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THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
R. Kieth Kelly, Circuit Court Judge

Appellate Case No. 2024-001579

The State, ...Respondent,

v.

Johnathan Olin Batchelor,.....Petitioner.

APPENDIX VOLUME II of III

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1 this afternoon. In case the Court needs him or wants to make
2 additional inquiry, I wanted to let everybody know that he's
3 not going to be here.

4 THE COURT: I don't, I don't. Okay. Do you have any
5 matters that we need to take up outside the jury before they
6 get here?

7 MR. GROSE: Well, I mean, I still have a motion to
8 exclude his testimony, I don't know if you want to hear
9 additional arguments on that now or later on today.

10 THE COURT: Yes, sir. Let's do it now while we've
11 got some time.

12 MR. GROSE: Okay. You have the memorandum, you have
13 the ---

14 THE COURT: I do.

15 MR. GROSE: --- plea transcripts that was attached to
16 the pretrial brief. You know, it's, it's very clear that, in
17 that transcript, that Andy Moorman changed his recommendation
18 from 240 months to 220 months, which is, you know, Mr. Tiller,
19 I think, was intentionally trying to create an impression that
20 he didn't get any more of a benefit out of his cooperation in
21 this case. You know, it's, it's also clear from the transcript
22 that Mr. Bannister had a range in mind based upon what other
23 co-defendants had gotten in the case, acknowledging the reality
24 that Mr. Tiller was the, the lead person, leading Defendant on
25 the indictment and that just the way the practice often goes,

1 that he wasn't going to get lower than, you know, any of the
2 people on the, that were lower than him on the conspiracy. So
3 for Mr. Tiller to suggest here today that he's never thought
4 about a number lower than 220 is just so incredible that it's
5 beyond belief. I've listed in the memorandum some factors that
6 the Innocent Project recommends considering as far as due
7 process is concerned before a jailhouse snitch is allowed to
8 testify. One of them is, you know, the complete criminal
9 history of the informant who has, in this case, has three
10 substantial drug convictions. Any deal, promise, inducement,
11 or benefit that the offering party has or will make in the
12 future to the jailhouse informant. I understand that on one
13 level they're saying that no, no promises have been made, but
14 at the same time, there's sort of the wink and the nod that if
15 he's helpful in this case, Ms. Wells will go to Court in some
16 future sentencing proceeding for, for a downward departure.
17 And it's very clear that, at the time that Mr. Tiller was
18 sentenced, it's very clear that he was already expecting to
19 come back on a rule 35 motion independent of this, and now he
20 has that additional expectation. With regard to the substance
21 of the statements that he's testified to, quite frankly, a lot
22 of that's common knowledge, and he's not able to provide
23 anything about the location of the store or the location of the
24 gun or anything that anybody would actually be able to follow
25 up and lead to any verification on. And we, we don't know the

1 extent to which he's ultimately going to be testifying. What
2 we do know from that plea agreement or from that sentencing
3 hearing is is that Mr. Tiller cooperated against other inmates
4 and employees of the South Carolina Department of Corrections
5 to provide information that is, is potentially, and probably is
6 leading to, you know, additional prosecutions. And so we don't
7 know to what extent at this point he's going to be called on or
8 not called on to be a witness. And then you can consider
9 anything that is, is relevant to his credibility which is why I
10 point out, you know, some of the things that I find to be just
11 unbelievable about what he said here this morning. And I think
12 that, you know, due process in this case requires that the
13 court exclude this testimony.

14 THE COURT: Thank you. Solicitor?

15 MS. WELLS: Thank you, Your Honor. Your Honor, just
16 a couple of things. First, I think it's misconstruing Mr.
17 Tiller's testimony to say that he has a number. He was adamant
18 that he didn't have a number and his reasoning is sound. It's
19 because it doesn't matter, like, exactly what he said, it
20 doesn't matter, it's pointless to think of a number because he
21 has no control over that. He recognizes and understands that
22 the only person who has control over that is Judge Michelle
23 Childs. And while he would like something closer to being able
24 to get out, I don't think that's a dishonest answer, I think
25 that's absolutely an honest answer, he doesn't know and it's

1 pointless to think of something because he has zero control
2 over that. There's no evidence of inducement, there's no
3 evidence of promise, there's no evidence of future promises. I
4 literally, cannot go to Federal Court and ask for anything. I
5 cannot file a motion before Judge Childs, that's, I don't have
6 standing to do that. The only person who can do that is the
7 federal prosecutor who is assigned to that case now, and as I
8 told the Court last week, as we sit here, I don't even know who
9 that is. Mr. Moorman is now in private practice, he is no
10 longer with the US Attorney's Office. So I, I don't even know
11 who the AUSA is, who would be the person who has the standing
12 to file that, but I can tell the Court it's not me. And we
13 discussed at length, and I don't think there's any reason to
14 rehash the fact that, yes, I was at sentencing, is that
15 appropriate for the jury to hear, absolutely not, because then
16 we'd have to answer why I was at sentencing. But as the Court
17 will recall, I was there only because I was subpoenaed. And
18 only, and I was there, absolutely, against my, I did not want
19 to be there at all. I, literally, had a child come home from
20 the hospital, I think, 48 hours, possibly, before this who was
21 very, very sick, and I did not want to be there. So as to the
22 rule 35, to, I'm sure that the Court's aware, but I'll just
23 kind of walk through it. A rule 35 is a motion that the
24 government can make after co-sentencing to reduce a Defendant's
25 sentence for any cooperation they might have provided

1 subsequent to that sentencing. And it's really, we don't, I
2 mean, I don't know anything, Mr. Grose knows more about that
3 than I do as to the rule 35, and of course, as I said on
4 Friday, it's absolutely appropriate for the government to
5 advise the sentencing Judge that there may be a rule 35 coming.
6 To my knowledge, there has been no rule 35, I'm not aware of
7 that, and I'm sure if one existed, Mr. Grose would have brought
8 it for us. But who knows what the status of that investigation
9 is, and it's really of no moment here. The only thing that
10 matters is what Mr. Tiller said. And Mr. Grose had an
11 opportunity to cross examine him, the Court had an opportunity
12 to see that, he did his best to tell, to answer Mr. Grose's
13 questions honestly and to understand the questions he was being
14 asked. He talked about his conversations with his attorney who
15 is well-known, you know, longtime Defense attorney in
16 Greenville, and, you know, he's been in the Bureau of Prisons
17 since 2018, I mean, I can't imagine what he's got left to give
18 in an investigation into the South Carolina Department of
19 Corrections when he's been a federal inmate for a number of
20 years now. So Judge, the Court's had an opportunity to view
21 all of this, that he has walked through the plea agreement, he
22 said that Mr. Bannister explained everything to him, he
23 understands the risk that he is taking here today if he gives
24 non-truthful, or if he lies on the stand, he understands that
25 he's facing life in prison. And that's, I mean, I think that's

1 significant for the Court to understand, too, and certainly
2 that Mr. Tiller understands that. And I don't think it's any
3 due process violation for the Court to allow a witness who has
4 knowledge of this and who the Defendant confessed to to testify
5 before this jury. Now, I would object to some, as I said, I
6 would object to some of the cross examination as to Mr. Tiller
7 should the Court rule that it's appropriate, and I think that
8 it is appropriate for Mr. Tiller to testify. But he'll be
9 subject to cross examine and Mr. Grose can ask him about what,
10 within reason, anything he wants to about it. But Judge, I
11 don't think it's a due process violation at all to allow this
12 witness to testify.

