip down the river with a Go
7 Pro?

8 A. They did. They used, I think it was on Steve's
9 boat -- one of the boats had it on there, showed where the
10 water is, I guess, from the distance, from the bridge to the
11 fireworks plant.

12 Q. Do you know how long -- let me ask you this. Did
13 you tell them to paddle or not paddle, or did they have
14 instructions from you on how they were supposed to go down the
15 river?

16 A. I did give them the instructions not to paddle due
17 to the information I was given. The victim and the Defendant,
18 neither one had a paddle. To try to go down the river, to
19 paddle at least as they had to, to steer.

20 Q. Do you know how long it took them from 29 bridge
21 all the way to the firecracker plant landing?

22 A. Hour-and-a-half right there.

23 Q. Do you know how long it took them to flow to
24 Mr. Keller's house, the one house on the river?

25 A. It took an hour. Around an hour.

DENNIS GARDNER DIR BY MS. LESKANIC

1 Q. Let me show you what's been marked State's Exhibit
2 69. Do you recognize that?

3 A. The thumb drive that the Go Pro footage is on.

4 MS. LESKANIC: Your Honor, at this time I'd offer
5 State's Exhibit 69 for admission.

6 MR. MOORE: Without objection.

7 THE COURT: Without objection. It is admitted.

8 (STATE EXH. 69, USB disc, was entered into
9 evidence.)

10 MS. LESKANIC: May I briefly publish?

11 THE COURT: Yes.

12 BY MS. LESKANIC:

13 Q. Detective Gardner, I'm not going to play the entire
14 hour-and-a-half. I'm going to pull up a couple excerpts from
15 it.

16 They were instructed when -- there again, where is
17 it going to start?

18 A. At the bridge on 29.

19 (Video played. Not transcribed.)

20 BY MS. LESKANIC:

21 Q. That shows water speed, essentially; how fast the
22 water would be moving?

23 A. Yes, ma'am.

24 Q. Would you say they are in what? What are they
25 traveling in?

DENNIS GARDNER DIR BY MS. LESKANIC

1 A. They're in kayaks.

2 Q. This is the area right under the bridge where you
3 get in?

4 A. Correct.

5 Q. Can you walk here?

6 A. You can.

7 Q. If you drop something, you can most likely pick it
8 up if it just drops and sinks?

9 A. I would assume so.

10 Q. Are they floating at this point?

11 A. I think they had to actually use the paddles to get
12 started a little bit. The water wasn't moving very fast.

13 Q. Even if something floats right here, it would stay
14 for a little while?

15 A. Yes, ma'am.

16 (Video played. Not transcribed).

17 BY MS. LESKANIC:

18 Q. Just to be clear, that's the area where everything
19 went wrong?

20 A. To my understanding.

21 Q. According to his story, everything falls off there;
22 Justin falls off there?

23 A. Yes, ma'am.

24 (Video played. Not transcribed).

25 BY MS. LESKANIC:

DENNIS GARDNER DIR BY MS. LESKANIC

1 Q. Do you know how far up it is before we get
2 entangled in the weeds?

3 A. I do not. I would assume, by his statement,
4 somewhere relatively close -- before you make the turn.

5 (Video played. Not transcribed).

6 BY MS. LESKANIC:

7 Q. At this speed, it took them an hour-and-a-half
8 essentially to make it from 29 all the way down to the landing?

9 A. I think they did have to paddle some simply because
10 they weren't moving.

11 (Video played. Not transcribed.)

12 BY MS. LESKANIC:

13 Q. Are there portions of the river that move more
14 quickly than this?

15 A. Yes, ma'am.

16 Q. There are parts where the water is moving at a
17 faster pace and it's rockier?

18 A. Yes, ma'am, that's correct.

19 Q. I'm going to jump ahead a little bit. I'm going to
20 go to the next ten-minute segment, see what we're looking at.
21 This would be the 11th minute in. The first segment was ten
22 minutes.

23 (Video played. Not transcribed).

24 BY MS. LESKANIC:

25 Q. Were they both in the same type of boat?

DENNIS GARDNER DIR BY MS. LESKANIC

1 A. Kayaks. I don't think they're the exact same
2 models; both kayaks.

3 (Video played. Not transcribed.)

4 BY MS. LESKANIC:

5 Q. I'm just going to jump ahead to the next segment.
6 That would've been the first 20 minutes in.

7 About ten minutes later, this is what we're looking
8 at for the river.

9 If you know, do you know if there are a lot of
10 portions of Broad River from this segment where you can walk
11 and stand in the water?

12 A. I would assume so, but I'm not certain.

13 (Video played. Not transcribed.)

14 BY MS. LESKANIC:

15 Q. I'm going to step forward to the next segment.

16 (Video played. Not transcribed.)

17 BY MS. LESKANIC:

18 Q. This is 40 minutes in. What's that sound?

19 A. Just the boat hitting the rock or going over the
20 top of a rock.

21 Q. Shallow and rocky?

22 A. Yes, ma'am.

23 Q. Do you know if they stopped anywhere along the way?

24 A. I believe they stopped at Wolf Den, well, in there.

25 Q. Do you know why?

DENNIS GARDNER DIR BY MS. LESKANIC

1 A. I don't remember why.

2 (Video played. Not transcribed.)

3 BY MS. LESKANIC:

4 Q. I'm going to jump ahead. This video is not ten
5 minutes. It's about five-and-a-half.

6 What do they appear to be doing there?

7 A. I'm sorry?

8 Q. Where are they? Do you know where they are now on
9 the river?

10 A. I think they're close to the house.

11 Q. Jump ahead to the sixth frame. Where are they
12 here?

13 A. I think that's where they stopped near Wolf Den.

14 Q. Was that to change batteries on the Go Pro or
15 something?

16 A. That seems correct. Yes, ma'am.

17 (Video played. Not transcribed.)

18 BY MS. LESKANIC:

19 Q. I'm going to jump ahead. I'm using the pointer.
20 What are we looking at here?

21 A. That would be the island.

22 Q. We're approaching the islands at this point?

23 A. Two or three islands, depending on how you look at
24 it.

25 Q. Mr. Keller's house would be over here to the right?

DENNIS GARDNER DIR BY MS. LESKANIC

1 A. That's correct.

2 (Video played. Not transcribed).

3 BY MS. LESKANIC:

4 Q. What are we starting to see here on the right side?

5 A. That would be the bank to the residence there. I
6 guess the yard, I guess you would say.

7 (Video played. Not transcribed).

8 BY MS. LESKANIC:

9 Q. I'll pick up this, playing the seventh segment.

10 (Video played. Not transcribed.)

11 BY MS. LESKANIC:

12 Q. Is this the area where the Defendant stated he got
13 the cooler lid and he tried really hard to get over to the
14 other side and was unable to do so due to the current?

15 A. Yes, ma'am.

16 (Video played. Not transcribed).

17 BY MS. LESKANIC:

18 Q. This portion over here on the left, that is land?

19 A. That's correct. That's an island in the middle of
20 the river.

21 Q. So if the current didn't carry you down and you
22 were able to paddle over there, you could get on land and walk
23 to the top of the island?

24 A. Yes.

25 (Video played. Not transcribed.)

DENNIS GARDNER DIR BY MS. LESKANIC

1 BY MS. LESKANIC:

2 Q. I'm going to move ahead. This is frame eight.

3 (Video played. Not transcribed.)

4 BY MS. LESKANIC:

5 Q. Is that looking back up one of the chutes of the
6 island?

7 A. It is, yes, ma'am.

8 Q. Moving over to the left side?

9 A. Correct.

10 (Video played. Not transcribed.)

11 BY MS. LESKANIC:

12 Q. Segment 9. Same type of water conditions?

13 A. Yes, ma'am. It looked to be slower than what we
14 just came from.

15 Q. Are we getting ready to approach the dam?

16 A. We are.

17 Q. Can you see that on here?

18 A. I can. I know where it's at. Yes, ma'am.

19 Q. I'll jump ahead a little.

20 Were there times they had to paddle just to move?

21 A. To move, I mean. If he doesn't paddle, he's not
22 going to move.

23 (Video played. Not transcribed.)

24 BY MS. LESKANIC:

25 Q. Segment ten. I'm going to kind of jump ahead.

DENNIS GARDNER DIR BY MS. LESKANIC

1 (Video played, not transcribe.)

2 BY MS. LESKANIC:

3 Q. What are we approaching here?

4 A. You're approaching the landing at Herbie's as this
5 has been referred to.

6 Q. Can you see the pointer? If you can't, you can
7 step down. What is this where I have the arrow moving?

8 A. That's the plant there.

9 Q. The firecracker plant?

10 A. Yes, ma'am. The landing is a little bit to the
11 left, right where those rocks are (indicating).

12 Q. This is the area where he talked to the man that
13 was going to Colorado?

14 A. By his description, yes, ma'am.

15 Q. And the fireworks plant is right there?

16 A. Yep.

17 Q. Where is the community that we see on the map as
18 far as houses and church?

19 A. Directly behind the fireworks plant, right up in
20 there. Maybe a little to the left, right above it.

21 (Video played. Not transcribed.)

22 BY MS. LESKANIC:

23 Q. I'll jump forward here. They're starting to paddle
24 a little bit?

25 A. Yes, ma'am.

DENNIS GARDNER DIR BY MS. LESKANIC

1 (Video played. Not transcribed.)

2 BY MS. LESKANIC:

3 Q. Last segment. Can you tell from here where the
4 landing is and where the creek is. If we get to that point
5 that you can see it.

6 A. There's the landing there. And the creek just
7 keeps on going straight.

8 Q. Through this area?

9 A. Yes, ma'am.

10 (Video played. Not transcribed.)

11 BY MS. LESKANIC:

12 Q. How far up in that creek was the raft found?

13 A. A good piece. It was up in there. It was tucked
14 away.

15 (Video played. Not transcribed.)

16 BY MS. LESKANIC:

17 Q. Thank you. Just a couple I want to make sure I
18 covered. Both of the telephones stopped sending and receiving
19 communication at 1:00 a.m. on the 14th; is that right?

20 A. Yes, ma'am.

21 Q. I don't think this is a question. Do you see the
22 Defendant, the person that you interviewed in the courtroom
23 today?

24 A. Sitting beside Mr. Moore there. Black suit. Coat
25 and tie.

DENNIS GARDNER DIR BY MS. LESKANIC

1 Q. Did all of this Broad River, this section, is this
2 all in Cherokee County?

3 A. It is.

4 MS. LESKANIC: Please answer any questions
5 Mr. Moore has.

6 THE COURT: Let's break. Mr. Foreman, ladies and
7 gentlemen, we're going to break for lunch here. We're about
8 12:29. We are going to resume at 2:00 p.m. Resume at 2:00
9 p.m. Give you at least good 90 minutes to have lunch, walk to
10 your car, and back in place. We'll start back at 2:00.

11 Please do not try to learn anything about the case,
12 don't talk about the case, and we'll be back ready to work at
13 2:00 p.m. Mr. Foreman.

14 (The jury exited the courtroom at 12:24 p.m.)

15 THE COURT: Investigator, you can't talk about your
16 case. Be back here ready to work at 2:00 p.m.

17 Anything else from the State or defense before we
18 go on recess?

19 MS. LESKANIC: Not from the State.

20 THE COURT: See everybody at 2:00.

21 (A luncheon recess transpired from 12:25 p.m. until
22 2:07 p.m.)

23 THE COURT: State's ready?

24 MS. LESKANIC: State's ready.

25 THE COURT: We'll have the jury.

DENNIS GARDNER CROSS BY MR. MOORE

1 (The jury entered the courtroom at 2:07 p.m.)

2 THE COURT: Mr. Foreman, everything good with the
3 jury?

4 THE FOREPERSON: Yes, sir, Your Honor.

5 THE COURT: Give your attention to Mr. Moore.

6 MR. MOORE: May it please The Court.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. MOORE:

10 Q. Good afternoon, Detective Gardner. Is it detective
11 now or what is it now?

12 A. It would just be officer.

13 Q. Officer?

14 A. Yes, sir.

15 Q. How long have you been with DNR?

16 A. Since January 2020.

17 Q. So a while. That would have been six months or so
18 after this incident?

19 A. Yes, sir.

20 Q. Obviously, you've been testifying for quite a
21 while. And a good portion of that testimony has been videos
22 and interviews and things like that.

23 I'm going to kind of start from the top, if I can,
24 and just clarify some things that I believe you testified to,
25 to make sure I understand, the jury understands exactly what

DENNIS GARDNER CROSS BY MR. MOORE

1 you did and what steps were taken and what Mr. Duncan may or
2 may not have said at certain points.

3 First of all, let's talk about -- at the time, I
4 know this was at the very beginning of your testimony, at the
5 time you were an investigator for the Cherokee County Sheriff's
6 Office; correct?

7 A. I was.

8 Q. You talked about the duties and responsibilities of
9 being an investigator. As part of being an investigator, do
10 you typically prepare an investigative report at some point
11 during the investigation?

12 A. We do.

13 Q. Is that kind of an ongoing thing or is that
14 something you do at the end of an investigation? How do you go
15 about doing that?

16 A. It's typically -- I can't speak for every
17 detective. It's typically something I do it at the end. I
18 prepare an investigative report to give to the Solicitor. It's
19 kind of a synopsis of what happened.

20 Q. That's because y'all investigate hundreds, I guess,
21 at least hundreds of cases a year. And you don't know when
22 you're going to go to court on them. Kind of summarizes what
23 you did during an investigation?

24 A. That's correct.

25 Q. You prepared an investigative report in this case,

DENNIS GARDNER CROSS BY MR. MOORE

1 too; is that right?

2 A. I did.

3 Q. Do you have that with you?

4 A. I do.

5 Q. How long was that report you prepared, do you know?

6 A. Almost 12 pages, typed.

7 Q. Again, that summarizes kind of the steps you took,
8 the things you did, the people you spoke with. It's kind of an
9 overview of everything having to do with the investigation;
10 right?

11 A. It's an overview. It's not going to list every
12 single detail. It's an overview of the case.

13 Q. I want to point out a couple things here and ask
14 you about them. If you'll go to top of page 2 in your
15 investigative report. I think it's page 2. Mine says two of
16 12.

17 A. Yes, sir.

18 Q. Paragraph regarding Mr. Thornburg, who we heard
19 yesterday, the man who said he let the Defendant, Chad, borrow
20 his cell phone?

21 A. Yes, sir.

22 Q. What did you say about your interaction with Mr.
23 Thornburg.

24 MS. LESKANIC: Object, if this is requiring hearsay
25 testimony.

DENNIS GARDNER CROSS BY MR. MOORE

1 THE COURT: He's asking about what he, being the
2 officer, said?

3 MR. MOORE: I'm asking about what he wrote in his
4 report that Mr. Thornburg told him when he spoke to him that
5 day.

6 THE COURT: Solicitor.

7 MS. LESKANIC: I would object that anything that he
8 was told as hearsay. Mr. Thornburg was here and testified and
9 subject to cross-examination. For this officer to testify as
10 to what he said would be hearsay.

11 MR. MOORE: I don't understand that. We just spent
12 over -- I understand the Defendant is different than any other
13 witness. We just spent 30 minutes to an hour talking about
14 what another witness had said; obviously, that's a party
15 opponent. It does talk about the steps he took, what led him
16 to do the next step in his investigation. I think he was
17 allowed to say what he was told and why he took the next steps.

18 If we're not allowed to talk about who he talked
19 to, what steps he took and why, I'm not sure how long this will
20 last.

21 THE COURT: He can talk about what -- not what he
22 was told but what he did. Do you want to recall him?
23 Mr. Thornburg.

24 MR. MOORE: I guess we'll have to, yes, sir, Your
25 Honor.

DENNIS GARDNER CROSS BY MR. MOORE

1 BY MR. MOORE:

2 Q. You talked to Mr. Thornburg?

3 A. I did, yes, sir.

4 Q. I guess we can't talk about what he told you.

5 Let's move on. So when did you get on scene and
6 see the Defendant, Chad Duncan? When was the first time you
7 saw him?

8 A. The time or the location?

9 Q. The time.

10 A. I'm not sure of the time. I can go back and look
11 at the body camera footage of when I got there. I don't know
12 the exact time. I can look back at my notes.

13 Q. I just didn't know if you recalled. Was it before
14 or after Deputy Heflin had talked to him on the body cam that
15 we watched?

16 A. Should've been after.

17 Q. After?

18 A. Yes, sir.

19 Q. Deputy Heflin's body cam was date stamped 1525.
20 Does that sound about right? 3:25 in the afternoon?

21 A. I'm not sure. I know it was after lunch.

22 Q. We know the 911 call was at 1321; correct?

23 A. Yes, sir.

24 Q. That's 1:21 p.m. That's after lunch?

25 A. Yes, sir.

DENNIS GARDNER CROSS BY MR. MOORE

1 Q. Based off the testimony we heard so far, we have to
2 assume that nobody else responded out there or did anything
3 until after 911 was called?

4 A. I would agree.

5 Q. I'm just trying to understand this time line and
6 this interview was taken. I know you said in one of the
7 interviews: It's 7:30 on a Friday night, there's other places
8 I'd rather be. Is that accurate as to a time frame when that
9 interview took place?

10 A. I know it would be in the evening.

11 Q. It was in your office, not on scene?

12 A. Yes, sir.

13 Q. That was in the evening.

14 We have a 911 call at 1:21 p.m. We have a body cam
15 of Chad sitting in a car and speaking to you and some others
16 around 1500, 1525, which would be 3:25 p.m. Ultimately he's in
17 your office at the Sheriff's Office around 1900, 1930 that
18 evening; is that correct?

19 A. I believe it would be.

20 Q. At any point was he allowed to leave the incident
21 scene where y'all kind of set up your command post?

22 A. I wasn't there the entire time. When I got there,
23 he never asked to leave the scene. We were trying to figure
24 out what happened with his buddy he was last seen with.

25 Q. Right. I'm just wondering. He was there the whole

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1 time is my question, as far as you know?

2 A. Yes, sir. From the time I got there he was there
3 the entire time.

4 Q. How long would that have been, based off what he
5 told you, since he had gotten on the river that morning?

6 A. He had been on the river the day before, I believe.

7 Q. He said he had been on the river the day before.
8 Then he met Justin around --

9 A. After midnight. Maybe 1:00 a.m.

10 Q. He'd been on the river since 1:00 a.m.?

11 A. That's what he told us.

12 Q. And then called 911 at essentially 1:00 p.m.?

13 A. Yes, sir.

14 Q. He was on Deputy Heflin's body cam at 3:30 p.m. and
15 then was eventually in your office at the Sheriff's Office at
16 7:30 p.m.; right?

17 A. I would assume that the time is correct on Deputy
18 Heflin's body camera, yes, sir.

19 Q. I'm just trying to figure out. He did not leave
20 the incident scene or the command post during any of that time.
21 Did he eat during any of that time?

22 A. Did not eat in my presence.

23 Q. I saw he had a bottle of water in one of the
24 videos.

25 A. Yes.

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1 Q. We're talking about going on 18, 20 hours since he
2 had gotten on the river probably?

3 A. By his statement he got on there at 2:00, I think,
4 before Justin went to work on the day before. Justin met with
5 him at lunch time. He ate, I believe he said, some chicken,
6 hush puppies, and some other item.

7 Q. After midnight?

8 A. I'm assuming, yes, sir.

9 Q. In one of the interviews, maybe two of them, he
10 obviously showed some frustration about the ballfield. It
11 sounds pretty clear. You tell me if you recall it differently.
12 I heard him in the interview with you say he was talking about
13 the ballfield at Wolf Den Road.

14 A. I agree with you.

15 Q. He did say that?

16 A. Yes, sir.

17 Q. I got a couple other questions about some things
18 that you found in your investigation. I know at the end the
19 Solicitor asked you about: Was there a fake light bulb in
20 Justin's car. Was it tested? There was a fake light bulb, it
21 had liquid in it. It tested for GHB; is that correct?

22 A. That's correct.

23 Q. At the same time the Solicitor also asked you about
24 the Defendant having a key to that car; correct?

25 A. Yes, sir.

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1 Q. There was no indication that he had access to that
2 car at any point during the day in question, is there?

3 A. Sir, I don't know what he had done for 12 hours.

4 Q. The key was at the house; right?

5 A. Yes, sir.

6 Q. That's where he gave it to you; right?

7 A. Yes, he did.

8 Q. How far is that house from the incident location?

9 A. It's a good way. I mean, it would be several
10 miles.

11 Q. He went from your interview at the Sheriff's Office
12 to the detention center; correct?

13 A. Yes.

14 Q. Was there a key in his inventory at the detention
15 center?

16 A. No, sir. I don't think there was, no, sir.

17 Q. Was the car impounded the day of the incident?
18 What happened to the car?

19 A. It was taken to the Sheriff's Office.

20 Q. That day?

21 A. Yes, sir.

22 Q. I think you can see where I'm going. I'm not
23 trying to make it difficult. She brought up the fact he had a
24 key and access to the car.

25 He went from the command post to the Sheriff's

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1 Office to the detention center with no key, and it's impounded.
2 Do you have any indication in your investigation he had access
3 to the inside of that car that day?

4 A. Still don't understand the time frame. There's a
5 lot of time there I don't know what he would've been doing.

6 Q. That's fair. He was arrested for not having a life
7 vest on a raft; is that correct?

8 A. Yes, sir.

9 Q. In your time at DNR, how many times have you
10 arrested people for not having a life vest on their raft?

11 A. I haven't.

12 Q. Never?

13 A. No, sir.

14 Q. Is that typically something people get arrested
15 for?

16 A. You would have to ask Officer Woodleaf. I've never
17 arrested anybody for not having a life jacket.

18 Q. Do you recall what the temperature might've been
19 that day?

20 A. I'm sorry. I don't. I'm assuming I know what the
21 temperature is in June. I don't recall the exact temperature,
22 no, sir.

23 Q. Was it hot?

24 A. I would assume in June around here it's warm.

25 Q. It looked hot. I don't know if you remember.

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1 A. I would say it's hot.

2 Q. The reason I ask, there was some considerable
3 attention made on the fact of whether or not he was wet or not
4 wet when he got in your truck. I believe you said something
5 like you're kind of OCD. If he had been wet, you would've laid
6 a towel out; something to that effect.

7 A. That's correct.

8 Q. He had called 911 out of the river off of
9 Mr. Thornburg's phone at 1:21, and was sitting in Deputy
10 Heflin's car at 3:25 and eventually gets in your truck to talk
11 to you; correct?

12 A. Right.

13 Q. That would've been three or four hours removed from
14 the 911 call?

15 A. Yes.

16 Q. Would you think he would still be wet at that point
17 in that temperature?

18 A. I mean, I would assume. If you've jumped in the
19 river and you got clothes on that are muddy, wet, took them
20 off, goes back up the creek, falls back down in the river again
21 and walks, I assume you're going to dry off some. I can't say
22 you would be completely dry. I wouldn't think you would be
23 completely dry.

24 Q. You don't think the fact he walked up that road and
25 however long that took -- I don't know. His testimony, his

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1 statement to you in the interview, he walked from where that
2 raft was?

3 A. Yes, sir.

4 Q. Where he told y'all to find it; right?

5 A. Yes, sir.

6 Q. He walked from there to Justin's car, 29?

7 A. Right.

8 Q. Do you know what that distance is?

9 A. I think it's somewhere around three miles. I don't
10 know, to be exact. I don't know.

11 Q. Roughly, three miles?

12 A. Okay.

13 Q. I'm not telling you.

14 A. You're asking?

15 Q. Yeah.

16 A. I'm thinking somewhere around three. Maybe a
17 little shy. I don't know the exact distance.

18 Q. I'm not going to hang up -- this is not a get-you
19 moment. I'm trying to understand. They tried to make a point
20 about him not being wet.

21 I understand he said he was in the river.

22 A. Yes, sir.

23 Q. He gets out in shorts and a T-shirt at some point,
24 walks three miles before he can make a call at 1:00. Sits in a
25 patrol car for another two hours and then talks to you in your

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1 truck. That seems like it may be enough time to dry off in
2 that weather. Maybe not.

3 A. Maybe not only the clothes, the mud, the two banks
4 he's talking about is extremely muddy. It would be very hard
5 for me to get all that mud off of me and be completely dry in
6 two to three hours, I believe.

7 Q. I got you. I think we are talking about
8 considerably more than two or three hours.

9 The Solicitor also made a point to talk about the
10 fact that you could call an Uber. I recall from the interview
11 that he said call an Uber or get a ride. Do you remember which
12 one he said? I wrote it down when he said it. Do you recall?

13 A. We can watch it again. I thought he said Uber.

14 Q. He definitely said Uber. I'm not saying he didn't
15 say Uber. I thought he said Uber or get a ride.

16 You're asking about his plan, how were y'all going
17 to get down there from the fireworks factory back to Justin's
18 car. Justin had to be at work the next morning.

19 A. Right. I think when I asked him -- I do kayak a
20 lot. Most of the time people kayak, you have a plan, take two
21 vehicles. Me and my buddy are going kayaking, take one where
22 it's going to end, put the kayaks on the trailer or truck.
23 That way we have a way to travel. I was just trying to
24 determine where were they going to camp and how were they going
25 to get out. We can watch it again to clarify. He may have

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1 said Uber and a ride. I'm not in disagreement. I don't
2 remember.

3 Q. That's okay. It's in evidence. It will be
4 available.

5 Sunrise. There was some talk and some I guess
6 discrepancies between light and sunrise and things of that
7 nature. I do want to ask you a question. What time -- I think
8 this has been stipulated to. Do you know what time sunrise was
9 that day?

10 A. 6:00-something.

11 MR. MOORE: We stipulate to 6:09.

12 THE WITNESS: Yes, sir.

13 BY MR. MOORE:

14 Q. You'd agree that sunrise in and of itself is not
15 when you first start seeing outside?

16 A. I would assume you can see outside about 30 minutes
17 before sunrise.

18 Q. That's what we call twilight typically; right?

19 A. Yes, sir.

20 Q. I guess you have to keep track of that stuff now
21 because you're in DNR?

22 A. Somewhat.

23 Q. You can only shoot so many minutes before sunrise
24 or something like that; isn't that right?

25 A. Yes, sir.

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1 Q. A lot of time you walk to the deer stand before
2 sunrise, you can still see?

3 A. Sure.

4 Q. 6:09 was sunrise. Probably had twilight 30 minutes
5 or so before sunrise?

6 A. Yes, sir.

7 Q. During your investigation, were you ever able to
8 determine whether or not Justin had actually purchased a tent?

9 A. I was.

10 Q. How did you find that out?

11 A. I know I found out, but I have to refer back to
12 find exactly.

13 Q. That's fine. If you want to take one second.

14 A. Chad told me he bought a tent, for one.

15 (A pause transpired).

16 BY MR. MOORE:

17 Q. I'm not trying to make it difficult. I'll just ask
18 it this way and see if you can answer it or not.

19 A. Yes, sir.

20 Q. Do you recall at any point in your investigation
21 getting a picture from a self-checkout or somewhere showing
22 Justin buying a tent?

23 A. Yes, sir.

24 Q. There was evidence in your investigation of him
25 having a tent other than Chad saying they were camping out?

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1 A. Yes, sir.

2 Q. There was no tent found at the 29 bridge. There's
3 no tent found anywhere on the river?

4 A. There wasn't.

5 Q. Do you remember what time frame Justin purchased
6 that tent?

7 A. I think it was the week of. Let me make sure.

8 Q. If you know how to get to it.

9 A. Yes, sir, I do. June 13, 2019. The receipt time
10 stamp is 0241, 54 seconds.

11 Q. What was that time again?

12 A. 0241, 54 seconds.

13 Q. Where did he buy it from at 2:00 in the morning?

14 A. It was Wal-Mart. I think it was the Gaffney
15 Wal-Mart. I would have to run the code.

16 Q. You did get a receipt and saw that he had purchased
17 a tent. Sounds like it was the day before, 13th?

18 A. 13th at 2:39 a.m.

19 Q. Make sure I'm -- I want to make sure we're on the
20 same page. That would be roughly 24 hours before Chad said
21 they were getting on the river?

22 A. Yes, sir.

23 Q. Again, I believe you already said this. Some of
24 this testimony I want to clarify. You said throughout your
25 discussions with Chad, the interviews the day of, the next day,

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1 you did not observe any noticeable injuries on his body?

2 A. He did state in the interview in my office about
3 his tooth. I think it was lost a tooth. He had done it to
4 himself. I don't remember seeing any injury to him, no, sir.

5 Q. I had a question. You might not know the answer.
6 Who was the other officer -- I know you know the answer to this
7 one.

8 Who was the other officer at the interview in there
9 with you at the Sheriff's Office?

10 A. Captain Parnell.

11 Q. I knew you knew that one. This one you might not
12 know the answer to.

13 I noticed when Chad was out of water and asked for
14 a refill, Captain Parnell took his water bottle and said he was
15 going to refill it and brought him back a styrofoam cup. Do
16 you know what happened to that water bottle?

17 A. You would have to ask Captain Parnell. I don't
18 have any clue. I'm assuming it got thrown a way.

19 Q. It was never collected to try to get any DNA or
20 anything from the Defendant?

21 A. No.

22 Q. You don't believe so?

23 A. No, sir.

24 Q. Did he ever -- was there any DNA in this case at
25 all throughout your investigation? Any DNA testing?

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1 A. Not to my knowledge. I think you would have to ask
2 Dr. Rose. Not to my knowledge.

3 Q. You didn't collect any?

4 A. I did not collect any, no, sir.

5 Q. You didn't submit any for testing?

6 A. I did not, no, sir.

7 Q. What about blood? Was there any blood at any point
8 collected for testing?

9 A. I did not.

10 Q. Do you recall what was on the raft? You went to
11 find the raft?

12 A. I was on the boat and went and saw the raft, yes,
13 sir.

14 Q. Where was it? In the creek?

15 A. Yes, sir.

16 Q. Do you remember what was on it at the time?

17 A. I can look back and tell you.

18 Q. Okay.

19 A. Not a lot. I think I just have -- I don't have a
20 copy of the photo. I just have a copy of the disc that the
21 photos would be on. I can look back in my notes. I remember
22 an empty lamp and a rope and some type of tool off the top of
23 my head.

24 Q. I think the State has an exhibit here that I can
25 show you. Just to refresh your memory. If I can find it

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1 without messing all this up.

2 MR. MOORE: Your Honor, may I approach the witness?

3 THE COURT: Sure.

4 BY MR. MOORE:

5 Q. I was going to show you -- I keep wanting to call
6 you detective. I might just keep doing that, if that's okay
7 with you.

8 A. Yes, sir.

9 Q. I'm going to show you what's been marked just for
10 identification purposes, State's Exhibit 25. It has not been
11 admitted into evidence yet. I want to show it to you just for
12 purposes of refreshing your memory as to what may have been on
13 the raft.

14 A. Yes, sir.

15 Q. So you're looking at it. Again, that's not in
16 evidence yet. I'm just showing it to you to look at.

17 A. Yes, sir.

18 Q. Now that you've seen it, what was on the raft?

19 A. A hammer. Towel. Pair of Channellocks. I think
20 that's a shirt. A stick, large stick. Rope. I would have to
21 look back at Lieutenant Anthony -- Major Anthony now -- to see
22 exactly what that blue thing is. I don't recall.

23 Q. That picture is consistent and accurate with what
24 you remember seeing on the raft that day when y'all came up the
25 creek and found it?

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1 A. Yes, sir.

2 Q. At any point did you personally, in your
3 investigation, measure any water depths at any of the -- if you
4 want to call them priority locations?

5 A. The depth?

6 Q. The depths of the water.

7 A. No, sir.

8 Q. For example, at the bridge or at the specific spot
9 at Mr. Keller's house? There was never a point where anybody
10 went out there and said: This is what the depth is at this
11 point?

12 A. No, sir.

13 Q. There's been some testimony to this fact, I believe
14 you even testified to it. This is a -- and we saw the video.
15 This is a muddy -- Broad River is kind of a muddy river?

16 A. Not always.

17 Q. That's like most rivers, right, depends on the
18 rain?

19 A. Yes, sir.

20 Q. It's not the Caribbean?

21 A. That's a fact.

22 Q. There's a lot of rock in the river?

23 A. Yes, sir. At certain areas. Overall I would say
24 it's rocky.

25 Q. Overall it's a rocky river. That's not unusual for

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1 rivers either. Have you personally ever walked in or across
2 the Broad River?

3 A. Yes, sir.

4 Q. Is that something that's easy to do?

5 A. It would depend on where you're at. Some places
6 will be difficult. Some places it wouldn't be difficult.

7 Q. Is it fair to say -- you don't have to agree with
8 me.

9 A. Yes, sir.

10 Q. Is it fair to say, walking on rocks in rivers is
11 not necessarily a uniform -- river bottoms aren't necessarily
12 uniform?

13 A. I would agree with that.

14 Q. Sometimes you step down, sometimes you step up.
15 You can't always see the rocks, can you?

16 A. Yes, sir, I agree with that.

17 Q. It may be a certain depth right here. You go just
18 a little further, it could be a lot deeper or a lot shallower;
19 right?

20 A. What kind of depth?

21 Q. I'm not talking about like scuba diving depth.
22 There are potholes in rivers. Say you're on the river in
23 boats. I hear people call them potholes. You find a spot, all
24 of a sudden, several feet deeper than we just were. Not ten,
25 15 or 20.

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1 A. There is a main channel in the river. I don't
2 think it's going to go from six inches to four foot. If you're
3 in the main channel, typically main channel stays about the
4 same. I don't know the depth of that.

5 Q. I got you.

6 A. It's not going to be drastically different given a
7 main channel.

8 Q. It can be difficult to walk across?

9 A. Yes, sir.

10 Q. Do you think it would be more or less difficult to
11 walk across rock if it was dark outside?

12 A. If it was dark, I would think it would be more
13 difficult.

14 Q. Do you think it would be more or less difficult to
15 walk across rock in a river if it's dark outside and you're on
16 some type of drugs?

17 A. Does it depend on if I'm trying to save my friend
18 or not?

19 Q. What's that?

20 A. Does it depend on if I'm trying to save my friend
21 or not or just walking?

22 Q. I'm just asking if you think being under the
23 influence makes it easier or harder to walk in a river.

24 A. I would think it would make it harder.

25 Q. Up there where the bridge -- we call it the 29

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1 bridge. I think that's what we refer to as the top of this.
2 Exhibit Number 2. That's the 29 bridge --

3 A. Yes, sir.

4 Q. -- up there at the top. Is there debris in the
5 water there?

6 A. I assume there would be. Are you talking the day
7 of the incident or right now?

8 Q. I'm talking about, when they got rid of the old 29
9 bridge, did they just put it in the water?

10 A. What kind of debris? I'm sorry.

11 Q. That bridge is not the bridge that's always been
12 there?

13 A. I agree with that, yes, sir.

14 Q. Are you aware of whether or not, when they
15 demolished the old bridge, if they just put it in the river
16 there?

17 A. I have no clue.

18 Q. No clue?

19 A. No, sir. Did they?

20 Q. That's my understanding. I'm asking you. I can't
21 testify.

22 A. Okay.

23 Q. I just didn't know if you knew.

24 You said a lot of people get in and out there.

25 You're on the river some. Some people know where the pipeline

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1 is. Some people know where this happened. Some people know
2 that the old bridge is there.

3 A. I would like to see if it is.

4 Q. I got you.

5 Let's talk about the video, the river video.

6 A. Yes, sir.

7 Q. We watched the video or excerpts from it. I guess
8 the full length will be available.

9 Explain to me exactly how you went about getting
10 the water level information.

11 A. I talked to, I think his name is Mr. Peterson, who
12 works at the dam, who kind of give me -- I don't know the exact
13 term he uses that you can calculate -- one second.

14 Gives you the depth of the river at that dam, as
15 it's being pulled for certain dates. Also gives you KCFS. I
16 can't remember what that acronym is. There's a formula you put
17 it in to determine the miles per hour that would be close to.

18 Q. What day was that video taken, the kayak Go Pro
19 video?

20 A. I don't know the exact date. I can look back and
21 see if it's on there. I would say a couple months, around
22 there. I don't know the exact date.

23 Q. Let's try -- this happened on the 14th?

24 A. Yes, sir.

25 Q. And I believe Mr. -- at some point the pathologist

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1 wanted to go out there?

2 A. She did.

3 Q. Chad was arrested on the 14th of August?

4 A. Okay.

5 Q. Does that sound right?

6 A. Yes, sir.

7 Q. Do you think that video was made in between then?

8 After he was arrested? When do you think the video was made in
9 relation to those kind of wave top events in the case?

10 A. I'm not sure. I can't remember the exact time, the
11 date they went out there. I'm sorry.

12 Q. That's fine. I didn't see it in the report. I was
13 wondering if it happened after the investigation or after the
14 arrest was made or if it happened sooner?

15 A. I'm sorry. I can't.

16 Q. I got you.

17 I do have a couple questions about that, not the
18 specifics about the date. They were riding kayaks, and we saw
19 that.

20 A. Yes, sir.

21 Q. Those are made of what?

22 A. Plastic.

23 Q. Plastic usually. They're generally designed for
24 one, two people? I don't know. I don't kayak.

25 A. Most of the time one, yes, sir.

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1 Q. There were two kayaks. I'm assuming with two
2 officers and the Go Pro?

3 A. Yes, sir.

4 Q. They had paddles?

5 A. Yes, sir.

6 Q. Do you recall whether or not the raft that Chad was
7 on that you found, saw the picture, did it have a transom on
8 it?

9 A. I think, yes, sir.

10 Q. Do you know what I'm saying?

11 A. Yes.

12 Q. By transom, I mean the stern or back of the boat.
13 A lot of time boats have a transom, which is a piece of wood or
14 something that you can attach a motor to; is that right?

15 A. Right.

16 Q. This was an inflatable West Marine dinghy thing?

17 A. Yes, sir.

18 Q. It would've been essentially a U-shaped raft?

19 A. Yes, sir.

20 Q. In the back do you recall there being a wooden
21 transom?

22 A. I think there was. I think that's where he said he
23 used to keep the pool float tied up at. I can look back. I
24 think there was one.

25 Q. I think it's important for a couple different

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1 reasons we'll get to in a minute.

2 Do you agree that there's a difference in the way a
3 plastic one-man kayak and a dinghy with a transom may be able
4 to maneuver in the river?

5 A. I do.

6 Q. Now, back to the video. I promise you I'm not
7 trying to be difficult. I think these are important questions.

8 Did you direct them to take this video of the
9 river?

10 A. Yes.

11 Q. You asked them to do it?

12 A. Yes, sir.

13 Q. You thought that would help provide a better
14 understanding of what happened that night or what the
15 conditions may have been like; is that right?

16 A. To show what the Broad River -- I know to certain
17 people, if you say you were kayaking on the river or rafting on
18 the river, I would assume it's whitewater, like whitewater
19 rafting type river, not a slow moving river.

20 Q. To your point, the purpose was to be able to
21 accurately depict what this river is like?

22 A. On a normal day, yes, sir.

23 Q. My question would be, if we're trying to replicate
24 what the river would've been like, why didn't they do it during
25 low visibility hours?

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1 A. I think we were more interested in the time of it,
2 to show the water movement. I don't know what we would've
3 gained by showing a video that's black. I don't think we can
4 see, kind of, what the water is like in black. Maybe we should
5 have done it at daytime and nighttime.

6 Q. You're saying the primary purpose was to determine
7 timing then?

8 A. Yes, sir. I mean, also the flow of the river.
9 Also the timing a little bit to try to make sense of the time
10 frame. I agree, maybe -- I think it would've just been black
11 photo for an hour-and-a-half.

12 Q. It could've been. I don't know. Do you know what
13 phase the moon was in that night?

14 A. I can look and see.

15 Q. I know that seems like a ridiculous question.
16 We're talking about official sunrise and sunset and accepted
17 water levels and river flow rates. Phase of the moon,
18 illumination could be important.

19 A. I agree. If it was a full moon, the visibility
20 would've been a little better. I agree.

21 Q. If we had seen that Go Pro at the same phase of the
22 moon, we would have an idea what maybe it would've looked like
23 that night?

24 A. I agree.

25 Q. At any point when they were trying to -- I know we

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1 pointed out some different things -- you and the Solicitor
2 pointed out some things on the video, particularly where
3 Mr. Keller's bank to his house was, the island, some other kind
4 of key terrain features. Do you know if, at any point in the
5 video, did they ever attempt to turn upstream and paddle
6 against the current?

7 A. I don't remember seeing them turn around, trying to
8 go up. I know they turned around and looked at different
9 areas. I don't remember them trying to use their paddles to go
10 upstream.

11 Q. Did they ever try to go from Mr. Keller's bank to
12 the island on that video?

13 A. The video where Ms. Kim showed, they just sat still
14 for about ten minutes. They were in that channel right there.
15 They weren't moving one way or the other.

16 Q. My question is: Did they attempt to go upstream to
17 the front of the island from his yard?

18 A. No, sir.

19 Q. They never did that in the video?

20 A. No, sir, they did not.

21 Q. They did stop there for a minute on the bank. I
22 think you said it might've been to change batteries on the Go
23 Pro?

24 A. Yes, sir.

25 Q. Do you know that or that's what you think?

DENNIS GARDNER CROSS BY MR. MOORE

1 A. I don't know that 100 percent.

2 Q. What I'm going to ask you to do, if the Solicitor's
3 okay with it, I don't think there's an objection -- I'll wait
4 and see if she objects. She had you come down and point out on
5 this board, this enlarged map, exhibit 2, the different points
6 and what Mr. Duncan said in your interview to you about where
7 he was and what he did. I want to hit a couple of those points
8 that you've already testified to.