13 THE COURT: Anything?

14 MR. GROSE: Well, you know, while the sentence is
15 ultimately up to Judge Childs in Federal Court, I think it's,
16 you know, not a fair characterization to say that, you know,
17 nobody else has the ability to influence what that is. You
18 know, because she's certainly going to hear information from
19 the government, potentially Ms. Wells whether she wants to be
20 there or not. If a rule 35 motion's made and this is part of
21 it, I feel certain that she'll probably be subpoenaed again.
22 So you know, the, the fact that he does hold out some type of
23 hope with and has a hope that he and his lawyer will be able to
24 influence what that number is, I do think it's fair game and
25 something that Your Honor needs to consider as far as this

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RECORD ON APPEAL – VOLUME II OF II

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motion is concerned. With regards to, you know, what Ms. Wells said about he's been in the Bureau of Prisons since 2018, I don't know what he could offer about the Department of Corrections, well, that's reputed by the plea transcript. We certainly don't know, or I'm sorry, the sentencing transcript. We certainly don't know the names of the people that he's turned in in the Department of Corrections, but it's important for this discussion that the fact that this drug conspiracy that Mr. Tiller is serving the current sentence on was a conspiracy that he was running from inside the walls of Department of Corrections and, you know, he, as part of, you know, trying to get, you know, more, more of a downward departure on his case, he was giving information on other inmates and employees of the Department of Corrections to the extent that the United States Government had to work it out with the South Carolina State Government so that Mr. Tiller didn't spend more than a night again in the Department of Corrections. He got out of the Department of Corrections, he would have gone back there to finish that sentence before he went to the Bureau of Prisons if he hadn't, you know, put himself in a potential danger by being, you know, having given all that information against people who work there and were sentenced there. So he had a wealth of information and State Court moves a lot slower than Federal Court on, on the

prosecutions. So I, I, we just ask the Court to suppress the testimony.

THE COURT: Okay. Court finds there is no due process violation. He can testify of what knowledge he has and if he testifies dishonestly and the government can prove that, of course, they can revoke that. I practiced in Federal Court, too, back when Trey Gowdy was AUSA over there, so I'm familiar with the rule 35, the downward departure and sentencing guidelines and everything he's talking about over there. I disagree with what you talk about the Innocence Project as far as the Court should make a finding as to his credibility or reliability. And I do agree to consider those factors and I have considered the factors you outlined, but reliability or credibility of any witness or any evidence is before the finder of fact which is that jury over there and not for this Court to consider. This Court doesn't weigh the evidence, that's what you've got 12 people over there for. So he's going to, he'll be testifying.

MR. GROSE: And respectfully, I disagree with the Court not weighing the evidence as far as admissibility. There's plenty of times, I mean, Ms. Wells already asked you to do that on the issue of third-party guilt and, you know, it happens a lot with expert testimony, it's just, I understand that once it's admissible then it's up to the jurors, but I do think that, I just wanted to put that position on the record.

THE COURT: That's fine. This Court doesn't, if there's any evidence at all, it goes to the jury and that's where it's going. Alright. Anything further?

MS. WELLS: Not from the State, Your Honor.

THE COURT: Alright. As soon as they're here, we'll be ready to go. And if they're here, there's nothing magic about 10:30, so if they're here at 10:20, we'll get started then.

MS. WELLS: Yes, sir.

(Off the record.)

THE COURT: Okay. I'm told we have all 14, everybody ready?

MS. WELLS: The State's ready, Your Honor.

THE COURT: Okay. We'll have the jury.

(Jury entering.)

THE COURT: Good morning ladies and gentlemen and thank you for being prompt. Any issues, Mr. Foreman?

MR. FOREMAN: No, sir.

THE COURT: Everybody's good. Solicitor?

MS. WELLS: Thank you, Your Honor. May it please the Court. The State would call Officer David Hogsed to the stand, please.

THE COURT: Alright.

MADAM CLERK: Do you swear or affirm that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth so help you God?

OFFICER HOGSED: I do.

MADAM CLERK: Thank you.

THE COURT: Sergeant, if you will adjust the microphone, please, and tell us who you are and spell your last name for the Court reporter.

OFFICER HOGSED: David Hogsed, H-o-g-s-e-d.

THE COURT: Thank you. Solicitor?

DIRECT EXAMINATION

BY MS. WELLS:

Q Sergeant, I've known you in many ideations, but where do you, where are you currently employed?

A Currently I'm with Wofford College Camp Safety.

Q Okay. And you are, where, you're a sergeant at the ---

A Yes.

Q --- public safety for Wofford?

A Yes.

Q How long have you been there?

A It'll be five years in December.

Q And who did you work for prior to working for Wofford?

A Spartanburg County Sheriff's Office.

Q And how long were you at the sheriff's office?

A About 13 years with the sheriff's office, prior to that with Spartanburg City PD, so all in all, in October, I hit 32 years.

Q Alright. And you officially retired from the sheriff's office when?

A December of 2016.

Q Okay. And what did, was your role when you were at the police department and then at the sheriff's office, what was your job?

A For the last 17 and a half years, I was with the crime scene units, the last 9 and a half, 10 years I was a sergeant with the crime scene unit at the sheriff's office.

Q And back in January of 2016, which agency were you working for?

A Spartanburg County Sheriff's Office.

Q And what role did you hold at the sheriff's office at that time?

A I was sergeant within the crime scene unit.

Q Alright. I want to direct your attention specifically to January the 7th of 2016. Were you called to assist with the, with, with a forensic investigation near the Tyger River on Reidville Road?

A I was.

Q Can you tell the members of the jury how you were called out?

A Actually, I was at home. I received a phone call from one of the guys at the crime scene unit basically informed me that we had a dual crime scene. One being at the residence on Reidville Road and I don't recall the number, I think it was [REDACTED] Reidville Road, the other being a vehicle on up Reidville Road near the Tyger River. So I got dressed, left my house, I went by the residence first, made sure that the guys that were there, had everything they needed, were good to go. I left there and moved up to where the vehicle was, it was off the side of Reidville Road on the right-hand side of the road traveling across 290 and then that, I concentrated, my concentration there that night was on the vehicle.

Q Okay. And you used your trip odometer from the residence to the location of the vehicle?

A I did.

Q And do you recall how far that was?

A One point five miles, a mile and a half.

Q You described the vehicle previously and I'm going to show you, I'm going to go ahead and show you all the photos we're going to talk about that have not, that are not admitted into evidence at this point. After I show them to Mr. Grose.

MS. WELLS: May I approach?

THE COURT: Yes, ma'am.

Q Sergeant, I'm going to show you these photos. If you'll, we'll just walk through them while I'm up here with you. Showing you State's 39, do you recognize that?

A I do.

Q Alright. And what, and ---

A It's a, so basically when a crime scene investigator arrives on the scene, one of the first things you want to do is you want to take 360-degree photos of what you're walking upon as you see it at that point. This is a photograph prior to me approaching the vehicle from a distance away showing how it is off the roadway.

Q So you recognize it?

A Yes.

Q Fair and accurate depiction of how it appeared to you on January the 7th, 2016?

A Yes.

Q Showing you State's 40, you recognize that?

A Yes. Moving around, basically taking a picture in front of the car.

MR. GROSE: And Your Honor, we're not going to object to any of those photos ---

MS. WELLS: Oh, okay.

MR. GROSE: --- so if that might move this along.

MS. WELLS: It would, Judge.

THE COURT: Alright.

MS. WELLS: So I'll just have him look at them then as a group.

Q Look at them as a group, tell me if you recognize them all.

A I do.

Q Alright. All fair and accurate depictions of how the vehicle appeared to you?

A Yes.

MS. WELLS: Your Honor, we'd offer State's, it's going to be 39 through, just make sure, through 51, I understand without objection.

THE COURT: Without objection.