9 I'm going to ask you to answer some questions. I
10 think we can all agree on a couple of things. I just want to
11 make sure these locations are what you've testified to and what
12 you previously pointed out to make sure we're all on the same
13 page.

14 This is the 29 bridge we've been talking about
15 where the victim's car is parked; correct?

16 A. It is.

17 Q. This is River Road down through here?

18 A. Yes, sir.

19 Q. These are the three pipelines?

20 A. Correct.

21 Q. This is what some people call the Ford complex but
22 it's a baseball field?

23 A. Softball field.

24 Q. Athletic complex?

25 A. It is.

DENNIS GARDNER CROSS BY MR. MOORE

1 Q. This is Wolf Den Road?

2 A. It is.

3 Q. This is Mr. Keller's bank, his house right here?

4 A. Yes, sir.

5 Q. I know we have a large picture that the State
6 submitted. This would be the Goat Island here?

7 A. Yes, sir.

8 Q. People refer to it as. That's the only island
9 between 29 and the firework factory?

10 A. That's correct.

11 Q. Down here is the Cherokee Falls, the firework
12 plant, the boat ramp, and this creek?

13 A. Yes, sir.

14 Q. I'm going to ask you some questions. I'm sorry, am
15 I blocking you? I'm going to ask you a couple questions just
16 to make sure I understand what you said Chad told you.

17 First of all, he said they put in here, the 29
18 bridge; is that correct?

19 A. That's correct.

20 Q. I'm going to hit -- I'm not going to go through the
21 whole thing, you've already done that.

22 I want to hit on some of the things, make sure that
23 I understood what you said he told you.

24 This is where he told you he got out and went to
25 Mr. Keller's house?

DENNIS GARDNER CROSS BY MR. MOORE

1 A. That's correct.

2 Q. He told you that he got back on his raft here. I'm
3 not going to lead you with this. Can you show the jury where
4 he told you he last saw Justin when he was leaving Mr. Keller's
5 house.

6 A. In front of the islands. I mean, he also said
7 multiple times, according to his angle, he don't know if he was
8 closer to over here, over there, but in front of the islands
9 (indicating).

10 Q. He said in your interview that, once he left
11 Mr. Keller's house, he tried to go -- is this where he was
12 trying to paddle with the cooler; is that what he told you?

13 A. Yes, sir.

14 Q. That would be right between here and the front of
15 this island?

16 A. I would assume. Wherever he was standing. I'm
17 assuming that's where he said he was trying to paddle to.
18 Somewhere in front of the island.

19 Q. This part between the bank and the island and the
20 river from 29 to there, would you agree that the river from 29
21 to the head of the island is much wider than it is once we get
22 to the islands? The individual channels?

23 A. Yes. Yes.

24 Q. This distance from the bank to the island is
25 definitely narrower than any point from the island up to 29?

DENNIS GARDNER CROSS BY MR. MOORE

1 A. I agree.

2 Q. He was unable to paddle his way, according to him,
3 back to Justin. What did he tell you where did he go next?

4 A. He stayed in this channel because the water was
5 moving and forced him to right here somewhere (indicating), I'm
6 assuming. He said he tried to look back up the channel to see
7 if he saw him coming up.

8 Q. He said he got down to here, couldn't get back up.
9 He tried to look back to see if he was coming down. I guess
10 there's a channel here, a channel here. Is there one in the
11 middle of those two islands?

12 A. There is.

13 Q. You could pass through that part of the river on
14 any one of those three locations?

15 A. It's really shallow in the center here
16 (indicating). I would say it's the deepest on this side. I
17 assume you can go through all three. I would say the deepest
18 is that one (indicating). And that one is very, very shallow.
19 And that one is shallow (indicating).

20 Q. He got down here. He looked back up these chutes
21 to see if Justin was coming down any of those. Then what did
22 he tell you he did next?

23 A. Continued down the river.

24 Q. He continued down the river?

25 A. I don't think he changed anything there from

DENNIS GARDNER CROSS BY MR. MOORE

1 looking back up. Anytime I talked to him he came down the
2 river.

3 Q. He didn't go over the dam. Obviously, that would
4 be bad for anybody to go down the dam. Came down here at some
5 point and parked his raft?

6 A. I never could understand. The calculations, you
7 can ask Mr. Peterson the exact. The way I figure -- I knew the
8 dam is moving less than four miles an hour, right around four.
9 Lake Wally has more of a current than four miles an hour. I
10 don't know how he made it to there. Maybe his raft come over
11 here (indicating) and he didn't have to. Somehow made it to
12 here (indicating).

13 Q. Correct me if I am wrong. The water doesn't only
14 flow over the dam. It continues down past here to; right? The
15 dam is not the only way for the water to escape, is it?

16 A. Yes, sir, you're correct.

17 Q. Water flows through the dam, which is controlled by
18 whoever controls the dam. Water also flows this way --

19 A. Yes, sir.

20 Q. -- rejoins the river?

21 A. Yes, sir.

22 Q. Water is continuing to flow on this bank to here.
23 There would be a current over there; correct?

24 A. Sure.

25 Q. If water is flowing, I'm assuming.

DENNIS GARDNER CROSS BY MR. MOORE

1 A. I think we saw the same video. I would agree with
2 you. I would think it would be moving that way, yes, sir.
3 That's fair. Yes, sir.

4 Q. He told you that, once he parked this raft, he
5 walked all the way back up here?

6 A. He says he got to here (indicating).

7 Q. You're right.

8 A. He got the stick and tried to use the stick to get
9 back up. And he said he got -- god, what word he used. Wasn't
10 channel.

11 Q. Maybe flow, something like that?

12 A. I think he was referring to, like, the channel. As
13 he -- when he started to go back up there, he said that a guy
14 come down to here (indicating) and had a cast on, talked to him
15 about going to Colorado, I think. It was out of state.

16 And then he started to go -- and I would assume,
17 maybe he meant the main channel here (indicating). I do not
18 know. Maybe I should've clarified with him how far he got to
19 the main channel. Says he couldn't do it. So he come back and
20 then he got his dinghy all the way to the creek, yes, sir.

21 Q. Was this a big stick on his raft when you found it?

22 A. There was, yes, sir.

23 Q. At this point in his statement to you, when he
24 tried to come back up with the big stick, let's call it coming
25 back up with a big stick, turning it around and putting it in

DENNIS GARDNER CROSS BY MR. MOORE

1 the creek, at that point in his statement to you, he said he
2 last saw Justin in front of the island in shallow water; is
3 that correct?

4 A. Yes, sir.

5 Q. What I'm getting at -- again, I'm not trying to
6 confuse you. He made no more comments about seeing or the
7 condition Justin may have been in from when he got from here
8 down here?

9 A. He did not.

10 Q. He told you after he parked the raft, and after he
11 had the failed attempt to use the stick to skirt the bank, that
12 he walked all the way back to the car; is that right?

13 A. Yes, sir.

14 Q. How deep would you say the water is right here, do
15 you know? You don't have to guess.

16 A. At the front or right here (indicating)? I mean,
17 here it is shallow. I mean it's really shallow.

18 Q. It's shallow right here?

19 A. Yeah, right in front of this island right there
20 (indicating).

21 Q. Could you walk from the front of this island to
22 this bank?

23 A. I'm sorry. Which bank?

24 Q. This bank over towards River Road. Could you walk
25 that part of the river?

DENNIS GARDNER CROSS BY MR. MOORE

1 A. I can't say with certainty, but I would assume you
2 could.

3 Q. You're good. Thanks.

4 Have you always done investigations at the
5 Sheriff's Office? What else did you do? I assume you don't
6 start in investigations?

7 A. I was road patrol deputy and worked in narcotics
8 and investigation.

9 Q. How long were you in narcotics?

10 A. Nine years.

11 Q. Nine years. Okay. Did you ever have any cases
12 with GHB?

13 A. I did not.

14 Q. Never?

15 A. No, sir.

16 Q. Ever had any cases with methamphetamine?

17 A. I did, yes, sir.

18 Q. At any point during any of Chad's interviews with
19 you, did you ever detect that he may be under the influence of
20 anything?

21 A. I'm sorry. Could you reword. I didn't understand.

22 Q. You conducted several interviews the day of, then
23 the next day, then there was the Spartanburg interview, and
24 then there was you at his house?

25 A. Yes, sir.

DENNIS GARDNER CROSS BY MR. MOORE

1 Q. At least four, maybe five --

2 A. Yes, sir.

3 Q. -- encounters. In any of those encounters, based
4 off your training and experience, did you at any time feel that
5 he may be under the influence of any drugs?

6 A. No, sir.

7 Q. None?

8 A. No, sir.

9 Q. Hold one second.

10 Just a couple more.

11 A. Okay.

12 Q. Did Chad tell you he had broken a tooth or that he
13 had lost his dentures?

14 A. We can rewatch it to see. Can rewatch it.

15 Q. Was he having issues talking or being understood at
16 all?

17 A. Looks like he wasn't.

18 Q. That brings me to my next question, which I think
19 is pretty important. Did you notice when you interviewed him a
20 distinct difference between his voice the day of the incident
21 versus the later interviews?

22 A. I did.

23 Q. Would it be fair to say he sounded to be hoarse?

24 A. Yes.

25 Q. Why did he say he was hoarse?

DENNIS GARDNER CROSS BY MR. MOORE

1 A. Because he had yelled so much.

2 Q. It wasn't just the videos. You were there in
3 person. You perceived that his voice was much different the
4 day of than it was subsequently?

5 A. It was different, yes, sir.

6 Q. Was there ever, at any point in the investigation,
7 anything determined or alleged to be any type of weapon in this
8 incident?

9 A. Can you ask it one more time. Like speculation?

10 Q. No. At any point in the investigation did you find
11 something that you were like: I think this was used, or this
12 was a weapon in this incident?

13 A. Did I find something that could've been used as a
14 weapon?

15 Q. Did you find anything that you thought was, based
16 off your investigation, used as a weapon?

17 A. There's items on the raft that could be a weapon.
18 I don't know what you're asking me. I'm sorry.

19 Q. No. I got you.

20 A. Yes, sir.

21 Q. I got you. You're not being difficult. There was
22 a hammer on the raft?

23 A. Yes, sir.

24 Q. At any point in time in your investigation did you
25 find evidence that looked like that hammer had been used as a

DENNIS GARDNER CROSS BY MR. MOORE

1 weapon?

2 A. I can't say. I think the victim had a broke rib,
3 if I remember correctly. I'm not smart enough to tell you if
4 it was from a hammer or not. I think he said in one of his
5 last interviews the boat ran him over one time. Are we talking
6 about -- I didn't find a gun, no, sir.

7 Q. Obviously. Was anything collected? I think you've
8 already answered this kind of generally.

9 Specifically was anything collected off the hammer,
10 the Channellocks, or any other items found on the raft,
11 anything else collected for DNA or blood or anything like that?

12 A. I feel confident saying no. I didn't do any of
13 that, no, sir.

14 Q. Mr. Anthony or Major Anthony is crime scene. It
15 may be more appropriate question for him.

16 A. Typically. He's a smart man. If we ask him to
17 collect DNA, if he thought there was a reason, then he would
18 have.

19 Q. I got you. I just want to make sure one more time.
20 You didn't see any injuries on Chad?

21 A. I did not observe any physical injuries other than
22 when he mentioned whether he lost his dentures or the tooth.

23 Q. Tooth-denture situation. Other than, no visible
24 injuries?

25 A. I didn't notice any.

DENNIS GARDNER CROSS BY MR. MOORE

1 Q. He was wearing shorts and a T-shirt when you
2 interviewed him?

3 A. When I interviewed him, yes, sir.

4 Q. I do have one more. I got ahead of myself for just
5 a second.

6 We were talking about a transom on the dinghy. And
7 a transom being that piece of wood on the stern or back of the
8 boat that you can mount a steering item to it or you can mount
9 a motor to it or whatever. It's a flat part on the back of the
10 boat; correct?

11 A. Uh-huh.

12 Q. Would having a transom on a boat like that -- this
13 is a multi-part question. Would having a transom on a boat
14 like that, compared to a kayak, make the current affect it
15 differently?

16 A. I would think it would. I don't know. I'm not
17 smart enough to tell you what degree, but I would think it
18 would.

19 Q. For example, if you're trying to paddle upstream
20 with a cooler lid in a kayak, do you think that would be easier
21 or harder than paddling upstream with a cooler lid on a boat
22 that has a transom submerged in the water?

23 A. I think it's easier on a kayak.

24 MR. MOORE: Beg The Court's indulgence, Your Honor.

25 (A pause transpired).

DENNIS GARDNER REDIR BY MS. LESKANIC

1 MR. MOORE: No further questions, Your Honor.

2 THE COURT: Anything?

3 MS. LESKANIC: Yes, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. LESKANIC:

6 Q. I'm going to show you what's been marked and
7 admitted State's Exhibit 57. Very quickly.

8 Just a moment.

9 I'm going to have to open that a different way.
10 I'll come back to that.

11 Mr. Moore asked you about what the Defendant told
12 you; that he had been, I guess, on the river since 1:00. Did
13 he appear sleepy?

14 A. No, he didn't.

15 Q. Did he have plenty of energy when he was talking to
16 you?

17 A. Appeared to.

18 Q. Do you have any idea what his sleep habits were on
19 Wednesday?

20 A. I don't.

21 Q. Or Thursday?

22 A. No, ma'am.

23 Q. Or even Friday before you arrived?

24 A. I didn't.

25 Q. Did he ever tell you he was tired?

DENNIS GARDNER REDIR BY MS. LESKANIC

1 A. He didn't.

2 Q. Did he ever look like he was tired to you?

3 A. No, ma'am.

4 Q. Did he seem to be confused by what you asked him?

5 A. No.

6 Q. He didn't seem to be delirious from lack of sleep?

7 A. No, not to me, no, ma'am.

8 Q. In the interview with you, he mentioned Wolf Den?

9 A. He did.

10 Q. Is that correct?

11 A. Yeah.

12 Q. And that's the area down by the Ford complex where
13 people can get off the river and where we think Rodney and
14 Steve Wright got off the river?

15 A. People call it Wolf Den. People fish there.
16 People hang out there. There's a walking trail. I consider
17 Wolf Den, I consider that little area instead of the road.

18 Q. He knew that language when he was talking to you in
19 your office?

20 A. He did.

21 Q. Do you have any idea if he used that language when
22 he spoke to first responders and firemen?

23 A. I wasn't there.

24 Q. They would be the ones to testify as to what
25 description he gave to them?

DENNIS GARDNER REDIR BY MS. LESKANIC

1 A. That's correct.

2 Q. We know that he knew it because he told you that
3 description later in your office?

4 A. He called it Wolf Den.

5 Q. You said that there would be a difference with
6 having a kayak and his boat or dinghy would move down the
7 water?

8 A. I did.

9 Q. What would that be?

10 A. I mean, I would assume, you know, it's going to be
11 different. I'm not, you know -- I don't know the amount of
12 difference at four miles per hour that would be. I would
13 assume that a kayak would be more easier to maneuver than a
14 dinghy would've been, a larger surface area and stuff. I don't
15 know to what extent. I would agree that the kayak is easier to
16 maneuver.

17 Q. Is his boat above water --

18 A. It is.

19 Q. -- because it doesn't have a bottom?

20 A. That's correct.

21 Q. If you know, how would that affect -- I'm not even
22 talking about the maneuverability because we don't have
23 paddles. I'm talking about just being on the water.

24 A. Right. I think it would float about the same. I'm
25 not -- I don't know the difference in the two. I would assume

DENNIS GARDNER REDIR BY MS. LESKANIC

1 they would be close.

2 Q. It's reasonable that a kayak and this are going to
3 be a little bit different. Do you think there's going to be a
4 drastic difference based on the river?

5 A. Yes, ma'am, that's correct. I think there's not
6 going to be much difference here. If you put them somewhere
7 where there is white water rapid, I think it would be a whole
8 lot different.

9 Q. On Broad River with the conditions as we have seen
10 them, would there be much difference in floating on a pool
11 float or a kayak or this dinghy that's above water on the
12 rubber tubes?

13 A. My opinion, they're going to be really close.

14 Q. When you asked Rodney and Steve Wright to go down
15 the river -- Mr. Moore asked did they try to paddle back
16 upstream -- were you trying to do a recreation of the events
17 that the Defendant had given? What was the purpose of going
18 out on the water?

19 A. The purpose was the time frame. From the beginning
20 of the investigation, it didn't make sense to me. Also, just
21 the way the water is, you know. The rapids, so to speak. Just
22 to see what kind of -- see what kind of decent location, what
23 the water like where they were at.

24 Q. It's not to recreate his story that he told you,
25 his version. It was to determine the time frame, how long it

DENNIS GARDNER REDIR BY MS. LESKANIC

1 would take to float, and what the river is like?

2 A. It was not intended to recreate any of the
3 versions. It was just intended to show the water.

4 Q. Could you step down for just a second. Looking
5 again at State's Exhibit 2, did Chad say that Justin had never
6 been floating down the river with him?

7 A. He did. He said he dropped him off. He had
8 never -- I think he said he met him because he brought him
9 food. He had never been on the river with him. He had dropped
10 him off and picked him up.

11 Q. After being on the river for a period of time and
12 he sees Justin standing here, where does he expect him to walk?
13 Where is River Road from there?

14 A. It's here (indicating).

15 Q. Can you see from here, can you see the road?

16 A. No. No.

17 Q. From here can you see the water?

18 A. I know you can see it here (indicating). You can
19 see it here. There's pipelines. You can see the water. I'm
20 willing to bet anytime of the year you can't see it from here
21 (indicating).

22 Q. What is all this green?

23 A. Trees.

24 Q. This is woods, forest?

25 A. I'm assuming in June, the foliage, it would be

DENNIS GARDNER REDIR BY MS. LESKANIC

1 pretty tough to see through. Maybe possibly in February. It
2 would be tough.

3 Q. That is what he told you. He thought his friend,
4 who's never been down this river with him before, was standing
5 here, was able to walk up here through the woods to River Road?

6 A. He did. He said he thought that's what he would
7 do.

8 Q. During your interviews with Chad, did he -- he did
9 not seem to be under the influence?

10 A. He didn't, no, ma'am.

11 Q. And he was hoarse?

12 A. He was, yeah.

13 Q. Do you know why he may have been yelling?

14 A. I have no clue.

15 MR. MOORE: Objection. Calls for speculation.

16 BY MS. LESKANIC:

17 Q. Did he yell at you during the interview?

18 A. Several times.

19 Q. Throughout most of the interview or only during
20 parts of it?

21 A. Throughout most of it.

22 Q. In fact, he told you that he didn't take any GHB
23 when they were getting on the raft?

24 A. He did. He told me he did not.

25 Q. He didn't appear to be, and he told you he didn't

DENNIS GARDNER REDIR BY MS. LESKANIC

1 take any?

2 A. That's correct.

3 Q. The 911 call was made at 1:21. Do you have any
4 idea how long it took first responders to get there?

5 A. I would say rather quickly. I don't know. I'm
6 sorry, I don't know. I would say within minutes. I don't
7 know.

8 Q. People would've been talking to him pretty quickly?

9 A. Rather quickly, yes, ma'am.

10 Q. Would Deputy Heflin have been one of those people?

11 A. Maybe the first responders would've beat him there,
12 some of them. He would've been one of the first ones to
13 respond.

14 Q. Do you know what time Deputy Heflin's first
15 interview with him began?

16 A. I do not.

17 Q. Do you know what time your interview with him
18 began?

19 A. Can I look back?

20 Q. You may look and see if you have it.

21 (A pause transpired).

22 THE WITNESS: I'm sorry. I don't see the times
23 there. Looking back, I would think that it would be noted in
24 the CAD system when Deputy Heflin went 1023. I would assume I
25 went 1023 on the radio, too.

DENNIS GARDNER REDIR BY MS. LESKANIC

1 MS. LESKANIC: May we approach just one moment?

2 THE COURT: Sure.

3 (Off-the-record discussion.)

4 THE COURT: Mr. Foreman, ladies and gentlemen of
5 the jury, we are very close to our break. I've been asked to
6 take a break a few minutes early so they can iron out
7 something. We're going to take our afternoon break at this
8 time. Those that smoke and you want to, this will be your time
9 to do that. This will be our 20-minute break. We'll be back
10 in the courtroom about 25 till the hour. Anything you need,
11 Mr. Foreman, let the bailiffs know; water, coffee, whatever.

12 (The jury exited the courtroom at 3:19 p.m.)

13 THE COURT: Officer, you can step down and refresh
14 yourself.

15 Everybody, we'll be in recess for about 20 minutes.

16 (A recess transpired from 3:20 p.m. until 3:47
17 p.m.)

18 THE COURT: Everybody ready?

19 MS. LESKANIC: Yes, Your Honor.

20 THE COURT: We'll have the jury.

21 (The jury entered the courtroom at 3:48 p.m.)

22 THE COURT: Mr. Foreman, everything good with the
23 jury?

24 THE FOREPERSON: Yes, sir, Your Honor.

25 THE COURT: Mr. Foreman, ladies and gentlemen,

DENNIS GARDNER REDIR BY MS. LESKANIC

1 while on the break the parties have made a stipulation. It is
2 stipulated that Deputy Heflin's first video, which is State's
3 Exhibit 57 began at 2:06 p.m. on June 14, 2019.

4 It is further stipulated that Brandon Gardner's
5 interview of the Defendant in his truck, which is State's
6 Exhibit 59, began at 3:23 p.m. on June 14, 2019. Is that the
7 State's stipulation?

8 MS. LESKANIC: Yes, Your Honor.

9 THE COURT: And the defense.

10 MR. MOORE: Yes, sir, Your Honor.

11 (COURT EXH. 6, Stipulation, was marked for
12 identification.)

13 THE COURT: Solicitor.

14 BY MS. LESKANIC:

15 Q. Detective Gardner, Mr. Moore asked you about the
16 Defendant having any injuries. I know there was something
17 about teeth or maybe dentures. Were there any other injuries
18 that you saw on him?

19 A. None that I noticed.

20 Q. None that he never complained of?

21 A. He never complained.

22 Q. He was wearing shorts when he was interviewed on
23 scene; is that correct?

24 A. He was.

25 Q. Did he tell you that he was wearing shorts during

DENNIS GARDNER REDIR BY MS. LESKANIC

1 this trip down the river, or what did he say he was wearing?

2 A. A pair of pants that he had pulled over the shorts.

3 Q. A pair of jogging pants?

4 A. Yes, ma'am.

5 Q. And those were the pants that he was wearing on
6 this river trip?

7 A. Yes. I think one time he stated they would've been
8 on the raft where he left it. And another time he told me that
9 they could've fell off when he was using the stick to go back
10 up the river. Maybe they would've been in the general area but
11 there were none.

12 Q. Long pants or jogging pants on the river, shorts
13 when law enforcement got to him?

14 A. Yes.

15 Q. Did he also state that Justin brought him other
16 clothes?

17 A. If I remember correctly he said two shirts.

18 Q. So he had two shirts and the white T-shirt?

19 A. The way I understood it.

20 Q. Three layers of shirts and two layers of pants?

21 A. 'Cause he said it was cold that evening.

22 Q. What did he say Justin was wearing on top?

23 A. Pants and a brown or black shirt. I don't know if
24 he ever clarified a dark colored shirt. I don't know if he
25 said brown or black shirt, I'm sorry.

BENJAMIN PETERSON DIR BY MS. LESKANIC

1 Q. Do you remember if he said long sleeve or T-shirt?

2 A. He said T-shirt.

3 Q. He's in three shirts and Justin is in one T-shirt
4 according to him?

5 A. Yes.

6 THE COURT: Anything?

7 MR. MOORE: No questions.

8 THE COURT: Sir, you may step down. Please be
9 careful.

10 (The witness exited the stand.)

11 MS. LESKANIC: State calls Benjamin Peterson.

12 (Mr. Peterson entered the courtroom.)

13 THE CLERK: Raise your right hand. Left hand on
14 the Bible.

15 BENJAMIN MICHAEL PETERSON
16 being first duly sworn, testified as follows:

17 THE COURT: Good afternoon, sir. If you'll tell us
18 your name and spell your last name for my court reporter,
19 please.

20 THE WITNESS: My name is Benjamin Michael Peterson,
21 P-E-T-E-R-S-O-N.

22 THE COURT: Thank you. Give your attention to the
23 Solicitor.

24 MS. LESKANIC: May it please The Court.

25 DIRECT EXAMINATION

BENJAMIN PETERSON DIR BY MS. LESKANIC

1 BY MS. LESKANIC:

2 Q. Mr. Peterson, where are you employed?

3 A. I work for Hydroland. We're a dam down at Cherokee
4 Falls on Broad River.

5 Q. Is that near Herbie's Fireworks?

6 A. Yes, ma'am. It's kind of behind Herbie's. We're
7 on the river.

8 Q. That is where you work?

9 A. Yes, ma'am.

10 Q. How long have you worked in that location?

11 A. August 1, 2013.

12 Q. When you go to work, how do you get to your office?
13 Do you have to go by the fireworks plant?

14 A. Yes, ma'am. I come through there -- well, there's
15 two gates. If they're there, I come through their main gate.
16 And I have a gate to come in.

17 If they're not there, so I don't open their gates
18 up. I have a gate that's down where my boat ramp is.

19 Q. Do you know if they were open on Friday, June 14,
20 2019?

21 A. I'm going to say they were, yes, ma'am. I don't
22 remember right off. Coming up on the July 4th thing, they
23 would usually open even longer than normal.

24 Q. What time were their normal opening hours?

25 A. Normally they're open from like 8:00 in the morning

BENJAMIN PETERSON DIR BY MS. LESKANIC

1 until 4:30 in the afternoon.

2 Q. Were those hours sometimes different coming up on
3 July 4th?

4 A. Yes, ma'am. Sometimes they would be there from
5 7:00 until 5:00 or 6:00 at night.

6 Q. At least 8:00 to 4:30?

7 A. Yes, ma'am.

8 Q. Those were the standard hours?

9 A. Yes, ma'am. Let me back up. Because it was coming
10 up on July 4th. Right after July 4th they might not even be
11 there on a Friday because there was no big demand for
12 fireworks.

13 Q. In June, of course, there would've been?

14 A. Yes, ma'am.

15 Q. Thank you for clarifying that.

16 Did Detective Gardner with the Cherokee County
17 Sheriff's Department reach out to you for some information
18 regarding river flow --

19 A. Yes, ma'am.

20 Q. -- on Broad River as it would've been on June 14,
21 2019?

22 A. Yes, ma'am.

23 Q. Without going in specifically as to what
24 information you provided him, what information can you provide?
25 What do you have access to?

BENJAMIN PETERSON DIR BY MS. LESKANIC

1 A. NOAA, which is the National Weather whatever. It's
2 a Website. And I can go on it. Anybody can. You can go on
3 it, put in your location. And it will give you the readings
4 for your closest location. It will tell you how fast the water
5 is running or the -- what we call the cube, the cubic foot per
6 minute water flow, and the height of the river by the hour.

7 Q. Are you able to control some of that at times? Are
8 you asked to open a dam or close a dam or how does that?

9 A. No, ma'am. I'm a run-off river dam. My machinery
10 will run as fast as the river is running.

11 Q. Were you able to access information for the full
12 day on June 14, 2019?

13 A. Yes, ma'am.

14 MS. LESKANIC: May I approach the witness, Your
15 Honor?

16 THE COURT: Yes, ma'am.

17 BY MS. LESKANIC:

18 Q. I'm going to show you, Mr. Peterson, what's been
19 marked as State's Exhibit 40 and ask if you can take a look at
20 that.

21 Do you recognize that?

22 A. Yes, ma'am.

23 Q. Would you be able to explain what that is, not yet.
24 Just looking at that, would you be able to explain it to me?

25 A. I can tell you on this side is the feet, the height

BENJAMIN PETERSON DIR BY MS. LESKANIC

1 on the river. And over here is the cubic foot per second, how
2 fast the river is running.

3 Q. Would that give us information for the section --
4 would you be able to use this information to at least give a
5 rough estimate of speeds and depth from 29 bridge down to the
6 firecracker plant?

7 A. The reading comes from the 29 bridge.

8 MS. LESKANIC: Your Honor, at this time I would
9 offer State's Exhibit 40 for admission.

10 MR. MOORE: Without objection.

11 (STATE EXH. 40, List of numbers, was entered into
12 evidence.)

13 BY MS. LESKANIC:

14 Q. I'm going to hand this back to you, Mr. Peterson,
15 to start with. Could you start about 1:00 in the morning on
16 June 14th and tell us -- tell us what you can about what Broad
17 River was doing at that time.

18 A. 1:00 in the morning, it was 4.46 feet in its run
19 height at the reading. It was running 2,070 -- 2,720 cubic
20 foot per second.

21 Q. Do you have any idea how to break that down to a
22 speed?

23 A. Not really. It's wider here. It's deeper here,
24 that kind of thing. That tears that up.

25 That's pretty quick. We've seen a lot quicker.

BENJAMIN PETERSON DIR BY MS. LESKANIC

1 That's pretty fast. But I've seen it upwards of 100,000.

2 Q. When you say it's fast, is it fast compared to
3 other rivers or is it fast for Broad River?

4 A. Fast for Broad River. Right now, today, the run on
5 it is about 900 CFS.

6 Q. If you're able to, would you be able to state --
7 you started at 29 bridge, and you were to float down to the
8 firecracker plant -- how long that would take based on the
9 information on June 14th, without paddles?

10 Just floating down the river on a raft or kayak.
11 Roughly, how long that float would take based upon the
12 measurements you had on that day.

13 A. Hour-and-a-half.

14 Q. When you say fast, do I need a helmet?

15 A. It ain't going to help you. Yes, sure.

16 Q. Is it rough? Is this white water on Broad River?

17 A. No, it's not white water fast. It's just quick for
18 what Broad River usually is.

19 Q. Again, when you say quick, it's Broad River terms,
20 not compared to another --

21 A. No, ma'am.

22 Q. -- type of river?

23 A. No, ma'am.

24 Q. Now, 4.6 feet, I'm sure Broad River is not just 4.6
25 feet deep the whole way down?

BENJAMIN PETERSON DIR BY MS. LESKANIC

1 A. No, ma'am.

2 Q. Can you describe how the river is. I'm talking
3 about the area from 29 down to the firecracker plant.

4 A. At 4.46 feet, it's going to hide a lot of the rocks
5 you would normally -- like, right now, anybody that goes
6 across, if you look down, that's rocky. At 4.46 feet, you
7 would see a few little rifts here and there. You're not going
8 to see those rocks.

9 Q. But they're there?

10 A. They're there. You're going to be above them.
11 It's not going to catch debris like it does when they're down.
12 Anybody goes across the river, sees the logs and stuff hung up.
13 You get above 4 feet, you start washing stuff down. It's not
14 hanging things. It's just running quicker.

15 Q. Is Broad River -- how do you describe it as far as,
16 is it deep, is it shallow? How would you describe it if
17 someone hasn't been out there before?

18 A. It's pretty shallow. I mean, most places it's
19 walkable. You can wade in it.

20 Q. Would it be more or less difficult to paddle once
21 you get close to the dam, like to get back over to the
22 left-hand side once you get down to the dam?

23 A. It's going to be pulling you to the dam pretty
24 hard. I mean, to get to the boat landing right there on the
25 river, you got to make a hard left. And going a hard left

BENJAMIN PETERSON DIR BY MS. LESKANIC

1 against getting pushed.

2 Q. If you don't mind, could you step down for just a
3 moment.

4 A. I know you haven't seen this. I'm going to show
5 you State's Exhibit 2. We're down here. Where would someone
6 start to get pushed if you came down this right side?

7 A. If you coming down through here (indicating),
8 that's going to be Jenkins. Once you get here (indicating),
9 that's the dam.

10 Q. Yes, sir.

11 A. You're going to be pushed up against it. You're
12 going to have to be coming across here, across the river to try
13 to make this turn. If you see right there (indicating), you
14 can see all that white.

15 Q. Yes, sir.

16 A. That's water running across the top. That's just
17 pushing. It's going over the top. It's dragging things this
18 way, not this way (indicating).

19 Q. Do you think, based on what you know, it would be
20 more difficult for me -- say if I was here -- to paddle over to
21 Goat Island or to come down here and have to paddle to this
22 left side.

23 A. Lot easier right there (indicating) because here
24 you have some depth. I mean, eight, ten foot. But here you
25 don't have that depth that you have here (indicating). I mean

BENJAMIN PETERSON CROSS BY MR. MOORE

1 paddling or stepping out, you know, you're right there. Here,
2 there's no ledges that you can get to.

3 If the water is way down, which it wouldn't have
4 been -- the water is way down, there's a ledge that comes
5 across the front of the dam that you can walk across. Not if
6 you're seeing that, that's not down.

7 Q. On that particular day, with it being higher, it
8 would've been more difficult to get to -- to paddle yourself
9 over here to the left to get away from the dam than say to move
10 over somewhere in this area?

11 A. Yes, ma'am.

12 Q. Thank you. You can have a seat.

13 MS. LESKANIC: Thank you. That's all the questions
14 I have. Please answer any questions Mr. Moore has.

15 THE WITNESS: Yes, ma'am.

16 CROSS-EXAMINATION

17 BY MR. MOORE:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. I think we all just learned a lot about dams. Let
21 me make sure I understand a couple things I think you were
22 pretty clear about. I just want to clarify. You and the
23 company you work for do not control the water flow at the dam?

24 A. We are -- federal permit requires us to run rate of
25 the river, what they call run of the river. However fast the

BENJAMIN PETERSON CROSS BY MR. MOORE

1 river is running is how fast we can run.

2 Q. I guess, maybe I was wrong. In my head, I thought
3 people who control dams can open gates and close gates and
4 choose how much water passes and doesn't pass. Y'all don't do
5 that?

6 A. We can. We're not supposed to. We have to call in
7 and get permission to do that.

8 Q. To your recollection, there was nothing like that
9 going on, on the date you pulled the records for?

10 A. No, sir. The only time that we will -- I'll throw
11 this out there. The only time I would open the gates is to
12 release water would be if it was running a lot harder; the
13 river was running a lot harder than what it is right now.
14 2,700 cubic foot is not hard enough for me to open gates to
15 allow water through.

16 Q. That makes sense.

17 What did you say that was again on your reading
18 that day? It was 20 what. 27?

19 A. At 1:00 it was 2,720 CFS. Cubic foot per second.

20 Q. Two thousand seven hundred. 2,700?

21 A. Yeah.

22 Q. Cubic foot per second. That's three times faster
23 than it is today?

24 A. Yeah.

25 Q. You pulled this information. This isn't some type

BENJAMIN PETERSON CROSS BY MR. MOORE

1 of sensor that your company does. This is actual NOAA stuff?

2 A. That's the federal government stuff, yes.

3 Q. They have a sensor. You said it's at the 29
4 bridge?

5 A. Yes, sir.

6 Q. Is it like mounted on the bridge? Is it in the
7 water? I do not know how it is.

8 A. It's mounted on the bridge and runs down into the
9 river.

10 Q. When you're talking about the flow rate, the depth,
11 all these things, we're talking about that's what the sensor
12 reported at 29 bridge?

13 A. Yes, sir.

14 Q. That makes sense.

15 You described 2,700 as being quick for the Broad
16 River?

17 A. Right.

18 Q. There's no sensor between 29 bridge and the dam?

19 A. No, sir.

20 Q. Would it be fair to say that there are different
21 depths, both shallower and deeper between the bridge and the
22 dam than the four feet at the bridge?

23 A. Yes, sir.

24 Q. What about the flow? I'm assuming, you correct me
25 if I'm wrong. I'm assuming that flow rate, that reading you

BENJAMIN PETERSON CROSS BY MR. MOORE

1 told us is from the bridge. When water passes through wider
2 and narrower spots along the river, doesn't the flow increase
3 and decrease at those points?

4 A. Not our measurable flow. Not our measurable flow.
5 The water that's coming down is coming down.

6 Q. Got you.

7 A. It's still 2,700 foot if it's this wide or if it's
8 this wide (indicating). It's going this way, not this way.

9 Q. For your purposes?

10 A. For our purposes, yes, sir.

11 Q. At the dam?

12 A. Uh-huh.

13 Q. Do you know -- if you don't, that's okay. Do you
14 know if, at a wider section of the river, up near the bridge,
15 versus a narrower section where an island may be, does that
16 water flow faster or slower? If you don't know, that's fine.

17 A. You know, I've never checked that, you know,
18 because that's not --

19 Q. That's not your job?

20 A. It is not in my field.

21 Q. You obviously know a lot. I thought maybe you'd
22 know that one. I just wanted to ask if you knew any
23 difference.

24 You said a minute ago at 2,700 there are rocks that
25 are normally exposed that are not exposed; is that correct?

BENJAMIN PETERSON CROSS BY MR. MOORE

1 A. Yes, sir.

2 Q. Are there still rocks exposed in some places?

3 A. Here and there. Not like it would be today. You
4 will still -- well, from the bridge, looking out, you won't see
5 a rock at 2,700 down river. You'll make the bend and then you
6 might see a couple here and there.

7 Upriver you'll see a few. Those are the ripples.
8 Anybody that's coming across will know, there's a, across the
9 river right there where it ripples.

10 Q. What you're saying, ripples are essentially some
11 type of -- what's the word -- manifestation that there is a
12 rock right below the surface of the water; is that fair?

13 A. Uh-huh.

14 Q. Most of the rocks down from the bridge at 2,700 --

15 A. Are covered.

16 Q. -- are covered either a lot or just a little?

17 A. Yes, sir.

18 Q. You also said that, at this rate, and at this
19 depth, debris which would normally collect in the river would
20 be swept away?

21 A. Yes.

22 Q. Things that get into the river with these readings
23 would be moving down the river?

24 A. Yes.

25 Q. Not just stationary?

BENJAMIN PETERSON REDIR BY MS. LESKANIC

1 A. Yes. Again, that depends on what size it is. I
2 mean, you know, you got branches, little two or three inch
3 saplings, stuff like that, yeah, they're flowing. A 30-foot
4 tree that weighs two thousand pounds, it might not be moving
5 yet because it might not be up high enough.

6 Q. What about fishing gear and stuff like that?

7 A. Oh, yeah, that would be moving.

8 Q. That would be?

9 A. Yes. That would be moving.

10 Q. If something fell off your boat --

11 A. It's coming down. If it floats, it's coming down.
12 If it doesn't float, it's still eventually coming down. It's
13 just -- it's moving everything.

14 Q. Thank you.

15 A. I didn't know if you wanted to know that. We
16 pulled a safe out that somebody threw off the bridge one time.

17 Q. Pulled it out where?

18 A. At my dam.

19 Q. Pushed it all the way down there?

20 A. Yeah, it got to the dam.

21 Q. Got you. Thank you for answering my questions.

22 MS. LESKANIC: Briefly.

23 THE COURT: Yes.

24 REDIRECT EXAMINATION

25 BY MS. LESKANIC:

BENJAMIN PETERSON REDIR BY MS. LESKANIC

1 Q. Do you know where the sensor is located on 29
2 bridge?

3 A. Yes, ma'am.

4 Q. Where is that?

5 A. About the center of the bridge.

6 Q. Are you familiar with the area at 29 bridge --

7 A. Yes, ma'am.

8 Q. -- the water there?

9 A. Uh-huh.

10 Q. Is the water more shallow or more deep against the
11 bank when you first come down the entryway?

12 A. Shallow.

13 Q. So it's more shallow right there at the bank. And
14 then as you move, like if I were to step off the bank and step
15 into the water, is it going to get deeper and deeper?

16 A. As you go towards the pylons, the pylons catch and
17 they move everything around. It's going to be deeper from
18 behind the pylons than away from them.

19 Q. That sensor measures a little over four feet.
20 That's more in the middle of the bridge?

21 A. It's running down a pylon.

22 Q. Near the bank it wouldn't be four feet?

23 A. No, ma'am.

24 Q. It would be more shallow?

25 A. Yes.

BENJAMIN PETERSON REDIR BY MS. LESKANIC

1 Q. Do you have any idea what that would be?

2 A. At that water depth, normally, ankle to calf.

3 Q. Ankle to calf right there?

4 A. That's where everybody puts in that does any kind
5 of fishing. If they want to float or if they go upriver on
6 kayaks, tubes, things like that, they will put in at 29.

7 Q. Now, you said that if you drop something in the
8 water, it's coming down?

9 A. Yes, ma'am.

10 Q. Just like a person on the kayak, you said it would
11 take them about an hour-and-a-half to come down. Is that what
12 we're talking about --

13 A. It depends on what it is that's dropped. If it
14 floats, yes.

15 Q. It's not coming down like flying down?

16 A. Not coming down like a racecar.

17 Q. It's going to eventually get there?

18 A. Yes, ma'am.

19 Q. Were you made aware that this had happened? Did
20 they notify you that they were looking for a body, and did you
21 have to do anything?

22 A. Yes, ma'am. I got called that afternoon to come
23 down and shut the dam down because they were going upstream for
24 a body.

25 Q. If the river flow was about an hour-and-a-half to

BENJAMIN PETERSON RECROSS BY MR. MOORE

1 get down, later that day, or the next day at your dam, did you
2 find a cooler?

3 A. No, ma'am.

4 Q. Did you find a paddle?

5 A. No, ma'am.

6 Q. Did you find some fishing rods?

7 A. (Witness moves head from side to side.)

8 Q. Did you find a tent?

9 A. No, ma'am.

10 Q. Sleeping bag?

11 A. No, ma'am.

12 Q. Blanket?

13 A. No, ma'am.

14 Q. Life jackets?

15 A. No, ma'am. I make a note because I report all that
16 stuff to my bosses, of things that are out of the ordinary.

17 Q. None of those things made it down to your dam?

18 A. I didn't see them.

19 Q. Thank you very much, Mr. Peterson.

20 A. Yes, ma'am.

21 THE COURT: Anything?

22 MR. MOORE: Very briefly.

23 RECROSS-EXAMINATION

24 BY MR. MOORE:

25 Q. I honestly don't know the answer to this question.

BENJAMIN PETERSON RECROSS BY MR. MOORE

1 I'm going to ask you for it. Is the dam the only place water
2 passes that part of the river?

3 A. Yes, sir.

4 Q. All the water goes over the dam?

5 A. It goes over or through. There's no around right
6 there.

7 Q. There's no around?

8 A. There's no canals, nothing like that.

9 Q. No overspill areas or anything where water goes?

10 A. I don't understand what you're saying.

11 Q. I don't either.

12 Here's what I'm trying to get at. Let me ask it in
13 a much simpler way. All the water on the Broad River goes
14 through or over your dam at that point?

15 A. Yes, sir.

16 Q. At what time were you asked to close the dam or
17 shut the dam down?

18 A. That I do not remember. I was already home. So
19 I'm going to say it was after 3:00.

20 Q. After 3:00 p.m.?

21 A. Yes. But I don't remember right off. Because it
22 could've been a day, where it being the summer, there's a good
23 chance that I left at 2:00 or even 1:00 because I'm allowed to
24 go in -- I'm the only one that works there. I get to work my
25 own eight-hour schedule. If I want to go in at 5:00 and get

BENJAMIN PETERSON RECROSS BY MR. MOORE

1 off at 1:00, I can. 6:00 to 2:00. 7:00 to 3:00. However I
2 feel like doing it.

3 Q. That's a pretty good job.

4 A. Oh, yeah. I love it.

5 Q. How long did you say you have been there?

6 A. Ten years.

7 Q. It was some point after you got home?

8 A. I know it was after I had already got home. I
9 think, like I said, the reason I think it was 3:00 or so is
10 because -- this is going to sound backwards. I don't mean it
11 to. I'm not throwing off on anybody.

12 The people who called me were the people we bought
13 the dam from. The law enforcement had called them to come shut
14 it down, and then they had to find me to get me to come shut it
15 down because they didn't own it anymore.

16 Q. How long did you say it takes to flow from the 29
17 bridge to your dam? I'll call it your dam.

18 A. Hour-and-a-half. If I'm sitting in the office and
19 I pull up a figure and it tells me that the water was 900 CFS,
20 now at 12:00 it's two thousand, I know I jumped that much. I
21 know to be getting ready because, within two hours, my water is
22 going to change, and I've got to make adjustments to make sure
23 that everything is all right.

24 Q. It's an hour-and-a-half for something, a boat, an
25 item --

BENJAMIN PETERSON RECROSS BY MR. MOORE

1 A. Hour-and-a-half, two hours.

2 Q. -- to float from the bridge to your dam?

3 A. Right.

4 Q. You didn't close the dam down until mid-afternoon
5 at the earliest on the 14th?

6 A. Yes.

7 Q. Thank you.

8 A. Yes, sir.

9 THE COURT: Sir, you may step down. Please be very
10 careful.

11 THE WITNESS: Thank you, sir.

12 MS. LESKANIC: May he be excused, Your Honor?

13 THE COURT: Any objection?

14 MR. MOORE: No, sir.

15 THE COURT: Sir, you may stay or go, whichever you
16 choose.

17 THE WITNESS: Thank you.

18 (The witness exited the stand.)

19 MS. LESKANIC: State calls C.R. Frank Keller, Jr.

20 (Mr. Keller entered the courtroom.)

21 THE CLERK: Mr. Keller, please raise your right
22 hand. Left hand on the Bible.

23 C.R. KELLER

24 being first duly sworn, testified as follows:

25 THE COURT: Sir, if you will tell us who you are

CR KELLER DIR BY MS. LESKANIC

1 and spell your last name for my court reporter, please.

2 THE WITNESS: I'm C.R. Keller, K-E-L-L-E-R.

3 THE COURT: Thank you.

4 MS. LESKANIC: May it please The Court.

5 DIRECT EXAMINATION

6 BY MS. LESKANIC:

7 Q. Mr. Keller, where do you live?

8 A. [REDACTED] Ford Road, Gaffney.

9 Q. Where is that in location to the Broad River?

10 A. It's right on the Broad River.

11 Q. Are you the only house on Broad River from 29 down
12 to the fireworks plant?

13 A. Yes, ma'am.

14 Q. I want to take you -- first, I want to ask: Who do
15 you live with or who lives with you?

16 A. My wife and my daughter.

17 Q. How old is your daughter?

18 A. She just turned 15.

19 Q. Tough age.

20 I want to take you back to June 14th of 2019. Do
21 you remember that day?

22 A. Yes, ma'am.

23 Q. Did someone come to your house that day?

24 A. No, ma'am.

25 Q. When did something change about your day? When did

CR KELLER DIR BY MS. LESKANIC

1 you notice that something was going on?

2 A. When I woke up that morning, and I looked outside.
3 And it was a lot of officers out there in my yard and out on
4 the water.

5 Q. Let's go through kind of your day. What time do
6 you normally get up?

7 A. Around 5:00, 5:30 every morning.

8 Q. Is that your standard time whether you're working
9 or not?

10 A. Yes, ma'am.

11 Q. Is that what time you got up that morning?

12 A. Yes, ma'am.

13 Q. Does your wife work outside the home?

14 A. Yes, ma'am.

15 Q. What time does she get up in the morning?

16 A. About the same time, between 5:00 and 6:00 every
17 morning.

18 Q. Both of you were up. By 5:00 to 6:00 in the
19 morning, someone is up and about in your home?

20 A. Yes, ma'am.

21 Q. Do you recall if you had to work that day?

22 A. Not that day I did not.

23 Q. Did your wife have to work that day?

24 A. Yes, ma'am.

25 Q. Where does she work?

CR KELLER DIR BY MS. LESKANIC

1 A. Corner Stop Number 2 in Gaffney.

2 Q. Is that over on Providence Road?

3 A. Yes, ma'am.

4 Q. What time does she have to be at work?

5 A. By 6:30.

6 Q. Do you know what time she leaves the house to get
7 to work?

8 A. Usually right around 6:00.

9 Q. She leaves the house at 6:00 a.m.?

10 A. Yes, ma'am.

11 Q. Is that what time she left the house that day?

12 A. As far as what I remember it was.

13 Q. Did your daughter stay home with you that day?

14 A. No, ma'am. My daughter was up at her
15 grandmother's.

16 Q. How did she get there?

17 A. She lives same property. We just brought -- my
18 wife dropped her off on the way to work.

19 Q. Your wife and your daughter would leave the house
20 together?

21 A. Yes, ma'am.

22 Q. As you're leaving your property -- is it her mother
23 or your mother?

24 A. It's her mother.

25 Q. Her mother. They stopped on top of the hill at her

CR KELLER DIR BY MS. LESKANIC

1 mother's house and dropped off your daughter?

2 A. Yes, ma'am.

3 Q. From the time that you awoke until you saw officers
4 outside, I guess, your property, did anyone come to your house?

5 A. No, ma'am.

6 Q. Could you describe your property a little bit for
7 the jury as far as if -- where you're situated on the river and
8 how, if you are on the river, you would get to your house. If
9 I was floating down Broad River, how would I come see you?

10 A. If you're coming down, you get down, go down to
11 this, my property would be on the right-hand side. It would be
12 a challenge then to get out of the river. You can get out of
13 the river right there, walk 200 feet to my house.

14 Q. I'm going to show you what has been marked and
15 admitted State's Exhibit 71. You can take a minute to kind of
16 acclimate yourself with that. Can you see your house?

17 A. Yes, ma'am. This right here (indicating).

18 Q. I'm going to put this up on the board.

19 On this photograph, can we see your home?

20 A. You can see my property. Yes, ma'am.

21 Q. Could you step down here with me. Would you mind.

22 I know there's a little bit of a glare. It's hard.

23 Can you use this laser light on it. Could you point to the
24 jury where your home probably is.

25 A. (Witness complied.)

CR KELLER DIR BY MS. LESKANIC

1 Q. Right there.

2 If I was going to come and see you, I was coming
3 down the river, how would I get to you?

4 A. Just coming down, you get right here (indicating)
5 and you get out the river, crawl up the bank and walk to my
6 house.

7 Q. Do you recall what the bank was like on June 14th?

8 A. Yes, ma'am. It was very steep and muddy.

9 Q. You can go back and have a seat. Thank you very
10 much.

11 After you got up between 5:00 and 5:30, did you go
12 back to sleep before law enforcement arrived?

13 A. I could have dozed off on the couch, yes, ma'am.

14 Q. Do you have any animals at your house?

15 A. Yes, ma'am.

16 Q. What kind of animals do you have?

17 A. I have dogs.

18 Q. Are they inside or outside?

19 A. I have some that's inside. I have two that's
20 outside.

21 Q. Two outside dogs. Let's start with those. If
22 somebody -- has anyone ever come up to your house before from
23 the bank?

24 A. Yes, ma'am.

25 Q. How do your dogs normally respond?

CR KELLER DIR BY MS. LESKANIC

1 A. They raise Cain.

2 Q. The dogs outside raise Cain. What kind of dogs did
3 you have inside the house at this time?

4 A. I have four chihuahuas and a Labrador. And another
5 little mixed breed dog.

6 Q. Four chihuahuas and what else?

7 A. Labrador retriever. And the other one is like a
8 brown pit.

9 Q. How do they react when somebody comes to the door?

10 A. They raise -- they act like they ain't never met
11 nobody.

12 Q. They make a lot of noise?

13 A. Yes, ma'am.

14 Q. Enough to wake you up?

15 A. Yes, ma'am.

16 Q. Did your dogs bark that morning?

17 A. No, ma'am.

18 Q. Was there any mud on your porch?

19 A. No, ma'am.

20 Q. Is your bank very muddy?

21 A. Yes, ma'am.

22 Q. Nobody came to your door saying: I need to call
23 911?

24 A. No, ma'am.

25 Q. Did you ever tell your wife and daughter not to

CR KELLER DIR BY MS. LESKANIC

1 answer the door? That somebody was at your door needing help,
2 and you told them don't help them?

3 A. No, ma'am.

4 Q. Have you helped people on the river before?

5 A. Yes, ma'am, we have.

6 Q. So when the DNR officer came up to talk with you,
7 did he come into your yard to speak with you?

8 A. I had actually walked down towards the river from
9 what I remember.

10 Q. Was he in a boat, or did he get out of the boat, or
11 do you recall?

12 A. I don't recall. I remember there was boats there.

13 Q. And you spoke with them?

14 A. Yes, ma'am.

15 Q. Did they ask you kind of these same questions I'm
16 asking you now? If anybody had been to your home?

17 A. Yes, ma'am.

18 Q. Did you tell them what you're telling us now?

19 A. Yes, ma'am.

20 Q. Nobody came on your door?

21 A. Yes, ma'am.

22 Q. Did you kind of look along your bank to see if you
23 saw anyone?

24 A. I did. I walked down there with the officer, and I
25 looked. I didn't see nothing.

CR KELLER DIR BY MS. LESKANIC

1 Q. You and the officer get out on the bank and y'all
2 look around a little bit?

3 A. Yes, ma'am.

4 Q. Did you and your wife even go out later and look?

5 A. Yes, ma'am. Later that day when she got home, we
6 walked down there and looked.

7 Q. You didn't see any slide marks or boat marks or
8 foot marks?

9 A. Nothing from what officer might've put on.

10 Q. How about a cooler? Did you find a cooler on your
11 bank?

12 A. No, ma'am.

13 Q. Can you tell the jury a little bit about the water
14 flow outside your home. Are you familiar with that branch of
15 water? If your home is here, what's the water like?

16 A. It's the same model. It ain't real deep right
17 there.

18 Q. Kids ever swim there?

19 A. Yes, ma'am, every year.

20 Q. Do you ever teach kids how to swim right there?

21 A. Yes, ma'am. Every year.

22 Q. It's not moving like a super fast current where
23 you're afraid of the kids being in right there?

24 A. No, ma'am, only if it's raining real hard.

25 Q. Do y'all ever go over to Goat Island?

CR KELLER DIR BY MS. LESKANIC

1 A. Yes, ma'am.

2 Q. How do you get there?

3 A. We swim across.

4 Q. Is your wife a good swimmer?

5 A. Well, she can doggie paddle.

6 Q. Can she doggie paddle from your house over to Goat
7 Island?

8 A. Yes, ma'am.

9 Q. If I stopped coming down the river, and I wanted to
10 stop here on Goat Island, can I do that? Is it land where I
11 can stop?

12 A. Yes, ma'am.

13 Q. Have you ever known anybody to stop there and camp?

14 A. All the time, every year.

15 Q. There's plenty of room to get off right there and
16 set up a camping spot?

17 A. Yes, ma'am, plenty of room.

18 Q. If somebody was on Goat Island, would they have
19 been able to see your wife and daughter leave the house that
20 morning?

21 A. Yes, ma'am.

22 Q. They wouldn't have had to go to your door to see
23 them leave the house?

24 A. No, ma'am.

25 Q. How about if somebody floats this river every other

CR KELLER CROSS BY MR. MOORE

1 weekend?

2 Are you and your family outside a lot?

3 A. Yes, ma'am.

4 Q. Is your lot visible from the river if people are
5 floating down?

6 A. Yes, ma'am. I have it completely open. There's a
7 few trees still that you can see from the river all the way to
8 my front door.

9 Q. Do y'all like to spend a lot of time outside?

10 A. Yes, ma'am.

11 Q. And at the river?

12 A. Yes, ma'am, all the time.

13 MS. LESKANIC: Let me make sure I don't have
14 anything else for you, Mr. Keller. Bear with me.

15 (A pause transpired).

16 MS. LESKANIC: I think that's all I have. If you
17 will, please, answer any questions Mr. Moore has for you.

18 THE WITNESS: Thank you.

19 MS. LESKANIC: Thank you, Mr. Keller.

20 CROSS-EXAMINATION

21 BY MR. MOORE:

22 Q. Good afternoon. Thank you for being here. I don't
23 have a whole lot of questions.

24 A. Yes, sir.

25 Q. Do you remember -- I know it's been a long time.

CR KELLER CROSS BY MR. MOORE

1 Do you remember what the water depth or flow was that day?

2 A. Not actually the complete depth. I know it wasn't
3 real deep.

4 Q. Would you say it was moving faster or slower than
5 normal?

6 A. About normal.

7 Q. It was normal?

8 A. Yeah, it wasn't going real fast.

9 Q. You observed the river every day; is that fair to
10 say?

11 A. Yes, sir.

12 Q. You have a frame of reference when it's high, when
13 it's low, when it's slow, when it's fast?

14 A. Yes, sir, I sure do.

15 Q. How would you describe it -- if you recall, you
16 might not. If you recall, how would you describe it that day
17 when you were out there looking on the bank and stuff?

18 A. I just recall about the way it was up against my
19 bank, water level at the bank. Where it's at, we usually get
20 in there and swim, probably couple feet deep.

21 Q. Is that deeper or shallower than usual?

22 A. It's about normal right about that time of year.

23 Q. You would say the flow and the depth that day were
24 pretty much average?

25 A. Yes, sir.

CR KELLER CROSS BY MR. MOORE

1 Q. Between the bank that you're describing and your
2 house, the porch, is it mud? Do you have, like, grass?

3 A. I have grass.

4 Q. You got like a yard and stuff?

5 A. Yes, sir.

6 Q. How far does the mud come up from the water until
7 your yard starts?

8 A. Probably about 25, 30 feet maybe.

9 Q. From the water to your yard?

10 A. Sometimes it does, yes, sir.

11 Q. Is there any foliage or that stuff that grows on
12 the side of the river?

13 A. Yes, sir.

14 Q. There's stuff down there?

15 A. Yes, sir. It's not all the way across the part I
16 got open. It's only sections.

17 Q. Do you recall what you were doing the night before
18 this?

19 A. If I ain't mistaken, I went to the emergency room
20 the night before.

21 Q. Emergency room?

22 A. I passed a kidney stone real bad.

23 Q. Oh, man. Those are terrible, aren't they.

24 A. Yes, sir.

25 Q. I know. You were in the emergency room?

CR KELLER CROSS BY MR. MOORE

1 A. Until around about midnight. I got home around
2 about midnight.

3 Q. Goodness. I didn't know we were going to get into
4 this. It's kind of relevant. They released you because you
5 were good to go home?

6 A. Right. Right.

7 Q. Did they give you anything to take when you got
8 home?

9 A. No. Told me to take Tylenol.

10 Q. That was nice of them.

11 A. Yeah.

12 Q. You came home around midnight?

13 A. Right.

14 Q. You testified that you typically wake up between
15 5:00 and 5:15?

16 A. Yes, sir.

17 Q. Even when you've been to the ER and had a kidney
18 stone, you still get up?

19 A. I still get up.

20 Q. So you slept for about four hours?

21 A. That's about normal.

22 Q. Do you usually only sleep four hours?

23 A. Four to six, that's usually about normal.

24 Q. The Solicitor may have already asked this. Where
25 did you say you work?

CR KELLER CROSS BY MR. MOORE

1 A. I do underground construction for Land Stone
2 Associates. They got the master contract with AT&T.

3 Q. Underground like infrastructure?

4 A. Yeah, new television.

5 Q. Had you worked on that Thursday?

6 A. Not that day because I think, like I said, I was
7 out because of kidney stones, if I'm ain't mistaken. It's been
8 a long time back.

9 Q. I got you. Let me just see if I have any other
10 questions. I think that's it.

11 Do you refer to that as Goat Island?

12 A. That's what I've always growed up. People always
13 called it.

14 Q. You can see it from your yard?

15 A. Yes, sir.

16 Q. Can you see it from your house?

17 A. You can see it from my front porch.

18 Q. The whole thing or part of it?

19 A. Just about the whole thing.

20 Q. Kind of where it starts to where it ends?

21 A. You can't see all the way down to the end past the
22 pillars. When you're sitting in my house on my front porch,
23 you can see three-quarters of it.

24 Q. Do you ever go into those other -- I know you've
25 looked, you live there. It's kind of like three channels, if

CR KELLER CROSS BY MR. MOORE

1 you will.

2 A. Yes.

3 Q. Do you ever go out into the other ones?

4 A. Yes.

5 Q. Are they deeper, shallower, slower, faster?

6 A. About the same what it is on the other side. On
7 Blacksburg side of it, lot of times it's more shallower. And
8 in between, it wasn't ever really high.

9 Q. Can you walk across it?

10 A. You might swim a little section, a little small
11 spot, maybe ten foot, 15 foot. Most part you could walk it.

12 Q. If you wanted to, you could get from your yard all
13 the way to the other bank?

14 A. I could walk all the way across to Blacksburg, yes,
15 sir.

16 Q. You don't need a boat or anything?

17 A. No, sir.

18 Q. What's on the other side?

19 A. Islands, woods.

20 Q. No roads or anything over there?

21 A. If you go on through the woods and come out on
22 River Road.

23 Q. That's not an improved road. It's like a gravel,
24 dirt road?

25 A. It's a gravel road. It leads you from 29 to

CR KELLER CROSS BY MR. MOORE

1 Cherokee Falls.

2 MR. MOORE: Thank you.

3 THE COURT: Thank you, sir. You may step down.

4 THE WITNESS: Thank you.

5 MS. LESKANIC: May he be excused, Your Honor?

6 THE COURT: Any objection?

7 MR. MOORE: No objection, Your Honor.

8 THE COURT: Sir, you may stay or go.

9 THE WITNESS: All right. Thank you, sir.

10 THE COURT: Thank you, sir.

11 (The witness exited the stand).

12 THE COURT: Mr. Foreman, ladies and gentlemen of
13 the jury, the next witness who will be coming is Major Billy
14 Anthony, is what I understand, about the scene out there. And
15 they don't want to break up testimony, and I understand that
16 completely. When I practiced law, I didn't like to do that
17 either.

18 We're going to adjourn just a little bit earlier
19 this afternoon. I had you a little earlier yesterday, so this
20 is comp time. Not paying overtime.

21 Remember, please, we are going to start at 10:00
22 a.m. tomorrow morning. I have veterans court at 8:45. That
23 will take me about 30 minutes in Spartanburg. Take me about
24 30, 35 minutes. I got to drive here, grab a cup of coffee. No
25 reason for you to be sitting back there all that time. I do

CR KELLER CROSS BY MR. MOORE

1 have veterans court in the morning. I will take care of that.

2 With that, I'm going to release you for the day.

3 Again, please don't try to do any investigations. Don't try to
4 learn anything on your own. You and I have to learn about this
5 case here in this courtroom.

6 With that, I'm going to let you go for the evening.
7 I hope everyone has a good evening. See you tomorrow at 10:00.

8 (The jury exited the courtroom at 4:37 p.m.)

9 THE COURT: Anything from the State or defense
10 before we adjourn?

11 MS. LESKANIC: Nothing from the State, Your Honor.

12 MR. MOORE: No, sir, Your Honor.

13 THE COURT: We will adjourn. We will recess until
14 10:00 a.m. tomorrow morning.

15 (The trial was adjourned at 4:39 p.m.)

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHEROKEE

IN THE GENERAL SESSIONS
7th JUDICIAL CIRCUIT

3 STATE OF SOUTH CAROLINA,
4
5 Plaintiff,

VOLUME 4

6 vs.

CASE NO. 2020-GS-11-0294

7 CHRISTOPHER CHAD DUNCAN,
8 Defendant.

9
10 HEARING BEFORE: HONORABLE R. KEITH KELLY

11 DATE: December 14, 2023

12 TIME: 10:30 AM

13 LOCATION: Cherokee County Courthouse
14 125 E. Floyd Baker Blvd
15 Gaffney, SC 29340

16 REPORTED BY: LORA L. McDANIEL,
17 Registered Professional Reporter

18
19 APPEARANCES:

20 ATTORNEYS FOR THE PLAINTIFF
21 KIMBERLY L. LESKANIC, DEPUTY SOLICITOR
and MATTHEW KENDALL, ASSISTANT SOLICITOR

22 ATTORNEYS FOR THE DEFENDANT
23 TRAVIS MOORE, ESQ.
24
25

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 I N D E X

2 DIRECT CROSS REDIRECT RECROSS

3 WITNESS/EXAMINATION

4 MAJOR BILLY ANTHONY

5 BY MS. LESKANIC 277 -- 335 --

6 BY MR. MOORE -- 317 -- --

7 KELLY ROSE, M.D.

8 BY MS. LESKANIC 339 -- 381 --

9 BY MR. MOORE -- 362 -- 385

10

11 E X H I B I T S

12 FOR I.D. IN EVD

13 STATE EXH. 4, Photograph 34 281

14 STATE EXH. 5, Photograph 34 282

15 STATE EXH. 6, Photograph 34 282

16 STATE EXH. 7, Photograph 34 282

17 STATE EXH. 8, Photograph 34 284

18 STATE EXH. 9, Photograph 34 284

19 STATE EXH. 10, Photograph 34 284

20 STATE EXH. 11, Photograph 34 284

21 STATE EXH. 12, Photograph 34 284

22 STATE EXH. 13, Photograph 34 284

23 STATE EXH. 14, Photograph 34 285

24 STATE EXH. 15, Photograph 34 285

25 STATE EXH. 16, Photograph 35 285

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STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 THE COURT: I think we have one matter we need to
2 take up outside the presence of the jury.

3 MR. MOORE: Yes, sir. May it please The Court,
4 Your Honor. We do have one issue I wanted to bring to your
5 attention that I think is appropriate for The Court to take
6 some testimony for purposes of the record.

7 Despite all the attempts to ensure that the jurors
8 did not see Mr. Duncan in custody at any point, and a lot of
9 precaution has been taken, it is my understanding there was
10 some type of incident -- I was not here -- there was some type
11 of incident last night when he was being taken from the
12 courthouse and transported back to the detention center. I
13 believe there were jurors in the parking lot where the
14 detention vehicle was parked.

15 It's not clear whether or not they observed the
16 Defendant. It's my understanding from talking to him he
17 definitely saw them and knew they were jurors. So I'm not sure
18 exactly what happened.

19 I do think it would be appropriate for The Court to
20 take some testimony from the detention officer who was present
21 so we can understand on the record what exactly happened last
22 night.

23 THE COURT: Come forward and let Ms. Brandy swear
24 you, see what happened.

25 THE CLERK: Raise your right hand.

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 DEPUTY CEDRIC DUNN

2 being first duly sworn, testified as follows:

3 THE COURT: Officer, tell us what happened.

4 DEPUTY DUNN: Yesterday, when we were leaving, we
5 got out of the elevator. As we were coming out of the elevator
6 to the foyer, we noticed the jurors in the parking lot. I
7 immediately backed him up and put him back in the elevator. We
8 just waited until all the jurors left. We waited about ten or
9 15 minutes. I'm not sure if they saw him, but we saw them.

10 THE COURT: We're making the record here. The
11 elevator on this building is an exterior elevator. And the
12 elevator has a foyer, it's glassed in. You actually have to
13 have a card reader and a key to operate that elevator.

14 DEPUTY DUNN: Yes, sir.

15 THE COURT: He never left out of the foyer?

16 DEPUTY DUNN: He never left the foyer.

17 THE COURT: The van is usually parked in front of
18 the door by the elevator?

19 DEPUTY DUNN: Yes, sir.

20 THE COURT: The van was between the elevator and
21 the foyer and, of course, the jurors?

22 DEPUTY DUNN: Yes, sir.

23 THE COURT: And Ms. Brandy was told about that,
24 took a picture. And that vehicle that they were standing at is
25 out in the middle of the parking lot?

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 DEPUTY DUNN: It was in the middle of the parking
2 lot.

3 THE COURT: Back towards the back actually.

4 DEPUTY DUNN: Yes, sir.

5 THE COURT: Did the jurors waive or acknowledge you
6 or him?

7 DEPUTY DUNN: No, they were talking amongst
8 themselves. They were looking around. I can't say if they
9 were looking my way. They looked behind them, they looked to
10 the other side. I can't say they looked directly at us.

11 THE COURT: He never exited the foyer?

12 DEPUTY DUNN: No, sir.

13 THE COURT: Was he handcuffed?

14 DEPUTY DUNN: He had handcuffs in the front. They
15 were black. He had manila envelope in his hands so you
16 couldn't see the handcuffs.

17 THE COURT: Did he have waist chains?

18 DEPUTY DUNN: No, sir, just black handcuffs on his
19 wrist.

20 THE COURT: No shackle on his legs?

21 DEPUTY DUNN: No, sir.

22 THE COURT: He didn't acknowledge them in any way
23 by waving at them?

24 DEPUTY DUNN: No, sir.

25 THE COURT: Drawing any attention to him.

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 DEPUTY DUNN: As soon as I saw them, I backed him
2 up.

3 THE COURT: Waited until the jurors were gone at
4 that point?

5 DEPUTY DUNN: Yes, sir.

6 THE COURT: Anything from the State?

7 MS. LESKANIC: No, Your Honor.

8 MR. KENDALL: Before the officers went down there,
9 did y'all wait up here for a long time for the parking lot to
10 clear out?

11 DEPUTY DUNN: Yes, we waited probably a good 15
12 minutes before we left from the courtroom.

13 THE COURT: Anything from Mr. Moore?

14 MR. MOORE: The door never opened? Y'all never
15 went out of the foyer area?

16 DEPUTY DUNN: We never went outside.

17 THE COURT: The door never opened?

18 DEPUTY DUNN: I'm not sure if the door opened or
19 not. I believe Officer Jansen opened the door. He never -- he
20 was at the door with me. He was behind me. I pushed him in.
21 Jansen went out the door. I never went out the door with him.

22 MR. MOORE: Thank you.

23 THE COURT: Thank you. Anything further from the
24 State or defense?

25 MS. LESKANIC: No, sir.

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 THE COURT: Mr. Duncan, would you like to make a
2 comment?

3 MR. DUNCAN: Your Honor, I just don't want the jury
4 to be already judgmental towards me.

5 THE COURT: I agree.

6 MR. DUNCAN: Because they did see me. They
7 were all talking amongst themselves. Ced is correct. I was
8 behind him. They already opened the door and was going out. I
9 saw them. When I saw them I said that's the jury member,
10 foreman, and two other guys.

11 Like Ced said, he pushed me back. We got in the
12 elevator. We waited for, like, 20 minutes. They did not leave
13 until Ms. Jansen got in the vehicle and started it up. Then
14 they all got in their vehicles and left. To me, it was like
15 they were waiting for something.

16 THE COURT: You were not in the van that she
17 started?

18 MR. DUNCAN: I was not.

19 THE COURT: You were still in the elevator?

20 MR. DUNCAN: Correct, Your Honor.

21 THE COURT: You didn't acknowledge them by waving
22 at them?

23 MR. DUNCAN: I did not, Your Honor.

24 THE COURT: They didn't wave toward you?

25 MR. DUNCAN: They did not, Your Honor.

STATE OF SOUTH CAROLINA vs. CHRISTOPHER CHAD DUNCAN

1 THE COURT: You don't believe they saw that you had
2 on cuffs?

3 MR. DUNCAN: I could not say honestly, Your Honor.

4 THE COURT: Were you holding a manila envelope?

5 MR. DUNCAN: I had my hands like this, holding my
6 envelope, yes.

7 THE COURT: Thank you. Anything further?

8 MS. LESKANIC: No, sir.

9 THE COURT: The Court finds they were pretty good
10 distance away. He was kept back in the foyer, never left the
11 foyer. I'm going to continue on. I don't think it's prejudice
12 at this point.

13 Anything further?

14 MR. MOORE: No, sir.

15 THE COURT: Everybody ready for the jury?

16 MS. LESKANIC: Yes, sir.

17 (The jury entered the courtroom.)

18 THE COURT: Mr. Foreman, everybody good?

19 THE FOREPERSON: Yes, sir, Your Honor.

20 THE COURT: Solicitor.

21 MS. LESKANIC: Thank you, Your Honor. May it
22 please The Court. State calls Major Billy Anthony.

23 (Major Anthony entered the courtroom.)

24 THE CLERK: Please raise your right hand.

25 MAJOR BILLY ANTHONY

MAJOR ANTHONY DIR BY MS. LESKANIC

1 being first duly sworn, testified as follows:

2 THE COURT: Major, tell us who you are and spell
3 your last name for madam court reporter, please.

4 THE WITNESS: I'm Major Billy Anthony. Employed
5 with Cherokee County Sheriff's Office.

6 THE COURT: Solicitor.

7 MS. LESKANIC: Good morning, Major Anthony.

8 DIRECT EXAMINATION

9 BY MS. LESKANIC:

10 Q. How long have you been employed with the Sheriff's
11 Department?

12 A. Twenty-three years.

13 Q. What different positions have you held during your
14 tenure at the Sheriff's Department?

15 A. Started out as reserve deputy with the Sheriff's
16 Office. I moved into -- I was hired on full-time to the
17 uniform patrol division.

18 After several years in uniform patrol, I started
19 working with the crime scene investigations division. I worked
20 there for about ten years before I went back into more of an
21 administrative role.

22 Q. During your time as a crime scene investigator, did
23 you attend lots of trainings to, I guess, enhance your
24 abilities as a crime scene investigator?

25 A. Yes, ma'am, I did.

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1 Q. Can you give us, not your entire resume, just
2 briefly some of the things that you have done throughout the
3 years.

4 A. Yes, ma'am. In my course of training, I've been to
5 numerous crime scene investigation courses, fingerprint
6 recognition comparison, footwear comparison, footwear
7 identification, tire tread, underwater crime scene
8 investigations. Just numerous in the forensic-related field.

9 Q. Going to this case, were you notified of a
10 potential drowning in the Broad River on June 14th of 2019?

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

12 Q. Back at that time were you working as a crime scene
13 investigator with the Sheriff's Department?

14 A. Yes, ma'am.

15 Q. How did you get that call, and what did you do?

16 A. So part of what we do at the Sheriff's Office is we
17 have mutual aid with other departments in the county. So when
18 a drowning call initially come out, we have officers in our
19 department that would respond as well. Emergency management
20 had a drone in which we assisted them with, in flying it
21 sometimes.

22 I initially responded. We were trying to locate a
23 subject in the river. That was my first interaction at this
24 time.

25 Q. Did you know exactly where that subject was located

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1 in the river, or do you know what information you had when you
2 responded?

3 A. When I responded, we just knew it was somewhere
4 below Highway 29, Cherokee Avenue where it crosses Broad River.
5 We were directed more further down the river, down Cherokee
6 Falls area, maybe even further down. We went as close as we
7 could get to the river on the Gaffney side to deploy the drone.

8 Q. While you had the drone out, did the drone locate a
9 body in the river?

10 A. No, ma'am.

11 Q. After you go with the drone, what is your next
12 involvement?

13 A. We received a call that the fire department, they
14 had deployed a boat into the river and they, in fact, located a
15 body in the river.

16 Q. Then what did you do?

17 A. I left from where we were at with flying the drone
18 and went around to the Blacksburg side at the Cherokee Falls
19 dam. And there's a boat ramp there where I met up with the
20 fire department and the coroner's office.

21 Q. What did you do after that?

22 A. We went out, myself and the coroner, deputy coroner
23 and DNR officer went up to where the body had been located.

24 Q. I want to show you, first of all, what has been
25 marked State's Exhibit 39. Just see if you recognize that.

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1 A. Yes, ma'am, I do.

2 Q. What will this show?

3 A. This is the area where the body was located.

4 MS. LESKANIC: Your Honor, at this time we offer
5 State's Exhibit 39 for admission.

6 THE COURT: Any objection?

7 MR. MOORE: No objection.

8 MS. LESKANIC: Without objection.

9 (STATE EXH. 39, Photograph, was entered into
10 evidence.)

11 MS. LESKANIC: Permission to publish.

12 THE COURT: Yes, ma'am.

13 MS. LESKANIC: Can I have Major Anthony step down.
14 I'm actually going to have him step down for the majority of
15 his testimony, Your Honor.

16 First of all I'm going to place this up here.

17 BY MS. LESKANIC:

18 Q. I'm showing you State's Exhibit 39. Can you tell
19 the jury what we're looking at in this photograph.

20 A. This is the island area (indicating) just above
21 Cherokee Falls dam. And this area right here (indicating) is
22 where the body was located.

23 Q. Then I'm going to ask you to step back over, Major
24 Anthony, to State's Exhibit 2.

25 If you could, on State's Exhibit 2, can you show

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1 the jury where this location is so that everyone is clear where
2 Justin was found.

3 A. Yes, ma'am. It was right in the divide of the
4 island, the little waterway there (indicating).

5 Q. Can you describe what the water depth there or what
6 it is like in that area.

7 A. At the time when we were out there, the water
8 was -- it was shallow in areas. Where his body was located was
9 around five feet of water. Above it and below it, there was
10 areas that was shallow where our boat was dragging going in and
11 out.

12 Q. I now want to show you, if you can remain standing,
13 I'm going to have you come back here. I'm going to show you
14 State's Exhibit 4, 5, 6, 7. If you can take a look at these
15 and tell me if you recognize them.

16 A. Yes, ma'am, I do.

17 Q. Do these accurately show what you saw approaching
18 Justin's body on the water?

19 A. Yes, ma'am.

20 MS. LESKANIC: Your Honor, at this time we would
21 offer State's 4 through 7 for admission.

22 MR. MOORE: Without objection, Your Honor.

23 THE COURT: Without objection.

24 MS. LESKANIC: May I publish?

25 THE COURT: Yes.

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1 (STATE EXH. 4, Photograph, was entered into
2 evidence.)

3 (STATE EXH. 5, Photograph, was entered into
4 evidence.)

5 (STATE EXH. 6, Photograph, was entered into
6 evidence.)

7 (STATE EXH. 7, Photograph, was entered into
8 evidence.)

9 BY MS. LESKANIC:

10 Q. Major Anthony, may I have you step over here.

11 I'm going to start by showing you what has been
12 marked State's Exhibit 4. If you would just walk the jury
13 through what we are looking at here.

14 A. This is approaching, coming up from the bottom of
15 the photo, as you're going up to where the divide is in the
16 island, this is -- the boat is where the body, the victim was
17 located. They are actually tied off there against that tree.
18 And this is coming upriver.

19 Q. Can you see parts -- in this picture, can you see
20 where the body is located?

21 A. It is right there (indicating) at the base of that
22 tree.

23 Q. And you are approaching -- if I'm looking at
24 State's Exhibit 2, you were coming up from the dam and
25 approaching from the bottom of the river, coming upstream; is

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1 that correct?

2 A. That's correct.

3 Q. I'm now going to show you what's been marked as
4 State's Exhibit 5.

5 A. This is just as we were getting a little closer to
6 the boat where they located -- this is the victim. He was face
7 down there (indicating) at the base of the tree and the river.

8 Q. State's Exhibit 6.

9 A. Just closer up photo of the victim.

10 Q. What do you see on his back?

11 A. When we first arrived there, we noticed there were
12 several scratches and some small cuts, lacerations to his body.

13 Q. And State's Exhibit 7.

14 A. This is, as they were getting ready to pull the
15 body out of the water, you can see there's several, right near
16 the waistband, there's several scratches, abrasions there. And
17 also down on the side.

18 Q. Thank you. Now, after Justin's body was removed
19 from the water, where was his body taken?

20 A. When the body was removed from the water, it was
21 placed into a body bag. And they brought it down in the boat.
22 We came back down the river to the boat landing, and he was
23 placed in the coroner's ambulance truck there at the boat
24 landing.

25 Q. Did you take photographs of Justin's body while it

MAJOR ANTHONY DIR BY MS. LESKANIC

1 was in the coroner's ambulance?

2 A. Yes, ma'am, I did.

3 Q. I'm going to show you what's been marked State's
4 Exhibits 8 through 16. If you would just take a moment. Turn
5 away from the jury for a moment.

6 Look at those and see if those are the photographs
7 that you took.

8 A. Yes, ma'am, they are.

9 MS. LESKANIC: Your Honor, at this time I would
10 offer State's 8, 9, 10, 11, 12, 13, 14, 15, and 16 into
11 evidence.

12 THE COURT: Any objection?

13 MR. MOORE: No objection, Your Honor.

14 THE COURT: Without objection.

15 MS. LESKANIC: May I publish?

16 THE COURT: Yes.

17 (STATE EXH. 8, Photograph, was entered into
18 evidence.

19 (STATE EXH. 9, Photograph, was entered into
20 evidence.

21 (STATE EXH. 10, Photograph, was entered into
22 evidence.

23 (STATE EXH. 11, Photograph, was entered into
24 evidence.

25 (STATE EXH. 12, Photograph, was entered into

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1 evidence.)

2 (STATE EXH. 13, Photograph, was entered into
3 evidence.

4 (STATE EXH. 14, Photograph, was entered into
5 evidence.

6 (STATE EXH. 15, Photograph, was entered into
7 evidence.

8 (STATE EXH. 16, Photograph, was entered into
9 evidence.)

10 BY MS. LESKANIC:

11 Q. I'm going to start with State's Exhibit 8.

12 A. This is the victim in the back of the ambulance.
13 It's a little harder to see on the TV screen. There's bruising
14 to the arms, there's some abrasions to the abdomen there. And
15 we have some bruising on the other arm, some redness around the
16 neck.

17 Q. Anything to the hands?

18 A. There was some bruising as well to the hands. I
19 believe something a little closer, another photograph.

20 Q. I'm going to show you State's Exhibit 9.

21 A. This is the victim's right arm. When we raised it
22 up, we saw some bruising. And you see there's more pronounced
23 bruising, several smaller, a little more linear bruises on the
24 arm.

25 Q. State's Exhibit 10.

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1 A. This is a photo, close-up of the victim's right
2 hand. You can see the bruising and a little bit of an abrasion
3 there on the knuckle. You have several bruises there on the
4 back of the hand.

5 Q. State's 11.

6 A. There is three linear bruises to the left arm,
7 upper arm. And we have several other smaller bruises on the
8 arm just below the elbow and back of the hand.

9 Q. State's Exhibit 12.

10 A. This is back of the left forearm area. There's
11 some abrasions and bruising on it as well.

12 Q. State's 13.

13 A. This is just a closer up photograph showing those
14 bruises. Got one bigger bruise there (indicating), and then
15 you got a little bit of an abrasion there and right there
16 (indicating).

17 Q. State's 14.

18 A. This is the underside of the left arm, upper arm.
19 You can see that the linear -- we have some linear bruising
20 there and several bruises around the elbow and abrasions back
21 that way.

22 Q. State's 15.

23 A. In this photo, the feet of the victim, you can see
24 some bruising on the ankles and abrasions. He only has one
25 sandal that was located there. The buckle was undone on the

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1 bottom part of the sandal.

2 Q. One shoe was still on Justin's foot. Was the other
3 shoe recovered?

4 A. No, ma'am, it was not located.

5 Q. State's 16.

6 A. This is the victim's foot, ankle area. You can see
7 the abrasions and bruising on both sides.

8 Q. These photographs do not -- he still has his jeans
9 on. Did you take any photographs of Justin without his jeans
10 on to get photos of his legs?