MS. WELLS: Alright. We'd ask for permission to publish to the jury?

THE COURT: Yes, ma'am.

(Whereupon photos were submitted as State's Exhibit Numbers 39 through 51 for identification and entered into evidence.)

Q Sergeant, I'm first going to show you what's been admitted into evidence as State's 39. You were just describing that to the members of the jury. Tell us what we're looking at here.

A That's the photograph taken on Reidville Road, taking a photograph of the car as it's off the side of the road by the guardrail.

Q And that's how it appeared to you when you first arrived

on scene?

A Yes.

Q When you arrived on scene, did you have information about this vehicle before you got on scene?

A Other than the fact that it had been involved in a shooting on Reidville Road, no. When I arrived on scene, there was actually a state, South Carolina Highway Patrolman or trooper at the vehicle.

Q Okay. And did you have information if anybody else had been called out to this vehicle prior to your arrival?

A Yes.

Q Alright. Who was that?

A I, I made an inquiry as to if the car was on the side of the road, one, was it running, was it in gear. I was informed that the fire department had also been out there and that a fireman had actually put the car in gear and parked and cut the ignition off, the engine was running, so he turned the ignition off.

Q Okay. And the car was in gear or not?

A Well, it was in drive, he put it in park. So basically, I made contact with our investigators and said I need to know who touched this car, who handled this vehicle.

Q Okay.

A We need to find that out.

Q And were you able to determine who might have touched

that vehicle?

A Yes. It was one of the firemen, I believe his name was Travis Wood.

Q Okay. And was there anybody else who had been in the vehicle prior to Travis Wood's arrival on scene?

A It's my understanding that a gentleman by the name of Lamont actually called in the vehicle being on the side of the road around 10:18 pm that night.

Q I'm going to show you State's 40 now. Sergeant, well, hold on, I got to get reoriented to this system. Alright. What are we looking at in State's 40?

A Basically, I had moved around to the front of the car taking photographs from the front back towards Reidville Road.

Q Okay. So we're looking, where, where you're standing, it looks like you're standing down from the vehicle?

A Yes. It's an incline, a slight incline going down towards the river.

Q Showing you now State's 41. What do we have here?

A Passenger's side, rear door, driver's door, showing the blood on, basically, where the two doors meet, lower portion of the right rear. When I refer to the right and left of a vehicle, it's as if I'm sitting in the car. So if I'm sitting in the car on left side and vice versa. So that would be the right rear passenger door.

Q State's 42. Alright.

A Blood on the right rear door above, exterior right rear door above the doorhandle.

Q So just, this is just an enlargement, I'm showing you State's 41 now ---

A Yes. If you ---

Q --- of this small area kind of to the ---

A Yes.

Q --- lower left of the Jolly Roger, is that fair?

A Yes.

Q Okay. Now I'm going to show you State's 43.

A That is the passenger side front door. Once I opened the door and start taking photographs of the interior of the vehicle.

Q And is that blood on the vehicle?

A That is, that is blood on the vehicle, there's some on the seat, can't really see it on the seat because of dark, the dark colored surface, but, yes, that is blood.

Q Showing you State's 44.

A Center console of the vehicle.

Q What, what if anything did you find in the center console?

A That night I didn't really find anything.

Q Okay. Is that a check stub or a bank statement?

A I think it's a bank statement, I can't really see it from here.

Q Showing you State's 45.

A That would be the, it looks like the rear hatch, once I lifted the rear hatch.

Q And what did you observe when you lifted the rear hatch?

A I guess child car seats; I don't really recall. I think it's child car seats.

Q State's 46.

A From the orientation without seeing the overall, I'm saying that is the driver's door handle. The orientation of the handle.

Q Showing you State's 47.

A That would be the driver's door interior door.

Q And did you take swabs from what you were looking at in State's 47?

A We did, I did, yes.

Q Okay. And are you aware whether or not that returned any DNA evidence?

A This area here?

Q Yes.

A I, yes, there was DNA evidence. I think there was five to six swab samples of what we collected that day, and DNA evidence came back on all of those. Most being that of Stephanie, but there was also an unknown standard that came up or profile, I'm sorry, it wouldn't be a standard, it would be a profile that came up as well off the steering wheel.

Q Okay. I'm going to show you State's 48.

A Left side of the steering wheel.

Q Okay. That's the left ---

A The overall, the steering wheel on the left side. And that would be the right side, that's blood on the steering wheel.

Q Showing you State's 50.

A And that's a close up of the gear shift of the vehicle.

Q Showing you State's, this is actual State's 59, Madame Court reporter, I'm sorry ---

A That is a photograph of the ignition switch to show that when we got to the vehicle, that the keys were in the vehicle.

Q Now we're going to get back to State's 51.

A That would be the driver's side rear passenger door, and that's blood on the handle and right above the handle where the door meets the hatch, I call it hatch area, rear cargo area.

Q Okay. Did you also look for fingerprints on this vehicle?

A We did.

Q Alright. Were any located?

A To my knowledge, only one that was actually identified.

Q There was one identified with fingerprints?

A When it came back through an AFIS hit, and automatic fingerprint identification system hit.

Q Okay. What does that mean?

A So basically, when we go out to a crime scene, and we lift fingerprints. Say your car is broken into and I go out there

and I fingerprint your car. I'm going to get your elimination prints, if those prints are definitely not yours then they go into a system called AFIS, automated fingerprint identification system. If you're arrested in the State of South Carolina, your fingerprints go into this system. And what our AFIS examiners do is is they'll sit down, and they'll work on them, and they'll show any fingerprint, and they'll enter that print into a system for a search. If a match is, is obtained through the automated fingerprint identification system, they'll come back, the system notifies the agency, we have a match, this is who it is, you need to confirm it. Once it's confirmed then we know who's fingerprint, lead fingerprint that was.

Q And whose fingerprint was located on this vehicle?

A It actually belonged to the, the highway patrolman, the trooper that was out there when I arrived.

Q Okay. And do you remember what his name is?

A I do not.

Q His name's not Travis Wood, then?

A No.

Q Alright. That was the firefighter, correct?

A That was the firefighter.

Q Alright. Were you asked to look for a weapon in this vehicle?

A I was. On the night that I was out with the vehicle, most of our investigators know what our protocol was, and basically

our protocol is if a car's on the side of the road, it must be photographed, secured, take it to a location where I can control what happens to that car. They called me and said we need to know if there's a weapon or a gun in the vehicle. So I did a quick search and did not locate one.

Q Okay. And you said that you, you walked through protocol, you took photos of the vehicle on the scene ---

A Right.

Q --- and then you secured the vehicle, and had it moved to a secure location?

A Yes.

Q What is that location?

A The location is actually Spartanburg County Police Maintenance Shop. We had an area out there where they could put it inside. Basically, as soon as the car left, it went to the county shop, I was with it. I went straight to start processing the car. I had crime scene investigators at the house, I was with the car. Once the car is at the shop, then a more thorough search is done, that's when we start collecting evidence, more additional, more detailed photographs are taken. There was no weapon found within the vehicle.

Q Okay. Let's go back and talk about just briefly while you're on the side of the road with this vehicle. Can you describe, and the jury saw what you observed, did you see any evidence that this vehicle had been in an accident?

A No.

Q Was a canine team deployed while you were there?

A They were. I had to wait until the canine team approached the vehicle, attempt to pick up the scent, takes off on a track before I approach. That way my scent is not near the car and the dog doesn't know me.

Q Okay. And did you, are you aware of what the outcome of that was?

A I have no idea.

Q Alright. And at that point, that's when you were able to take photographs?

A Yes. After I got the trooper out of there.