11 A. No, ma'am, we didn't remove anything from him. He
12 would've been placed in the body bag and went to autopsy with
13 everything he had on him.

14 Q. You photographed him as you find him at the scene.
15 And then from there the body will be transported for an
16 autopsy?

17 A. Yes, ma'am, that's correct.

18 Q. After Justin was placed into the coroner's
19 ambulance, did you continue with your crime scene
20 investigation? Just let you stand there if you're comfortable.

21 A. Yes, ma'am. We did. Initially we don't know what
22 has happened. We go based upon the information that we
23 receive. We went back upriver, looking to see if we could see
24 any -- we received information that potentially he had gotten
25 off, out of the river somewhere, upriver near a residence. DNR

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1 took us back upriver in the boat. And we looked to see if we
2 could locate that area where he said he got off the boat.

3 Q. Were you able to find the one residence that is on
4 the Broad River?

5 A. Yes, ma'am, we were.

6 Q. Did you personally examine that bank?

7 A. Yes, ma'am, I did.

8 Q. Did you find any evidence of anyone going up that
9 bank? Foot impressions?

10 A. No, ma'am. The only ones that were located, we
11 pulled up to the bank. There was some dogs out there barking
12 at us. The DNR officer stepped off the boat to go up to see if
13 anyone was at home at the time. When he stepped off, he sunk
14 up in the mud. And even where the boat pulled up, it left an
15 impression.

16 A. We took photographs up and down that bank area.
17 And also took photographs of his impressions and the marks that
18 the boat made when we stopped.

19 Q. When you pulled up, dogs greet you. Dogs start
20 barking and come out?

21 A. Yes, ma'am, that's correct.

22 Q. You personally observed the bank, and you also
23 photographed the bank?

24 A. Yes, ma'am, that's correct.

25 Q. And other than Officer Woodleaf's foot impressions

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1 and the impression that the DNR boat left on the bank, did you
2 see any other indications of a boat or anyone walking on that
3 bank?

4 A. No, ma'am, did not locate anything.

5 Q. Did you photograph that bank?

6 A. Yes, ma'am, I did.

7 Q. I'm going to ask you to look at what's been marked
8 as State's Exhibit 17. It contains 24 photographs. If you
9 will just glance through that and tell me if those are the
10 pictures that you took of the bank. And that would've been the
11 day of; is that correct?

12 A. Yes, ma'am. That's correct. Same day.

13 (A pause transpired).

14 THE WITNESS: Yes, ma'am, these are the photographs
15 I took that day.

16 MS. LESKANIC: Your Honor, at this time I would
17 offer State's Exhibit 17, which contains 24 photographs for
18 admission as evidence.

19 While he's looking at that, I'm just going to ask.

20 BY MS. LESKANIC:

21 Q. This area where Justin's body was found, I'm just
22 going to say the whole area from 29 bridge down to the
23 firecracker plant, is this all Cherokee County, South Carolina?

24 A. Yes, ma'am, it is.

25 Q. Where the body was located, it is within our county

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1 and state?

2 A. Yes, ma'am, it is.

3 MR. MOORE: Without objection.

4 THE COURT: Without objection, they're admitted.

5 MS. LESKANIC: May I publish?

6 THE COURT: Yes, ma'am.

7 (STATE EXH. 17, 24 photographs, was entered into
8 evidence.)

9 BY MS. LESKANIC:

10 Q. I'll unclip these, keep them in order. The first
11 photograph?

12 A. This is coming up the river as we were approaching
13 the area and saw the residence (indicating). We started taking
14 photographs of the bank, and this is just kind of lower area as
15 we're approaching the yard (indicating).

16 Q. I'm going to have you step over to State's Exhibit
17 2 for just a second. I just want to be clear which direction
18 you are approaching Mr. Keller's residence.

19 A. So we were coming up the river and Mr. Keller's
20 residence is right here (indicating). Right there is the
21 residence. This is the bank area that the photographs
22 represent.

23 Q. As we go through these photographs, where is this
24 first one taken?

25 A. The first one would be right near this area

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1 (indicating) where the trees, where the wooded area is. They
2 will be traveling upwards.

3 Q. Thank you. Second photograph.

4 A. This is just above that same area. Still showing
5 no signs of any marks.

6 Q. Photograph three.

7 A. This is moving a little further up the bank.
8 You're starting to see -- there is the residence. It's
9 starting to come into the frame as we move up the river.

10 Q. Not only are you taking photographs, you're doing a
11 visual inspection as well?

12 A. Yes, ma'am, that's correct.

13 Q. Number four.

14 A. Just a little further up the river. You see a
15 little more of the residence and also a building that was there
16 on the property. This is just continuing moving up the river
17 bank.

18 Q. Still no signs?

19 A. Still no signs. This is moving still further up
20 the river. Still no signs of any foot traffic other than small
21 animals.

22 Q. There's a lot of foliage in that one. Were you
23 able to look in that area to ensure there were no footprints in
24 there, or did it appear anyone had slid down that bank? Was
25 the green foliage muddy and dirty?

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1 A. No, everything was still standing in that area.
2 Even though the grass, the weeds growing on, still very kind of
3 marshy and wet. If someone stepped off there, still going to
4 sink.

5 Q. You did not see any impression in that area?

6 A. No, ma'am. This is just above that last
7 photograph. As you can see, just moving further up. We're
8 just below -- if you're facing the home, we're almost directly
9 in front of the residence from the river.

10 Just another photograph, moving up the river.
11 Still no signs of foot traffic or a boat.

12 Moving further up the river, still no impressions
13 at all.

14 This is just another photograph just above the
15 last. You're starting to see the rock area. They got rocks
16 placed up.

17 Moving up the bank. Took several photos as you go
18 up, just to try to use them as a reference as well.

19 This is moving further up. It's a little more
20 angled to the photograph. This is moving up the river. Still
21 no signs of any footprints.

22 This is looking kind of a long shot up the river.
23 Just kind of gives you more of a view all the way up. We're
24 approaching that area. It's hard to see here. I think we have
25 a close-up. There's actually a rope swing right here

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1 (indicating) hanging out over the river.

2 This is just turned a little more in to the bank.
3 We were having to stay a pretty good ways off the bank. Water
4 was really shallow there up the edge.

5 There's a close-up of the rope swing that was out
6 over the water, and this is, if you're looking, the residence
7 is getting further down below where we're at, looking at the
8 bank.

9 This is a close-up in the area of the muddy area
10 there. You can see, we noticed when we were out there, one of
11 the canines, the dogs, came down to us. There was marks where,
12 when he came down, he was sliding and marring up in the mud.
13 And there's also several deer tracks and other small animal
14 tracks there in the mud.

15 Q. So not the deer tracks but the dog tracks on the
16 right side of the picture, those were made while you were
17 there. Is that the reason you photographed them?

18 A. Yes, ma'am, it is.

19 When we first initially banked or we pulled the
20 boat up to the bank, the DNR officer stepped off the boat to go
21 up and to approach the residence, see if we can make contact.
22 The dogs actually came down at one point. We're trying to get
23 off the boat. We had to back the boat off while he went up to
24 keep the dogs off. Very friendly, wanting to play.

25 When he stepped off, you can see the slide marks he

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1 was making, going up the bank in this photograph. There's one,
2 two right at the water. And then as he moved up, you can see
3 them on the bank.

4 Q. That was DNR Officer Woodleaf?

5 A. Yes, ma'am, that's correct.

6 Q. Why did you photograph that?

7 A. If we're looking for a place that someone may have
8 exited, we would typically see those type marks and being able
9 to see them clearly while we're there. We should have been
10 able to see where someone else may have exited as well.

11 This is a little closer up image of it. You can
12 see his slide marks right there (indicating) and right there
13 and, also, as you're moving up the bank where he was sliding,
14 trying to get up the bank.

15 This one is where we pulled the boat back in. This
16 is where he was actually coming back to get on the boat and
17 slid down the bank. It's a little steeper of an incline there.

18 Q. That was a mark that was also made by law
19 enforcement?

20 A. Yes, ma'am, that's correct.

21 Q. Was that the boat or Officer Woodleaf's?

22 A. The boat was right against the bank, kind of this
23 little flatter area here (indicating), made this mark. And as
24 he was coming down to step on the boat, he stepped here
25 (indicating). When he stepped down, that's actually the side

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1 of his shoe that's pushing the dirt and mud down.

2 Q. That's what it looks like when you slide down the
3 bank?

4 A. Yes, ma'am.

5 Q. Again, you photographed that to show the marks that
6 were left by law enforcement and not there when you arrived?

7 A. Yes, ma'am, that's correct.

8 Q. Next photograph.

9 A. This is just a little further up the river. As
10 water was getting shallow, got a lot more mud out in the river.
11 This is just a photograph little further up the bank.

12 Q. In that area, did you see any foot impressions,
13 slide marks that looked as if a boat had docked? You have seen
14 the boat in this case, the raft. Did you see anything that
15 would match the impression of that raft or someone getting off
16 and going up this bank?

17 A. No, ma'am. This is just moving further up the
18 bank. It's getting steeper, a little harder to get off -- to
19 get on to the property. Still no marks there.

20 Q. No foliage that's been pushed down, somebody
21 sliding down the bank on their bottom?

22 A. No, ma'am. This is more of an angled shot like,
23 it's looking right in that same general area. Just further up
24 the river. Still no impressions or marks.

25 This is going further up the river back where

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1 you're getting outside of kind of the manicured area of the
2 yard that the residence had. Still no marks or signs anybody
3 exited there.

4 Just another photograph further up the river. No
5 marks, slide marks, anything.

6 Moving still upriver. Starting to get into the
7 yard that is not manicured. You're getting into the wooded
8 area. No marks moving up.

9 Q. Those photographs that we have just gone through,
10 that's the entire bank?

11 A. Yes, ma'am.

12 Q. This is the end of the bank?

13 A. Yes, ma'am. You get up into more of the wooded
14 area. It's hard to tell, a reflection is there. That water up
15 in that area was getting shallower. We went further up, just
16 visually inspecting. It becomes overgrown like maybe foliage
17 and all up the river through there.

18 Q. When you did initial inspection, did you see
19 anything up further that appeared a boat had docked or a raft
20 or that anyone had gotten off of a boat and walked up to
21 Mr. Keller's home?

22 A. We did not locate any.

23 Q. Thank you very much. Have you step back.

24 State's Exhibit 2. Are you familiar with where
25 Justin's car was located?

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1 A. Yes, ma'am. I am.

2 Q. After locating Justin, he's loaded into the
3 coroner's ambulance, go out on the river, taking photographs.
4 Do you continue to work the scene and take photographs?

5 A. Yes, ma'am. When we were out, while we were out on
6 the river, additional information comes into our officers.
7 Another officer stood by where the vehicle would've been
8 upriver. They will stand by and secure it until we're able to
9 go up there to photograph and process the vehicle or have it
10 towed.

11 Q. Are you aware of the location where the vehicle was
12 found?

13 A. Yes, ma'am.

14 Q. I'm going to show you what's been marked State's
15 Exhibit 70 and has been admitted. It's been previously
16 admitted. If you can step down again. Show us on this closer
17 up, give us an idea what we're looking at and where the vehicle
18 was located.

19 A. This is U.S. 29 (indicating). This is the Gaffney
20 side of Broad River. As you're traveling towards Blacksburg,
21 when you come across the bridge, the first little road to your
22 right is River Road. The vehicle was set in this little
23 pull-off right here (indicating) is where the vehicle was
24 located.

25 Q. Looking at this, are you aware of how you would

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1 get -- not a boat landing -- the place where people go down to
2 the river to get on their kayak. How would you get down below
3 the bridge to get on the water?

4 A. There's a pull-off in the dirt area, you can see it
5 here (indicating). Goes down beside the bridge. You can make
6 it out a little here (indicating). It actually goes down and
7 under the bridge to a little clearing.

8 Q. Did you take photographs of where Justin's car was
9 located?

10 A. Yes, ma'am, I did.

11 Q. I'm going to show you what's been marked State's
12 Exhibit 18 and 19.

13 A. Yes, ma'am.

14 MS. LESKANIC: Your Honor, I offer 18 and 19 for
15 admission.

16 MR. MOORE: Without objection.

17 THE COURT: Without objection.

18 MS. LESKANIC: May I publish?

19 THE COURT: Yes, ma'am.

20 (STATE EXH. 18, Photograph, was entered into
21 evidence.)

22 (STATE EXH. 19, Photograph, was entered into
23 evidence.)

24 BY MS. LESKANIC:

25 Q. Just showing you State's Exhibit 18.

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1 A. Yes, ma'am. This is a photograph of that little
2 pull-off on the River Road and the vehicle that was left there.

3 Q. State's 19?

4 A. This is facing -- from Highway 29 would be behind
5 you. And this is River Road that goes down alongside the
6 river.

7 Q. At some point, were you able to locate the
8 Defendant's raft, the raft that he said they were on?

9 A. Yes, ma'am, we were.

10 Q. Where was that located?

11 A. So if you're looking at the river, this is the boat
12 ramp where we were working from. There is a little -- you can
13 see kind of like some back water. There's a creek that flows
14 into it. It was located right back up at the bend in this area
15 (indicating).

16 Q. I'm going to show you what's been previously
17 admitted State's Exhibit 3, a little bit closer up, if that
18 will assist you in showing the jury the location.

19 A. Yes, ma'am.

20 Q. State's Exhibit 3.

21 A. This is the boat ramp where we worked off of. If
22 you go back up, this is the creek, the back water. The raft
23 was located right along this area in the back water
24 (indicating).

25 Q. Could you see that from the boat landing?

MAJOR ANTHONY DIR BY MS. LESKANIC

1 A. No, ma'am.

2 Q. Could you see it from the roadway? How did you
3 locate that?

4 A. No, ma'am. I was given information that the raft
5 was there. We walked down to the area. We actually accessed
6 it off the side of the roadway. Went down the hill and located
7 it in the water there.

8 Q. Was there much creek left where it could've been
9 pulled? Was it towards the end of the creek?

10 A. As you get up that way, it gets narrower and
11 shallower. There was actually a tree up above it laying
12 across. That would've been about as far as you probably
13 could've made it up.

14 Q. Did you photograph the raft as you found it in the
15 creek?

16 A. Yes, ma'am, I did.

17 Q. I am going to show you State's Exhibit 20, 21, 22,
18 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 77. Do you
19 recognize those as photographs that you took?

20 A. Yes, ma'am, I do.

21 MS. LESKANIC: Your Honor, we would offer those
22 announced exhibits for admission.

23 MR. MOORE: Without objection.

24 THE COURT: Without objection.

25 (STATE EXH. 20, Photograph, was entered into

MAJOR ANTHONY DIR BY MS. LESKANIC

1 evidence.)
2 (STATE EXH. 21, Photograph, was entered into
3 evidence.)
4 (STATE EXH. 22, Photograph, was entered into
5 evidence.)
6 (STATE EXH. 23, Photograph, was entered into
7 evidence.)
8 (STATE EXH. 24, Photograph, was entered into
9 evidence.)
10 (STATE EXH. 25, Photograph, was entered into
11 evidence.)
12 (STATE EXH. 26, Photograph, was entered into
13 evidence.)
14 (STATE EXH. 27, Photograph, was entered into
15 evidence.)
16 (STATE EXH. 28, Photograph, was entered into
17 evidence.)
18 (STATE EXH. 29, Photograph, was entered into
19 evidence.)
20 (STATE EXH. 30, Photograph, was entered into
21 evidence.)
22 (STATE EXH. 31, Photograph, was entered into
23 evidence.)
24 (STATE EXH. 32, Photograph, was entered into
25 evidence.)

MAJOR ANTHONY DIR BY MS. LESKANIC

1 (STATE EXH. 33, Photograph, was entered into
2 evidence.)

3 (STATE EXH. 34, Photograph, was entered into
4 evidence.)

5 (STATE EXH. 77, Photograph, was marked for
6 identification and entered into evidence.)

7 MS. LESKANIC: May we publish?

8 THE COURT: Yes.

9 BY MS. LESKANIC:

10 Q. I'm going to start with State's Exhibit 20.

11 A. This is the photograph of the raft, how we found it
12 in the creek area.

13 Q. Is that how everything was found on top of it?

14 Did you move anything on the raft before you
15 started taking these photographs?

16 A. No, ma'am. That is exactly where we located it and
17 how it was when we first found it.

18 Q. State's 21?

19 A. Little closer up photograph of the raft.

20 Q. 22?

21 A. This is just showing the raft where it is and there
22 was a piece of rope that was in the water above it. And
23 another piece there that was tied (indicating).

24 Q. State's 23?

25 A. Little bit harder to see on the screen. There is a

MAJOR ANTHONY DIR BY MS. LESKANIC

1 piece of rope attached to the raft that goes up, and it's tied
2 to a limb right there (indicating), kind of keeping it from
3 floating back out into the river.

4 Q. Looking at this photograph of the water behind the
5 boat, if I went to the water behind the boat around the corner,
6 where am I going just to understand the position of the boat?

7 A. You're going back out to the main part of the
8 river, which would be out towards the dam.

9 Q. You can't see the main part of the river from here.
10 There's a curvature in the river, and the boat is pulled around
11 the corner?

12 A. Yes, ma'am.

13 Q. State's Exhibit 24.

14 A. This is a little closer up photo of items that were
15 on the raft.

16 Q. Can you identify any of the items that you see?

17 A. There were several things on the raft. There is a
18 pair of Channellock pliers there. Hammer. There's a pack of,
19 like, fishing hooks laying right there. There's a cell phone,
20 kind of like the plug-in to your home or 110 charging block
21 there. There's a shirt, rope, sticks.

22 Q. State's Exhibit 25.

23 A. This is just a little closer up photograph. You
24 can see there's a towel laying there. There's the hammer.
25 There's also like a nut off of a bolt laying right there on the

MAJOR ANTHONY DIR BY MS. LESKANIC

1 raft.

2 Q. State's 26.

3 A. Closer up of the pliers there on the raft.

4 Q. Is that debris on the top of the raft? I know you
5 personally saw this as well as photographed it.

6 A. Yes, ma'am. There's -- all this (indicating) is
7 like stained. There's a little bit of dirt, mud. There's
8 other -- it's on the sides of it as well. Appears maybe like
9 bread or something that kind of dried out.

10 Q. State's 27.

11 A. This is off the side of it. There's that pack of
12 fish hooks (indicating). They had, like, little lines on them.
13 It was laying on the side.

14 This is more of what looks like bread or something,
15 maybe something they were fishing with. There's a hammer. And
16 there's a spray cap lid right there (indicating).

17 Q. Number 28.

18 A. Little closer up photo. You can see the spray cap
19 lid right there on the raft.

20 Q. 29.

21 A. Closer up photo of the fishing hooks and line and
22 more of that bread material.

23 Q. 30.

24 A. Closer-up photo of the cell phone or the charging
25 block, and there's that nut off of a bolt laying there.

MAJOR ANTHONY DIR BY MS. LESKANIC

1 Q. 31.

2 A. There's a stick, a smaller stick laying here
3 (indicating). You got some rope, fishing rod stand here
4 (indicating). One over there (indicating). And the housing
5 and some wires coming out of the light fixture.

6 Q. State's 32.

7 A. It was a little closer-up picture of the light
8 fixture. These are the wires coming up out of it.

9 Q. Was there any way for that to work on the boat?

10 A. We did not locate anything there.

11 Q. State's 33.

12 A. This is a close-up photograph of the lamp when we
13 brought it back to the shop.

14 Q. 34.

15 A. This is the underside of it as we found it.
16 Damaged, torn here and is missing a lightbulb.

17 Q. Is that essentially like a heat lamp?

18 A. Typically that's what you see those in. Heat lamp.

19 Q. Red lightbulb?

20 A. Yes, ma'am.

21 Q. There was no bulb?

22 A. No, ma'am.

23 Q. It's just a wire sticking up. No way for that to
24 work?

25 A. It was not connected to anything else.

MAJOR ANTHONY DIR BY MS. LESKANIC

1 Q. State's 77.

2 A. This is a picture of the raft when we got it back
3 inside the shop. Just as how we brought it back. And this is
4 looking at the rear of the boat (indicating) and this is the
5 transom area of the boat (indicating).

6 Q. With the transom -- I guess, what is a transom?

7 A. Transoms are more structurally -- usually you're
8 going to find that wherever they mount a motor. Sometimes they
9 will say it's the rear of the boat or a vessel; it's not
10 always. It's going to be something towards the rear that
11 stabilizes the back of the boat and typically where you would
12 find a motor or something like that attached.

13 Q. When you were looking at the raft and photographing
14 it, did the transom sit up higher or lower than the boat?

15 A. It set up higher than the bottom of the pontoon
16 than it's sitting on. One of the big reasons we look for the
17 transom on the boat, typically that's where you always find
18 your identification with your vessel, serial numbers.

19 Q. Nothing keeping it down to create a drag on the
20 back of this boat?

21 A. No, ma'am, it was not below the bottom of the
22 inflatable pontoon on the side.

23 Q. Continuing with your investigation, did you also go
24 to the bridge at 29 where you have shown the jury that the car
25 was located and you showed them how you can walk down there.

MAJOR ANTHONY DIR BY MS. LESKANIC

1 Did you also actually go down there and look?

2 A. Yes, ma'am. After we photographed the vehicle
3 where it was at, a wrecker was called for it to be towed back
4 to our impound lot. We took photographs and went down the side
5 of the bridge, down to the river access there.

6 Q. I'm going to show you State's Exhibits 35, 36, 37,
7 38. Do you recognize those as photos that were taken while you
8 were down at that bridge area?

9 A. Yes, ma'am. Those are.

10 MS. LESKANIC: Your Honor, at this time I would
11 offer State's 35 through 38 for admission.

12 MR. MOORE: Without objection, Your Honor.

13 THE COURT: Without objection.

14 (STATE EXH. 35, Photograph, was entered into
15 evidence.)

16 (STATE EXH. 36, Photograph, was entered into
17 evidence.)

18 (STATE EXH. 37, Photograph, was entered into
19 evidence.)

20 (STATE EXH. 38, Photograph, was entered into
21 evidence.)

22 MS. LESKANIC: May I publish?

23 THE COURT: Yes.

24 BY MS. LESKANIC:

25 Q. Starting with State's Exhibit 35.

MAJOR ANTHONY DIR BY MS. LESKANIC

1 A. This photograph you can see kind of the tire
2 tracks. This is facing from River Road back down under the
3 Highway 29 bridge.

4 Go back to this photograph. This is the area --
5 we're standing right near the top of the bridge, taking
6 photographs back down under the bridge.

7 This little path, little yellow looking area there
8 (indicating), that's the dirt that you can see from those
9 tracks. That's the direction we were taking them from the road
10 back down.

11 Q. State's Exhibit 36.

12 A. This is moving down further under the bridge.
13 Going back towards the river.

14 Q. 37.

15 A. This is a little closer up. We're directly under
16 the bridge now. This time of the year, it's kind of grown up
17 on either side of the bridge. You can see the bridge pilings
18 here (indicating). And this is an area where people would walk
19 down to fish or put in or take out kayaks, canoes.

20 Q. State's 38.

21 A. This is a little closer up photograph looking down
22 into the water right there where you could get in the river.

23 Q. Were you able, I guess as far as the glare, was the
24 water deep in this area next to the bank?

25 A. It's not. It's one to two feet deep out to about

MAJOR ANTHONY DIR BY MS. LESKANIC

1 that second piling out in the river.

2 Q. You could definitely walk out in there?

3 A. Yes, ma'am.

4 Q. Could you see into the water?

5 A. Yes, ma'am, you could.

6 Q. Did you do a visual observation of the water around
7 the bank?

8 A. Yes, ma'am. We did. When you start taking
9 photographs with the sun where it was during the time, you're
10 getting a glare over the top of the water. We did a physical
11 and visual inspection. Did not locate anything additional
12 there.

13 Q. You did not find anything in the water there at the
14 landing that may have fallen into the water and sank?

15 A. No, ma'am.

16 Q. Thank you. Are you aware whether a cell phone was
17 recovered from Justin when he was removed from Broad River?

18 A. We received it with the items that came from
19 autopsy.

20 (STATE EXH. 73, Photographs, was marked for
21 identification.)

22 BY MS. LESKANIC:

23 Q. I'm going to show you State's Exhibit 73. And this
24 contains two photographs. If you would look at that and tell
25 me if you recognize those.

MAJOR ANTHONY DIR BY MS. LESKANIC

1 A. Yes, ma'am, I do.

2 Q. Is this what you received that was on Justin's
3 person?

4 A. Yes, ma'am, it is.

5 MS. LESKANIC: Your Honor, at this time I would
6 offer State's 73 for admission.

7 MR. MOORE: No objection, Your Honor.

8 THE COURT: Without objection.

9 (STATE EXH. 73, Photographs, was entered into
10 evidence.)

11 MS. LESKANIC: May I publish?

12 THE COURT: Yes.

13 BY MS. LESKANIC:

14 Q. After Justin's body was removed, the person is
15 searched. Was he wearing a shirt?

16 A. No, ma'am.

17 Q. He did have on the pants that we saw?

18 A. Yes, ma'am, that's correct.

19 Q. A cell phone was located in his pocket?

20 A. Yes, ma'am.

21 Q. One or two phones?

22 A. Only one that I'm aware of.

23 Q. I'm going to show you this. Tell us what we're
24 looking at.

25 A. This is an iPhone.

MAJOR ANTHONY DIR BY MS. LESKANIC

1 Q. On page 2?

2 A. That's a photograph of the back of the iPhone.

3 Q. This was the only phone in his possession but it
4 was in his pocket?

5 A. Yes, ma'am.

6 Q. It had been in the water?

7 A. Yes, ma'am.

8 Q. During the course of your investigation, did you
9 also look in Justin's vehicle?

10 A. Yes, ma'am, we did.

11 Q. During the search of that vehicle, did you locate
12 some boots?

13 A. There were some when we did a search of the
14 vehicle.

15 (STATE EXH. 74, Photograph, was marked for
16 identification.)

17 BY MS. LESKANIC:

18 Q. I'm going to show you what's been marked State's
19 Exhibit 74. Take a look at that. Is that a photograph that
20 was taken inside the vehicle on scene?

21 A. That was actually right after, when we conducted a
22 search of the vehicle.

23 MS. LESKANIC: Your Honor, at this time I offer
24 State's 74 for admission.

25 MR. MOORE: No objection, Your Honor.

MAJOR ANTHONY DIR BY MS. LESKANIC

1 THE COURT: Without objection.

2 (STATE EXH. 74, Photograph, was entered into
3 evidence.)

4 (STATE EXH. 76, Boots, was marked for
5 identification.)

6 BY MS. LESKANIC:

7 Q. I'm going to show it to you. You may come on over.
8 Also going to show you State's Exhibit 76.

9 A. Yes, ma'am.

10 Q. Do you recognize those?

11 A. I do.

12 MS. LESKANIC: Your Honor, at this time we would
13 offer State's 76 for admission.

14 MR. MOORE: Without objection, Your Honor.

15 THE COURT: Without objection.

16 (STATE EXH. 76, Boots, was entered into evidence.)

17 BY MS. LESKANIC:

18 Q. I'm going to first show you State 74. Where are
19 the boots located?

20 A. They're located in the driver's side floorboard,
21 the rear seat.

22 Q. Were those collected?

23 A. No, ma'am. They were photographed initially, and
24 they were turned over to us.

25 Q. I'm going to show you now State's Exhibit 76. Let

MAJOR ANTHONY DIR BY MS. LESKANIC

1 me get those photos out. Were you able to determine the size
2 of those boots?

3 A. Yes, they're marked on the bottom as size 9.

4 Q. If you would put it back in the box.

5 Did you also recover the one sandal that was left
6 on Justin when he was pulled from the river?

7 A. Yes, ma'am, I did.

8 (STATE EXH. 75, Sandal, was marked for
9 identification.)

10 BY MS. LESKANIC:

11 Q. I'm going to show you State's Exhibit 75. Take a
12 look at that. Do you recognize that?

13 A. Yes, ma'am.

14 MS. LESKANIC: Your Honor, I would offer State's
15 Exhibit 75 for admission.

16 MR. MOORE: Without objection.

17 THE COURT: Without objection.

18 (STATE EXH. 75, Sandal, was entered into evidence.)

19 MS. LESKANIC: Permission to publish?

20 THE COURT: Yes.

21 BY MS. LESKANIC:

22 Q. What are we looking at, Major Anthony?

23 A. This is a sandal that was removed at autopsy and
24 returned to us with his property.

25 Q. In looking at that, were you able to determine the

MAJOR ANTHONY DIR BY MS. LESKANIC

1 shoe size on that sandal that was on Justin's foot?

2 A. Size 11.

3 Q. Just a moment, Major. I want to make sure.

4 Let me ask you, I'm going to have you step down to
5 number 2. If you know, approximately, how far from the top of
6 the islands to where Justin's body was located?

7 A. From the top of the island to where his body was
8 located would be approximately 100 yards.

9 Q. Did you, during the course of your investigation,
10 going down by the creek, find any life jackets?

11 A. No, ma'am.

12 Q. Find any paddles?

13 A. No, ma'am.

14 Q. Fishing rods?

15 A. No, ma'am.

16 Q. Tent?

17 A. No, ma'am.

18 Q. Were you able to measure essentially the distance
19 by water from 29 bridge down to the boat landing?

20 A. We did. If I may refer to my notes. We initially
21 went the roadway travel. From traveling the roadway from the
22 raft to where the victim's car was located was 2.6 miles on the
23 roadway.

24 From the 29 bridge and traveling down the river to
25 the boat ramp is approximately two-and-a-half miles.

MAJOR ANTHONY DIR BY MS. LESKANIC

1 Q. Two-and-a-half miles by water. And then from where
2 his raft was found, walking back up Cherokee Falls?

3 A. We came back up from there. I came shortest
4 roadway, traveled up Cherokee Falls. Took a left on to River
5 Road. Drove River Road back to the intersection of U.S. 29 and
6 River Road. That was 2.6 miles.

7 (STATE EXH. 78, Photograph, was marked for
8 identification.)

9 BY MS. LESKANIC:

10 Q. I'm going to show you State's Exhibit 78. Tell me
11 if you recognize that.

12 A. That's a photograph, yes.

13 Q. That's down by the water in the creek area?

14 A. Yes, ma'am.

15 MS. LESKANIC: Your Honor, I would offer State's 78
16 for admission.

17 MR. MOORE: Without objection, Your Honor.

18 THE COURT: Without objection.

19 (STATE EXH. 78, Photograph, was entered into
20 evidence.)

21 BY MS. LESKANIC:

22 Q. Could you tell us what we're looking at here.

23 A. Yes, ma'am. This is from the raft looking back
24 across that little -- back across and up the creek area. Right
25 below or right above there's something white there. Looked

MAJOR ANTHONY DIR BY MS. LESKANIC

1 like kind of one of the cooler lids or a cushion. Kind of one
2 of those like chair cushions. Can't be 100 percent. We did
3 not collect it that day.

4 Q. Did you find a cooler?

5 A. No, ma'am.

6 Q. You didn't see a cooler on Mr. Keller's bank?

7 A. No, ma'am.

8 Q. You didn't see a cooler or any of those items I
9 previously asked you about while you were moving upstream to go
10 to Mr. Keller's house to retrieve Justin's body?

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

12 Q. I think we've covered it. I just want to be sure.
13 A pool float was not recovered out there either. You did not
14 see anything that looked like a pool float stuck in the rocks
15 or in the water?

16 A. No, ma'am, we did not locate one.

17 Q. The only thing recovered from the river was Justin?

18 A. Yes, ma'am, that's correct.

19 Q. When Justin was recovered, did you find a wallet on
20 him?

21 A. No, ma'am.

22 Q. Keys to his vehicle?

23 A. No, ma'am.

24 Q. Did you find his wallet in his vehicle?

25 A. No, ma'am.

MAJOR ANTHONY CROSS BY MR. MOORE

1 Q. Have you, during the course of your investigations,
2 worked other drownings, Major Anthony?

3 A. Yes, ma'am, I have.

4 Q. Have you reviewed, of course, your photographs of
5 Justin?

6 A. Yes, ma'am, I have.

7 Q. And you saw him in person?

8 A. Yes, ma'am.

9 Q. And have you also had an opportunity to view
10 photographs of Justin from the autopsy?

11 A. Yes, ma'am, I have.

12 Q. And during the course of your 23 years in law
13 enforcement and working drownings, have you ever seen a
14 drowning victim with injuries as significant as those sustained
15 by Justin?

16 A. I have not.

17 MS. LESKANIC: Thank you. Please answer any
18 questions Mr. Moore has.

19 MR. MOORE: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. MOORE:

22 Q. Good morning. Is it Major Anthony now?

23 A. Yes, sir.

24 Q. Good. Congratulations. Give me a second. Y'all
25 went through a bunch of exhibits. I know you took a bunch of

MAJOR ANTHONY CROSS BY MR. MOORE

1 pictures. I got some questions about several of them. Take a
2 minute to get that organized; all right?

3 A. Yes, sir.

4 (A pause transpired).

5 MR. MOORE: I promise you, if I get these
6 organized, the whole thing will go smoother.

7 (A pause transpired).

8 BY MR. MOORE:

9 Q. I'm going to have to go over there and show you
10 some pictures in just a minute. Before we do that, I want to
11 clarify and make sure I understand the time frame, if you will,
12 of your involvement in the investigation.

13 A. Yes, sir.

14 Q. I kind of view your testimony, basically, in three
15 or more kind of sessions. There was the bank at Mr. Keller's
16 house. There was Justin --

17 A. Yes.

18 Q. -- in the island water. And the recovery of the
19 body in the coroner's vehicle.

20 There was the bank at Mr. Keller's house?

21 A. Yes, sir.

22 Q. There was the raft in the creek at the bottom of
23 the river near Cherokee Falls?

24 A. Yes.

25 Q. There was where Justin's car was found at the

MAJOR ANTHONY CROSS BY MR. MOORE

1 Highway 29 bridge and photos of the water and such under the
2 bridge. Can you make sure I understand sequentially what order
3 you did those things and give me a rough time frame that day
4 when that was done.

5 A. I'll refer to my report. From the time that I
6 arrived at the boat ramp, when we arrived there sequentially --

7 Q. I'm sorry to interrupt. Do you know what time you
8 arrived at the boat ramp?

9 A. I do not have the exact time, not stated in my
10 report.

11 Q. That's okay.

12 A. I do not have a CAD log that would've recorded my
13 initial on-the-scene time.

14 Q. Why don't you tell us sequentially like you were
15 getting ready to do before I interrupted. Tell us sequentially
16 what you did. If any notes anywhere, time reference, if you
17 can tell us what those were.

18 A. Initially when I arrived down at the boat ramp to
19 assist in the recovery, we went up to where Justin's body was
20 located. From there, after the recovery, we took the
21 photographs inside the coroner's vehicle.

22 Q. Do you know what time the body was located?

23 A. I do not have the exact time, no, sir.

24 Q. If you don't know, that's fine. Do you have a
25 rough estimate time frame?

MAJOR ANTHONY CROSS BY MR. MOORE

1 A. It would have been -- I would have to go back. On
2 our photographs, when we take them, they take the data of when
3 each photograph is taken and embedded in those images. That
4 gives us that time log.

5 Q. Let's just keep going sequentially.

6 A. Yes, sir. Took the photographs there in the
7 coroner's truck. Then we went, took the photographs near where
8 the raft was located. We took the photographs there.

9 At that point then we went into the river and went
10 up to where the information was given that he had maybe gotten
11 out of the river. We went and searched that river bank area,
12 and then we went up to where the vehicle was located.

13 Q. Thank you. You don't have any time references that
14 you can see? I understand what you said. What's that called,
15 Metadata?

16 A. Metadata in the photographs, yes, sir.

17 Q. You don't have it right there?

18 A. I don't have it written down in my report, no, sir.

19 Q. Got you. Do you know what time you might've
20 finished that day? Closed out?

21 A. When we left on scene, it would've been roughly
22 around probably 5:00, 4:30 by the time I left after we
23 completed everything.

24 Q. Looking for one more picture. I'm going to show
25 you some pictures and ask you some questions, if that's okay.

MAJOR ANTHONY CROSS BY MR. MOORE

1 A. Yes, sir.

2 Q. I think I'm close. I'm going to put them in the
3 order of what you just said y'all did, so we can keep that all
4 sequential in your answers. All right?

5 A. Yes, sir.

6 Q. It might be easier if you step down, too, like
7 Ms. Leskanic had you do, when I show you these.

8 First one I'm going to show you, just went over
9 these, State's Exhibit 4.

10 A. Yes, sir.

11 Q. I know you just testified that this is a picture of
12 where Justin's body was found. I just want to ask you a couple
13 questions about that. I think I heard you say -- first of all,
14 point out in relation to that boat and the tree where the body
15 was found again for us.

16 A. Right at the base of the tree was where it was at
17 when I arrived (indicating).

18 Q. What vantage point is this? What's the
19 perspective? Which way are we facing in relation to Highway 29
20 bridge and the fireworks plant?

21 A. Highway 29 bridge would be upriver, kind of above
22 you. We're traveling towards Highway 29 bridge. The
23 firecracker plant would be behind you.

24 Q. How deep did you estimate the water was right here?

25 A. Right near where his body was located, it was five

MAJOR ANTHONY CROSS BY MR. MOORE

1 feet, roughly.

2 Q. How was that -- was that measured or estimate or
3 depth finder?

4 A. It was measured. Coroner Fowler was on the boat as
5 well. We took an anchor line, dropped it down. And based on
6 the sediment on the bottom of the river, you can move a foot,
7 six inches to a foot difference. It was right at the five-foot
8 depth.

9 Q. It's uneven in areas?

10 A. Yes.

11 Q. I think I heard you testified, y'all actually on
12 the way like hit some rocks and things like that. Does that
13 mean it's shallower in other areas around this?

14 A. While we were in the area, we went kind of above
15 where the body is. There's a lot of sediment, sand. And there
16 is some rock in there. We actually, at one point, did hit some
17 of the sand as we were traveling back up.

18 Q. I hate to keep moving you around. Real quick, on
19 that Exhibit 2, I want to make sure I understand where this
20 picture right now is on here. I think you just testified to an
21 estimated distance.

22 A. It's right in this area here (indicating).

23 Q. What you just said was y'all approached to make
24 this picture, from this way is up; is that correct?

25 A. Yes, sir.

MAJOR ANTHONY CROSS BY MR. MOORE

1 Q. How far is the location here from the front of that
2 island?

3 A. From here (indicating) where the body was located
4 to the top of the island is approximately 100 yards.

5 Q. Could you see the top of the island from there?

6 A. Yes, sir.

7 Q. It's kind of like an open chute or what?

8 A. It is. It kind of has two forks off it. If you're
9 looking upriver, you have one that goes up. And then you have
10 this. It forks off to the right, to the top, what I consider
11 the top was right where these trees (indicating) and little
12 sandy area is. Approximately 100 yards.

13 Q. You said it's a sandy area. Is it shallow there?

14 A. It is.

15 Q. Could you walk in it?

16 A. You could.

17 Q. I'm assuming -- I know you just told us about the
18 depth there. Did y'all measure any depths anywhere else while
19 you were down there?

20 A. We did not other than, when we were close to the
21 bank, as you're traveling up while we're checking the bank, you
22 can't hear the boat when it starts hitting sandy.

23 Q. As far as official measurements, this is only
24 official measurement you took?

25 A. Yes, sir, that's correct.

MAJOR ANTHONY CROSS BY MR. MOORE

1 Q. Let me put this down. We'll go back over here and
2 look at couple other pictures.

3 I think you said next -- first of all, how did you
4 know to go here? Who called you to go to this location in the
5 island?

6 A. As I spoke about earlier, we initially wound up
7 looking for a drowning victim. We were notified by radio that
8 they had located a victim. And that's when I went around to
9 the boat ramp. I was met there by Coroner Fowler and DNR who
10 responded, looking for the victim.

11 Q. This is just a general question. Who's in charge
12 at an event like this? Who makes the decisions to direct
13 people to different locations?

14 A. Typically, if it's not a drowning, the local fire
15 departments that have the search and rescue equipment, they're
16 the first to get notified. The responding fire department,
17 they have boats, they have divers as well. Because it was in
18 their district, they get that initial call.

19 Q. They're essentially like the incident commander or
20 what?

21 A. They are. As far as looking for that. Once it
22 becomes -- once they locate someone, it's kind of a joint
23 effort between the Sheriff's Office, coroner's office. We all
24 work the investigation together.

25 Q. That makes sense. Are these firemen, who are the

MAJOR ANTHONY CROSS BY MR. MOORE

1 personnel on the boat, in the picture?

2 A. They were with the fire department.

3 Q. Those would've been the first people who located
4 the body?

5 A. That's correct.

6 Q. I think you said next you did -- you went to the
7 creek to look for or to take pictures of the raft; is that
8 correct?

9 A. That's correct.

10 Q. How did you know to go there?

11 A. I was given information that the raft was up there.

12 Q. I don't know if this was the best one or not. I
13 think it's a pretty good one. Can you show us again where that
14 was.

15 A. Yes, sir. I'm going to use some references. This
16 is the boat ramp that we've been referencing (indicating).
17 This is the firecracker plant (indicating). Traveling up from
18 the boat ramp, you come up the creek and, as you make this
19 turn, the raft was located right there in the creek
20 (indicating).

21 Q. How close would you say that raft was to that River
22 Road?

23 A. To River Road or Cherokee Falls?

24 Q. Cherokee Falls rather.

25 A. You're probably 75 yards or so down the ramp to the

MAJOR ANTHONY CROSS BY MR. MOORE

1 road, maybe a little less.

2 Q. This is State's Exhibit 23. That's how you found
3 the raft when you got there?

4 A. Yes, sir, it is.

5 Q. I believe you said it was tied off to a tree there?

6 A. Yes, sir. See the rope coming up from the raft.
7 And it's attached right there on the tree (indicating).

8 Q. Did you find any foot impressions or footprints or
9 slide marks or anything in relation to where the raft was tied
10 up?

11 A. We did not there.

12 Q. I know you just went over some of these items. I
13 don't believe we talked about this. What's this right here?

14 A. The stick in the middle?

15 Q. Right.

16 A. There's a stick that runs about the length of the
17 raft that's on there.

18 Q. How long do you think that stick was?

19 A. We could go back and reference the other
20 photographs, full length. The vessel of the raft was 12 feet.
21 So it's about 12, 13 feet.

22 Q. That's a long stick?

23 A. Yes, sir.

24 Q. Did you happen to notice whether or not there's any
25 mud on either end of it?

MAJOR ANTHONY CROSS BY MR. MOORE

1 A. There was a little bit on the one end of it.

2 Q. There's also a hammer here. What kind of hammer is
3 that? I know there's different types. It's not a framing
4 hammer. What kind of hammer does that look like?

5 A. It's a smaller hammer. It's not a big framing
6 hammer. I'm not exactly sure on that photo. I can't tell if
7 it's ball peen. It's a smaller hammer, though.

8 Q. I'm not sure that picture helps you more. How long
9 do you think that handle is on that?

10 A. Probably eight inches to a foot.

11 Q. What is this right here next to that hammer?

12 A. That's a fishing rod holder.

13 Q. How many of those did you see?

14 A. I know there was at least two on there. Could've
15 been more.

16 Q. Got a couple questions about this one. That's
17 another picture of that stick. Which end would've been the end
18 that had the mud on it, if you noticed any?

19 A. When I saw it, it would've been more on this end
20 (indicating).

21 Q. This transom, it's hard to see. None of the other
22 pictures in the water show the transom, I don't believe. This
23 one clearly does. On the other side of the transom, do you
24 recall whether or not there's an actual bottom to this boat?

25 A. I do not.

MAJOR ANTHONY CROSS BY MR. MOORE

1 Q. You don't know if there's some type or any type of
2 bottom or not? You don't know? That's fine.

3 A. No, sir.

4 Q. You didn't look under there for any reason?

5 A. I probably did initially. I know I did when we
6 loaded it. My recollection, I do not remember.

7 Q. I think you just testified that transom sits
8 slightly higher than the actual boat. I don't know what you
9 call the port. The blue label part of the boat, it sits higher
10 than that; correct?

11 A. It does.

12 Q. Would you agree with me if that was in the water
13 and had somebody on it, that transom would be lower than it is
14 now on the concrete floor?

15 A. It will. As it sits in the water, the volume of
16 that is going to disperse the water and it's going to sit a
17 little lower.

18 Q. The blue part, the inflatable part of the raft
19 would be a little bit under the water. That's the way
20 inflation in the water works. Do you think the transom would
21 be touching the bottom at that point or that's speculation?

22 A. I'm not 100 percent sure.

23 Q. You did not have an occasion at any point to see
24 that transom on this boat in the water with weight on top of
25 it?

MAJOR ANTHONY CROSS BY MR. MOORE

1 A. I did not, no, sir.

2 Q. You also said -- let me reference this for the
3 record. This is State's Exhibit 78. I believe you just said
4 you weren't sure if that was a cooler lid or a cushion or
5 something. You did say y'all did not collect that; is that
6 correct?

7 A. That's correct.

8 Q. To the best of your recollection, that's where it
9 was when you got there?

10 A. It was. When we first arrived down there, they had
11 opened the dam up a little bit and water was starting to flow
12 out of that creek a little more. And so at that time it was
13 floating. It was initially up near the tree that's across. It
14 started floating back down.

15 Q. You could notice a difference in the water level or
16 you heard?

17 A. They sound an alarm when they open the dam, and you
18 can see the flow move a little bit. Not significant. It moved
19 maybe eight to ten feet while we were out there.

20 Q. Moved eight to ten feet. That cushion or whatever
21 that is moved --

22 A. Down the creek, back towards the river, probably
23 eight to ten feet while we were out there.

24 Q. Got you. Did you notice whether or not the depth
25 changed at all

MAJOR ANTHONY CROSS BY MR. MOORE

1 A. Not significantly while we were out there.

2 Q. Got you. This is a series of pictures. We're not
3 going to go through all these. We just did. This is a series
4 of pictures from what I'm going to call Mr. Keller's bank. Can
5 you tell us how long is that bank from what I -- let me try to
6 find the best way to ask you this question.

7 You testified there's kind of a maintained area of
8 the bank, if you will. There's a run-up area, bank, yard area
9 and then it's grown up again.

10 A. That's correct, yes, sir.

11 Q. What's not grown up on the bank that you surveyed,
12 what's the total distance of that bank, would you say?

13 A. 150, 200 yard area.

14 Q. 150 to 200 yards. I know you talked about the DNR
15 officer stepping off and sliding. I'm going to try to find
16 that picture. Maybe that's when he's getting on. Is that what
17 you said?

18 A. There was one when he exited, one when he returned
19 back on.

20 Q. One of them looked like a slide, didn't it?

21 A. It did.

22 Q. Here's one. I don't think this is the one. Let's
23 go with this one. This is State's Exhibit --

24 State's Exhibit 17 was this whole collection. This
25 is one of the pictures that you already testified to, State's

MAJOR ANTHONY CROSS BY MR. MOORE

1 Exhibit 17.

2 A. Yes, sir.

3 Q. That's where you said the DNR officer --

4 A. That's where he -- when we pulled the boat back up,
5 when he stepped down, that's where he's sliding down. He was
6 trying to step back over on the boat.

7 Q. Would you say it's fairly difficult to get in and
8 out of a boat on that bank?

9 A. Yeah, it can be.

10 Q. This is a different slide; is this correct?
11 Another picture. This color really not good.

12 A. There's two marks here (indicating). This is where
13 he was actually exiting off. There's two separate areas.
14 They're very close together.

15 Q. So the boat moved --

16 A. It did.

17 Q. -- while he was up?

18 A. While we were there, there was two dogs came down.
19 We had to back the boat up to keep the dogs from getting on the
20 boat. When we backed up, he slid a little further down.

21 Q. I'm going to show you another thing in this
22 picture. Actually, I just want you to look at the picture
23 first. I'll ask the question while you're looking at it. Then
24 I'll put it up.

25 Can you tell from looking at that picture whether

MAJOR ANTHONY CROSS BY MR. MOORE

1 there is mud or residue on the plants close to the bank?

2 That's not a trick question. Does it look like, at some point
3 prior to when you took those pictures, the water level had been
4 higher?

5 A. Yes, it has been. You can see a mark up the bank
6 where the water has been up a little bit higher.

7 Q. We are going to move from the bank to 29 bridge.
8 That's the point where you testified this is where people put
9 in and out as far as you're aware under the 29 bridge?

10 A. Sometimes. There is a landing or a canoe, kayak
11 access upriver. Sometimes people get in and out there. They
12 stop, people fish there. We have saw numerous people put in
13 out there.

14 Q. Did y'all put in or out there?

15 A. I did not.

16 Q. When you approached this area to take a picture,
17 you came down from where Justin's car was parked and Highway
18 29?

19 A. That's correct.

20 Q. I believe you just testified that water was one or
21 two feet or so. Did y'all measure that?

22 A. Did not measure the depth there that day. I
23 walked -- in previous incidents, I've walked almost all the way
24 across the river to retrieve evidence there. With that water
25 depth, it was evidence we actually saw from on top of the

MAJOR ANTHONY CROSS BY MR. MOORE

1 bridge laying because that's a rock shell bed across until you
2 get to 29 side. The water is significantly shallower on the
3 Blacksburg side.

4 Q. The rock bed, that's the foundation for the bridge;
5 right?

6 A. No, sir. It's pretty well -- three-quarters away
7 across the river. You can see paper boxes are sticking out the
8 water. People stole them and threw them over. Water is not
9 deep enough there typically for that paper box to go under the
10 water.

11 Q. That's under the bridge?

12 A. Yes, sir.

13 Q. Did you get in the water here the day you took
14 these pictures?

15 A. I did not that day.

16 Q. Do you know if anybody did?

17 A. Nobody that I know of stepped in the water. You
18 could see the sticks and the rocks from the bank there like,
19 say, when we moved up to the car later in the evening. The
20 reflection is hard to see in the photographs.

21 Q. I got you. I think that's it for the pictures. If
22 you want to have a seat, I'll ask you a couple more questions.

23 A couple minutes ago you testified as to State's
24 Exhibit 75, the individual sandal. You said it was a size 11.
25 Was there a size in it? How were you able to determine it was

MAJOR ANTHONY CROSS BY MR. MOORE

1 a size 11? Was there a label?

2 A. There are. There's a size label inside the band.

3 Q. I know you just testified about the number of
4 drownings you've worked over the years. How many drownings
5 have been in this stretch of the Broad River?

6 A. Going a couple miles above or below, probably
7 seven.

8 Q. How many in between Highway 29 and Cherokee Falls?

9 A. I know of four.

10 Q. In how many years?

11 A. That's while I was doing crime scene. About
12 12-year period.

13 Q. At the beginning when you started your testimony,
14 you talked about a lot of different training and qualification
15 you had with fingerprints and DNA and footprint matchings. I
16 don't know if you said blood or not. You are talking about the
17 different crime-scene type of things.

18 During this investigation, were any of those types
19 of things collected?

20 A. No, sir, they were not.

21 Q. No DNA collected, no blood, no footprint matching
22 took part in this investigation?

23 A. No, sir. That's correct.

24 Q. At any point when you observed anything that day,
25 the raft, the car, any of it, did anything -- you're the

MAJOR ANTHONY REDIR BY MS. LESKANIC

1 professional investigator -- did anything stand out to you that
2 should've been done?

3 A. As far as?

4 Q. Was there anything to even collect, DNA or blood or
5 something from? There was no evidence to collect of that, was
6 there?

7 A. No, sir, there was not.

8 MR. MOORE: Beg The Court's indulgence.

9 THE COURT: Yes, sir.

10 (A pause transpired).

11 BY MR. MOORE:

12 Q. One last question. I know you took a picture. Did
13 you collect the boots?

14 A. They were turned over to me at a later time. They
15 were turned over by the Justin Cash family. When the car was
16 turned over to them, they said they did not belong to their
17 son. It was turned over to us.

18 Q. They were not collected the day of?

19 A. No, sir. They were not.

20 MR. MOORE: Thank you.

21 THE COURT: Anything?

22 MR. MOORE: No, sir.

23 THE COURT: Anything?

24 MS. LESKANIC: Briefly.

25 REDIRECT EXAMINATION

MAJOR ANTHONY REDIR BY MS. LESKANIC

1 BY MS. LESKANIC:

2 Q. The boots were photographed that day, though?

3 A. Yes, ma'am, that's correct.

4 Q. They were behind the driver's seat inside Justin's
5 car?

6 A. Yes, ma'am.

7 Q. I just want to clarify one thing with you. May I
8 have you step down one more moment. I'm going to show you
9 what's been marked State's Exhibit 72.

10 Can you point out again, roughly, the location of
11 the raft.

12 A. Yes, ma'am (indicating). Right here.

13 Q. And what is the -- you were there?

14 A. Yes, ma'am.

15 Q. Is that correct? What is the terrain around there
16 to get up to Cherokee Falls?

17 A. It's very rocky. To go from the creek up, it's
18 rocks, dirt, and it's a pretty steep incline.

19 Q. You didn't see any footprint impressions or slide
20 marks or anything there?

21 A. No, ma'am. There is a trail that leads down there.
22 People that fish there. There was nothing -- pretty wore out
23 bed where they travel up and down. Did not see anything.

24 Q. If you were to come up that trail, you would get on
25 Cherokee Falls. Can you show the jury where on this point,

MAJOR ANTHONY REDIR BY MS. LESKANIC

1 where you would come out on Cherokee Falls?

2 A. The creek, you can see it follows up right in this
3 little opening (indicating), and it would come up right past
4 the curve there on Cherokee Falls Road.

5 Q. Once you get on Cherokee Falls Road, would it be
6 faster to get to a house or a business or something if you took
7 a right and came in this direction or if you took a left and
8 went up Cherokee Falls and up River Road?

9 A. Yes, ma'am. There's numerous houses here around
10 Cherokee Falls. Around the dam. There's a business that
11 operates the firecracker plant that operates there. You come
12 out here and travel all the way back, there's no residence all
13 the way back to River Road.

14 Q. Thank you.

15 THE COURT: Anything?

16 MR. MOORE: No, sir.

17 THE COURT: Sir, you may step down. Please be
18 careful.

19 MS. LESKANIC: May he be excused, Your Honor?

20 THE COURT: Any objection?

21 MR. MOORE: No objection.

22 THE COURT: You may stay or go, whichever you
23 choose, Major.

24 THE WITNESS: Thank you.

25 (The witness exited the stand.)

MAJOR ANTHONY REDIR BY MS. LESKANIC

1 THE COURT: Mr. Foreman, ladies and gentlemen of
2 the jury, we're going to break for lunch at this point in time.
3 Make it 1:40, 1:45.

4 MS. LESKANIC: Yes, sir.

5 THE COURT: 1:40, 1:45, be back in place. That
6 still gives you good hour and a half or so, hour and 45
7 minutes. Don't talk about the case. Don't try to learn
8 anything about it. We'll see you back in just a little while.

9 (The jury exited the courtroom at 12:16 p.m.)

10 THE COURT: Side bar.

11 (Off-the-record discussion.)

12 THE COURT: We're going to be in recess until 1:40.
13 Get back started soon as we can after that.

14 (A luncheon recess transpired from 12:18 p.m. until
15 1:52 p.m.)

16 THE COURT: Mr. Foreman, everybody ready?

17 THE FOREPERSON: Yes, sir.

18 THE COURT: Solicitor.

19 MS. LESKANIC: May it please The Court. State
20 calls Dr. Kelly Rose.

21 (Ms. Rose entered the courtroom.)

22 THE CLERK: Raise your right hand. Left-hand on
23 the Bible.

24 KELLY ROSE, M.D.
25 being first duly sworn, testified as follows:

KELLY ROSE DIR BY MS. LESKANIC

1 THE COURT: Doctor, if you'll tell us who you are
2 and spell your last name for my court reporter, please.

3 THE WITNESS: My name is Kelly Rose. I'm like the
4 flower, R-O-S-E.

5 THE COURT: Solicitor.

6 MS. LESKANIC: Thank you, Your Honor. May it
7 please The Court.

8 DIRECT EXAMINATION

9 BY MS. LESKANIC:

10 Q. Dr. Rose, would you please tell the jury a little
11 bit about what you do.

12 A. I'm a forensic pathologist. I work in Newberry,
13 South Carolina. I use the morgue and the hospital there where
14 I do autopsies for 16 counties and South Carolina Department of
15 Corrections and Federal Bureau of Prisons.

16 Q. Do you have a specialty?

17 A. Forensic pathology.

18 Q. What is your education and training and background
19 to have a specialty in forensic pathology?

20 A. Pathologist is a medical doctor; forensic
21 pathologist is a subspecialty of pathology. I went to the
22 College of Charleston and got my Bachelor of Science in
23 biology.

24 I then went to medical school at MUSC in
25 Charleston. And then I started my residency in pathology at

KELLY ROSE DIR BY MS. LESKANIC

1 MUSC. And then I finished it at Emory. I stayed on to do
2 another year of training just in doing autopsies, just
3 forensics. And I did that at Emory in Atlanta, the Fulton
4 County Medical Examiner's Office. I did a year of that.

5 Q. And during your course as a forensic pathologist,
6 approximately how many autopsies have you performed?

7 A. Six thousand.

8 Q. In general, what is an autopsy? Not in this case.
9 In general, what do you do?

10 A. An autopsy is a medical procedure that we do to
11 determine cause and manner of death.

12 Q. Are you always able to do that?

13 A. Generally. There's some, you know, instances if
14 it's a skeleton, really decomposed where we're not able to
15 determine. The vast majority of cases we're able to determine
16 cause and manner of death.

17 Q. How do you do that generally?

18 A. We'll receive the body. I look at the body from
19 head to toe. I look for natural diseases. I look for
20 injuries. We take pictures. Once we've done external exam,
21 we'll open the body. And I'll look at every organ system
22 individually.

23 I'm also looking for evidence of disease or
24 injuries. If needed, I will even look at some of the tissue
25 under a microscope. And then when all of this is said and

KELLY ROSE DIR BY MS. LESKANIC

1 done, generally 99 percent of the time you can determine what
2 killed that person or how that person died.

3 Q. Have you ever been qualified as an expert to
4 testify in court?

5 A. I have.

6 Q. Approximately how many times?

7 A. Approximately 50 times.

8 MS. LESKANIC: Your Honor, at this time I would
9 offer Dr. Kelly Rose as an expert in the field of pathology and
10 forensic pathology.

11 THE COURT: Any questions?

12 MR. MOORE: No questions, Your Honor.

13 THE COURT: Any objection?

14 MR. MOORE: No objection, Your Honor.

15 THE COURT: Without objection, she is so qualified.

16 Ladies and gentlemen, normally a person will not be
17 able to give an opinion. When they have the education,
18 experience, and skills necessary in a particular field, they're
19 qualified. Because of those skills, they may give an opinion.

20 This witness is now qualified as an expert in
21 pathology and forensic pathology. That does not mean you must
22 accept her opinion. It is evidence that you can use in this
23 case.

24 Solicitor.

25 MS. LESKANIC: Thank you, Your Honor.

KELLY ROSE DIR BY MS. LESKANIC

1 BY MS. LESKANIC:

2 Q. Dr. Rose, did you perform an autopsy on Justin Cash
3 on June 17, 2019?

4 A. I did.

5 Q. Where was that autopsy performed?

6 A. In the morgue at Newberry County Memorial Hospital
7 in Newberry.

8 Q. How do you receive a body when it comes in or, in
9 this case, how did you receive his body?

10 A. They will receive them in a body bag, which is
11 labeled with, you know, their name and other identifiers. And
12 in this case that's how we received the body.

13 Q. Once you received the body, what's your first step?
14 If you could walk the jury through.

15 A. I will photograph the bag. Will then unzip the
16 bag, photograph the body as is in the bag. Once that's done,
17 if they have any clothing or medical devices on them, we'll
18 remove those. And then we'll photograph the body. If needed,
19 we'll clean, you know, the body so I can see all the areas of
20 skin. And then we'll take more pictures.

21 And I'll do a body diagram sometimes, you know.
22 Measure how long they are, their weight, et cetera.

23 Q. Did you take a length measurement?

24 A. Yes.

25 Q. I know it's not height, it's length, you've

KELLY ROSE DIR BY MS. LESKANIC

1 explained to me. What was Justin's length?

2 A. He was, if I recall, he was a tall gentleman. He
3 was 78 inches. So six foot -- what is that -- six?

4 Q. 78 inches?

5 A. Yes.

6 Q. How does length vary from height?

7 A. When you go to the doctor and you get your height
8 measured, you stand straight up against the wall. When the
9 bodies are received in the morgue, and they're on the table,
10 they're lying back. It's hard to approximate height exactly.
11 We measure basically from the end of their body to the top.
12 Sometimes it's a little longer than they were tall.

13 Q. The length can be more than the height?

14 A. Yes.

15 Q. Could you describe his body frame.

16 A. He was thin. Muscular. He looked like he was in
17 good shape but thin.

18 Q. And you photographed his body while performing --

19 A. Yes, I did.

20 MS. LESKANIC: If I may approach the witness, Your
21 Honor.

22 THE COURT: Yes.

23 BY MS. LESKANIC:

24 Q. I'm going to show you exhibits marked State's
25 Exhibit 41, hand them to you to look at. 42, 43, 44, 45, 46,

KELLY ROSE DIR BY MS. LESKANIC

1 47, 48, 49, 50, 51, 52, 53, 54, 55, 56. Are these all
2 photographs that were taken during the autopsy procedure with
3 Mr. Cash?

4 A. Yes, they are.

5 Q. Have they been changed in any way?

6 A. No.

7 MS. LESKANIC: Your Honor, at this time I would
8 offer State's Exhibits 41 through 56 for admission as evidence.

9 THE COURT: Any objection?

10 MR. MOORE: No objection.

11 THE COURT: Without objection. They are admitted.

12 (STATE EXH. 41, Photograph, was entered into
13 evidence.)

14 (STATE EXH. 42, Photograph, was entered into
15 evidence.)

16 (STATE EXH. 43, Photograph, was entered into
17 evidence.)

18 (STATE EXH. 44, Photograph, was entered into
19 evidence.)

20 (STATE EXH. 45, Photograph, was entered into
21 evidence.)

22 (STATE EXH. 46, Photograph, was entered into
23 evidence.)

24 (STATE EXH. 47, Photograph, was entered into
25 evidence.)

KELLY ROSE DIR BY MS. LESKANIC

1 (STATE EXH. 48, Photograph, was entered into
2 evidence.)

3 (STATE EXH. 49, Photograph, was entered into
4 evidence.)

5 (STATE EXH. 50, Photograph, was entered into
6 evidence.)

7 (STATE EXH. 51, Photograph, was entered into
8 evidence.)

9 (STATE EXH. 52, Photograph, was entered into
10 evidence.)

11 (STATE EXH. 53, Photograph, was entered into
12 evidence.)

13 (STATE EXH. 54, Photograph, was entered into
14 evidence.)

15 (STATE EXH. 55, Photograph, was entered into
16 evidence.)

17 (STATE EXH. 56, Photograph, was entered into
18 evidence.)

19 MS. LESKANIC: May I publish?

20 THE COURT: Yes.

21 MS. LESKANIC: May I have Dr. Rose step down?

22 THE COURT: Yes.

23 BY MS. LESKANIC:

24 Q. I'll have you step over here, Dr. Rose. I'm going
25 to show you first State's Exhibit 41. If you can walk the jury

KELLY ROSE DIR BY MS. LESKANIC

1 through what we're looking at, the procedure in autopsy.

2 A. This is what we call face shots, a shot to help
3 identify the body. In this picture you can see, his hair was
4 wet, his body was, you know, had a lot of water on it. Had the
5 changes that you see if someone is found in a body of water.

6 Q. State's Exhibit 42.

7 A. This is the upper body photograph that we take once
8 they have been cleaned and clothing removed. In this case he
9 didn't come with a shirt.

10 Q. He came with pants on but not a shirt?

11 A. Correct.

12 Q. Are there visible injuries in this photograph that
13 you noted?

14 A. You start to see some abrasions here, contusions.
15 That's just a fancy word for a bruise. You start to see
16 bruises and scratches here, here (indicating).

17 Q. Continue.

18 A. That's what's the most obvious in this picture.

19 Q. Can you tell if these injuries occurred before
20 death or after death?

21 A. You can. During an autopsy, you can tell if an
22 injury occurred when the person was alive, when they were in
23 the process of dying and/or if it happened after they died.

24 If they're alive, they're going to have a normal
25 reaction. We call that a vital reaction. They're going to

KELLY ROSE DIR BY MS. LESKANIC

1 have the same type of redness and bruising that you or I would
2 have.

3 If they're in the process of dying, they have some
4 reaction, but it's not as much as you would expect. There's a
5 certain appearance to the injury.

6 After death, they don't have that vital reaction
7 and a lot of the injuries are yellow, tan, not red.

8 These are all pre-mortem or before death injuries.

9 Q. I'm going to now show you State's Exhibit 43.

10 A. This is the other side of his body, photo taken
11 from the other side. You see bruises, abrasions (indicating)
12 on the arms here. On the hips. That's an area that's kind of
13 bony that would protrude and get injury. That's what you're
14 seeing here (indicating).

15 Q. State's Exhibit 44.

16 A. These were a significant amount of bruises
17 (indicating). It's a little bit blurred out on your screen.
18 The bruises extend from the armpit region down to the wrist
19 region. These are all bruises with some abrasions, some
20 scratches happening.

21 Q. In the photographs that were taken when he was
22 pulled from the water, the injuries are not as visible. Could
23 you explain why there would be a change from that time to the
24 time of autopsy?

25 A. As the body -- when a body is in a cold

KELLY ROSE DIR BY MS. LESKANIC

1 environment, such as water is always colder than the air, the
2 cooler that they put the body in after they recovered the body,
3 the bruises are not as prominent.

4 When a body warms up, it allows that blood that's
5 kind of stagnant to really show. It's a phenomenon that
6 happens all the time in an autopsy. The bruises will burst at
7 the end after the body is warmed up.

8 Q. Is that indicative of the amount of force that was
9 applied to create those bruises?

10 A. It's just indicative that these are real injuries.
11 It occurred before he died, I guess is the significance of
12 them. Significant impact that would've occurred to cause them.

13 Q. How is the body stored until you are ready to
14 perform your autopsy?

15 A. They will secure the body at the scene, and then it
16 will go to the coroner's, to his cooler, what he uses as a
17 cooler. Not sure if in Cherokee that's on-site, at his office
18 or if it's at the hospital or what. Then it's brought to us.
19 And if we're not quite ready to do the autopsy, he'll go
20 straight to our cooler.

21 Q. When you're ready to perform the autopsy, that's
22 when the warming process begins?

23 A. Yes, it's brought up to room temperature where we
24 are.

25 Q. State's Exhibit 45.

KELLY ROSE DIR BY MS. LESKANIC

1 A. That's just more bruises. It's a little bit of a
2 close-up picture of the arm that we saw. Just to show you the
3 extent of the bruises (indicating).

4 Q. Same as here but close up?

5 A. Yes.

6 Q. State's 46.

7 A. This is a picture of the chest, and the flanks,
8 which is the side of the body. You see the scratch, abrasions.
9 You see some contusions here, some scratches here (indicating).

10 Q. State's 47.

11 A. The other side showing similar finding here and
12 here (indicating).

13 Q. On both sides of his body?

14 A. Yeah, both flanks.

15 Q. State's 48.

16 A. This is the other arm, and it's showing numerous
17 contusions from the wrist to the armpit again. And another
18 finding here is that they all look about the same age. They
19 don't look like he's been falling down for days, getting this
20 over days. These all occurred at the same time. They all have
21 a very similar appearance.

22 Q. State's 49.

23 A. This is how he was received to us. These pants,
24 they look a little bluer. They were tan color. I believe they
25 were tan color. This is showing the dirt and silt from the

KELLY ROSE DIR BY MS. LESKANIC

1 river.

2 Q. State's 50.

3 A. That's the rest of his lower body clothed. He had
4 one sandal with him when we received him. You'll see the mud
5 and water soaking of the clothes.

6 Q. Do you do full body photographs and remove the
7 clothing?

8 A. Yes, we do.

9 Q. I'm going to show you State's 51.

10 A. These are the legs after we removed the clothes.
11 You see from the knee level to the ankles and there's some even
12 on to the feet, just the extensive bruises. And they all have
13 the same appearance; they're all the same age. That's a lot of
14 bruises.

15 Q. Was there anything from the knees up on the thighs?

16 A. No.

17 Q. State's 52.

18 A. This is a picture from the other direction
19 showing -- now you can see some of the bruises that are popping
20 up on the legs there.

21 Q. State's 53.

22 A. Those are just close-up shots of the same injuries.

23 Q. 54.

24 A. You can see the foot bruise there really well. And
25 they all have the same look. They're all the same age

KELLY ROSE DIR BY MS. LESKANIC

1 (indicating).

2 Q. State's 55.

3 A. This is the back of the leg showing the difference
4 between the anterior or the front and the posterior aspect, the
5 minimal amount of injury to the back of the legs.

6 Q. Did you have an opportunity to look at photographs
7 from where Justin was removed from the river?

8 A. I did.

9 Q. I'm going to show you first what has already been
10 admitted, State's Exhibit 6. Just to refresh you. This is
11 where Justin's body was found in the water. And abrasions,
12 apparent abrasions to his back and also going to show you
13 State's Exhibit 7. Then I'm going to show you State's 56. If
14 you can explain what we see or do not see in the autopsy photo.

15 A. At autopsy, once you get the body cleaned up and
16 warmed up and you're in a controlled environment with lighting,
17 most of that red discoloration is what we call lividity. It's
18 where the blood settles after death.

19 And then what looks to be significant abrasions in
20 a previous picture, these are perimortem or post-mortem type
21 injuries. They're much less significant appearing. They have
22 a very dried appearance.

23 Q. Is it your opinion that the injuries that we're
24 looking at on State's Exhibit 7 and 6, this and this, those
25 injuries would have occurred after death?

KELLY ROSE DIR BY MS. LESKANIC

1 A. Correct, or slightly before death perhaps.

2 Q. Not the same injuries as what we've previously seen
3 on the arms, legs, and chest?

4 A. No. That's where the waistband of his pants was
5 against his lower back (indicating). Just the friction there
6 on a body that's already deceased or nearly deceased will cause
7 these bright-type abrasions that appear minimally here. They
8 look a lot worse in the picture. At autopsy, their true nature
9 was apparent.

10 Q. You can go back and have a seat. Thank you.

11 Are you told that this is a possible drowning?
12 What information are you given when you receive a body?

13 A. In this case I was told a drowning.

14 Q. When you looked just at the exterior before you did
15 the internal view of Justin's body, did you have concerns with
16 this being a drowning?

17 A. I did. I've never seen that extensive amount of
18 injuries with a straightforward drowning unless someone, you
19 know -- I have not actually ever seen that extensive injuries.
20 Usually with drowning you'll have some injury, not that much.
21 I remember thinking, was he beat up and thrown in the water?
22 It was that much of a drastic change from what I'm used to
23 seeing with drownings.

24 Q. So you have handled other drowning cases and
25 performed autopsies on drowning victims?

KELLY ROSE DIR BY MS. LESKANIC

1 A. Many.

2 Q. Justin drowned?

3 A. He did. He did drown.

4 Q. Have you ever seen these type of injuries on any of
5 your previous drowning cases?

6 A. No. The only case that even approaches this type
7 of injury is a guy that was chopped up by his boat propeller.

8 Q. It would be something else causing an injury to a
9 body in the water?

10 A. Correct. Something did not add up. How did he get
11 these injuries?

12 Q. After you take the photographs and you do your
13 external exam, you have concerns at that point?

14 A. I did.

15 Q. You continue with the autopsy?

16 A. Yes.

17 Q. Opening up Justin's body?

18 A. Correct.

19 Q. Can you tell the jury about your findings during
20 that process.

21 A. He had some bruising over his left collarbone. He
22 had a fracture of his right rib. Then when we examined the
23 neck, he had a broken hyoid bone, which is a bone that sits --
24 one of my techs calls it the high-up bone. It sits so high up,
25 it's at the base of your skull. Very hard to injure that bone,

KELLY ROSE DIR BY MS. LESKANIC

1 and it was fractured. And that was highly concerning.

2 Q. Do you know how many drowning cases, approximately,
3 autopsies you've performed?

4 A. Probably around 50. I'm not 100 percent sure. I'd
5 have to look it up.

6 Q. Have you ever had a hyoid bone injury in a
7 drowning?

8 A. Never. Never.

9 Q. Have you ever had a fractured rib in a drowning?

10 A. No, I have not.

11 Q. You've never had injuries this significant unless
12 there was some other object in the water causing them?

13 A. Correct.

14 Q. I'm going to go back to those injuries a little bit
15 more.

16 On an accidental drowning, what would you expect to
17 find? What have you found?

18 A. Often, the bodies have no other injuries. They
19 look like they just went to sleep. And they're very white
20 often.

21 If there's been a boat involved, they will have
22 those type of injuries. Sometimes I've had them where snapping
23 turtles will peck at them, and I'll have those kind of
24 findings. Nothing like this. Usually it's all internal
25 findings.

KELLY ROSE DIR BY MS. LESKANIC

1 Q. Have you ever had an overdose drowning?

2 A. I have had people that are, when you're drinking
3 and/or using drugs, it's easier to drown. So oftentimes they
4 will have drugs or alcohol in their system.

5 Q. What did those bodies appear to be?

6 A. They still just appeared to be drowning. And what
7 you'll see in a drowning, they will have -- you don't always
8 see every one of the findings but you'll have a lot of fluid on
9 the lungs, frothy fluids. Water soaked.

10 The very most specific finding in a drowning is
11 water in a sinuses, up in your skull. To get that water there,
12 you have to inhale it. And it's called the sphenoid sinus.
13 And he had water in his sphenoid sinus.

14 They will get some discoloration on the inside of
15 their skull that correlates with the ear canals. They will get
16 hemorrhage in those. Their lungs can get hemorrhages from the
17 whole drowning, the physiology of how the person is drowning.
18 In this case, he had all of those findings.

19 Q. What is the physiology when someone is drowned?
20 What happens to make them die?

21 A. So at first the person tries not to breathe. And
22 then when it becomes impossible not to breathe because they
23 have such low oxygen, they will start to inhale. When they
24 inhale water, no oxygen, their body is deprived of oxygen and
25 that is what kills them.

KELLY ROSE DIR BY MS. LESKANIC

1 Q. Essentially, they're trying to get air; instead
2 they get water?

3 A. Correct.

4 Q. Hold your breath as long as you can until you
5 can't?

6 A. Correct.

7 Q. Did you receive, in the course of your autopsy,
8 toxicology results on Justin?

9 A. Yes. We always take specimens like blood and fluid
10 from the eyes for toxicology tests.

11 Q. In this case, he had methamphetamine and GHB in his
12 system?

13 A. Yes, he did.

14 Q. Did you consider that in the levels when you made
15 your final determination of cause of death and manner of death?

16 A. I did. The levels were enough -- I'm sure he was
17 feeling, you know, messed up from the drugs. With all the
18 other findings of a drowning, the drugs did not kill him. It
19 probably made him easier for him to drown. They did not kill
20 him.

21 Q. Could it have made him easier to kill?

22 A. Most definitely.

23 Q. In this case, when you finished the external,
24 internal, and you had concerns, I believe that you did
25 determine a cause of death. And what was that cause of death?

KELLY ROSE DIR BY MS. LESKANIC

1 A. Drowning.

2 Q. Did you immediately determine manner of death?

3 A. I did not. The findings were so concerning and the
4 history that I was given was drowning, which did not match my
5 finding. So I pended the manner of death pending
6 investigation. I wanted to know what the river was like and
7 the other circumstances surrounding his death.

8 Q. Why would the river matter?

9 A. I mean, it looked, I mean, was there a waterfall?
10 Was it classified rapids? Was there any explanation for any of
11 these findings? How deep was it, et cetera.

12 Q. You just find out it's a river --

13 A. Correct.

14 Q. -- and that's all you know?

15 So on June 27th of 2019, did you make a trip from
16 Newberry to Cherokee County and go on Broad River?

17 A. I did.

18 Q. Can you tell us about that, please.

19 A. I was particularly interested in the depth, what
20 this river was like. If the river -- what his findings were,
21 if they made sense.

22 Q. What was your conclusion?

23 A. No. It was mostly shallow. I got out of the boat
24 and walked around. It was after that, that I determined that I
25 believed he was held down and that is how he drowned.

KELLY ROSE DIR BY MS. LESKANIC

1 Q. Can you explain that a little bit more. Let me ask
2 you, because we looked at photographs, where are the majority
3 of Justin's injuries?

4 A. They're from his knees down. Some few here on the
5 chest, bony prominences, on his arms and hands. To me -- and
6 then the fractured hyoid bone. That's so much associated with
7 strangulation that you have to have an extremely good
8 alternative cause for it not to be a strangulation or manual
9 compression on the neck.

10 With all of the above -- and the findings on his
11 knees to his feet, to me it was as if he was on his face, face
12 down. Maybe tried to get up and was being forcefully held, his
13 head forcefully held under the water.

14 Q. And what about his legs?

15 A. His legs, he was probably trying to get out from
16 under the person holding his head under the water.

17 Q. Could that be kicking?

18 A. Yeah. Trying to get up on his knees. Trying to
19 get up. Falling back down.

20 Q. Going to that hyoid bone fracture, you said that's
21 classic strangulation?

22 A. It is.

23 Q. Do you know approximately how many pounds of
24 pressure have to be applied to that bone to fracture it?

25 A. I believe it's about 40.

KELLY ROSE DIR BY MS. LESKANIC

1 Q. 40 pounds of pressure on that?

2 A. That's in contrast to, if you just press on a
3 jugular vein, it's four pounds. So a significant pressure.

4 Q. I guess the fracture of the rib and the bruising
5 under the clavicle, what in your opinion, how would that have
6 been caused as well?

7 A. Probably the same way that bruises on his arms and
8 legs were; trying to get up, trying to not be drowned.

9 Q. Twisting?

10 A. Yes.

11 Q. With the hyoid fracture, 40 pounds of pressure to
12 break that bone, I guess could that happen if you grab
13 somebody's shirt and let them go?

14 A. No. It has to be pretty much direct application of
15 pressure in that area. So no. Pulling on someone's shirt, no.
16 I would've fractured my brother's hyoid bone many times.

17 Q. How about a chokehold? Just trying to grab
18 somebody.

19 A. Chokeholds are notorious for not causing any
20 injury; it's too much pressure over an area. You need a more
21 directed pressure to break the hyoid.

22 Q. This is directed pressure on that bone. Does it
23 have to come from the front or can it also come from the rear?

24 A. It cannot come from the rear.

25 Q. If it were held down in the water, that pressure

KELLY ROSE DIR BY MS. LESKANIC

1 could be applied whether it's an object holding him down or
2 hands holding him down as long as there's direct pressure on
3 that area?

4 A. Correct.

5 Q. Do Justin's injuries and your findings indicate a
6 struggle?

7 A. The sum total of findings made sense to me if he
8 was, you know, intoxicated on drugs, maybe not his fully alert
9 self. That it would've been -- he was a prime candidate to be
10 drowned and struggled as best he could in that state.

11 Q. The drugs would have -- did the drugs kill him?

12 A. No.

13 Q. In your expert opinion, was this an accidental
14 drowning?

15 A. No.

16 Q. In your expert opinion, what is the manner of
17 death?

18 A. Homicide.

19 Q. If he is on drugs and he falls down in the water,
20 would you expect to see the significant injuries to his knees
21 and shins that we see in this picture?

22 A. Not that extensive, no. Certainly would not see a
23 fractured hyoid bone.

24 Q. If I'm pulling somebody on a boat and have him kind
25 of in a chokehold, am I going to break the hyoid bone?

KELLY ROSE DIR BY MS. LESKANIC

1 A. No.

2 Q. That pressure is going to have to be right there?

3 A. Yes.

4 Q. 40 pounds of pressure?

5 A. Yes. That's why it's such a significant finding.

6 Q. Have you ever had a broken hyoid bone found in a
7 case other than strangulation?

8 A. I have not. Not even on my strangulations have
9 fractured hyoid bones.

10 Q. Was it after -- I may have covered this. I want to
11 make sure.

12 When you first finished your autopsy, you came to
13 the river. You saw the river. What was your impression of
14 Broad River?

15 A. I thought it was a beautiful river.

16 Q. Did you see anything there that would cause these
17 injuries even if Justin was in the water without a raft?

18 A. No. I couldn't make sense of the injuries that I
19 found.

20 Q. If he was tumbling down the river, would you expect
21 to see injuries all over his body?

22 A. Yes. I would've expected it to be more equally
23 distributed on the body. You would not see a fractured hyoid
24 bone.

25 MS. LESKANIC: One moment, please.

KELLY ROSE CROSS BY MR. MOORE

1 (A pause transpired).

2 BY MS. LESKANIC:

3 Q. Just so that it is clear, could you please make
4 sure the jury understands the difference in cause of death and
5 manner of death and what your findings were in this case.

6 A. Cause of death is what led to that person's death;
7 what was the underlying cause that they died. And in this
8 case, it was drowning. Drowning is what caused Justin to die.

9 Manner of death helps explain the circumstances
10 under which the death occurred. In Justin's case, the manner
11 of death was homicide.

12 Q. If you were not certain of that, what would your
13 manner of death be in this case?

14 A. I would have left it or I would have picked
15 undetermined. When I'm not sure and there is arguments for
16 both, for maybe two different manners of death, I would have
17 called it undetermined.

18 Q. After doing your full investigation, autopsy,
19 looking at the river, considering all of the circumstances,
20 your opinion is the manner of death is homicide?

21 A. It is.

22 MS. LESKANIC: Thank you, Dr. Rose. Please answer
23 any questions Mr. Moore has.

24 THE COURT: Mr. Moore.

25 CROSS-EXAMINATION

KELLY ROSE CROSS BY MR. MOORE

1 BY MR. MOORE:

2 Q. Good afternoon. How are you doing, Doctor?

3 A. I'm pretty good.

4 Q. I have several questions for you. I'm going to try
5 to keep them as straightforward and simple as I can. If I
6 misuse a word or something, I'm obviously not trained in
7 medicine. I obviously read your report in preparation for this
8 trial. There is some words and some terminology I don't
9 necessarily know. I would like you to clarify for us.