Q So tell me something, if the car, your understanding is, when you testified, your understanding was that that night that the car was in gear and on when Lamont discovered it, is that your understanding?

A Yes.

Q Why did that car stop? Why did it, did it come out of gear? Do you know what happened?

A There's like a berm, well, some people call them berm or whatever, I just, it's an overgrowth. That area if you look closely at the photographs was all weeds, kudzu, and all that. But we got to remember we're in January, it's, it's dead foliage and all that. The car had actually rolled up against a berm or whatever it's called, and it stopped. And basically,

the only thing causing that vehicle to go where it went was it was in idle position and the engine was just pulling it. So when it hit that area, it didn't have enough momentum to push it on through, so it just stopped.

Q And then you said that you previously testified that you had the vehicle transported to your location, that's 290

Broadcast ---

A Yes. 290 ---

Q --- Drive ---

A --- Broadcast, yes, ma'am.

Q --- for further processing. And you said that you took swabs from the vehicle?

A Yes.

Q And those swabs were submitted to someone?

A Well ---

Q Talk, just talk about your process, instead of letting me ---

A Okay. So once ---

Q --- talk about it, you talk about it.

A --- all the photographing and all that's done, I'm sure y'all have seen photographs of number placards, whatever. We use sterile cotton swabs, cotton tipped applicator for cotton swabs, distilled water, and then each swab goes into its own sterile carton or box. You moisten the cotton swab, you collect the blood, you put it in a box. It's then date, time

and collection and all the information that needs to go on the swab. Those are then, once that is done and we can get all the evidence back to the sheriff's office, then we submit everything to evidence. Keep in mind, every swab that we collect is in its own individual evidence bag. We never put two or three in the same bag to keep away from cross contamination. They're submitted into evidence. The protocol at the time was that the lead investigator would get somebody from the crime scene unit and a decision will be made to what swabs to be submitted for analysis. But because of the cost of DNA, to build DNA profiles and all that, they only allow you to submit so many samples at a time. So yes, were swabs sent, yes. I was not involved in which swabs were sent, so I don't know exactly which ones went.

Q Okay. What is CODIS?

A Combined DNA identification system.

Q Okay. And what does that mean?

A So basically, in the State of South Carolina, if you are arrested for certain crimes, felonies, if you're on the sex offender registry list, and certain things, or a Judge orders it, you have to give a DNA standard for the State of South Carolina which goes into this database. And that's combined DNA identification, okay, CODIS. So when we work a, a scene, and we're dealing with, especially, unknown, any time you deal with an unknown DNA standard or profile, so we get back an

unknown, that DNA profile is built, it's going to go into CODIS. It's just like the AFIS machine, there's a database with everybody's profile, these individuals' profiles is in it and a search is done. And it stays in there, and every so often there's a reverse search done. In the event that that unknown DNA would be able to come back and tell the agency, hey, we have a profile, it is this, this individual's profile that was in CODIS, you need to follow up on this, basically. And then there's steps that we have to take, or we'd have to take after that.

Q Okay. And you're aware that, you testified previously that there was an unknown ---

A Yes.

Q --- DNA profile that came out of ---

A Yes.

Q Do you know if that was submitted to CODIS?

A It would automatically be submitted to CODIS.

Q Okay. And are you aware whether a CODIS hit has ever come back?

A No, I'm not.

Q Do you know if it, if anyone else's DNA was submitted to be compared to that unknown profile?

A Well, you would have had Stephanie, Mr. Batchelor, Travis Wood, we got his DNA or DNA standard, anybody pretty much involved with the crime scene itself as far as individual wise,

an attempt would have been made or we would have gotten their DNA profile or DNA standard to send out with it. A direct comparison can be made without having to use CODIS and all that.

Q Right. And it didn't come back as either, any of those three people other than Stephanie's DNA?

A That's correct. You have Stephanie's DNA, and then the unknown profile.

Q Was the trooper's DNA submitted?

A Not that I'm aware of.

Q What about Stephanie's two children, were those, her boy children, were those submitted?

A Yes, she had, they should have been submitted, yes.

Q Do you know that they were submitted?

A I do not.

Q What about Lamont?

A As far as I know, no.

MS. WELLS: May I have a moment, please, Your Honor? Your Honor, those are the questions I have for Sergeant Hogsed at this time.

THE COURT: Counsel?

CROSS EXAMINATION

BY MR. GROSE:

Q I've got State's Exhibit 48 back on the screen. That was the, the steering wheel, right?

A Yes.

Q And if you, and I know that there's kind of a glare on there, but that's looking at what we would call the left side of the steering wheel, right?

A That's correct. Basically, me standing in the open doorway taking a photograph, yes, sir.

Q Alright. And it looks like there's a reddish, brownish colored ---

A That's correct. Almost at a 10 and 2.

Q Alright.

A On both sides.

Q On both sides. That's State's 49 that's on the screen now. And again, that's the other side of the steering wheel?

A That's correct.

Q Alright. And, and you see what is the, the reddish brown, right?

A Yes.

Q Alright. And you refer to it as 10 and 2?

A Almost at 10 and 2.

Q Almost 10 and 2?

A I mean, I, it's close.

Q And 10 and 2 is how they teach you to drive, right?

A Yes.

Q That, that, you know, I'll be honest, I don't

Do it the right way, but 10 and 2, you have your hands

kind of on the top of the steering wheel where you can control it, correct?

A That's correct.

Q Alright. Now, I think that you've already testified that, that this was blood, right?

A It was.

Q Okay. And in fact, I guess you testified you weren't sure of everything that was sent, but you do know that the swabs from each side of the steering wheel were sent?

A Yes.

Q Okay. And what, what is, what is significant about that is is you know, there's times where you don't know how long DNA's been somewhere?

A I cannot time stamp how long a latent fingerprint and or DNA is on it.

Q Right. But when you have blood, sometimes you can piece that with other evidence to figure out when the blood could have gotten put there?

A Yes. We, you can pretty much, we know pretty much from the incident at Reidville Road house ---

Q Right.

A --- you can narrow it down a time frame of when the blood evidence was there.

Q Right. And this blood evidence is, I mean, probably from the crime?

A Yes.

Q Okay. Now, the swab from the left side of the steering wheel was a mixture of DNA, is that right?

A Yes.

Q Okay. And that's where the major contributor was Stephanie?

A I, I don't have the report.

Q Alright. I'm going to show you, first I'm going to show you what looks like a serology report and see where item 9 and, 9 and 10 are?

A These two, yes.

Q Alright. Item 9 is from the left side of the steering wheel, item 10 is from the right side of the steering wheel, is that correct?

A Yes.

Q Okay. And over here, item 9, again, was from the left side of the steering wheel and they determined that that was, was blood, correct?

A Yes.

Q And so then that would be forwarded for more testing, right?

A Correct.

Q And the same thing with item 10 from the other side of the steering wheel, they determined that that was blood as well, is that right?

A Correct.

Q Okay. And then we've got a report that lists that items 9 and 10 were tested, right?

A Correct.

Q And ---

A Yes. Okay. So the, yes.

Q And so the, the item 9 which is the left side of the steering wheel had a mixture of DNA?

A Correct. It is saying that it has a major contributor in what's referred to as a partial contributor.

Q Okay. And the, the major contributor is Stephanie?

A Correct.

Q And they eliminated Jonathan Batchelor as a contributor all together?

A Yes.

Q Okay. And you're aware, it's not in this report, but they did also compare Travis Wood's, right?

A That's my understanding, yes.

Q Okay. And you understand that that also excluded him, it wasn't Travis?

A That's correct.

Q Okay. Alright. And when you were talking about CODIS, that unknown sample of male DNA was going to be entered in that CODIS system?