10 I want to start with a couple basic things. Can
11 you restate Justin's height and weight or length and weight.

12 A. We measured him to be 78 inches and his weight was
13 approximately 185 pounds.

14 Q. Thank you.

15 I noticed in your report under evidence for
16 drowning, you use a word I'm not familiar with; suffusion of
17 the head and neck.

18 A. Yeah, that's just the red discoloration.

19 Q. That's kind of like -- is suffusion like when
20 people get red in their cheeks and things like that?

21 A. Yes, can be.

22 Q. The redness on his neck and on his head is
23 suffusion?

24 A. Yeah, the general pinkness of his skin.

25 Q. Why is that associated with drowning?

KELLY ROSE CROSS BY MR. MOORE

1 A. It can have to do with the actual lack of oxygen in
2 the blood. It can have to do with the position of the head
3 being down when drowning.

4 Q. We'll talk about the fractures in a second. Other
5 than the hyoid bone you just spoke about, was there any
6 indication there was any other trauma to the head?

7 A. There was blood around the hyoid bone. If there's
8 just a fractured bone, no blood around it, that possibly
9 happened when they were -- when we were protecting the organs,
10 getting the organs out. In this case, there was blood all
11 around the hyoid fracture. He was alive when it happened.

12 Q. Is there any way -- I think you said the hyoid,
13 rib, and was it a clavicle?

14 A. Was bruised, yes, under the tissue that overlies
15 the collar bone was bruised.

16 Q. It was not fractured?

17 A. Correct.

18 Q. The only fracture was the hyoid and the rib?

19 A. Correct.

20 Q. I know you just talked about determining the timing
21 of contusions and bruises and things. Is there a way to
22 determine the timing of bone fractures? I guess what I'm
23 really getting at, being able to tell at what time it broke or
24 how long it's been broken, things like that?

25 A. Yes, there's definitely ways to determine

KELLY ROSE CROSS BY MR. MOORE

1 fractures, acute or chronic. So your bones heal like any other
2 tissue in your body. And when they heal, because they are bone
3 and calcium, they heal with what are called calluses that are
4 bony. And you don't see the acute hemorrhage.

5 In this case, there was no callus formation. There
6 was hemorrhage. That means it was an acute fracture.

7 Q. When did you submit your preliminary report?

8 A. I submitted my preliminary death certificate --
9 it's kind of a guide, what I'm thinking was the cause of
10 death -- right after the autopsy, I believe. That would've
11 been in June.

12 Q. And then your final report, looks like you signed
13 it in April of the next year. Does that sound right?

14 A. Correct, I did. The next year.

15 Q. What happens between that time frame?

16 A. I went to the scene. I made sure I have all the
17 evidence from the investigators. I want to go through the
18 report carefully when I'm not distracted. And I'm also doing a
19 lot of other autopsies.

20 Q. You just said -- we're talking about the marks and
21 the bruises on the leg. I believe you said there is no such
22 thing -- correct me if I am wrong. Is there or is there not
23 such thing as post-mortem bruising?

24 A. No. You don't really bruise after you're dead.
25 You can get a funny discoloration to your skin. It's not a

KELLY ROSE CROSS BY MR. MOORE

1 bruise.

2 Q. Let's talk about the marks that you identified and
3 testified to on his legs. You would agree those are
4 essentially knee down only?

5 A. Correct.

6 Q. You would also agree those are almost only on the
7 front of his legs. His shins, if you will?

8 A. Correct.

9 Q. I believe you testified that your opinion was that
10 could be from being held down and kicking in the water. Could
11 those same marks happen from walking through water and rocks?

12 A. Not walking through them. It would've required
13 contact from, you know, the knee down. And it was even on top
14 of the foot. That to me says the leg was down on the rocks
15 like this (indicating), horizontal not vertical.

16 Q. It's your opinion that, if there's a rock you can't
17 see in the water and you're walking at night in the dark, and
18 you hit your leg on that rock, you couldn't have got a bruise
19 on your knee and shin that way?

20 A. You probably get one here and there, not that
21 level. You certainly wouldn't had it on top of the feet.

22 Q. Does it matter how far you might've done that or
23 how long you might've done that?

24 A. How long you might've done what?

25 Q. I'm just speaking hypothetically right now. There

KELLY ROSE CROSS BY MR. MOORE

1 is not evidence in this case. If you walked at night through a
2 river with submerged rocks, you did that for a half an hour or
3 hour or more, would you agree the longer amount of time you did
4 that, the greater chance you have more bruises?

5 A. That you probably would have more. I personally
6 got out and walked in that river. I don't see how there were
7 enough rocks -- the rocks are kind of on the bottom. The water
8 is on the top. There are some that will jut out here and
9 there. To have the extensive nature from the knees down and on
10 top of the feet, I don't think it's consistent with walking 30
11 minutes through rocky water.

12 Q. Can we look -- have you looked at the map, exhibit
13 2 here?

14 A. I don't believe I have.

15 Q. If you don't mind just stepping down for a minute.

16 Can you show the jury where on the river you were
17 and what part, like, if you're making assessments on the rocks,
18 the depth, the current, things like that. Can you show me
19 where you were when you were walking through the river.

20 A. I believe we put in over here (indicating). We
21 went out this far. And all along the way I was getting out of
22 the boat.

23 Q. You think you went to where?

24 A. Here, I believe (indicating). This is 2019. And I
25 didn't look at it at that time from the air. But if I were to

KELLY ROSE CROSS BY MR. MOORE

1 do the best guess here in court today, I remember being in here
2 (indicating), and I remember we went out past it. I'm not sure
3 where we put in.

4 Q. You put in on a boat ramp?

5 A. Yes.

6 Q. Like an actual boat ramp?

7 A. Yes, sir.

8 Q. This is where law enforcement conducted their
9 investigation from.

10 A. That's right there (indicating).

11 Q. Do you recall going upstream?

12 A. What's upstream in this picture?

13 Q. The river is flowing from this direction to the
14 bottom.

15 A. We did -- it was a long boat ride. Whatever. I
16 felt, like, I was out there over an hour, two hours maybe.

17 Q. How many times did you get out of the boat during
18 that?

19 A. Throughout. A lot. 'Cause I like the water. I
20 wouldn't be able to recall exact number. As often as I could.

21 Q. Was that like four times, 50 times?

22 A. It wasn't 50. Could've been ten.

23 Q. It was not -- the water wasn't moving very fast; it
24 wasn't very deep?

25 A. It wasn't deep. There were some areas that were

KELLY ROSE CROSS BY MR. MOORE

1 deeper. There was movement on the water.

2 Q. You don't recall there being a whole lot of rocks?

3 A. There were rocks, mostly on the bottom. Not
4 enough, like -- in my opinion, for the rocks to cause his
5 injuries, it would be somewhere you couldn't even walk through,
6 you know. They were here and there. There were some areas
7 that were higher rocks.

8 The bottom is definitely rocky. I don't see how
9 walking through that river could explain. To me it was more
10 consistent with his legs being down on the river bottom, at the
11 shallows. Or at least at the shallows, in a horizontal
12 position, not a walking position.

13 Q. Did the fact that he was under the influence of
14 various drugs contribute to your determination of whether that
15 could've happened? For example, my understanding people who
16 are on drugs may not feel pain as much as people who are not?

17 A. That's true.

18 Q. If you're walking through this river at night in
19 the dark, submerged rocks, methamphetamine, you don't think
20 these injuries could've happened?

21 A. Maybe if he hit his legs on 300 rocks. It's the
22 extensive nature of them that makes me not comfortable saying
23 it could've been from walking.

24 Q. It's not even possible in your opinion?

25 A. Pardon?

KELLY ROSE CROSS BY MR. MOORE

1 Q. It's not even possible in your opinion?

2 A. It's not even possible you said?

3 Q. Right.

4 A. Highly unlikely.

5 Q. You also just testified that you've never had a
6 broken hyoid bone in a case that was not a strangulation; is
7 that right?

8 A. That is true.

9 Q. You've never had a broken hyoid bone in a hanging?

10 A. No, never have. Those usually occur in judicial
11 type hangings, which we don't do. I've never had it in a
12 hanging.

13 Q. Is there a way to break your hyoid other than
14 strangulation?

15 A. I've heard you can have it in a motor vehicle
16 collision. I don't believe I've ever had that either.

17 Q. It can happen?

18 A. High speeds like motorcycle crash-type where the
19 neck is exposed. I've heard that's possible.

20 Q. What about just actual blunt force trauma aside
21 from strangulation? Could that happen in that scenario?

22 A. I haven't had a case like that. Maybe if there was
23 a super duty karate kick or something, that's possible.

24 Q. I'm not talking about karate, I'm talking like
25 weapons, like bats and sticks and mallets and things that

KELLY ROSE CROSS BY MR. MOORE

1 happen in other type scenarios.

2 Would one of those cause the same type of injury?

3 A. It's possible. You also see evidence of the bat or
4 whatever was being used to strike.

5 Q. There were no evidence in this case of any type of
6 weapons strike?

7 A. Correct. There was no evidence of a bat or a
8 whatever else you were describing, no.

9 Q. Or a hammer, anything like that?

10 A. No. Hammers make very specific injuries.

11 Q. Really?

12 A. Yes.

13 Q. Like what?

14 A. So, when someone is struck with a hammer, it leaves
15 a round to somewhat kind of square looking abrasion on their
16 head with some splits. If they're struck with the side of the
17 hammer, you can almost see the outline of the hammer with the
18 legs, the pointy things in the back and then the side. There
19 are classic findings in a hammer. And I've had several hammer
20 deaths.

21 Q. I want to switch gears just for a second. How do
22 you determine an overdose death? I know you ruled it out here
23 is what you're saying. How do you determine that in cases --
24 I'm assuming you run into a lot of those in your job.

25 A. Yeah, I do. You look at the level and you exclude

KELLY ROSE CROSS BY MR. MOORE

1 other possibilities. For instance, I've had people that had
2 levels that would be considered lethal, but they died from a
3 gunshot and their body is reacting to the gunshot, so the
4 gunshot killed them. That's not a tox death.

5 If you have someone slumped over, there is a needle
6 beside them, they have no other injuries, their tox levels are
7 lethal, that's a tox death. I do autopsies on those cases and
8 I'll make sure there isn't a heart attack, there isn't
9 something else going on inside the body that would trump the
10 tox. Because everyone's body is different and levels don't
11 mean the same thing across the board.

12 Q. I understand levels don't mean the same thing
13 across the board. There are somewhat accepted like toxic blood
14 levels of different substances; correct?

15 A. Yeah, there's ranges based on a certain number of
16 studies where they say, in general, we've had blank number of
17 people die and their levels were from this to this.

18 During my training, my mentor said you have to take
19 the tox in consideration with all your other findings. Because
20 nothing in pathology is as black and white as: Oh, that number
21 equals this. You have to include all your findings.

22 Q. What were your findings regarding the levels --
23 first of all, tell me how toxicology is done as part of an
24 autopsy.

25 A. So we will draw blood from the body at time of

KELLY ROSE CROSS BY MR. MOORE

1 autopsy. We put it in a certain tube that helps preserve the
2 drugs. And then sent to SLED depending on which county.
3 Cherokee uses SLED Forensic Services Laboratory in Columbia.
4 It's sent to them, and they run the test.

5 Q. You did that in this case; is that correct?

6 A. We did. I can tell you what we drew on him.

7 We got femoral blood, which is blood from the legs,
8 which is supposed to be the most accurate blood you can get
9 after death. You want to get as far way from the heart as
10 possible; sometimes those levels are higher.

11 Q. What was the results from that?

12 A. The methamphetamine was 1,600 nanograms per amount.
13 That's the units they use.

14 Q. What's the cutoff for testing?

15 A. You know, I don't know what their cutoff is. If I
16 had the report, I could see if that's listed.

17 Q. While I'm looking for the report -- I think I have
18 it right here. What is a toxic level of methamphetamine?

19 A. It depends on the individual and their health
20 status. I've had people that are healthy. When
21 methamphetamine is the obvious and only cause of death, I've
22 had 14,000, 10,000, 12,000. It's very high because, in
23 general, people use methamphetamine and they develop a
24 tolerance to it. It's not usually just: I'll use it once.

25 Usually people that use meth use it often. The

KELLY ROSE CROSS BY MR. MOORE

1 levels are very high, and you have to make sure there's nothing
2 else that could've killed them.

3 Q. The GHB, which is a different substance?

4 A. It is.

5 Q. You did not test for that at the same time, did
6 you?

7 A. No. You'll have to forgive me. I don't exactly
8 remember what prompted the extra testing for the GHB in this
9 case. Something -- I don't know if it was some concern of GHB
10 was brought up. It was requested and they tested it.

11 Q. That wasn't done as part of the standard procedure?
12 Somebody contacted you and asked specifically for the
13 subsequent testing to take place?

14 A. That test had to be requested. It's not -- or else
15 it would've been listed with the original results. At some
16 point along the line someone requested that testing.

17 Q. In your capacity as a medical doctor -- I
18 understand you're a medical pathologist. In general, GHB is a
19 prescribed drug; it's a legitimate Schedule 1. You can get a
20 prescription for it; correct?

21 A. That I don't know. My knowledge being in the
22 forensic world is different than, say, whomever would prescribe
23 GHB. In my role, it's known as the rape drug. Date rape drug,
24 et cetera. And that it's usually an illicitly acquired
25 substance, in my experience.

KELLY ROSE CROSS BY MR. MOORE

1 Q. Based off what you just said, is that because GHB
2 is a sedative?

3 A. It does have sedative effects, yes.

4 Q. Describe what sedative effects are.

5 A. Things that will slow you down, make you less, you
6 know, you know, make you kind of drowsy feeling. That's
7 generally a sedative.

8 Q. Do you know what a therapeutic dosage of it is?

9 A. I don't.

10 Q. Do you know what a toxic level of it would be in
11 someone's bloodstream?

12 A. Again, that varies. I don't know the exact numbers
13 off the top of my head. There's always a range. And it varies
14 and you interpret in context with your other findings.

15 Q. What would be a toxic-level range for GHB?

16 A. That I'm not sure. I know that Justin's was not in
17 that lethal level. They have different -- they have toxic,
18 you're going to feel the effect. Lethal, this number is going
19 to kill you in the select number of cases that they have
20 studied. That's why you have to interpret in the context of
21 your own findings.

22 Q. Do you know what that toxic level would be?

23 A. I don't right now. I'd have to look that up.

24 Q. I just know you ruled it out.

25 A. Because I looked it up at the time. I don't recall

KELLY ROSE CROSS BY MR. MOORE

1 the levels right now.

2 Q. What was his level, do you know that?

3 A. It says greater than 200.

4 Q. Do you know what the threshold was?

5 A. I don't. A toxicologist would.

6 Q. Can I show you the toxicology report?

7 A. Sure.

8 MR. MOORE: May I approach the witness, Your Honor?

9 THE COURT: Yes, sir.

10 THE WITNESS: The threshold is 50.

11 BY MR. MOORE:

12 Q. His was greater than 200?

13 A. Correct.

14 Q. You don't know what a therapeutic range would've
15 been?

16 A. Nor do I know why people would be prescribed it.

17 Q. Bear with me. Let me look over this for a minute.

18 (A pause transpired.)

19 BY MR. MOORE:

20 Q. We talked about contusions and timing of bruises
21 and contusions. You also discussed that regarding fractures.
22 What about abrasions? I'm assuming there's such thing as
23 postmortem abrasions?

24 A. Those are -- you can see what we call postmortem
25 abrasions. They have a distinctive yellow, almost parchment

KELLY ROSE CROSS BY MR. MOORE

1 paper look. Very classic, easy to tell. The blood isn't
2 flowing into that area. You get loss of this superficial
3 layers of your skin. That area underneath your skin dries out.
4 It's yellow. It's like tan, yellow.

5 Q. The bruising on the upper arms, which we saw in the
6 pictures, do you have -- were they consistent with any type of
7 movement?

8 A. Just movement against rocks.

9 Q. You think the bruising on his arm was from rocks?

10 A. Could've been from rocks. Any type of, you know,
11 grip or a grasp. They were pretty extensive like the legs so
12 they could've all been from rocks.

13 Q. You just said a grasp. Could they have been from
14 somebody grabbing his arms?

15 A. Maybe some of them. When I've seen other cases
16 where they're grabbed, you don't see that many. But could
17 there have been a grab bruise in there with all the others?
18 Definitely.

19 Q. If I remember looking at those pictures, there were
20 not any bruising on the back of the neck or the top of the
21 back; is that correct?

22 A. Correct.

23 Q. No bruising on the back of the neck or the top of
24 the back?

25 A. Correct. That doesn't concern me in a case where I

KELLY ROSE CROSS BY MR. MOORE

1 see a fractured hyoid because -- I'm not sure why. I think
2 it's 'cause the tissue is so thick back there. Oftentimes you
3 don't see the bruises like you see on the front, the anterior,
4 'cause you don't have all that muscle. You have big thick
5 muscles back here that holds your head up. I'll see injuries
6 inside. I don't see any on the surface.

7 Sometimes if I can cut into that tissue -- it's
8 really a little bit gruesome to do. And you'll see the bruises
9 deep down in it. In this case, with the hyoid fracture and the
10 hemorrhage, I didn't feel that was necessary.

11 Q. At any point -- I don't know if it's appropriate to
12 call it investigation. I don't know if that's what you call
13 it.

14 A. Sure.

15 Q. At any point in this process -- I know you came to
16 look at the river. Did you ever look at the raft that was
17 found as part of this incident?

18 A. I believe I did look at the raft. It was out of
19 the water already.

20 Q. So you saw it in person?

21 A. Yes. I think I saw it in a shed. Again, I don't
22 remember all those details. I just remember it's out of the
23 water now. It didn't -- really, it wasn't as applicable to
24 what I was looking for. Didn't raise any concerns or offer any
25 help to his injuries.

KELLY ROSE CROSS BY MR. MOORE

1 Q. Were you aware of the circumstances or at least the
2 alleged facts of what happened?

3 A. I just knew that he had been out with his boyfriend
4 on the river. Beyond that, I don't know the full story.
5 That's, you know, part of the investigation, not necessarily my
6 part.

7 Q. I get that. I just wondered how much information
8 was communicated between law enforcement and you. Obviously, I
9 think it's fair to say that you wouldn't have done a subsequent
10 GHB test had law enforcement not contacted you and suggested
11 that?

12 A. And I don't know if it came through my office or if
13 the coroner requested it. Anyone can request that. I don't
14 remember. Sorry.

15 Q. You didn't unilaterally say: I'm going to do a GHB
16 here?

17 A. No.

18 Q. Because you don't know necessarily the facts that
19 have been put forward or alleged or any of that. I understand
20 why you're removed from that.

21 I am going to ask you about a situation. I want
22 you to be able to tell us whether you think these injuries are
23 or are not consistent with that.

24 The bruising on the upper arm, the bicep-type area,
25 could that be from someone grabbing ahold of the victim?

KELLY ROSE CROSS BY MR. MOORE

1 A. I don't believe all of that was from someone
2 grabbing them, no.

3 Q. I'm talking about any of them on the arm area?

4 A. Perhaps some of them, like I said earlier. Perhaps
5 some, yes.

6 Q. If someone was grabbing someone and trying to pull
7 them up onto a raft that is moving down the river, could those
8 front leg contusions and bruises be related to that?

9 A. Perhaps some of them. I don't feel that all of
10 them. And that would be extreme, especially in light of the
11 fractured hyoid. It would make no sense really that they were
12 all from a rescue attempt. I've had other drowning rescue
13 attempts by the loved ones. I haven't seen that extensive
14 amount of injury.

15 Q. I understand. We keep coming back to the hyoid. I
16 get the significance of that. I'm trying to make sure.

17 You don't think that, if someone was holding
18 somebody's upper arms and trying to pull them on a raft that is
19 floating down a river full of rock, those injuries could be
20 consistent with that type of scenario?

21 A. I would think that would be highly unlikely.

22 Q. What is more likely is what's the Solicitor
23 described, somebody pushing somebody else down from behind in
24 the water with no bruising on the back of the neck or their
25 back?

KELLY ROSE REDIR BY MS. LESKANIC

1 A. Yes.

2 MR. MOORE: No further questions.

3 MS. LESKANIC: Briefly.

4 THE COURT: Yes.

5 REDIRECT EXAMINATION

6 BY MS. LESKANIC:

7 Q. Dr. Rose, I should've asked this initially. You
8 did look at all of Justin's organs?

9 A. I did.

10 Q. Was there anything that you saw that was a diseased
11 organ or could've caused death?

12 A. No. I believe I put on my final autopsy no
13 significant natural disease. No. He was healthy.

14 Q. Mr. Moore asked about the fractures and the timing
15 of the fracture and you mentioned acute and --

16 A. You know, subacute and chronic like over time.
17 Like there had been some healing process.

18 Q. What was the rib fracture?

19 A. That was acute.

20 Q. That means it was recent?

21 A. Yeah. That happens within, you know, around the
22 death. You can start to see healing in a week to two weeks
23 out.

24 Q. And the hyoid bone injury, was that also an acute
25 injury?

KELLY ROSE REDIR BY MS. LESKANIC

1 A. Yes.

2 Q. Mr. Moore just asked about the back of the neck. I
3 just want to be clear. Did it -- because you believe that your
4 findings, looking at everything, that is consistent with Justin
5 being held face in the water from behind?

6 A. I do.

7 Q. No bruising to his neck. Can you explain why that
8 does not concern you.

9 A. Because in previous autopsies and subsequent
10 autopsies where someone -- they have a history of someone
11 being, you know, held down from behind, you don't always see
12 bruises there. You have to cut into that pretty much to let
13 open their skin back there to see the bruises. Because the
14 skin is so, and the muscles are so dense that the bruises is
15 deep down there.

16 And then, like I said, with the fractured hyoid
17 bone and the hemorrhage around that, I didn't feel that is
18 necessary. It is an extreme procedure to do.

19 Q. And the hemorrhage, what is hemorrhage?

20 A. Blood, bleeding.

21 Q. There was bleeding around the hyoid bone fracture?

22 A. Yes.

23 Q. What does that indicate?

24 A. That happened when he was not dead. He was alive
25 when he received that injury.

KELLY ROSE REDIR BY MS. LESKANIC

1 Q. Do you believe that the drowning and the fractured
2 hyoid injury occurred simultaneously?

3 A. I do.

4 Q. There was a question about the preliminary report
5 and the final report. Your final report was not signed, I
6 think, until 2020?

7 A. Correct.

8 Q. Is that when you decided the manner of death as
9 homicide?

10 A. No. I decided that earlier on in, I believe,
11 August after I went to the scene and had time to issue the
12 updated death certificate.

13 Q. This happened in June of 2019. You knew the cause
14 of death was drowning. You had a pending manner of death. You
15 went to the river. And by August you had issued the final
16 death certificate stating that the manner of death was
17 homicide?

18 A. Yes, correct.

19 Q. You didn't sign your report?

20 A. Correct.

21 Q. But your report was complete?

22 A. Correct.

23 Q. Because that was your autopsy?

24 A. Correct.

25 Q. So the 2020 -- it did not take you until 2020 to

KELLY ROSE REDIR BY MS. LESKANIC

1 determine that this was a homicide?

2 A. No.

3 Q. I didn't want there to be any misunderstanding
4 about dates.

5 Mr. Moore asked a lot about the toxicology. Do you
6 run the toxicology there, or is that handled at SLED?

7 A. That's handled at SLED, their lab.

8 Q. You don't just say: Hey, folks in my office, run
9 GHB testing?

10 A. No.

11 Q. That was a report that was provided to you?

12 A. Correct.

13 Q. And the methamphetamine report was provided to you?

14 A. Correct.

15 Q. Did you evaluate the results of both of those
16 reports in developing your findings?

17 A. I did.

18 Q. And that is that the drugs in his system did or did
19 not cause his death?

20 A. It did not kill Justin.

21 Q. There was nothing that you recall seeing on the
22 raft that would've caused the injuries --

23 A. No.

24 Q. -- to Justin?

25 A. No.

KELLY ROSE RECROSS BY MR. MOORE

1 MS. LESKANIC: One moment.

2 (A pause transpired).

3 BY MS. LESKANIC:

4 Q. Just to make sure there's no confusion, when
5 someone drowns, does that mean it's an accident? I just want
6 to clarify whether we're talking about the drowning has to be
7 an accident and exactly what you found in this case.

8 A. No, a drowning does not have to be an accident.
9 Someone can say I've had enough of this world, good-bye, and
10 drown themselves. That's a suicide.

11 Someone could drown at the hands of another.
12 That's a homicide.

13 Someone can drown because they don't know how to
14 swim and they were not intending to drown. They drowned
15 anyway. That's an accident.

16 Q. In this case it was?

17 A. A homicide.

18 MS. LESKANIC: Thank you.

19 RECROSS-EXAMINATION

20 BY MR. MOORE:

21 Q. You just said you didn't see anything on the raft
22 that could've been consistent with the injuries that you saw on
23 Justin's body. What all did you see on the raft?

24 A. I remember there was some debris and -- I don't
25 recall what else was on there. At the time it was not

KELLY ROSE RECROSS BY MR. MOORE

1 concerning to me, and so I have not re-thought about that until
2 today.

3 Q. Were there any notes or anything, maybe in your
4 case file, about it?

5 A. No.

6 Q. Don't let me get these confused because I do.
7 Manner and cause. I want to get that right. Manner, when did
8 you make your official determination on manner of death? What
9 was the date of that?

10 A. The official date was in August. I don't recall
11 the date exactly. It was in August. Of 2019.

12 Q. Was that before or after you received the results
13 regarding the GHB?

14 A. That was before. And then I received the GHB
15 results after. In cases like that where this occurs and I
16 think, oh, wow, you know, this is not what I initially thought,
17 I issue an amended report. And I'm saying this report is
18 amended to reflect the toxicology results.

19 In this case after evaluating them, it did not
20 change my cause or manner of death so I did not issue an
21 amended report. I have the results in the file.

22 Q. You said it's your opinion that he was held down
23 from behind on the back of his neck. Is that correct?

24 A. Yeah. It's my opinion that his injuries,
25 especially with the fractured hyoid bone, there's pressure

KELLY ROSE RECROSS BY MR. MOORE

1 applied to his neck.

2 The extent of other injuries on the front of his
3 legs and his arms here, in my interpretation are most
4 consistent with, you know, him being face down and someone
5 being on top of him.

6 Q. Although there's no bruising, your testimony is it
7 could've been much deeper bruising but, I guess, an involved
8 procedure to do that, so you didn't do that; is that correct?

9 A. Correct. For example, if I don't see a broken
10 hyoid bone in a case, something is not adding up here. I will
11 go ahead and cut into the back of the neck and really look at
12 all the different levels back there. You've already opened the
13 body and exposed the anterior neck.

14 To do that, it's nearly having to decapitate the
15 body. In most cases, if I can avoid doing that, I do. And in
16 this case I did not do that.

17 MR. MOORE: No further questions, Your Honor.

18 THE COURT: Thank you. Doctor, you may step down.
19 Please be careful.

20 MS. LESKANIC: Can she be excused, Your Honor?

21 THE COURT: Any objection?

22 MR. MOORE: No objection.

23 THE COURT: Doctor, you may stay or go, whichever
24 you choose.

25 (The witness exited the stand).

KELLY ROSE RECROSS BY MR. MOORE

1 THE COURT: Solicitor.

2 MS. LESKANIC: Your Honor, at this time the State
3 rests.

4 THE COURT: The State rests.

5 Mr. Foreman, ladies and gentlemen of the jury, the
6 State has now rested its case known as the case in chief, which
7 means the State does not intend to call any more witnesses or
8 offer any other exhibits, pictures or otherwise, diagrams, maps
9 or nothing else at this point in time.

10 With that, that brings up a couple of things called
11 matters of law, which I told you first of the week, are in my
12 wheelhouse, not yours. I have to take up a couple matters.
13 We're going to take an afternoon break anyway.

14 We're going to let you go on a break for good,
15 solid 20 minutes or so. We're going to take care of a few
16 matters right here and then refresh ourselves. I'm going to
17 get some ice water. Then we'll see where we are with the
18 trial.

19 Mr. Foreman, if you'll take the jury out, please.
20 Anybody needs to smoke, Mr. Bailiff, y'all have to go out with
21 them.

22 (The jury exited the courtroom at 3:07 p.m.)

23 THE COURT: Anything from the State?

24 MS. LESKANIC: No, Your Honor.

25 THE COURT: From the defense?

KELLY ROSE RECROSS BY MR. MOORE

1 MR. MOORE: Can we take, say, a brief recess before
2 any matters?

3 THE COURT: Absolutely. Let's do that.

4 MR. MOORE: How long, Your Honor?

5 THE COURT: Let's take about 15, 20 minutes.

6 MR. MOORE: Yes, sir.

7 (A recess transpired from 3:08 p.m. until 3:37
8 p.m., after which the jury entered the courtroom.)

9 THE COURT: Ladies and gentlemen of the jury. Give
10 your attention to Mr. Moore.

11 MR. MOORE: Yes, sir, Your Honor. At this time the
12 defense rests.

13 THE COURT: The defense rests.

14 MR. MOORE: Yes, sir.

15 THE COURT: Anything from the State?

16 MS. LESKANIC: No, Your Honor.

17 THE COURT: Mr. Foreman, ladies and gentlemen of
18 the jury, the defense is now rested in this case, which means
19 they do not intend to call a witness or put any evidence before
20 you. And the State has nothing to rebut.

21 What that brings us to, we're going to recess for
22 the afternoon. I'm going to let you go home and enjoy your
23 evening and be back here in the morning at 9:00. Be back in
24 the morning at 9:00.

25 Tomorrow morning you can expect the lawyers to make

KELLY ROSE RECROSS BY MR. MOORE

1 their closing arguments, after which the case -- I will charge
2 you on the law in this case and then the case will be in your
3 hands.

4 Madam clerk should have already taken your lunch
5 order.

6 THE CLERK: Yes, sir.

7 THE COURT: Everybody, I'm going to really enjoy
8 that steak. It's Chick-Fil-A.

9 Nonetheless, you can expect tomorrow morning that
10 the lawyers will make their closing statements to you. I will
11 then charge you on the law in the case. You will go and retire
12 into the jury room, at which time you'll begin your
13 deliberations in this case.

14 Again, do not try to do any research. If there is
15 something in the media, I've had the media with us all week,
16 they're always welcome in our courtroom. If there's something,
17 just lay it aside. Don't read anything about it until the case
18 is in. It's very close to be in your hands tomorrow.

19 Mr. Foreman, if you'll take the jury out.

20 (The jury exited the courtroom at 3:39 p.m.)

21 THE COURT: We're going to be in recess until 9:00
22 tomorrow morning. We'll retire and go over the jury charge
23 that Sanders put together. 9:00 tomorrow morning.

24 (The trial was adjourned at 3:39 p.m.)

25

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHEROKEE

IN THE GENERAL SESSIONS
7th JUDICIAL CIRCUIT

3 STATE OF SOUTH CAROLINA,
4
5 Plaintiff,

VOLUME 5

6 vs.

CASE NO. 2020-GS-11-0294

7 CHRISTOPHER CHAD DUNCAN,
8
9 Defendant.

10 HEARING BEFORE: HONORABLE R. KEITH KELLY

11 DATE: December 15, 2023

12 TIME: 9:14 AM

13 LOCATION: Cherokee County Courthouse
14 125 E. Floyd Baker Blvd
15 Gaffney, SC 29340

16 REPORTED BY: LORA L. McDANIEL,
17 Registered Professional Reporter

18
19 APPEARANCES:

20 ATTORNEYS FOR THE PLAINTIFF
21 KIMBERLY L. LESKANIC, DEPUTY SOLICITOR
and MATTHEW KENDALL, ASSISTANT SOLICITOR

22 ATTORNEYS FOR THE DEFENDANT
23 TRAVIS MOORE, ESQ.
24
25

1 THE COURT: We'll have the jury.

2 (The jury entered the courtroom at 9:14 a.m.)

3 THE COURT: Good morning, everyone. Mr. Foreman,
4 everybody ready?

5 THE FOREPERSON: Yes, sir, Your Honor.

6 THE COURT: Give your attention please to the
7 State.

8 MS. LESKANIC: May it please The Court.

9 Mr. Foreman, ladies and gentlemen of the jury. On behalf of
10 the State, on behalf of Justin Cash and his family, thank you
11 for paying attention. You have watched a lot in the last few
12 days. You have listened a lot in the last few days. It is
13 appreciated because it is important.

14 I told you during my opening what the State was
15 going to show you. We were going to show you that Justin Cash
16 was murdered in the Broad River on June 14, 2019 by the
17 Defendant, Christopher Chad Duncan. And I believe the evidence
18 that you have been presented this week shows exactly that.

19 We were going to show you that through the
20 testimony of the pathologist, Dr. Kelly Rose, because that's
21 what she does. She is an expert in determining how people die.
22 It's what she went to school for; it is what she does on a
23 daily basis. She has performed over 6,000 autopsies. She told
24 you this was murder. Justin Cash did not accidentally drown in
25 the Broad River.

1 I also told you that we were going to listen to
2 statements made by the Defendant that he gave to law
3 enforcement on scene, in the office; that you would get to hear
4 those statements and how in the beginning of those statements
5 his friend drowned in the river, he couldn't get to him. He
6 couldn't get to him. And he couldn't get to him.

7 Until law enforcement said there's evidence of
8 choking. Then he felt the need to change his story because his
9 story of not being able to get to him no longer fit. Because
10 we found the evidence of what happened on the river.

11 At that point the story changed to I grabbed him.
12 I pulled him. I held him under. The boat ran over him. Why
13 did your story change about what happened with you and your
14 best friend, your boyfriend, on the river? Why would you lie
15 about your efforts to save your best friend on the river? Why
16 would you not start with that?

17 Frankly it's because none of it is true. Something
18 I want you to keep in mind, whether I'm talking to you or
19 Mr. Moore is talking to you, the time. And the statements.
20 Okay. A lot of things are going to be talked about, and I'm
21 going to have to talk about a lot of things you've already
22 listened to it.

23 I'm not going to tell you anything you don't
24 already know because we can't present evidence at this stage.
25 So I'm just going to talk about that evidence. You already

1 know everything. Pay attention to the statements. You can
2 listen to them again, if you need to. All of that was put into
3 evidence for you.

4 You can listen to the statements. You can look at
5 the pictures. You can have testimony replayed. It is for you
6 to decide.

7 Look at the time. They arrived at the river at
8 1:00 a.m. We know that. At 1:00 a.m., all phone communication
9 on both devices ceased.

10 Then we know the next time is 1:21 p.m. that
11 afternoon. 12 hours and 21 minutes later the Defendant called
12 911.

13 And with all of the stories -- and I say stories --
14 that he gave, none of them would fill the time. None of them
15 will fill the time. It's impossible. And I'm going to go
16 through that.

17 I can't tell you what happened for 12 hours and 21
18 minutes. I wasn't there. More importantly, in his statements
19 to police, he couldn't tell them what happened for 12 hours and
20 21 minutes.

21 Let's look at what we have. What do I have to
22 prove to you? Murder.

23 Murder is the unlawful killing of another person
24 with malice aforethought. It is when you kill somebody
25 unlawfully and, split second before you do the act, you have

1 ill will or hatred in your heart. Split second before his
2 hands went around Justin's neck, he had ill will or hatred in
3 his heart. I think that's a given when you strangle somebody.

4 And the evidence in this case, the clear evidence
5 is that he was strangled. That's how the hyoid bone gets
6 broken. 40 pounds of pressure applied directly to that part of
7 your neck breaks the hyoid bone.

8 I'm not going to be able to give you a definitive
9 motive: This is exactly why he did this, this day. I can't.

10 I'm going to stand up here and tell you what I can
11 prove and tell you what I can't. What's important is what I
12 have to prove. What I have to prove is murder. Are you firmly
13 convinced that Justin Cash was murdered and that man did it?
14 And if so, I have met my burden of proof.

15 Why did he do it? I don't know. I can't tell you
16 for sure. I know that, when Justin's body was found in the
17 water, he had the phone. He took the phone back that he had
18 let the Defendant use.

19 I know that law enforcement didn't find his wallet
20 on him. They didn't find his wallet in his car. They didn't
21 find his phone.

22 Are you firmly convinced that he was murdered by
23 Chad Duncan? What evidence do we have that it's murder?
24 Dr. Kelly Rose. It's not all but that's where I want to start.
25 That's where you ended yesterday with Dr. Rose.

1 She was qualified as an expert in the field of
2 pathology and forensic pathology. It is her expertise to
3 determine how people die.

4 She testified that she has completed about 6,000
5 autopsies, handled multiple drownings and that she has special
6 knowledge, training, education, and experience in figuring
7 these things out. And she brought all of that to the table
8 when she examined Justin's body.

9 In our case, all she knew was that this was a
10 drowning. Supposed to be two guys on a river. And she opens
11 up the body bag. And she sees what you saw. And she sees
12 bruises and abrasions all over the outside of Justin's body.
13 She sees this. And she sees this.

14 That's what she visibly saw when she opened the
15 body bag. This was reported as a drowning. And she
16 immediately knew with all the drownings she had worked, she had
17 never seen injuries like this to the outside of the body.

18 She said the only time she saw physical injuries is
19 if there was some sort of projectile like a propeller from a
20 boat that maybe struck someone in the water. Never in an
21 accidental drowning.

22 She didn't stop. Her autopsy requires that she
23 look inside Justin's body. And when she did, she found even
24 more evidence of crime. She found the blood under the clavicle
25 where he was bruised. She found a fractured rib, and she found

1 a broken hyoid bone, the classic and clear sign of
2 strangulation.

3 She never had a drowning with a fractured rib.
4 Never had a drowning with a broken hyoid bone. Never had a
5 drowning victim look like this. She knew it was on the river.

6 You know what she didn't do? She didn't rush to
7 judgement. She didn't just say, okay, that must be a murder so
8 I'm just going to say murder.

9 She made arrangements to come down here and go on
10 the river. Why did she do that? She told you. She said: I
11 didn't know the river had waterfalls or class five rapids,
12 something that may have thrown this body around with such force
13 that it would've caused these bruises.

14 When she arrived at the Broad River, she found what
15 you saw on video; a slow moving, calm, peaceful, beautiful
16 river in Cherokee County. She got out and she walked through
17 the river. She said at least ten times. She's walking around,
18 she's checking the terrain. There is absolutely nothing in or
19 on the Broad River to cause these injuries.

20 There was absolutely nothing to break a hyoid bone,
21 to break a rib, and to cause these bruises and abrasions and
22 brokenness to Justin's body.

23 She looked at the toxicology. He had
24 methamphetamine and GHB in his system. She looked at that as
25 she has to in all autopsies, and said that's not what it is.

1 People use drugs, people drink alcohol, that doesn't mean
2 that's what killed them. It's not what killed him.

3 And she finalized her report in August of 2019.
4 Mr. Moore yesterday was asking about signing the report in
5 2020. The manner of death was finalized in August 2019. And
6 she said the manner of death is homicide. It is murder. The
7 cause of death was drowning.

8 The way that works, he is held down. He is not
9 drowning on his own. Someone is drowning him. That someone is
10 Chad Duncan. He is the only person on the river with him. He
11 says that. We're out there. Who's out there? Me, Justin, and
12 God.

13 Dr. Rose even looked at the raft to make sure: Is
14 there anything on this raft that could cause the injuries?
15 Absolutely not. She was looking for a way for this to not be
16 murder. And she couldn't find one. She could not find a
17 reason for this not to be a homicide.

18 She came to the location. She looked at the body.
19 She looked at the raft. What else could it be? And her
20 answer: Nothing. There is nothing else it could be other than
21 murder.

22 She said that, in her opinion, the injuries
23 sustained by Justin were most consistent with him being held
24 face down from behind -- and this is going to be important.

25 Being held down, face down in the water from behind

1 while he is trying to get up. His legs are hitting the
2 surface. His arms are on the surface of the ground, on the
3 rocks. And he is trying to get up. He is trying to get air.
4 And he is being grabbed, and he is being held, and he is being
5 held, and he cannot get up.

6 When his body finally made him take a breath, which
7 will eventually happen, the only thing he could breathe in was
8 the water of the Broad River.

9 I want to talk a little bit about the drugs again
10 because I think Mr. Moore is going to talk about the drugs. I
11 want you to remember where you're getting your information.
12 You had an expert who looked at the toxicology reports. And
13 then you have the Defendant who's told all sorts of stories.
14 And he is the one saying that Justin was completely out of it.

15 It's not what you heard from the pathologist. It's
16 what you hear from the Defendant. You know what's interesting
17 about that, too? The Defendant didn't mention the GHB until he
18 got into the office with Brandon Gardner. You'll remember that
19 interview. There was a lot of yelling.

20 That's the first time GHB is mentioned. Maybe
21 because on scene when he spoke with Brant Heflin two times and
22 he spoke with Detective Gardner and he spoke with Detective
23 Gardner and Woodleaf. Never mentioned Justin being on -- it
24 was just: My friend and I, we got separated and never could
25 get to him and he must have drowned.

1 You know what? That didn't work. Because
2 Investigator Gardner had talked to fire personnel. And he had
3 talked to witnesses. And they said his story doesn't make
4 sense. And he said his story doesn't make sense.

5 The Defendant had to change his story. This whole
6 thing we were just out here, and we got separated, my friend
7 drowned, they're not buying it. So I better add to it.

8 And I know he's used some drugs. We're out here
9 together, we live together, we showed up here together. He
10 knows he has drugs in his system. I need to add that because
11 the whole thing, he just drowned, they're not buying it.

12 So now we're in the office for another interview.
13 And, oh, yeah, by the way, I think he took some of that stuff,
14 GHB. I don't know, maybe it's a drug. I don't know a whole
15 lot about it. By the end, he knows a whole lot.

16 In the beginning, he didn't know a whole lot. Let
17 me throw these drugs in here because then it can be used as an
18 overdose drowning. So let me plant that with law enforcement
19 because the whole thing of we just got separated and he
20 drowned, they don't believe me.

21 Dr. Rose told you that the drugs in Justin's
22 system, he may have felt an effect from them. The effect
23 would've been that he was easier to kill. Easier to hold down.
24 Mr. Moore and I both gave her alternative scenarios. Could the
25 injuries to his legs have occurred walking through this river

1 and falling down?

2 She said you would have to fall a whole lot in the
3 same way, in the same place. These all happened at the same
4 time. They're all from the knee below. She said highly
5 unlikely.

6 How about just walking through there? Can we just
7 walk through here, we bump our shins? She said it doesn't
8 explain the bruises on top of his feet. She said: Plus, I got
9 out and I walked it. At least ten times. And the rocks are
10 smooth and flat on the bottom. So highly unlikely.

11 What about this hyoid bone? I'm grabbing, I'm
12 pulling him on the boat. No. No. You don't break the hyoid
13 bone when you have someone in a chokehold. You break the hyoid
14 bone when you apply 40 pounds of pressure to the neck and
15 strangle someone. That's how you break the hyoid bone. That's
16 it. You strangle someone with 40 pounds of pressure at least.
17 That's what breaks the hyoid bone.

18 Justin had minimal injuries to his back. The
19 abrasions that you saw in the photographs when he is in the
20 river, maybe being pulled across a rock. Maybe being poked
21 with a stick so the body will sit. Those injuries were made
22 after death.

23 Dr. Rose gives us the manner of death as homicide.
24 The cause of death is drowning. The evidence doesn't stop
25 there. We have to go back, and we have to look at what the

1 Defendant told everyone. How did he act on scene? What did he
2 say on scene? What do we know?

3 We know that they were together, 29 bridge, right
4 here, and River Road at 1:00 a.m.

5 We know that there is no communication on the
6 phones after that time. We know the Defendant called 911 and
7 was sitting here waiting -- we'll talk about that -- 12 hours
8 and 21 minutes later.

9 And we know that Justin's body was found in the
10 middle of Goat Island, in the most secluded spot on the entire
11 stretch of the river. He just happened to die and his body be
12 found in the most secluded place on the entire river.

13 Makes it all the way down where it's wide open and
14 you can see. His body is found in there. His body is hidden
15 in there.

16 The truth does not change. I said that in my
17 opening. And you-all know that. You tell the truth, you tell
18 the truth. And it stays the same. When you say I couldn't get
19 to my friend and then they say there's evidence of choking, you
20 say: Well, I don't know, I couldn't get to my friend.

21 You don't say: Hang on, you got to give me a
22 minute, I've got to think about this. Can we go outside? Can
23 I have a cigarette?

24 He's changing his story not because time has passed
25 but because he has been questioned with evidence. There is

1 evidence Justin was choked. You got to give me a minute 'cause
2 my story ain't going to work anymore. I got to come up with
3 something else.

4 You heard him say -- and that was the reason we
5 played the statements again. His statements were not played
6 for the truth. They were played because I wanted you to see
7 him. I wanted you to hear his frustration, his anger, his
8 lies. And I wanted you to hear his story drastically change at
9 the most important part.

10 I mean, when you're thinking about this, remember
11 his story is that this is his best friend. This is his person.
12 And his person has gone missing on Broad River.

13 Did he act in a way that supports that? I don't
14 think he did anything that supports that.

15 According to the Defendant, starting with his
16 statements -- and I just want to briefly talk about the time
17 frame because I know I've had a lot more time with this case
18 than you have.

19 He says that they started floating at 2:00 in the
20 morning. Keep in mind, Justin had never been down the river.
21 He was a lawyer type, not the outdoors type.

22 At 2:00 in the morning, on Friday June 14th, he's
23 going to take his first trip down the river. It's cold.
24 Because the Defendant put on two extra shirts and jogging
25 pants. Justin, just a T-shirt.

1 Defendant's story. They start at 2:00. We
2 presented evidence that it takes one-and-a-half hours to make
3 it down here to the boat landing with the water moving the way
4 it was on June 14th. And that is what you have, a video. You
5 saw the river. You saw how it was moving.

6 I know the video isn't of that day; it is the same
7 and similar type of water movement. And I know Judge Kelly
8 said you can't bring in notepads and pen and paper. You can
9 bring your common sense. If you do something under the bridge
10 at 29 and it floats, would you pick it up?

11 Because I think Detective Gardner testified they
12 even had to paddle a little bit just to get away from the
13 bridge. And if you drop something under the bridge at 29, and
14 it sank, in two feet of water, and it's your paddles, it's your
15 fishing rods, it's your tent, wouldn't you just bend down and
16 pick it up? It wasn't there. It didn't happen.

17 Let's look at the time because you need -- you got
18 to pay attention to the time. And it doesn't work. We start
19 at 2:00 in the morning and it takes an hour-and-a-half to make
20 it all the way down. 3:30 in the morning they are done with
21 this float. 3:30 in the morning they are down at the bottom.
22 4:30. 5:30. 6:30. 7:30. 8:30. 9:30. 10:30. 11:30.
23 12:30. 1:21. Before 911 was called.

24 He's on a raft. And Mr. Moore made a point where
25 there's a transom, there's going to be some drag. Okay. Even

1 the Defendant in one of his statements said it would take me
2 maybe three hours to make it all the way to the bottom on my
3 raft. I'll get to him.

4 We leave at 2:00. We're down at the bottom at
5 5:00. We're not at Mr. Keller's house at daybreak. Daybreak
6 is 6:00. We'll give him his three hours. That's what he said.

7 Three hours is 5:00 a.m. at the bottom. 6:00,
8 7:00, 8:00, 9:00, 10:00, 11:00, 12:00, 1:21. Eight hours and
9 21 minutes, no call to 911.

10 Let's look at it this way; he just got the time all
11 wrong. And he gets to Mr. Keller's house. It has to be before
12 6:00 because the wife and the daughter leave the house at 6:00.
13 She has to be at work at 6:30.

14 If he's running up on the bank, which there's
15 absolutely no evidence of, and the wife and the daughter are in
16 the house, it has to be before 6:00 a.m. because they leave the
17 house at 6:00 a.m. Let's put him here at 6:00 and another 30
18 minutes to float down. 6:30.

19 He hangs around the bottom for an hour. 7:30.

20 He walks up the road. I'll give him an hour to do
21 that. 8:30, 9:30, 10:30, 11:30, 12:30, 1:21. It won't fit.
22 They can't get the raft to move slow enough.

23 And the water is even moving so fast that paddles
24 disappear or it's moving so slowly that it took him 12 hours to
25 get down a one-and-a-half hour float. You can't have it both

1 ways. His story is not true. The time cannot work.

2 The 911 call. Our paddles got knocked off, kept
3 going downstream. You saw the video. You decide whether you
4 think that's true.

5 Mr. Thornburg, very important. He was our witness
6 after he placed the 911 call. He's the one who let the
7 Defendant borrow his phone. You know what he said? He didn't
8 say: Yeah, I was coming down this super busy Highway 29 and
9 this guy was out here flagging me down where cars come by every
10 30 seconds. No. He's standing here in this cul-de-sac by
11 another car -- by a car. And when I come, having a good time,
12 making lots of noise coming up River Road, he's still standing
13 by his car. In fact, I pass by him, and I back up to see if he
14 needs help.

15 He doesn't jump out in the middle of River Road and
16 say: My gosh, thank you, I need your phone, my buddy is in the
17 water. This is his best friend, ladies and gentlemen. This is
18 the person he loves.

19 And when a car finally comes down isolated,
20 desolate River Road, he stands by the car. And he waits for
21 Mr. Thornburg to approach him. And that is going to be a
22 pattern that you see in Mr. Duncan.

23 Mr. Thornburg backs up: Are you okay? He said I
24 thought he might be having car trouble. Do you need to use my
25 phone? Yes, I do now 'cause you're going to make me do

1 something. So he calls 911.

2 That's the effort he made to get help for Justin
3 drowning in the river. Use your common sense. It's not what
4 you do. You jump out -- number one, you jump up here, 25 yards
5 to Highway 29 and you flag down those cars. You don't wait on
6 gravel River Road for someone to maybe come up that road for
7 help.

8 When they do, you stand at the car and maybe hope
9 they're going to pass you by. But he didn't. He came in here
10 and he told you.

11 Then you heard from members of the fire department,
12 Cecil Bell, Randy Moss, Brian Mullinax, who were talking with
13 Mr. Bell. He's the one who had the pickup truck. The
14 Defendant got on the back of his truck. Who knows where Justin
15 was last seen? The Defendant. Firemen don't know. They're
16 showing up to a call.

17 He gets on the back of the pickup truck, and they
18 drive him down River Road. And they come down here to the
19 firecracker plant, you know, that same location where his raft
20 was holed up in the creek and he got out in the creek. That
21 exact same place.

22 And they stop there and they said: Is this where
23 we need to put in?

24 Y'all need to keep going. You see, Justin is right
25 there.

1 Yeah, guys go off. Smoking cigarettes on the back
2 of the truck. Not beating on the truck: Oh, Mr. Bell,
3 Mr. Bell, you're going too far. My buddy, I last saw him up
4 here. We got to get in the water.

5 Uh-uh. He's right on the back of the truck. Let's
6 go another 20 minutes down to Pick Hill and start trying to set
7 up command post there.

8 You heard from Randy Moss, he was the one in the
9 fire engine. Just like Mr. Thornburg, he said: I got on
10 scene. I had to walk up to the guy and say: Are you the one
11 who called 911? Are you the one who needs help?

12 He wasn't going up to him saying: Thank God,
13 you're finally here, I need help. He's standing back. The
14 fireman has to approach him. Did you call? Yeah.

15 All right, well, let's go. Randy Moss goes with
16 Cecil Bell down to the firecracker plant. He said the same
17 thing. We got to the firecracker plant. We stopped. He said:
18 This isn't the place.

19 Randy Moss had asked him something else. Is this
20 where you got out? Not is there where we put in to find him.
21 Is this where you got out, Mr. Duncan, who's on this river
22 every other weekend. Is this where you got out? Nope. I
23 didn't get out here.

24 So they keep going down to Pick Hill. Because
25 that's what he is telling them. Now, they get to the Pick Hill

1 and Brian Mullinax, who is the chief of Blacksburg now, he
2 worked with the Sheriff's Department. He was the captain at
3 the fire department and in charge of water rescue. He has to
4 go up to the Defendant. The Defendant is not coming up to him
5 saying: Hey, we're at the wrong place, y'all have gone too
6 far. My buddy is not this far down.

7 He's just hanging out near the truck. Let them do
8 their thing.

9 And Captain Mullinax walks up to him and says:
10 Where did you last see your buddy? Did y'all come around the
11 dam? He's like: No, we didn't come around the dam.

12 Captain Mullinax says: We need to go back to the
13 firecracker plant, we need to go back up here and put in.

14 He testified the Defendant got frustrated. No.
15 We've already been there. We stopped there. That's not the
16 right place for you to be. But it was. It was exactly where
17 they needed to be. He did everything he could to give them bad
18 information so they would not get here.

19 There's going to be some talk he said the
20 ballfield. You can't see these ballfields from the river.
21 Everybody testified to that. There is a ballfield here. You
22 know what everybody is familiar with? Wolf Den and Goat
23 Island.

24 You know what they said he did not say to them?
25 Wolf Den or Goat Island. We know that he knows it because,

1 when he got in the interview with Investigator Gardner, all of
2 a sudden he knew those words. At that point the body had been
3 found.

4 When they are looking for Justin, he doesn't know
5 Wolf Den. He doesn't know Goat Island. The firecracker plant
6 is the wrong place to be. I did not get out of the water
7 there. Do not stop there. If you do, you're going to find
8 him.

9 His boat just wasn't in the creek. I submit to you
10 it was hidden in the creek. It is pulled up as far as it can
11 go around the corner. You can't bring a body that far because
12 there's people here. And there were a whole bunch of people --
13 we talked about that. A whole bunch of people. If you needed
14 help, you could get help. The firecracker plant, the dam, the
15 houses, the church. That's where you go. That's where you go
16 if your friend is in trouble.

17 It is not where you go when you have killed him and
18 left him in the river. Then you want to stay hidden. You want
19 to hide the boat. You want to hide the body. You want to hide
20 yourself and go up the untraveled lanes. And that's what he
21 did.

22 What did he tell them before autopsy? Before
23 autopsy his story, at least most of it, changed just like I
24 say. The paddles float. The paddles sink. The cooler got
25 knocked off. I used the cooler at Mr. Keller's house. I

1 pulled the two lids off. No cooler is found. We had lights.
2 Little bitty lights. Then it's complete darkness. There are
3 all sorts of discrepancies. You can listen to them again.

4 I'm going to give you the general. We're going to
5 talk about the big ones. In general, we get on the raft here.
6 We try to. But Justin, the lawyer, doesn't know how to get on
7 his boat. He can't figure out how to get on the raft. So he
8 falls off. And he knocks everything into two feet of water.
9 They just can't be recovered. It's in two feet of water.

10 And so Justin -- he helps him. He says he caught
11 himself. That's important. The first time Justin fell, and he
12 got wet. And he indicates with his hand, it was like from his
13 knees down, and he caught himself. That's going to change when
14 he finds out about the broken hyoid bone. First time
15 Justin caught himself.

16 And then Justin decides to get on a pool float.
17 Not recovered. If you want to talk about the roughness of the
18 Broad River, if you are getting on a pool float, you think
19 that's a good device to go down the Broad River, that tells you
20 how calm it is. It is a lazy river and you can take a pool
21 float.

22 He gets on the pool float. And Detective Gardner
23 keeps asking him about this stuff that got knocked off. So
24 that changes a little bit 'cause nothing is going to be at the
25 bridge 29; right?

1 Then we're going to come over here and maybe under
2 some trees and some bushes, some vines. At first the stuff was
3 on the float with Justin. I mean, Justin is so messed up on
4 GHB, he can't get on the raft. But he gets on a pool float
5 with all this stuff.

6 And Detective Gardner asked him about that: Oh,
7 no, no, the stuff was on my raft. That doesn't make sense.
8 Change your story again.

9 And so now we have more stuff getting lost a little
10 further down the river because it's not going to be under the
11 bridge. We've got to get it lost a little farther down.

12 Gets back on his float. He says I didn't have to
13 touch him then. He got back on the float fine. We're floating
14 down the river. Everything is going great until we get
15 somewhere around the pipelines and then Justin comes off his
16 pool float. I never see the float again.

17 This is where it's really important. I'm trying to
18 get to him. I'm screaming. I don't know why he was hoarse. I
19 don't know if he was hoarse before that day. I don't know if
20 he screams at everybody. I know he screamed the entire time he
21 talked to Investigator Gardner.

22 He says: I am trying to get to him. I can't get
23 to him. He's moving away from me. Over and over and over and
24 over he says that. That's the truth. That's the whole truth.
25 That's everything, Detective. I can't get to him.

1 We come down here -- and then Detective Gardner in
2 the office said: Hold up, this doesn't make sense. You said
3 you -- how did you get to him one time? You said I can get to
4 him one time with his shirt. He said I could get to him one
5 time with his shirt.

6 Then the story was modified a little bit. I got
7 hung up on a rock. My raft got hung up on a rock, and it gave
8 Justin just enough time. We were in the same flow of the Broad
9 River. It gave him just enough time to come up to my raft.
10 And I got him by the shirt and he nudged it. He bumped.
11 Barely touched my boat. With the water pressure and him, it
12 bumped me off and I let go. I got tension on the shirt. Then
13 he pulled his shirt off. Later, the boat ran over him. That's
14 going to happen in the last interview.

15 When it starts, it nudged him, it bumped him. Then
16 we're separated again.

17 Then he says we got separated near Wolf Den. And I
18 came down here, the Defendant, and got off of my raft, into the
19 water. And I swam and pulled my raft to the bank at
20 Mr. Keller's home.

21 There is absolutely no evidence to support that.
22 Crime scene investigator Billy Anthony worked with the
23 Sheriff's Department for 23 years. Went out there personally,
24 took photographs of every inch of that bank for you.

25 Also, Mr. Keller came here. And he said: The only

1 people that came to the house that day were the officers.

2 There's no cooler on my bank. I have chihuahuas in the house.

3 My wife leaves at 6:00 a.m. to go to work.

4 So he can't say, oh, I got there, Mr. Keller must
5 have been sleeping. No, no, no. You already said the wife and
6 the child were there, which means that's before 6:00 a.m.

7 There is no evidence he went for help. None. He
8 says: So then I go to Mr. Keller's. I beat on the door. They
9 won't answer the door.

10 You heard from Mr. Keller. He's helped other
11 people on the river. Nobody came to his house until officers
12 did. There are no footprints on that bank. There are no boat
13 impressions on that bank. You saw what they looked like
14 because Detective Anthony is a great crime scene investigator.
15 And he took the pictures of Officer Woodleaf going up the bank
16 and sliding down the bank so you would know what it looks like
17 if somebody went up that bank.

18 The deer had been there. The dogs had been there.
19 The Defendant had not. Why do you lie about getting help for
20 your best friend?

21 He said: And I came down and lo and behold, my
22 best friend, who I got separated with in the river is standing
23 up, and he's fine. Seems to be fine. Not under the influence
24 of GHB. Not under the influence of methamphetamine. Standing
25 up and seems to be fine.

1 So I get on my raft and the current, which you saw
2 on video, is so strong that I could not get to him. The entire
3 way down this piece of land on Goat Island, I couldn't get over
4 there so that I could walk up and say: Man, are you all right?

5 Makes sense. That's what someone does.

6 No, he gets on his raft and says: I went on down
7 and somehow we could not paddle with the cooler lid from here
8 to here or anywhere along here. But we get down here to the
9 dam where Mr. Peterson said the water is slowing, we can then
10 paddle with that cooler lid all the way across with the water
11 pulling us to get to the other side.

12 When we get there, what do we do? Waited. I
13 waited. I thought my friend, who didn't have a raft, that had
14 been so high on GHB, I thought he was just going to, I don't
15 know, float around. So I sat there and I waited.

16 And then Detective Gardner is like: You just
17 waited. I thought you were worried about your friend?

18 Oh, well, I didn't wait the whole time. I got a
19 stick. So I got this big stick. There's a big stick on his
20 raft. I tried to go back up river with the big stick, but I
21 couldn't make it.

22 So I went back and I pulled my boat all the way as
23 deep as I could into the creek. I didn't want anybody to steal
24 it. My friend is up here, been drowning all morning, I don't
25 want anybody to steal my boat. I pull it all the way up into

1 the creek.

2 I'm not going to turn right and go into this
3 development with people and Herbie's Fireworks. I'm not even
4 going to ask the man who pulled up. He said it. A man came
5 there in a truck. He had a cast on his arm. He was going to
6 Colorado. That takes a little bit of a conversation. He said
7 I didn't have a conversation with him.

8 I say, if you know somebody is getting ready to go
9 out of town, out of state, you had a little bit of conversation
10 with him. He didn't ask to use his phone. He didn't ask for a
11 ride back to his vehicle. He didn't ask for anything. He just
12 decided he was going to get the stick. And you know why it
13 doesn't make sense? Because it's not true. Doesn't make sense
14 because it's not true.

15 Then he says he walked back up to River Road. He's
16 trying to flag people down and nobody will stop for him. You
17 know what? Mr. Thornburg already told you: I came up the
18 road, and he didn't try to flag me down. He stood by the car.
19 He didn't jump in front of my car. It didn't seem like he
20 really wanted me to stop.

21 The interview with Detective Gardner in the office:
22 I was ahead of him and could not stop. I threw a rope. I
23 tried to get him on the boat one time.

24 And Detective Gardner says: I don't believe your
25 story. It doesn't make sense. He's familiar with the river.

1 It doesn't make sense. The time will never make sense.

2 And hold us accountable for that time. 1:00 a.m.
3 to 1:21 p.m. None of the stories he gave law enforcement fit.
4 None of them.

5 After Detective Gardner said that story doesn't
6 make sense, the paddles, oh, they're made out of metal. They
7 were floating until then. Then they're made out of metal.

8 And then he thinks Justin took some G. This is
9 where he starts with the, okay, they're not buying my story,
10 let me go to drugs. I think maybe he took G. I didn't see it.
11 I think it's in the car. Just me, him, and God out there. He
12 looked fine standing up. He would not come to me.

13 He never said he was unconscious. He never said he
14 was drowning. In fact, he said he was conscious, and he was
15 not drowning. And that is going to be important, too, because
16 of his last statement.

17 He said: I thought after being high on GHB and
18 standing up right here, that he was just going to take a little
19 trek through the woods and get up on River Road and walk his
20 way back. That's what he said. I got the shirt one time. I
21 could not get tension on the shirt. I have told you every bit
22 of the truth. That's what he told that man.

23 Why did he take his phone? He didn't want it to
24 get wet. That's what he said. He didn't want it to get wet.

25 If what he said was true, that he had been floating

1 from Drayvo down already, he had that phone. Now Justin took
2 it because he didn't want it to get wet when it's been on the
3 river all day. And his answer to that is to put it in his
4 front pocket and get on a pool float in Broad River.

5 This is where the Defendant tells you, when he fell
6 off the raft the first time, both of his legs got wet. And he
7 caught himself. I didn't catch him. I didn't grab him. I
8 didn't pull him. He caught himself.

9 And once he fell off the pool float, he would not
10 come to me. I got his shirt one time.

11 He was placed under arrest for the life jackets.
12 Detective Gardner goes back the next morning. Anything that
13 has changed? Is there anything about what you told me you need
14 to change? Nope. Nothing.

15 How were you going to get back? We were going to
16 call a ride or call an Uber. Most importantly, I don't need to
17 tell you anything different. You know why? Because Detective
18 Gardner had to tell him something different.

19 Then he goes to the interview in Spartanburg. And
20 he tells them Justin could stand, he could swim. He could do
21 everything on his own. He's not drowning. He's not
22 unconscious. I could not get to him. He would not come to me.
23 I was scared and terrified to get into the water. He would not
24 come to me. I tried one time. I got his shirt for a split,
25 tiny second.

1 Now here he said Justin had poured the G into a
2 cup. Now people in Spartanburg are talking to me, and he
3 really needs to overdose. So now it's: I didn't see him take
4 G or I don't know if he took the G. He poured it in a cup like
5 he's taken a lot of this, folks. Check the toxicology. Maybe
6 if y'all do that, y'all will stop talking to me.

7 He would not come to me. I never, never got to
8 grab him. I grabbed his wrist to pull him up, to get him back
9 on the boat the first time. So he falls in the water, he
10 catches himself. Maybe he's helping him get back on. That
11 didn't work. He got on the bank, and he got on the pool float,
12 if you believe his stories.

13 The cooler fell off. Again, we're using the cooler
14 and the cooler lid is down here at Mr. Keller's land. One
15 thing that he said in that interview, the last memory the
16 Defendant has is not being able to get to him. He was going
17 away from him. That will be my last memory. I couldn't get to
18 him.

19 He says, well, Mr. Duncan, information has come in
20 since we've been in this meeting and there is evidence that
21 Justin was choked. What? Not by me. Let me think about this.
22 Let me clear my head for a minute. Can we walk outside? Can I
23 smoke?

24 Truth. I don't know how that could've happened. I
25 told you I never got to him. It's not his truth 'cause it's

1 not the truth. The truth doesn't change. When you are trying
2 to create a story to fit facts to explain why things are going
3 to be found a certain way by law enforcement, you have to
4 change them. That's what he did. Over and over.

5 I never touched him physically. This is important.
6 Where did Dr. Rose say he was probably held? From behind.
7 Back of the neck. You know who knows that? You know who would
8 know that? The person who did it.

9 You know what? When they said there's evidence of
10 being choked, he said: Maybe I grabbed him by the back of the
11 neck. Because maybe he's worried there's going to be bruising
12 and evidence on the backside because he knows he was on the
13 backside of Justin's neck, holding him down in the water.

14 They say there's evidence of choking. I think a
15 lot of people would think the front to begin with. No, no.
16 Maybe I grabbed him by the back of the neck 'cause daggone it,
17 that's where they're going to find the evidence because
18 Dr. Rose is an expert, and she knows what she's doing.

19 Then during that interview: I had to get in the
20 water. This is new. He's never gotten in the water for
21 Justin. I had to get in the water. I had to lay on my boat.

22 You saw that boat. Does it look like anybody was
23 laying on that boat with the lamp, with no light, with the
24 charger, with the hammer, the Channellocks? He says -- this is
25 what his story: I had to lay on my boat using my body weight

1 to counter his weight. Now, they're talking about under the
2 bridge.

3 You're telling me in two feet of water, Justin, who
4 is over six feet tall, you had to lay down on your boat and
5 pull with all your might to get him out of two feet of water.
6 No. But were panicked because there's evidence of choking, and
7 I need to lay on my boat, and I need to be pulling on him
8 really hard.

9 Where he caught himself. Where you helped him up a
10 minute ago. Now when he's falling, you grab him by the back of
11 the neck. That's what he said.

12 Then Detective Gardner waits a little while. He's
13 waiting for the final autopsy. And in his last interview he
14 goes to the Defendant's house. And he talks to him there.
15 Y'all saw that interview. And, boy, had we made a change.

16 I tried to get him on the boat as much as I could,
17 as hard as I could. I F-ing held him down. The boat ran over
18 him one time. I held him as hard as I could. I fought him,
19 basically grabbing him. He was jerking away.

20 I don't understand. He is not drowning. He is not
21 unconscious, per the Defendant. Why are you pulling him on
22 your boat? Why are you pulling, grabbing him around the neck,
23 tugging, jerking, holding him in the water for someone who is
24 not drowning and is not unconscious? You don't. It's not
25 true.

1 I was grabbing him everywhere. I was grabbing
2 hard. I was not letting go. I did that three or four times to
3 jerk him on the boat. I was squeezing his arms as hard as I
4 could. His wrist. His shoulders. Pulling with all my force.
5 I could have grabbed him by the back of the neck at any point.

6 In that statement, I was laying on my boat, trying
7 to drag him up. I still had my boots on at the time. These
8 were found in Justin's back seat floorboard. They're not his.
9 They're a size nine, and Justin is a size 11. He said when law
10 enforcement gets here, he's in tennis shoes.

11 When he was telling Detective Gardner about this
12 fight, I'm pulling him, and I'm holding him down, he still had
13 his boots on. And they found them in the car. 12 hours and 21
14 minutes after Justin arrived.

15 Something else that I don't understand. His last
16 story goes through that. His last story, we start at 2:00. I
17 don't know where he's pulling him and tugging him and trying
18 with all his might to get him on the boat. That's what he says
19 he was doing.

20 Everything else he said was still the same. So
21 we've done all this pulling and tugging, a non-drowning,
22 conscious person pulled him on the boat, and I wasn't going to
23 let go but I guess he did.

24 And he goes to Mr. Keller's house although there's
25 no evidence of it, and he comes back down and Justin is

1 standing here. You have just told this man that you had tugged
2 and pulled and held under, I was exhausted from trying so hard
3 to save him. From what, I don't know. But I was exhausted,
4 and I come down from Mr. Keller's house and there he is.

5 What do you do? After all those efforts, I mean,
6 you are scared to death for the life of your friend. You have
7 tugged and pulled and grabbed and left marks and bruises and
8 cuts and abrasions and broken his rib. And broken his hyoid
9 bone. What do you do?

10 You go this short distance where Mr. Keller's wife
11 can doggie paddle to get there. You go there to get to your
12 friend that you did all of that for.

13 No, you get on your boat and you let -- slowly, as
14 you know because you've seen it -- let it drift you down to the
15 firecracker plant. Because it's not true. Justin was broken.
16 His last breath was water from the river.

17 He didn't go to Mr. Keller's. There's nothing
18 found at the bridge. There was no cooler, tent, fishing poles,
19 nothing. And he had a lot of time to get rid of whatever he
20 wanted to. Lots and lots of time. Because it takes an
21 hour-and-a-half to go all the way down.

22 If you want to give him the benefit of the doubt,
23 on his raft, he says it takes him three hours. That's fine.
24 Because by 5:00 a.m. he's done.

25 At first he wanted everybody to believe that his

1 best friend drowned. He didn't count on people doing their
2 jobs. He thought they would find the body maybe. First I'm
3 going to take them different places, not going to tell them
4 where he really is. And then maybe when they find him, they'll
5 just say it's a drowning.

6 When that doesn't work, I'm going to say he was
7 using drugs. Maybe I can get this as an overdose.

8 It's not an overdose. It's not an accidental
9 drowning. It is a violent, unsuccessful struggle to survive.
10 Justin couldn't come in here and testify. But he did. He's
11 here. He brought his body. He brought the evidence. And the
12 only thing that breaks that hyoid bone is strangulation.

13 So why does he stay? Right. Got all this time.
14 Why don't you just leave? He had a problem. Justin's the
15 lawyer type. He's never been down the river. He's not going
16 to be on that river by himself. The phones are going to put
17 them together at the river. The Defendant lives with the
18 victim. The victim drives him to the river. He gives him the
19 phone to use. He said he was basically supporting him. So he
20 can't just leave Justin at the river. He has to stay. He has
21 to come up with a story.

22 When he was finally forced to give that story
23 because Mr. Thornburg was a nice guy and said, do you need
24 help, he thought it was going to work. And it doesn't work.
25 It does not work.

1 You may choose any story of his you want. You can
2 give him the amount of time he says it takes for him to get
3 down the river. It's impossible. It's not true.

4 He didn't count on Mr. Thornburg to come in here
5 and tell you what happened that day. He didn't count on the
6 firemen to maybe really pay attention and realize immediately
7 this isn't adding up. He's not giving us accurate, consistent
8 information.

9 He didn't count on an investigator who kept asking
10 questions and says: This isn't right. We can say a body
11 drowned in the river, case closed. Move onto the next one.

12 But they all said this isn't right. And the
13 pathologist, she said it was a drowning. It was. He drowned,
14 case closed. It ain't right.

15 Drowning victims do not ever -- drowning victims do
16 not ever look like that. Six thousand autopsies.

17 I'm not going to be able to tell you exactly when
18 or exactly where he killed Justin. I can tell you that, during
19 the time frame they were at Broad River, he drowned him
20 forcefully, breaking his hyoid bone, breaking his rib, causing
21 bruises and abrasions to his arms, his chest, his shins.

22 And he left his dead body hidden in the most
23 secluded area that he could on the Broad River.

24 And then he hid his boat in the most secluded area
25 that he could. Can't bring the body down here with people. He

1 can't bring the body past here on the inside. Everybody goes
2 to the outside. Body is found in the middle.

3 And according to the Defendant, the last time he
4 saw him he was fine. He was standing up. The G doesn't last
5 long.

6 Okay, the G doesn't last long. You took it at 1:00
7 in the morning -- again, I'm going with the Defendant. 1:00 in
8 the morning he takes the G. It doesn't last long. It wears
9 off quickly.

10 We're down here at Mr. Keller's at sunrise. 6:00.
11 So five hours have passed. Right. Five hours had passed. I
12 look out here, and my buddy is standing up, and he's fine.
13 Then 100 yards later he is found face down dead in Broad River.
14 Does that make sense?

15 He took the G at 1:00 in the morning. The
16 Defendant said he's fine right here. 100 yards later we're
17 dead.

18 Why would you lie about the trip down the river,
19 and why would you lie about your efforts to save your best
20 friend? You wouldn't. But he did, 'cause he killed him.

21 We know it was the two of them out there. And we
22 know what happened to Justin. We know he was drowned. We know
23 the hyoid bone was broken. We know his body was broken. And
24 we know he didn't try to get help until he was made to.

25 And then the story that he told doesn't work.

1 There is no scenario that it works. Killed him, he left him,
2 and I guess hoped they wouldn't find him.

3 The charge is murder; the unlawful killing of
4 another with malice. And as I said in my opening, if you can
5 hold someone's face in the water long enough for their body to
6 stop movement, I don't know what is more malicious than that.

7 I thank you for your time and your attention. And
8 we ask that you return a verdict of guilty.

9 MR. MOORE: May it please The Court. Madam
10 Solicitor.

11 Good morning, ladies and gentlemen. As you are
12 obviously well aware of and as I told you at the beginning of
13 this trial, this is a very, very important trial to a lot of
14 different people. And your job is very, very important.

15 As the judge instructed you at the beginning, as he
16 will again in a few minutes, the Defendant is presumed innocent
17 until the State has presented enough evidence sufficient to you
18 to leave you firmly convinced beyond a reasonable doubt that he
19 is guilty beyond a reasonable doubt. That he is guilty.

20 I told you at the beginning of this trial that it
21 is absolutely undisputed that Justin Cash tragically drowned in
22 the Broad River. That is not disputed.

23 Also told you it's not disputed that Chad Duncan
24 was there with him. That's not disputed.

25 What this trial is about is intent. Did the

1 Defendant have willful intent to kill Justin Cash?

2 The Solicitor went through a lot of review of the
3 testimony. I'm going to hit some of that, too. She's going to
4 tell you -- she told you some of the parts of what you saw on
5 the video. Not all the same parts. Okay.

6 Let's talk about the fact that she says that he's
7 not telling the truth, that his story's just not true. Let's
8 look at some of their own evidence, evidence they presented
9 that corroborates his story.

10 Chad said in one of these videos to Detective
11 Gardner, Justin came to meet him to go rafting and camping on
12 the river. That's what he said. Justin's car is at the river.
13 There is absolutely no evidence that he was brought there
14 against his will. He voluntarily came to the river.

15 What did Chad say they did when he first got there?
16 He said that Justin had brought him food. He had eaten. We
17 don't know how long they hung out there at the car, hung out at
18 the cul-de-sac. We did know his car was there.

19 You know what's next to the car on the ground? A
20 styrofoam container from dinner. You may say that doesn't
21 prove or disprove anything. I agree it doesn't.

22 You know what it does? It corroborates a story.
23 It corroborates what he said in an interview. Another picture.
24 Their evidence against him corroborating what he told Detective
25 Gardner.

1 He then told the detective -- I agree there's
2 multiple interviews. You saw them. There's no denying that.
3 He spoke to law enforcement voluntarily over and over after
4 being advised he had no duty to do so. But he voluntarily
5 spoke and told them what he knew.

6 He tells Detective Gardner the reason he didn't
7 mention the drugs, because he was worried about his friend's
8 reputation. His best friend, his boyfriend's reputation. He
9 didn't mention that initially to a fireman who was searching
10 for him. To first responder.

11 When he got to the office the same day, hours from
12 the incident, he did tell them about it. Was that
13 corroborating? Yes. In Justin's car they find GHB like he
14 said. In Justin's toxicology, they find GHB like he said;
15 corroborating his story and what he told Detective Gardner.

16 Let's remember -- you want to talk about time
17 lines. Let's remember that he has been on this river from the
18 day before, according to their evidence. Meets Justin at 1:00
19 a.m. on the 14th. Eats. And then they're sitting in Detective
20 Gardner's truck at 3:00 p.m., and then his office at 7:30 on a
21 Friday night. Correct? Think about that time line.

22 Think about the fact that he has been up for
23 apparently 36 or more hours. He hasn't eaten in, I guess, 18
24 or 20 hours, if you believe their testimony, their evidence
25 they put in. He needs to be held to every single fact in that

1 first or second statement he made the day his best friend died.
2 It better be all right now. All of it. You can never add
3 anything later.

4 You can never remember another detail. We need it
5 all right now. Their own investigator in Spartanburg's
6 interview, Detective Schafer said we understand. When you're
7 under stress, you forget things. Maybe some stuff has come
8 back to you. That's what he said. That was their detective.
9 I know you're under a lot of stress that day, maybe you'll
10 remember more about it because it's really important. It's
11 really important that we determine whether or not this was
12 intentional or unintentional.

13 And Detective Schafer said ultimately, whether this
14 is intentional or unintentional, that's going to be a jury
15 decision. He was absolutely right. That's the only person
16 here; not me, not the Solicitor, not the judge. Y'all are the
17 only ones who can decide this one issue. Was this drowning
18 intentional or unintentional.

19 Now just a minute ago, Ms. Leskanic told you, the
20 Solicitor told you that Dr. Rose testified this was a murder.
21 She did not. That's not true. She testified the manner of
22 death was homicide. A medical examiner does not determine
23 murder; a jury determines murder.

24 A medical examiner determines suicide, homicide,
25 natural causes. She does not make that determination. She

1 reviews the evidence and makes an opinion. Murder is a legal
2 decision reserved for you.

3 He said their plan was to go camping on the river.
4 And the Solicitor wants to talk about they didn't find
5 anything; there was nothing there. There was no tent. There
6 was no personal property. No wallet. No fishing rods. No
7 bag.

8 Detective Gardner, you heard me ask him, he
9 verified 24 hours before this, Justin was buying a tent. Is
10 that a coincidence that he was buying a tent 24 hours before he
11 met Chad at the river?

12 They weren't going camping; that's a lie. That's
13 his truth; that's not for real. Receipt from Wal-Mart. Your
14 witness said it. But they want you to focus on no tent was
15 found. They say he's a liar.

16 Let's talk about -- let's just take a break and
17 talk about the river for a second. We heard a lot of people
18 talk about the river. We heard Dr. Rose talk about the river.
19 It's pretty, really shallow. That's basically what she said;
20 pretty and really shallow. Not many rocks.

21 We saw a video. A video that was not from the day
22 of the incident, not the time of day of the incident. We saw
23 that video. Not in the type of boat or raft or float that
24 anybody alleged to have been on. We saw that, too.

25 We heard Dr. Rose. She pointed out -- she pointed

1 out here on this map that she went all the way up here. They
2 got in a boat landing and went all the way up here, right to
3 the front of Goat Island. That's not even where he said in the
4 interviews that the struggle happened, if you believe him.

5 If you want to think about his version of the
6 facts, that's not even where he said it happened. She's making
7 opinions and determinations and wants you to believe she went
8 to the river. She never testified what the conditions were.
9 Nobody testified what the conditions were on June 27th when she
10 visited. Nobody.

11 She went to the river, got out as much as she
12 wanted to. Less than 50, maybe ten times. It was always
13 shallow, not very rocky.

14 You know what else we heard about the river from?
15 A man who is on the river every single day. A man whose job is
16 to monitor the depth, the flow rate, the conditions. You know
17 what that man said about the river that day? It was quick. It
18 was quick. It was deeper than usual. Almost all the rocks
19 were covered. None of them exposed. Maybe just a few.

20 That sounds a lot different than what Dr. Rose said
21 she saw on the river. That sounds a lot different than the
22 video from a day that was not the day of the incident looked
23 like.

24 Let's look at another piece of their evidence and
25 see if this makes sense. Mr. Duncan said that, when he got to

1 the bottom on this quick river, which he alleges he could not
2 go back up, which nobody on the video attempted to go back up
3 with or without paddles. When he attempted to go back
4 upstream, he could not get back upstream. That's what he said.

5 He said when he got down to the bottom near the
6 boat ramp, he found a stick and tried to use that to go back up
7 the bank. Remember, according to him, at that time his friend
8 was still alive. He says in the interview: The last time he
9 saw him, he was alive. He didn't say he was okay. He didn't
10 say he was drowning. He said he was out of his mind, swirling,
11 not knowing what's going on, splashing, standing up. That's
12 what he said. Go back and watch the videos.

13 He gets a stick and he says he tries to go back up
14 this bank to see if he can see him through one of the chutes on
15 Goat Island. You know what? They found his raft. You know
16 what they find on his raft? A long eight-foot stick with mud
17 on one end of it. Does that in and of itself solve this case?
18 No, absolutely not.

19 Does it corroborate his story? The story you were
20 just told is not true. Does this picture prove maybe some of
21 it is true?

22 He also said that once they got started at the
23 Highway 29 bridge, that the current took them over and into
24 some weeds and then knocked some of their stuff off that they
25 brought. That's what he said. You get to decide whether you

1 believe it or not. That's what he said.

2 You know what else is on this raft? Sticks. And
3 green vegetation. Look at it yourself. Where did that come
4 from? He planned to make up the story later so he broke off
5 some sticks and put some vegetation on the raft, or did he hit
6 weeds like he said? Did the current push him into the over
7 drift? It's their evidence.

8 Again, does the fact that vegetation there and the
9 fact there's sticks there, does that matter? Does that end
10 this case? It doesn't end this case. It doesn't answer the
11 question you have to answer. It corroborates what he said to
12 them the day of. And that matters.

13 Chad told Detective Gardner that Justin was under
14 the influence of at least GHB. He had seen him take it, and he
15 said you take a very little amount. He told them less than a
16 ChapStick capful. And it wears off quick. You just heard the
17 Solicitor say that. It wears off quick. Yeah, if you take
18 less than a ChapStick capful.

19 What if you drink it straight out of a bottle of
20 it? Unmeasured? How long does that take for that to wear off?

21 He says that, from the 29 bridge to where he last
22 saw him at Goat Island, standing up, splashing around, he says
23 that during that time frame he was swirling, he was out of his
24 mind. He could swim. He could walk. He could not comprehend.
25 He would not comply with his request, what he asked him to do.