A Yes. But as I said, it's a partial. So does it, did

it, did it not say that there was a partial male DNA standard or profile?

Q It does. So up here -- no, go ahead.

A This is a partial minor male contributor. So going back to CODIS, if I may?

Q (Nonverbal response).

A I don't know if I'm qualified to testify to this but, the way DNA profile is built, it's built on a ---

COURT REPORTER: I cannot hear you, I'm so sorry.

A So basically, when they build your DNA profile, it's built on what is called an allules, a-l-l-u-l-e-s. And basically, it's, it breaks down, I don't know how many's in, how many there are, there's multiple. In order for them to enter a DNA profile into CODIS, then you have to have so many factors in those, the breakdown to enter it. So I don't, don't know if it was entered because that's a partial profile. Okay. So now, here it does say it was, so they had enough to enter it into CODIS.

MR. GROSE: That's all I have. Thank you, Your Honor.

THE COURT: Thank you. Anything?

MS. WELLS: Yes, sir.

REDIRECT EXAMINATION

BY MS. WELLS:

Q You know the DNA from Stephanie comes from blood, correct?

A Yes.

Q What about the other profile?

A There's no way for me to tell you what the other profile came from because the DNA profile build, I have no idea what it came from, it could be from several things.

Q Like what?

A Touch DNA. All of you are sitting there in your chairs, touching your chairs with your hands and all, every time you do that, you're losing skin cells, so you're leaving your DNA on that chair. Somebody standing in a doorway, coughs, standing there talking to Stephanie, coughs, they could leave their DNA all in that car. I mean, sneeze, anything like that.

Q And you said with blood, you could, you could kind of figure out when the DNA sample was left, correct?

A Right. And that would be at the time of the incident when she was shot.

Q What about with touch?

A I have no idea. There's no way you can time stamp without knowing who that profile belongs to, there's no way I could sit and tell you when that DNA profile was deposited onto that steering wheel.

Q And you, you swabbed the car, you saw the report. On all those swabs that were submitted, driver's steering wheel, gear shift, left side of the car, right side of the car, inside the

car, outside of the car, did Mr. Batchelor's profile ever appear?

A No.

Q There's been no CODIS hit in this case to your knowledge, ever?

A Not to my knowledge, no.

MS. WELLS: Those are all the questions I have, Judge.

THE COURT: Anything at all?

RECROSS EXAMINATION

BY MR. GROSE:

Q Going back to the 10 and 2, you also can't rule out that somebody who had Stephanie's blood on their hands drove that car and left that unknown male sample either, you can't rule that out?

A No.

MR. GROSE: Thank you.

THE COURT: Okay. Officer, you may step down. Please be careful.

MS. WELLS: May he be released from his subpoena?

MR. GROSE: No objection.

THE COURT: Sir, you may stay or go, whichever you choose.

MS. WELLS: Judge, my next witness is just outside the hallway, I may need to step out for one second and let

him know. It's going to be Lindsey McGraw, M-c-G-r-a-w.

MADAM CLERK: Do you swear or affirm that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth so help you God?

MR. MCGRAW: I do.

MADAM CLERK: Thank you.

THE COURT: Sir, if you'll adjust the microphone to suit you, and if you feel comfortable, you may remove your mask.

MR. MCGRAW: Thank you.

THE COURT: Tell us who you are and spell your last name for Madame Court reporter, please.

MR. MCGRAW: My name is Lindsey McGraw, last name's M-c-G-r-a-w.

THE COURT: Thank you. Solicitor?

DIRECT EXAMINATION

BY MS. WELLS:

Q Alright. I'm going to call you mister because you're retired. Mr. McGraw, where are you currently employed?

A I'm currently employed at QS1 as a technician.

Q Okay. What's QS1?

A QS1 is a pharmacy software company, they're based right across the street. It used to be a division of James Smith Corporation.

Q Prior to working for QS1, did you have a career

in law enforcement?

A I did. About 27 years.

Q Alright. Can you tell the members of the jury about who, what agencies you served with and what you did for those agencies?

Q Yes, ma'am. I did 20 years in the air force, the last 9 years of which I was an investigator with the air force office in special investigations. I did primarily surveillance operations, and what we commonly refer to as bug sweeps. After I retired from the air force, I was employed by the solicitor's office here as an investigator investigating child sex crimes. Took a break to do IT work for about four years in Spartanburg County, and then I was employed by the Spartanburg County Sheriff's Office as the computer forensics investigator for about 12 years. Retired from the sheriff's office, took another break doing air conditioning work, realized I didn't like that, and went to work for the Attorney General's Office in Columbia doing computer forensics again for about a year and a half.

Q Okay. And I'm going to ask you just to speak up a little bit so our jurors here on the end can hear you. Just, your voice is kind of low and I want to make sure everybody can hear you.

A Certainly.

Q Okay. I want to direct your attention back to,

let's see, January of 2016. What, what agency were you working for at that time and what did you do?

A At that time I was the computer forensics investigator for the Spartanburg County Sheriff's Office. I did computer forensics, cell phone forensics, GPS forensics, basically anything that's electronics I would recover data from that records to investigation.

Q Okay. So you, so you did forensics, electronic forensics, computers, what else?

A Cell phones, GPS devices, external hard drives, storage cards, just about anything that would store data.

Q Okay. And I want to direct your attention to, I think I said January of that, of 2016. During that time, were you asked to use your forensic skills to download a number of telephones in relation to the investigation before this Court today, State versus Jonathan Batchelor?

A Yes, ma'am. Between January 8th, 2016, and February 1st, 2016, I performed a forensic examination of four cell phones and their associated storage cards and sim cards.

Q Okay. How did you do that?

A Using a device called a UFED, it's a device manufactured by Cellebrite which is an Israeli Company. UFED is universal forensic extraction device. It's a self-contained unit that has a pre-loaded software and comes with a multitude of Cables to attach to primarily cell phones to extract the

data from cell phones in a forensically sound manner.

Q And so what is, as the forensic examiner, what is your role in operating this software?

A My role is to primarily protect the data, extract it, produce a report for the lead investigator, basically, it's commonly referred to as a cell phone dump. It's all data from the cell phone you could possibly get, and the lead investigator makes the determination as to what's relevant.

Q Okay. And in this case, you said during a course of time you were asked to download several cell phones, do you remember how many?

A Four cell phones.

Q Four. I'm going to, after I talk to Mr. Grose, I'm going to show you four discs.

MS. WELLS: Mr. Grose wants to approach, Judge.

(Whereupon, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: Alright.

MR. GROSE: Thank you, your Honor.

THE COURT: Thank you.

Q Alright. Mr. McGraw, I'm going to show you what's been marked for identification purposes as State's Exhibit 60, 61, 62, and 63. Are you able to identify each one of these?

A Yes, ma'am. These are copies of CDs or DVDs that contain the cell phone examination reports I submitted as

evidence in reference to this case with the four cell phones.

Q Okay. And how are you able to identify them?

A I initialed them and dated them on each CD.

Q You had an opportunity to review each one of these CDs prior to Court today?

A Yes, ma'am.

Q And found them to be true and accurate copies of what you actually downloaded from each of these phones during the course of your portion of this investigation?

A Yes, ma'am.

Q Alright.

MS. WELLS: Your Honor, we'd offer State's 60 through 63 at this time.

THE COURT: Any objection?

MR. GROSE: Subject to our conference, no objection.

THE COURT: Without objection, they're in.

MS. WELLS: Thank you, Your Honor.

(Whereupon four CDs were submitted as State's Exhibit Numbers 60, 61, 62, and 63 for identification and entered into evidence.)

Q I want to talk to you about, just briefly about each one of these. I'll leave them up here with you. I'll talk to you first about Exhibit 60, that is a model LGD415 telephone, is that correct?

A Yes, ma'am.

Q What's the cell phone number associated with that phone number?

A That cell phone number was area code 864-706-0857.

Q Okay. And whose phone, who did that phone belong to?

A This phone belonged to Stephanie Batchelor.

Q Alright. Now, looking at Exhibit 61, that was a Samsung Galaxy 5G900T?

A Yes, ma'am.

Q Is that correct? And what was the phone number associated with that cell phone?

A The phone number for this cell phone was area code 864-504-9052 and it belonged to Jonathan Batchelor.

Q And that's, we're talking about Exhibit 61 there, is that right?

A Yes, ma'am.

Q Alright. Next, Exhibit, I believe that's Exhibit 63, that would be the Samsung SMN910B handset?

A No, ma'am. That's Exhibit 62.

Q I'm sorry. That's Exhibit 62?

A Yes, ma'am.

Q And what is the cell phone number associated with that cell phone?

A That cell phone number was area code 864-384-9419, and it belonged to Sydney Allen.

Q And then the final phone that you got, that's Exhibit 63?

A Yes, ma'am.

Q And which phone is that?

A That is the SCH-S738C, the phone number assigned to that was area code 864-918-9414, and this phone also belonged to Jonathan Batchelor.

Q I want to direct your attention to Mr. Batchelor's phone, that would be the phone in Exhibit 61. Do you know how, if Ms. Batchelor's number, that 864-706-0857, how that was saved in Mr. Batchelor's phone?

A Yes, ma'am. That was saved in, under two names. It was saved under Sydney and Crown Vic.

Q Wait a minute. I'm asking you about Stephanie Batchelor, I'm sorry. Stephanie Batchelor ---

A Stephanie's phone ---

Q Yeah.

A --- I'm sorry. Okay. What was the question again, please?

Q How was Stephanie's phone number saved in Mr. Batchelor's phone?

A Oh, Stephanie's was saved as Little ---

COURT REPORTER: I didn't hear that, I'm sorry.

A Little Wifey, I'm sorry.

Q Okay. And then was Sydney Allen's phone number saved in Mr. Batchelor's phone?

A It was.

Q And how was that number saved?

A That phone number was saved with the phone number, it was saved as Sydney and Crown Vic.

Q So it was saved in two different mechanisms?

A Yes, ma'am.

Q I'm going to show you, well, I'm going to talk to Mr. Grose first and then I'm going to show you something. Mr. McGraw, I'm going to show you what's been marked for identification purposes is State's Exhibit 52, do you recognize that?

A Yes, ma'am.

Q What is State's Exhibit 52?

A That is a partial extraction that I pulled from the cell phone for Mr. Batchelor, the SM-G100T during the physical examination call logs.

Q Okay. And you're referring to some notes up here, is that right?

A Yes, ma'am.

Q And does that help refresh your recollection as to what we're talking about here today?

A Yes, ma'am.

Q Alright. Now, I want to, and you've seen this report before?

A Yes, ma'am.

Q Alright. Fair and accurate section of the larger

report that was produced when you downloaded this phone?

A Yes, ma'am. I did verify that; I think it's the original report.

MS. WELLS: Your Honor, I offer State's 52 at this time.

MR. GROSE: No objection.

THE COURT: Without objection, it's in.

(Whereupon a report was submitted at State's Exhibit Number 52 for identification and entered into evidence.)

Q Okay. I'm going to back up for a second and talk about these cell phone reports generally. And we're going to see a portion of them here in just a second. Can you talk about how the report generates? I want to talk a little bit about that.

A Certainly. It's really dependent upon how well the cell phone is supported by the UFED, the extraction device that I use. Depending on the model of the phone and when that phone was produced, certain information is available to me to be extracted. Typical information would be the call logs, sms messages and ms messages, basically anything that's available for the user to see on the phone.

Q What's an sms message?

A Sms message, short message system, it's basically a text message that doesn't have an attachment to it.

Q Okay. So what's an mms message?

A Mms is a multimedia text message, and it would have media attached to it such as video, photographs, that type of thing.

Q So that device, the UFED, the Cellebrite device that we're talking about can capture text messages, both with or without a detachment, it can capture call logs. What about deleted material?

A Yes, ma'am. In certain cases, depending on the type of extraction that's done, deleted information can be recovered from the cell phone.

Q Alright. So when those reports are generated by the Cellebrite can then you later go in and adjust the data from the report?

A Not really. Once the report is made, it is what it is. And that would be tampering with evidence if I went through and adjusted it. I could extract information from the report to adjust for, like, time zone differences, but that would not be in that report, that would be a separate item.

Q Okay.

A So the report itself, once it's generated, it is what it is.

Q So once the phone is dumped, you or someone else could not go in and manipulate that information?

A Well, let me make a distinction ---

Q Or let me, let me, to manipulate the underlying data?

A Right. The UFED actually extracts the data, it is in a container, that container has a, what's called a hash bag, it's basically a digital fingerprint. If any amount of that data in that container is changed at all, that hash bag would not be the same. The report is generated from the data container, so that's, that's where the report comes from.

Q And you've been able to confirm on each of these discs and the reports generated therefrom that that data has not been ---

A Yes, ma'am.

Q --- manipulated? Underlying data?

A Correct.

Q But you did create additional reports from the report, you created a report from a report, is that fair to say?

A Yes, ma'am. Yes. Sometimes an investigator will ask me to create a customized report, it comes from the same container of data, so nothing is changed. For instance, if the investigator wanted cell phone, or excuse me, text message conversations, only between two people, then I could extract that data, basically create a filter so that the, a specialized report from that original data is created with just the text communication between the two individuals.

Q Okay. Alright. Now let's talk about State's 52. What are we, let's talk about where this information in State's 52 came from. It came from a larger report?

A Yes, ma'am. It came from the call log report from

the physical extraction from the G900T cell phone belonging to Jonathan Batchelor.

Q Okay. And what are the, so we've got several columns here, what's the column on the left side, as I'm looking at it?

A The far left is just an arbitrary number basically a sequential number of the entries within that report.

Q And what about the next column over, or let's just move from column going left to right. The next one, I think, 73 says outgoing?

A Right. That's the type of call that was made, it was either an outgoing call or incoming call to this, to this phone.

Q Okay. And the next column over, what are we looking at in those columns?

A That's going to be the number dialed or it's going to be, it'll also show the contact information associated with that number dialed if there's contact information associated with that cell phone number.

Q Okay. And let's come back and talk about that. But let's walk through the columns first. The next column over, it looks like there's a date and time?

A Yes, ma'am.

Q And what are we looking at there?

A That's the date and time stamp for the entry that we're referring to, either the outgoing call or incoming call.

Basically the time, date, and time that the call occurred.

Q Okay.

A And in this case, it's reference to Coordinated Universal Time.

Q Coordinated Universal Time, is that right?

A Yes, ma'am.

Q Okay. What is Coordinated Universal Time?

A Okay. Coordinated Universal Time is the successor to what's commonly referred to as Greenwich Mean Time. It's basically the time at zero degrees longitude, in this case it happens to run through England. So ---

Q I'm sorry, runs through?

A England, yes. And other countries as well, but it's zero degrees longitude and that's, that's a reference point from which all the time zones are derived. So if you're talking about, like, eastern, Eastern Standard Time, in our case it's UTC minus five hours. So to get local time for this, these call entries, you would have to subtract five hours.

Q Okay.

A And then also, you have to make allowances as you cross a date. So if you cross midnight going backwards, you have to adjust the date accordingly.

Q Got it. So in the next column what are we looking at there?

A After the date and time, it's the duration of the call.

Q Okay. And then there's some blank columns?

A (Nonverbal response).

Q Whatever there is not relevant to what we're talking about here, is that correct?

A Right, right.

Q Okay. And then what does logs table mean?

A That's the location from where the data was extracted from the cell phone.

Q So logs table here would mean call log?

A Yes.

Q Alright. And then it looks like on 75, there's a red yes in that lower right-hand corner, what does that mean?

A That means that that entry was either deleted or flagged for deletion.

Q Was that by you?

A No.

Q By who?

A By whoever the owner of the phone was.

Q Okay. So let's, we'll go back through each of these calls. I want to direct you first to what shows as 75 on State's Exhibit 2. Can you talk about, again, let's go from left to right on that column. That's ---

A Certainly.

Q What can you tell about this call based on the day that you're able to download from this telephone?

A Based on this data, this indicates this was a incoming phone call from the phone number, 864-438, excuse me, 864-384-9419, which is a number in this case it was associated with the contact entry, Crown Vic.

Q Okay. And did you know whose number that was?

A Yes, ma'am. That was Sydney Allen's number.

Q Okay. And when did this call come into Mr. Batchelor's phone?

A Again, this came in 2:16 am, Universal Time, so you have to subtract five hours from this, so it's going to be 9:16 pm on the 7th of January 2016.

Q And that call lasted four minutes and 42 seconds?

A Yes, ma'am.

Q And was marked for deletion?

A That's correct.

Q Alright. Let's look at 74, what phone call is that?

A That's is also an incoming phone call coming from 864-706-0857, for the entry, Little Wifey, which I just said she was Stephanie Batchelor. That call came in 2:23 am, which is going to be 9:23 pm on the 7th of January 2016 for a duration of 13 minutes and 39 seconds.

Q And then entry 73?

A That is an outgoing 911 call that would be 10:13 pm on the 7th of January 2016. Duration of that call is 11 minutes and 32 seconds.

Q Now, when you were looking at Mr. Batchelor's phone, and I know there's two of them, so I want to be specific. You were looking at Exhibit 61, that G900T, the 504-9052 number, did the investigators ask you to pull some specific reports out of the larger data stuff that you had?

A Let me check here in my notes, please.

Q If that refreshes your recollection.

A Yes, ma'am. For which phone again, that was?

Q For Exhibit 61, that would be the Galaxy 5G900T.

A I don't see a specialized report for this one.

Q You weren't asked to do a report for his contacts with his wife or with Sydney Allen?

A That would be on the trac phone, SCH738C.

Q I'm going to show you, well, let me talk to Mr. Grose first, but I'm going to show you what's ---

MR. GROSE: Your Honor, may we approach?

THE COURT: Yes, sir.

(Whereupon, a bench conference was held in the Presence of the jury but out of the hearing of the jury.)

MR. GROSE: Alright. Thank you, Your Honor.

THE COURT: Thank you.

A I need to correct my testimony.

Q Sure, go ahead.

A I was looking at the wrong notes here, I did do a customized report on the G900T, I can tell by my notes here.

It was entitled Sydney report. It is an extraction for communication between Jonathan Batchelor ---

Q I'm going to get you to pull that microphone ---

A Oh, I'm sorry.

Q Pull it a little closer.

A Yeah. I was looking at the wrong notes, I had a note here on the, where I validated the reports against what was on the CDs. I did do a customized extraction report for communication between Sydney and Jonathan Batchelor for the SMG900T, which is the State's Exhibit 61.

Q Alright. I'm going to show you what's been marked for identification purposes, it's State's Exhibit 53 and ask if you recognize that?

A Yes, ma'am. This looks like communication between Jonathan Batchelor and Sydney. This is going to be sms communication.

Q Okay. And is this a small portion of the larger report that you just testified to creating at the request of investigators?

A Yes, ma'am. This is a subset of the information that was contained in the original.

Q Okay. You've had an opportunity to review this subset prior to trial?

A I have.

Q Against the larger report that you have?

A Yes, ma'am.

Q Alright. And is the information in this report accurate?

A It is, it's ---

Q Just less data than the full report that you created?

A Correct.

Q Alright.

MS. WELLS: Your Honor, subject to Defense objection, we offer State's 53 at this time.

THE COURT: It's admitted over objection.

(Whereupon a report was submitted as State's Exhibit Number 53 for identification and entered into evidence.)

Q Okay. Now, we've talked about UTC, right?

A Yes, ma'am.

Q Alright. So we don't need to go through that, but I'm going to show you, this is a, it's a multi-page exhibit and I just want for you to just take a look at, let's just look at page 1 of this exhibit and just, just kind of give us a guidepost here for what we're looking at. It looks pretty similar to State's Exhibit 52, is that right?

A Yes, ma'am.

Q So in that far lefthand column is just, you tell us what we're looking at instead of me leading.

A Sure. These are going to be arbitrary entry numbers, basically, just to keep the entries in sequential order. In this case this is going to be chronological. The next block

indicates whether the text message was incoming or outgoing or otherwise categorized. The third column indicates the source or the destination depending on whether it's an incoming or outgoing message. The fourth column indicates the date time stamp, again, this is in, according to Universal Time, so you have to make adjustments. The next column is a, it refers to the, when the text message got on the network and then there's another column that, next column beside it has what looks like a telephone number, that's going to be the sms service center, which is the, the cell phone provider provides a specific center to handle text messages and like that. The next column indicates whether the text message was read or whether it was sent and then the final column from next to the last column indicates the content of the text message.

Q Okay. So on the phone one it said incoming or outgoing, I don't see that on this report, why not?

A It's just a different report.

Q Okay. Alright. And, but, so let's look at that column, I guess it would be three over, let's just look at line, I think that's 1387 at that top?

A I got to find it.

Q Sure, take your time.

A 1387, got it.

Q Alright. So it would be not the 1387 column, not the blank column to the immediate right, but the next

one over, that third column over.

A (Nonverbal response).

Q There's, it looks like on here that there's, like, kind of a beige or yellow, I guess if you're color blind, you're not, arrow on 1387 then if you look at 1388 there's a blue arrow.

A It's gray on mine, but I see it.

Q You see what I'm talking about in exhibit 53?

A Yes, ma'am.

Q Okay. Can you explain the significance of those arrows and what that means?

A Sure. This is in reference to the cell phone that's being examined, entry 1387, you've got like a, like a little parentheses and then the arrow going out, that means that was an outgoing text message. Next entry, 1388, you've got your parentheses on the other side where the arrow's coming in, that means that's an incoming text message.

Q Okay. So this would read, based on time, from bottom to top going to the next ---

A Yes, ma'am.

Q --- block over on the, with the UTC? So that bottom, that 1391 is actually the, I think we might have had some debate about that, that's an earlier text than 38?

A It's the oldest message.

Q The oldest message.

A Yeah.

Q Right. So what's that UTC time in that oldest message in 1391?

A It's 1:19:59 am UTC.

Q So what is that our time?

A I'm looking at it here.

Q I asked you UTC, but now I'm asking you NRT.

A Right. It looks like it's going to be 8:19 pm on the 7th.

Q On the 7th?

A Yes, ma'am.

Q So these messages would have all been on the 7th of January 2016?

A Right. Until they get to a, a point where they go beyond, like, 0500 UTC, that would be the next day, locally.

Q Just, I'm flipping to the last page of State's 53, looking at 1368 ---

A Yes, ma'am.

Q That would have been the most recent in time?

A Being the newest message.

Q Alright. And taking you to 1370, what time would that text message, is that an incoming or outgoing?

A That's an outgoing text message.

Q Okay. And that's as to what phone number?

A To Sydney's phone number, 864-384-9419.

Q Okay. And it has a UTC time of 2:15:48 am?

A Yes, ma'am.

Q What is our Eastern Standard Time?

A That would be 9:15 pm on the 7th.

Q Alright. I'm going to talk to Mr. Grose, but I'm going to show you the next exhibit.

MS. WELLS: Your Honor, may I approach?

(Whereupon, a bench conference was held in the presence Of the jury but out of the hearing of the jury.)

Q Now, Mr. McGraw, I'm going to show you what's been marked for identification purposes, it's State's 54. Do you recognize that?

A Yes, ma'am.

Q And what is State's 54?

A This is an extract of the CD report from the phone belonging to Jonathan Batchelor, the SM-G900T cell phone.

Q Okay. And just like the exhibit we talked about before, this is just a smaller, just a smaller subset of data from that subset of data?

A Yes, ma'am. This is a subset of text message communication.

Q And you've had an opportunity to review it before Court here today?

A I did.

Q And it's accurate based on the original data that you collected from this phone?

A Yes, ma'am. I did apply that against the original report.

MS. WELLS: Understanding there's an objection to this, Your Honor, we'd offer it at this time.

THE COURT: It's admitted over the objection.

MS. WELLS: Thank you. Your Honor, I'm going to publish a portion of this to the jury.

(Whereupon a report was submitted as State's Exhibit Number 54 for identification and entered into evidence.)

Q Okay. I'm going to show just the front page of this exhibit 54 and this is also a multi-page document, is that correct?

A Yes, ma'am.

Q Okay. Now, looking at this first page, again, this is set up similar to what we looked at in State's Exhibit 53?

A It is.

Q Okay. And the same with this, I believe, it's going to work from bottom to top, is that right?

A That's correct.

Q Okay. So let's just, I'm just going to pick, let's just look at the top and let's look at 254. Is that an incoming or outgoing?

A That is an incoming text message.

Q Coming from who?

A Coming from Sydney.

Q Alright. At what time?

A It's going to be 12:37 am.

Q Okay. And that's the UTC time?

A Yes, ma'am.

Q And what happens when you translate that to Eastern Standard, I'm making you do math.

A It's going to be 7:37 pm, and that's going to be on the 8th.

Q Okay. What's that number, that 1206 number on that column?

A That's that sms message center number.

Q Okay. So that's just how the phone company ---

A That's how they get text messages to the phone, through that service center.

Q So it's not like a three-way text or ---

A No, no, no, ma'am.

Q Alright. And just briefly, I'm going to show you message, it's going to be that page 144 through 148. Let's look at 147.

A Okay.

Q Okay. What time was that text, what, okay, 147, is that incoming or outgoing?

A That would be an outgoing text message.

Q And who's it going to?

A It's going to Sydney.

Q And what time?

A 9:57 pm on the 9th, which would be 4:57 pm the same day, on the 9th.

Q 4:57 pm on the 9th?

A Yes, ma'am.

Q I'm going to show you that same page again, sorry. 146, what time, it's almost like two different messages?

A Right.

Q But they go out at different times? 146 and 147.

A Right. That's just a partial rendering of the message and entry 147 shows as unknown. The actual message that was sent was the 146 entry.

Q Okay. And what does it say?

A It says do you want to walk back to see her, I mean, not to make it weird, but I am just asking.

Q Okay. I'm showing you now, look at 142. Incoming or outgoing?

A 142 is going to be an incoming text message.

Q From who?

A From Sydney.

Q Okay. What time?

A It's going to be 9:57 pm according to Universal Time, so it would be 4:57 pm local time on the 9th.

Q Okay. And this is to Mr. Batchelor's phone?

A Yes, ma'am.

Q And what does that message say?

A It says no, I'll cry, being in hospital rooms freaks me out and seeing tube and stuff, no.

Q Showing you 129. Incoming or outgoing?

A 129 is incoming from Sydney.

Q What time?

A That's going to be 5:02 pm local on the 9th.

Q Okay. And what does it say?

A It says I would be, though, it's inappropriate just cause of my relationship with you.

Q 127?

A Okay.

Q Incoming or outgoing?

A That is an outgoing text message to Sydney.

Q What time?

A It's going to be 5:02 pm local on the 9th.

Q And what's it say?

A It says but we are the only ones that know.

Q Okay. Let me show you three more exhibits. Mr. McGraw, I'm first going to show you what's been marked as State's Exhibit 55 and ask if you recognize it?

A Yes, ma'am.

Q What is State's 55?

A This is a subset of images that were extracted from Sydney Allen's phone.

Q Okay. And which number is that?

A That's going to be the SM-910B.

Q Get closer to that microphone.

A The SM910B, and that's going to be the one associated with State's Exhibit 62.

Q Okay. And that's from a larger report that you generated at an investigator's request?

A Yes, ma'am.

Q Alright. You've had an opportunity to review State's 55 before today?

A I did.

Q And is that, does that reflect a smaller portion of the larger set of data that you downloaded from that phone?

A Yes, ma'am.

Q Okay.

MS. WELLS: Your Honor, I'd offer State's 55 at this time, I understand it's subject to objection.

THE COURT: Over the objection.

(Whereupon a report was submitted as State's Exhibit Number 55 for identification and entered into evidence.)

Q I'm now going to show you State's 56 and 57, I'd ask if you recognize those?

A Yes, ma'am.

Q Alright. What are we looking at in State's 56?

A These are larger images of the ones that I extracted from Sydney's cell phone.

Q You had an opportunity to compare those to the pictures actually extracted?

A Yes, ma'am.

Q And they're just larger photos, is that right?

A That's correct.

Q Okay.

MS. WELLS: Your Honor, I'd offer 56 and 57 at this time, I understand that's subject to objection as well.

THE COURT: Over the objection.

MS. WELLS: Thank you, Your Honor.

(Whereupon reports were submitted as State's Exhibit Numbers 56 and 57 for identification and entered into evidence.)

Q Alright. I'm going to show you the front page, this is a three-page exhibit, Mr. McGraw. Looking at State's, the front page of State's 55, I understand that's kind of small. Can you help the jury read, see what that information is. Okay. Again, like we have with the other exhibits, let's start in that lefthand column.

A Okay. Lefthand column is just going to be an arbitrary sequential number for the data that's being referenced here.

Q Okay. And then what are we looking, what's in that next column over?

A The next column is going to be the file name associated with the image that's in the far-right column. It's going to have the, the size, whether the file path from the image was retrieved from the cell phone. The date and time that the

image was written to the cell phone. And then there's, you want to go to the next column?

Q Yeah. Go ahead and do the next column ---

A Okay.

Q --- that would be that middle column, I guess I would call it the middle column.

A The next column contains what I commonly refer to as meta data associated with the image. Images taken with digital phones contain basically information about information, so it can contain information about the date and time that the image was created, the f stop that was used by the camera to create the image. In some cases the GPS coordinates, if that's turned on, the make and model of the camera that was used to create the image and so on.

Q Okay. And let's look at, let's stay with that middle column, can you tell from the data in the middle column when this photo was taken?

A Yes, ma'am. The date and time shown on the creation date was the 17th of January 2016, and it's going to be 15:48:29 is the time, absent any other information, I can't tell if that's UTC or local time, but it would appear to be local time.

Q And for those of us who were not in the military, can you tell us what that means in civilian time?

A Okay. 15, if I can read this right, 16, 16:48, alright, 16:48 is just military time, so you subtract

12 and that's going to be 4:48 pm.

Q Okay. Alright. I'm going to show you page 2. Let's look at, let's just look at that top one right there, 127. When was that created?

A That was created on the