1 He says I yelled and I yelled and I begged him get
2 back on the raft. Get over here towards me or go to that bank.
3 Go to that bank over there. You can walk from here to there.
4 Go. And he wouldn't comply. If you're out there to murder
5 somebody, why would you be yelling and yelling and yelling?

6 There was a house on the river. They said it's not
7 true. He made that up, too.

8 You heard the interviews. What about the
9 difference in his voice from the interview the day of and the
10 day after to the later interviews? How long and how hard do
11 you have to yell to get your voice to that point?

12 I guess if he did this intentionally and he had
13 planned this, he had spent the day or day prior just yelling to
14 get his voice ready for this story or he had a friend he cared
15 about who was under the influence of a drug, an unknown amount,
16 on a river at night. And he was screaming for him to come to
17 him for safety or to go to the other bank.

18 What happens if you go to the other bank? He told
19 Detective Gardner, if you went to that other bank, you could
20 walk right back to the car. He could walk up River Road, right
21 back to the car.

22 He might not have floated the river before. He
23 doesn't drive. Justin is the one who brought him to the river
24 the day before. Picked him up from the river before, takes him
25 to the river. He was familiar with the area but had not

1 floated, is the evidence in this case. That's what was
2 provided.

3 He could've walked to that boat. That's what he
4 says he was screaming at him. He says to Detective Gardner
5 that the last time he saw him he was standing at the front of
6 Goat Island.

7 You can make your own decision here. You look at
8 this diagram. You look at this river, the width of the river
9 here versus the width of the river and those channels by the
10 island. You apply your own common sense. You decide whether
11 or not water runs faster in a broad, wide area or it runs
12 faster in a narrow chute. Where do you think it runs faster?
13 Where do you think that current is faster?

14 Mr. Keller said his wife doggie paddled out there,
15 not that day. Not the day that it's above average height and
16 flowing three times faster than it was yesterday. With all the
17 rocks covered, according to the expert at the dam.

18 This trial is not about whether Chad made great
19 decisions, could've made different decisions, should've done
20 this versus should've done that. You should've gone to this
21 town. You should've waved down that car.

22 That's not what this trial is about. This trial is
23 about did he intentionally and willfully murder his best
24 friend? Is there an explanation for why he would've gotten
25 down here to the fireworks plant, tied up his boat and not just

1 immediately walk to somebody's house or the fireworks plant?

2 Is there? Well, according to his statement to
3 Gardner, the last time he saw Justin he was still alive. He
4 thought he might've walked back to the vehicle.

5 This is also about tying up above this creek, tying
6 the raft up the creek. How else are we going to get to that
7 road?

8 And if you just murdered somebody, why not let that
9 piece of junk go into the dam. The water is flowing.
10 Mr. Peterson told you, if it hit the water, it's coming down.
11 But, no, he tied it up as if he was going to come back to it at
12 some point.

13 He says he walked back to the car. He doesn't have
14 keys to the car. They arrested him onsite for not having a
15 life vest. Did not find keys to the car, did not find any
16 personal property of Justin. Did not find a wallet.

17 He walks back to that car. When he gets there,
18 realizes: Oh my goodness, he's not here. That's when he
19 realizes there's a problem. That's when he realizes this is
20 not good.

21 He's at the car. And Mr. Thornburg says he can't
22 remember but something told him he needs to turn around and
23 talk to Chad. He couldn't remember if he had waved him down or
24 not. But something caused him to turn around.

25 He turns around. Complete stranger who said that

1 he looked like he had been crying and upset and said: Hey,
2 man, is everything okay?

3 If you had just murdered somebody would you say:
4 Let me borrow your phone, I need to call 911? Or everything's
5 good. I'm good, man.

6 No, he did not do that. He called 911. The
7 witnesses we saw, the first responders who came, the law
8 enforcement would not have been there but for him calling them.
9 He called all that to that location.

10 And then when they got there, there's a discrepancy
11 about where to go. We can talk about ballfields. We can talk
12 about which ballfield he was talking about, whether he was
13 referring to the ballfield on the Gaffney side of the river
14 where he's from or some ballfield somewhere down there. Look
15 at the map when you're deliberating. See if that other
16 ballfield is more noticeable on the Blacksburg side of the
17 river. That they never even got to or passed.

18 He's floating from Highway 29 bridge to the boat
19 ramp. You can't go any further. You heard Mr. Peterson; you
20 can't go any further than that. There's no going around the
21 dam; you go over it. He's floating from 29 to the dam. Why
22 would he ever be talking about a ballfield that you can't get
23 to?

24 Why would firefighters drive past a dam that you
25 had to go over? Could it be because he was talking about the

1 ballfield at Wolf Den, closer to Goat Island? Could there have
2 been a miscommunication? That's for you to decide.

3 The Solicitor put up these pictures. And she asked
4 that you look at them. These pictures are very, very
5 important. I couldn't agree more. They're here. You don't
6 need to look at them now. You're going to have them to
7 deliberate. You're going to have all these exhibits in
8 deliberation. You can look at them then.

9 I think these pictures are very important, in my
10 opinion, because basically, essentially what y'all have been
11 presented with is two different scenarios. And an opinion
12 offered by Dr. Rose and a version that Chad told Detective
13 Gardner. That's what you've been given.

14 One of those is an intentional act. One of those
15 is not. If I was going to summarize the focus of your
16 deliberation, that's where I would say. On the intent. What
17 was his intent? Was this an intentional act or an
18 unintentional act?

19 We have Dr. Rose. We have Chad. When you look at
20 these pictures, it is clear, absolutely clear. I agree with
21 the Solicitor. There are bruises and abrasions to his lower
22 legs, from the knee down. Only on the front side. Only on the
23 shins, not on the back of the legs. There's bruises on his
24 arms, particularly his biceps.

25 You know where there's not any bruises or

1 abrasions? On his face. On his neck. The pictures are there.
2 Is there redness? Yes. Dr. Rose told us that's called
3 suffusion. It's like when your cheeks get red. It's a symptom
4 of drowning. Are there bruises? Are there abrasions on the
5 face or neck? Particularly the back of his neck. Think about
6 that for a second.

7 They are alleging that Chad grabbed him by the back
8 of the neck, applying enough pressure, either directly or
9 indirectly, on another object, of 40 pounds or more was her
10 testimony, to break a hyoid bone. That's what they're
11 alleging.

12 There's no bruises. No fingerprints. No
13 fingernail marks in that area.

14 When asked about it, what did Dr. Rose say? Oh, on
15 the back of your neck it could be deeper. Okay.

16 Is there a way to tell that? Oh, yeah, there is a
17 way you can tell.

18 Did you do that? No, I didn't do that.

19 What about the fracture of this hyoid bone? It is
20 crucial to determining the intentionality of this case and the
21 intentionality of this charge is the breaking of that bone.
22 They said it in their case. I'm saying it now. That is
23 crucial.

24 Why wasn't -- in evidence, why wasn't there an
25 x-ray of that fracture? Why wasn't there a picture of it? If

1 this is what the linchpin is, why not? Think about that for a
2 second.

3 Her opinion -- and that's what it is, an opinion.
4 The judge instructed you yesterday, he will instruct you in a
5 minute, based off her training, experience, she's allowed to
6 offer an opinion. The other witnesses testified to facts as
7 they know them. Experts can testify to opinions. You're not
8 required to accept her opinion. You can accept part of it.
9 You can believe it full stop. Or you can believe none of it.
10 It's up to you.

11 Her opinion is that the five-foot-eight, 130-pound
12 man seen on that video forcibly held down a five-foot or
13 six-foot-five, 185-pound man enough so that he had broke that
14 bone. Enough so that these injuries were caused to his
15 extremities from what she said would've been pushing or
16 flailing against it with absolutely no injuries to Mr. Duncan.
17 Think about that.

18 I asked -- I believe I asked every single witness,
19 the Solicitor even asked: Did you notice any injuries to
20 Mr. Duncan? No. No. No. No.

21 Solicitor asked you to apply your common sense.
22 I'm asking the same. How does a smaller person do what they're
23 alleging to a larger person in that violent manner that they're
24 alleging it happened and not suffer any injuries? No cuts. No
25 bruises. No nicks. Nothing seen by anybody.

1 Chad told Detective Gardner that he had fallen off
2 the float early in the trip. That happened in between the 29
3 bridge and Goat Island. That's what he said. He said that,
4 from that point, he couldn't get to him. He continued to walk
5 and swim in a river that is full of submerged rocks. And
6 sandals. At night. With meth and GHB in your system.

7 Dr. Rose says: You can't get bruises like this
8 from that. You can get bruises like that if you're laying
9 horizontally and kicking rocks but you can't get bruises like
10 that being drugged down a river, walking in a river at night,
11 hitting your shins or feet on rocks. You can't get bruises
12 that way. All on the front of your legs. That's her opinion.

13 I ask you to think which one -- which one of these
14 stories or her opinion or Chad's version of the facts, which
15 one of those is more consistent with the injuries and the
16 absence of injuries on both the victim and him? Look at those
17 bruises on the arms and tell me if those look like somebody
18 grabbing somebody and helping them to the raft or something
19 different. That's your decision.

20 The thing is, when we're looking at Dr. Rose's
21 opinion, and Chad's version of the facts, this is not a: I
22 believe that one is a little bit more than this or that's a
23 little more likely than that one.

24 This is: Do you believe Dr. Rose's opinion beyond
25 a reasonable doubt? Are you firmly convinced that's what

1 happened? No questions. No reasonable questions.

2 Does it concern you at all that she had already
3 determined the manner of death before she even got the
4 toxicology results on GHB? We never alleged -- I'm not
5 alleging that this was an overdose. I don't think there's any
6 evidence in the record that this was an overdose. I don't want
7 you to think I'm suggesting that.

8 But does it concern you at all that she had made
9 her final determination of homicide in a river at night by
10 drowning without even having reviewed the results of the GHB?
11 Without even having those yet?

12 I asked her, you heard me ask her yesterday, what's
13 the toxic blood level of that particular drug? She didn't
14 know. She didn't know.

15 Well, the amount of this toxicology report -- she
16 said she's not an expert. She's not an expert in toxicology.

17 Was the amount on this report that you didn't
18 review before you made your decision, is this amount -- do you
19 think that's close to the toxic level? I don't know. You
20 don't know?

21 This is a Schedule I prescription drug used for
22 different purposes. Are you aware of what those purposes are?
23 No. I'm not sure. I don't know why people take that stuff.

24 She did confirm that the levels were over four
25 times higher than the testing threshold. She did confirm that.

1 She already made her mind up. She already figured
2 out what was going on and made her finding. And that didn't
3 change it. And I'm not saying it should. I'm saying you
4 should consider it.

5 She said it's a sedative. She referred to it as a
6 date rape drug. A sedative. Something designed to knock
7 somebody out. Four times the testing threshold. In a river at
8 night. No concern that had anything to do with anything.

9 The Solicitor told you in her opening statement the
10 motive is not an element to the crime of murder. It's not.
11 The judge is going to instruct you on the law in a minute about
12 murder, what the elements are. You're going to hear that.

13 Motive is not an element. It absolutely is a
14 circumstance; the presence or absence of motive is something
15 you can consider. Does it cause you any hesitation? Any pause
16 that there was not one piece of evidence submitted as a why.
17 Why?

18 Instead, to the contrary, they put up videos of a
19 man crying about how much he loved him, how there was no one
20 like him, how he supported him, how he was the only person he
21 had in the world. And he felt like a coward for not being able
22 to do more. That's evidence. That's in there.

23 But not one single thing about why he would've
24 intentionally killed him. Nothing.

25 I don't recall him saying anything about boots.

1 Watch the video, the boots. He had his boots on. They're in a
2 car that he didn't have keys to. It was clear from the
3 interview he had tennis shoes on.

4 He took them off. Dumped the dirt out. It's all
5 in the video. We watched it. Did he say something about
6 boots? Who would wear boots in a river? Did he say something
7 about boots? Watch that video.

8 Ladies and gentlemen, I understand this is a
9 difficult case. For one, it's a murder case. And I don't envy
10 your job. I don't envy the decisions you have to make. I
11 don't envy the discussions you have to have.

12 I appreciate your attention to what you're doing.
13 Like I said, this is a murder case where there is no DNA
14 evidence. There's no blood evidence. There's no murder
15 weapon. And there's no evidence of motive.

16 What the State wants you to believe and what they
17 have alleged is that, on June 14th, Chad lured his best friend,
18 who he loved, to the Broad River for the purpose of murdering
19 him. That's what they want you to believe. And not with a
20 weapon. Not with a 12-inch steel hammer sitting on the raft.
21 No.

22 They want you to believe that somehow, at some
23 point he gained control of someone almost a foot taller than
24 him and 50 pounds heavier than him and held him under water
25 against his will, without sustaining a single injury to

1 himself. No evidence of any type of physical altercation on
2 Mr. Duncan.

3 And then what did he do? The person that they want
4 you to believe just murdered somebody says that he flagged
5 down -- he says he flagged him down. Says that he flagged down
6 a stranger, borrowed his cell phone and called law enforcement.
7 If he had not done that, would anybody have been there that
8 day?

9 And then once they got there, this raft he was
10 trying to hide, he tells them where it is. Watch the video.
11 They ask him. They're trying to figure out his story. Where's
12 his raft? He tells them where it is.

13 You know what? They go and find it where he said
14 it was. He could have let that thing go in the dam. It's
15 junk. It would've been gone. Just like Mr. Peterson said.
16 Gone. He tied it off and told them where it was.

17 What did he do next? He told them where he had
18 last seen Justin. His statement where he had last seen Justin
19 alive. What did they do? They went there. And tragically
20 they found him within 75 to 100 yards was the testimony of
21 where he told them he last saw him.

22 Not: I last saw him way down there over the dam.
23 I saw him -- they found him within 75 to 100 yards of where he
24 told them.

25 Are those the actions of someone who just murdered

1 somebody? Are those the actions of someone trying to get help
2 to a friend he loves? I don't know. That's your decision.
3 They're the decisions y'all have to make. Unanimously. All of
4 you. Beyond a reasonable doubt.

5 I'm telling you, the Judge is going to tell you, if
6 you are not firmly convinced beyond a reasonable doubt to all
7 the elements of this crime, you have to return a verdict of not
8 guilty. Thank you.

9 THE COURT: Mr. Foreman, and ladies and gentlemen
10 of the jury, we're going to take about 15, 18-minute break
11 here. We are a little bit past where we should be. We're
12 taking a break. I don't want to keep you any longer.

13 I'm going to charge you, that's probably going to
14 take 20, 30 minutes. Don't talk about the case. It's not time
15 to deliberate. All 14 of you are going back. When you begin
16 the deliberation, there will only be 12. Don't talk about the
17 case. We're on break here.

18 If you need to smoke, they'll escort those who want
19 to smoke outside. We'll reconvene here about, at 25 past the
20 hour. 25 past the hour. Mr. Foreman, take the jury out.

21 (The jury exited the courtroom at 11:03 a.m.)

22 THE COURT: We're going to be in recess until 25
23 past the hour. In the meantime, I'm going to ask the lawyers
24 at some point during this break so we don't have delay, to get
25 with madam court reporter about the exhibits. Let's make sure

1 we have everything ready to go so they can go out with them.

2 (A recess transpired from 11:03 a.m. until 11:30
3 a.m.)

4 THE COURT: We'll have the jury.

5 (The jury entered the courtroom at 11:30 a.m.)

6 THE COURT: Mr. Foreman, everybody ready?

7 THE FOREPERSON: Yes.

8 THE COURT: Ladies and gentlemen of the jury, you
9 have seen and heard the evidence presented as well as the
10 arguments of the lawyers. It is now my duty and my obligation
11 to instruct you on the law on this case. It will then be your
12 duty and your obligation to begin your deliberations through
13 which process you will decide the facts, apply the law as I now
14 instruct and render a fair and impartial verdict.

15 It is your duty to determine what the facts are.
16 You will do that based on your own common sense, evaluation,
17 and examination of the testimony and the other evidence
18 received during this trial.

19 You 12 alone will decide what effect, value, and
20 weight is to be given to any particular testimony or other
21 evidence received. Quite simply your obligation is to give
22 this Defendant and the State a fair and impartial trial based
23 on the evidence presented and the law in this case.

24 The indictment number 2020-GS-11-00294 charges the
25 Defendant with the offense of murder. The State alleges that

1 Christopher Chad Duncan did, in Cherokee County, South
2 Carolina, on or about June 14th of 2019, feloniously,
3 willfully, and with malice aforethought killed Justin William
4 Cash by strangling and/or drowning the victim and that the
5 victim died as the proximate result thereof, in violation of
6 South Carolina law.

7 I remind you that the fact that this Defendant was
8 arrested, charged, and indicted is not evidence in this case
9 and cannot be considered by you as evidence of guilt in this
10 case nor does it create any presumption or inference of guilt.

11 The indictment is simply a written instrument which
12 contains the charge made against him. It is the formal
13 document by which this case is brought before The Court. It's
14 a piece of paper; that's all the indictment is.

15 The Defendant has entered a plea of not guilty to
16 the indictment and that puts the burden squarely on the State
17 of South Carolina to prove his guilt beyond a reasonable doubt.

18 A person charged with committing a criminal offense
19 in South Carolina is never required to prove himself innocent.
20 I charge you it is of cardinal importance, a vital rule of law
21 that, in a criminal trial, no matter what the seriousness of
22 the charge may be for which the Defendant stands charged, he is
23 always presumed to be innocent of the crime for which the
24 indictment was issued unless guilt has been proven by evidence,
25 satisfying you 12 of his guilt beyond a reasonable doubt.

1 The presumption of innocence, ladies and gentlemen,
2 does not end when you begin your deliberations. It accompanies
3 this Defendant throughout the trial until you reach a verdict
4 of guilt based on the evidence satisfying you of his guilt
5 beyond a reasonable doubt.

6 The presumption of innocence has been described as
7 a robe of innocence placed about the shoulders of the
8 Defendant, and it remains with him unless stripped from his
9 shoulders by evidence satisfying you of his guilt beyond a
10 reasonable doubt.

11 The presumption of innocence is not a legal theory.
12 It is not a legal phrase. It is a substantial right to which
13 every defendant is entitled unless you are satisfied of his
14 guilt beyond a reasonable doubt.

15 I remind you that during this trial, you and I have
16 certain duties to perform. As the trial judge, it is my
17 responsibility to preside over this case, and I have the duty
18 to rule on the admissibility of evidence offered during the
19 trial. You are to consider only the competent evidence before
20 you. If any evidence was ordered stricken from the record, you
21 must disregard.

22 You are to consider only the testimony which has
23 been presented from the witness stand, and the exhibits which
24 have been made a part of the record, and the stipulations of
25 the lawyers.

1 Additionally, I have the duty to charge you on the
2 law applicable to the case. As the presiding judge, I am the
3 sole judge of the law. It is your duty to accept it and apply
4 it as I've now stated it to you.

5 Ladies and gentlemen, if you have any idea as to
6 what the law is or what the law should be or ought to be and
7 does not agree with what I tell you the law is, you must
8 abandon your idea because you have sworn to accept it and apply
9 it as I now give it to you.

10 In every case tried in this courtroom before a
11 jury, you 12 become the sole and exclusive judge of the facts
12 in a case. A trial judge cannot make a comment or a statement
13 to a jury about a fact.

14 You 12 are the sole judges of the facts, and you
15 are not to infer from anything I might have said during the
16 progress of this trial in ruling on admissibility of evidence
17 that I have an opinion about a fact in this case. I tell you
18 and I charge you that the law of South Carolina does not allow
19 me or any other trial judge to have an opinion about a fact in
20 the case.

21 The State of South Carolina has the burden of
22 proving this Defendant guilty beyond a reasonable doubt. Proof
23 beyond a reasonable doubt is proof that leaves you firmly
24 convinced of his guilt. There are very few things in this
25 world that we know with absolute certainty. In criminal trials

1 and criminal cases, the law does not require proof that
2 overcomes every possible doubt.

3 A reasonable doubt has been described as the kind
4 of doubt that would cause a reasonable person to hesitate to
5 act. If you have such a doubt as to the guilt of this
6 Defendant, then say so and find him not guilty.

7 Reasonable doubt may arise from evidence in a case,
8 or from the absence or lack of evidence in a case. Based on
9 your consideration of the evidence, if you are firmly convinced
10 that this Defendant is guilty of the crime charged, say so and
11 find him guilty.

12 But if you think there is a real possibility he is
13 not guilty, you must give him the benefit of the doubt and find
14 him not guilty. You 12 alone must make the determination of
15 whether or not reasonable doubt exists as to the guilt of this
16 Defendant.

17 Now, there are two types of evidence which are
18 generally presented during a trial; direct evidence and
19 circumstantial evidence. And somebody may have heard those
20 terms. Direct evidence is directly proving the existence of a
21 fact; it does not require deduction.

22 Circumstantial evidence is proof of a chain of
23 facts and circumstances indicating the existence of a fact.
24 Crimes may be proven by circumstantial evidence. Our law makes
25 no distinction between the weight or value to be given to

1 either direct or circumstantial evidence.

2 However, to the extent the State relies on
3 circumstantial evidence, all of the circumstances must be
4 consistent with each other. And when taken together, point
5 conclusively to the guilt of the accused beyond a reasonable
6 doubt.

7 If these circumstances merely portray the
8 Defendant's behavior as suspicious, the proof has failed. The
9 State has the burden of proving the Defendant guilty beyond a
10 reasonable doubt. This burden rests with the State regardless
11 of whether the State relies on direct evidence or
12 circumstantial evidence or a combination of the two.

13 In determining what the facts are, you must
14 necessarily pass upon the credibility of the witnesses who have
15 testified. You 12 are the sole judges of the credibility of
16 witnesses. And credibility in the law means believability.
17 Cannot believe this witness. Is this witness credible?

18 The value and weight to be given to their testimony
19 is at your discretion. You alone must decide the force and
20 effect of the truth of the testimony.

21 In making a determination as to the credibility of
22 the witness, there are many factors that you should consider
23 and take into consideration such as the appearance or manner of
24 a witness as he or she testified from the stand. Was the
25 witness forthright or hesitant? Was the witness' testimony

1 consistent or did it contain discrepancies? What was the
2 ability of that witness to know about the facts concerning what
3 testimony he or she provided?

4 As jurors, you have the right to believe a small
5 portion of a witness' testimony and disregard a larger portion,
6 or you may believe a larger portion of a witness' testimony and
7 disregard a smaller portion.

8 Ladies and gentlemen, you may believe a witness'
9 testimony in its entirety or you may completely reject a
10 witness' testimony in totality, but if you have a sound reason
11 and a reason for doing so, but not arbitrarily. You may
12 believe the testimony of a single witness against many or many
13 against one. You do not determine the manner of believability
14 or credibility merely by counting the number of witnesses in
15 this case.

16 The Rules of Evidence ordinarily do not permit
17 witnesses to testify to opinions or conclusions. An exception
18 to the Rule exists for a witness we call an expert witness. A
19 witness, who by education and experience, have become an expert
20 in some profession or calling may give an opinion as to the
21 relevant matter in which that witness claims to be an expert
22 and also may state the reasons for the opinion.

23 You should consider any expert opinion received in
24 this case like all other evidence and give it the weight you
25 think it deserves. If you decide that the opinion of an expert

1 witness is not based on sufficient education and experience or
2 if you conclude that the reasons given in support of the
3 opinion are not sound, or that the opinion is outweighed by
4 other evidence, you may disregard it in its entirety.

5 An expert witness' testimony is to be given no
6 greater weight than any other witness simply because the
7 witness was qualified as an expert. Furthermore, you are not
8 required to accept the expert's opinion even if it is not
9 contradicted.

10 Ladies and gentlemen, a stipulation is an
11 agreement, admission, or a concession made in a judicial
12 proceeding by the parties or their attorneys. A stipulation is
13 an agreement, an understanding. The Court and the jury must
14 accept the stipulation as binding on the parties.

15 If the Counsel for the parties have stipulated to a
16 fact or any fact has been admitted by Counsel, you will regard
17 that fact as being conclusively proven as to the party or
18 parties making the stipulation.

19 I instruct you and I emphasize this point that the
20 fact that this Defendant did not testify is not a factor to be
21 considered by you in your deliberations or in your
22 consideration on the question of guilt or innocence. It must
23 not be considered by you in any manner whatsoever.

24 A Defendant has a Constitutional right to remain
25 silent, and the assertion of the right must not be considered

1 by you in your deliberations. The fact that this Defendant did
2 not testify should not be discussed in the jury room. He is
3 not required to prove his innocence. Remember, the burden of
4 proof remains on the State to prove his guilt beyond a
5 reasonable doubt.

6 Now, criminal intent is a necessary element of a
7 crime that must be proven by the State beyond a reasonable
8 doubt. Criminal intent is a matter that must be determined by
9 you, the jury, from the circumstances surrounding the
10 situation.

11 There is no way to prove intent to a mathematical
12 certainty. Criminal intent is a state of mind which, when
13 operated jointly with an act, is the commission of a crime. It
14 is a mental state. It is a conscious wrongdoing. It is up to
15 you, the 12 jurors, to determine what this Defendant intended
16 to do based on the circumstances shown to have existed.

17 I tell you that the State must prove criminal
18 intent beyond a reasonable doubt just as it must prove every
19 element beyond a reasonable doubt. While the State may prove
20 motive, it is unnecessary that the State do so. The State must
21 prove criminal intent.

22 The Defendant is charged with murder. In order to
23 prove this crime, the State must prove that this Defendant
24 killed another person with malice aforethought, either
25 expressed or implied. Ladies and gentlemen, malice is hatred.

1 It is ill will. It is hostility towards another person. It is
2 the intentional doing of a wrongful act without just cause or
3 excuse and with intent to kill that the law will infer an evil
4 intent.

5 Malice aforethought does not require that malice
6 exists at any particular time before the act is committed. It
7 must exist in the mind of the Defendant just before and at the
8 time the act is committed. There must be a combination of
9 previous evil intent and the act.

10 Malice aforethought may be expressed or implied.
11 Expressed or inferred do not mean different things of malice
12 but merely a manner in which malice may be shown to exist. It
13 is either by direct evidence or by inference from the facts and
14 circumstances which are proven.

15 Expressed malice is shown when a person speaks
16 words which express hatred or ill will towards another or when
17 the person prepared beforehand to do the act which was later
18 accomplished, like lying in wait for a person or any other act
19 of preparation going to show that the deed was within the
20 Defendant's mind would be expressed malice.

21 Malice is the wrongful intent to injure another.
22 It indicates a wicked or depraved spirit in doing wrong. It is
23 the doing of a wrongful act intentionally without just cause or
24 excuse.

25 Intent means intending the result which actually

1 occurs, not accidentally or involuntarily. It may be shown by
2 acts and conduct of the Defendant and other circumstances from
3 which you may naturally and reasonably infer intent, evidence
4 of character of the event, the character of the instrument
5 used, the manner in which it was used, the purpose to be
6 accomplished, and resulting wounds of injury may be considered
7 in determining the intent with which the act was committed.

8 You 12 have been selected as fair and impartial
9 jurors, sworn to impartially try and determine the facts in
10 this case. And you are to decide the case according to the
11 testimony that you have heard from the witnesses along with the
12 evidence introduced.

13 Ladies and gentlemen your verdict must be
14 unanimous. Mr. Foreman, when the jury agrees on the verdict,
15 you will indicate the verdict on the space provided on the form
16 and sign your name as the foreperson of this jury, then knock
17 on the jury room door, inform the bailiffs that you have
18 reached a verdict, and we will return you to the courtroom to
19 receive your verdict.

20 During deliberations, Mr. Foreman, all members of
21 the jury must be present. If someone needs to refresh
22 themselves or whatever it might be, momentarily the
23 deliberations must cease. All 12 must be together at all times
24 during the deliberations.

25 Mr. Foreman, this is a jury verdict of which my law

1 clerk, who's been seated with me all week, has prepared. It
2 has the caption of the case. It has the number. That merely
3 means it goes with this particular indictment.

4 It says: We, the jury, unanimously find the
5 Defendant, Christopher Chad Duncan, on the charge of murder of
6 Justin William Cash, not guilty or guilty.

7 I tell you and I charge you it matters not which
8 one comes first. I always put them in not guilty and guilty
9 order on every one of my jury verdict forms.

10 It then says: I certify this decision was a
11 unanimous decision of the jury. It has a place for you to
12 sign, Mr. Foreman, and a place for you to date. Put the date
13 of the decision.

14 It matters not to me if it's a checkmark, an X,
15 initial, it matters not. I only ask that it be unambiguous, it
16 be patently clear whatever the decision of the jury is.

17 Mr. Foreman, I'm going to send all 14 jurors to the
18 jury room. Do not begin deliberations. You have 14 with you.

19 The lawyers have already met during the break to
20 make sure all the evidence is there. I practiced law 25 years
21 before coming to this job. It's so very easy, so very easy to
22 pick up a picture or something and then it's missing; I have it
23 on my desk over there somewhere.

24 I've asked them to make sure that everything is
25 there. You leave the room with all 14. I'm going to ask them

1 once more, make sure everything is there. Once they affirm to
2 me all the evidence is for you there, the bailiff is going to
3 bring the evidence to you along with this form.

4 To my alternates, when the bailiff brings the
5 evidence to the jury, the alternates will leave. It will not
6 be proper for you to be there. You will return to the
7 courtroom. I will release you from the courtroom on the
8 record.

9 14 go back. And the evidence comes back. You two
10 are going to come back to the courtroom.

11 In the event that you need to see something played
12 or hear some testimony or whatever it is, you will simply write
13 me a note, Mr. Foreman. And we would set up whatever we need
14 to do to accommodate that request, if you need it.

15 Mr. Foreman, take all 14 out.

16 (The jury exited the courtroom at 11:47 a.m.)

17 THE COURT: Any matters from the State?

18 MS. LESKANIC: No, Your Honor.

19 THE COURT: From the defense?

20 MR. MOORE: No, sir, Your Honor.

21 THE COURT: Everything there? Everybody satisfied
22 it's all there?

23 MR. MOORE: You're good.

24 MS. LESKANIC: Yes, we both prepared it again.

25 Mr. Kendall assisted.

1 (The alternate jurors entered the courtroom.)

2 THE COURT: This ends your jury service. I thank
3 you so much. Thank both of you for your jury service this
4 week. This ends your service.

5 We have open courtrooms in this state. A lot of
6 times my alternates want to see what happens. You're more than
7 welcome to remain with us or go, whichever you choose.
8 Ms. Brandy has pay vouchers for you for a million dollars.

9 THE CLERK: I want to thank you for your time and
10 your service this week. You played a very important role in
11 the judicial system. We thank you for your service this week.

12 Take the top portion over to the treasurer's
13 office. That's where you pay your taxes at the county
14 administration building. It's a perforated edge, sign the
15 back. Your treasurer, Ms. Sheila Carpenter, will pay you cash
16 for your service. Don't lose your voucher. And the bottom is
17 your work excuse, if you need it.

18 (The alternate jurors exited the courtroom at 11:51
19 a.m.)

20 THE COURT: We're going to stand at ease on this
21 case while they're out.

22 (A recess transpired from 11:51 a.m. until 2:30
23 p.m.)

24 THE COURT: We have a question from the jury.

25 (Off-the-record discussion.)

1 (The jury entered the courtroom at 2:30 p.m.)

2 THE COURT: Mr. Foreman, ladies and gentlemen,
3 madam court reporter has pulled up the doctor's testimony.
4 We're going to begin it. You can listen to all of it or you
5 can, whenever you get to what you want, you raise your hand and
6 we'll stop it. Otherwise she's going to play all of it.

7 (Recording was played from page 339 to page 361.)

8 THE COURT: Mr. Foreman, take the jury back out.

9 (The jury exited the courtroom at 3:01 p.m.)

10 THE COURT: Anything from the State?

11 MS. LESKANIC: No.

12 THE COURT: From the defense.

13 MR. MOORE: No, sir.

14 THE COURT: Be in recess in this matter.

15 (A recess transpired from 3:01 p.m. until 3:11
16 p.m.)

17 THE COURT: I'm told we have a verdict. Before I
18 bring the jury out, I'm going to tell everyone that we're not
19 going to have a celebration one way or the other, whichever way
20 it is. Not going to be any outburst.

21 If you are in the audience and you cannot control
22 your emotions, I would ask you to leave quietly now before I
23 bring the jury in.

24 I'll have the jury.

25 (The jury entered the courtroom at 3:16 p.m.)

1 THE COURT: Mr. Foreman, has the jury reached its
2 verdict?

3 THE FOREPERSON: Yes, sir, we have, Your Honor.

4 THE COURT: Give that to Mr. Bailiff.

5 Madam clerk will publish.

6 THE CLERK: 2020-GS-11-294, State of South Carolina
7 versus Christopher Chad Duncan. We, the jury, unanimously find
8 the Defendant, Christopher Chad Duncan, on the charge of murder
9 of Justin William Cash guilty. Signed by foreperson, Billy
10 Parker.

11 Ladies and gentlemen of the jury, if this is a
12 verdict of you-all, please indicate by raising your right hand.

13 (The jury complied.)

14 THE COURT: Polling of the jury by the State?

15 MS. LESKANIC: No, Your Honor.

16 THE COURT: By the defense?

17 MR. MOORE: No, Your Honor.

18 THE COURT: Both parties waive polling of the jury.

19 Mr. Foreman, if you will come sign, with madam
20 clerk, sign the indictment.

21 (A pause transpired.)

22 THE COURT: Mr. Foreman, ladies and gentlemen, this
23 will end your jury service for the week. I thank you so very
24 much. We certainly couldn't do what we do without you. You
25 are an integral part of the judicial system. It's both a

1 privilege and a Constitutional obligation to serve on jury
2 duty.

3 With that, I am going to recognize Ms. Brandy,
4 she's going to give you pay vouchers. After that you'll be
5 excused.

6 I do sometimes have jurors who want to follow
7 through. We will proceed to sentencing. If you would like to
8 be part of that, when you exit, if you will come across the
9 second floor underneath us here, come up the stairway. You can
10 take your seat in the gallery. If you choose to do so. Not
11 required to.

12 THE CLERK: Just like the judge said, thank you for
13 your time and service this week. You play a very important
14 role in the judicial system. We appreciate your time.

15 When I call your juror number, you're free to go
16 and exit. If you want to come back in the courtroom, they will
17 get you through and get you to the back of the courtroom so you
18 can observe sentencing.

19 You will take this over to the county
20 administration building, they're still open until 5:00. Your
21 treasurer, Ms. Sheila Carpenter, she does pay you cash for your
22 service. Make sure you hold on to your voucher. Your bottom
23 sheet is your work excuse. If you'll take your badge off and
24 hand it to the bailiff as you leave.

25 (The jury exited the courtroom at 3:21 p.m.)

1 THE COURT: Matters from the State?

2 MS. LESKANIC: No, sir, Your Honor.

3 THE COURT: Matters from the defense?

4 MR. MOORE: No, sir, Your Honor.

5 (A pause transpired.)

6 THE COURT: Mr. Moore, you have the floor.

7 MR. MOORE: Yes, sir, Your Honor. I'll be very
8 brief. Obviously, nothing that the Defendant or I can add as
9 to the facts of the case. This was a very extensive,
10 essentially four-and-a-half, almost five-day trial.

11 I will point out, as far as mitigation, the
12 Defendant is 38 years old. I don't believe he has an extensive
13 criminal record. I'm not sure if there's any record of any
14 violence or serious crime. I think we're both kind of still
15 processing it right now.

16 He understands as we've discussed prior to this, no
17 offers in this case. It was 30 years to life sentencing range
18 available to The Court. We accept the verdict of the jury.
19 Ask The Court to consider any potential sentence that may,
20 considering his age being 38, may potentially give him the
21 ability to get back out one day. Although that would be very
22 far in the future.

23 I haven't had any additional time to speak with him
24 regarding mitigation. I'll answer any questions The Court may
25 have.

1 THE COURT: I don't have any. Sir, would you like
2 to speak?

3 MR. DUNCAN: I would not. I still would like to
4 claim my innocence.

5 THE COURT: Yes, sir. Thank you. Criminal
6 history, Solicitor?

7 MS. LESKANIC: 2008, driving under suspension.
8 2009, unlawful carrying of a weapon.
9 2011, fraudulent check.
10 2012, DUI, driving under suspension.
11 2019, a domestic violence in the second degree
12 conviction.

13 And then the charge in this case, Your Honor.

14 Standing to my right is Justin's mother, Anna
15 Hicks. Behind her is Justin's father, William Cash. And Mike
16 Hicks to the right of him. And I believe at least Mrs. Hicks,
17 maybe all of them, would like to address you.

18 THE COURT: Certainly. Ms. Hicks.

19 MS. HICKS: Your Honor, I would like Chad to know
20 that every night I prayed for my son while he was driving on
21 85. I prayed that he would be kept safe. I prayed that for
22 him to be protected from a monster.

23 And Justin was not your friend. You bullied him.
24 And you took advantage of him. You took his future.

25 And you took not only his life, you took our life.

1 You took our future. And I can't sleep without seeing that my
2 son, my only child, my kind and compassionate child, who would
3 do anything for anyone, and he was never violent.

4 He felt sorry for you, and he helped you. And I
5 taught him to do that. And by doing that, I feel like I caused
6 his death. And I wish I could forgive you. At this point I
7 cannot. That's all.

8 THE COURT: Sir.

9 MR. CASH: He was our only child. He did so well.
10 Like she said, he was kindest, heartest person you'd want to
11 know. He made mistakes. He was best son a man could have. My
12 only son.

13 THE COURT: Thank you, sir.

14 Sir, would you like to speak?

15 MR. HICKS: He was my step-son. And he referred to
16 me as his bonus dad. He was a good kid.

17 THE COURT: Thank you, sir.

18 How much time, Mr. Moore?

19 MR. MOORE: He's been in custody on August 14,
20 2019; correct? I didn't have time to calculate that.

21 MR. DUNCAN: Yes.

22 THE COURT: Mr. Duncan, everyone loses here.

23 2020-GS-11-00294, you're confined to the Department
24 of Corrections for a period of 40 years. Give you credit for
25 any time you're entitled. Best of luck to you.

1 I want to say I have really enjoyed working with
2 the lawyers on this. Good lawyers.

3 (The trial was concluded at 3:27 p.m.)

4 (COURT EXH. 7, Jury question, was marked for
5 identification.)

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1 CERTIFICATE OF REPORTER

2
3 I, Lora McDaniel, Registered Professional Reporter
4 and Notary Public for the State of South Carolina at Large, do
5 hereby certify that the foregoing transcript is a true,
6 accurate, and complete record.

7 I further certify that I am neither related to, nor
8 counsel for, any party to the cause pending or interested in
9 the events thereof.

10 Witness my hand, I have hereunto affixed my official
11 seal this 6th day of March, 2024 at Spartanburg, Spartanburg
12 County, South Carolina.

13
14
15
16 

17
18 _____
19 Lora L. McDaniel,
20 Registered Professional Reporter
My Commission expires:
August 9, 2026

WITNESSES

Cherokee County Sheriff's Office

[Signature]

ARREST WARRANT NUMBER

2019A1110100995

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: 12-15-22

DOCKET NO 20-GS-11-00294

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

February 20, 2020 TERM

THE STATE

vs.

CHRISTOPHER CHAD DUNCAN

INDICTMENT FOR:

MURDER

SC CODE: 16-03-0010, 0020

CDR: 116

CLASS: FEL-EXM

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2020 FEB 20 AM 10:58

BRANDY W. MCBEE

RECEIVED

Dec 28 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on February 20, 2020, the
Grand Jurors of Cherokee County present upon their oath:

MURDER

That Christopher Chad Duncan did in Cherokee County on or about June 14, 2019, feloniously, willfully, and with malice aforethought, kill one Justin William Cash by strangling and/or drowning the victim, and that the victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Kimberly S. Kainc
ASSISTANT SHERIFF

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee

STATE

VS.

Christopher Chad Duncan

AKA: _____

Race: W Sex: M Age: 38

DOB: [REDACTED]

Address _____

City, State, Zip: Blacksburg, SC 29702

DL#* SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Murder [30 years to Life]

In violation of § 16-3-10 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. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

16837
SC Bar # Defendant

Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 40 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years

and/or to pay a fine of \$____; provided that upon the service of ____ days/months/years/Time Served 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.

The sentence shall run

☐ 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 SCDOC.
days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2020 -GS-11 - 294

A/W#: 2019A1110100995

Date of Offense: 6/14/2019

S.C. Code §: 16-3-10

CDR Code #: 0116

SENTENCE SHEET

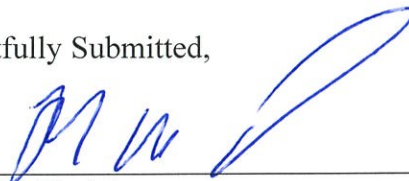
Dec 28 2023

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

RECEIVED

Oct 01 2024

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 1st day of October, 2024.

RECEIVED

Oct 01 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

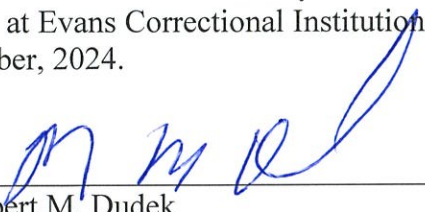
CHRISTOPHER CHAD DUNCAN,

APPELLANT

APPELLATE CASE NO. 2023-001988

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Christopher Chad Duncan, #382771, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 1st day of October, 2024.



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT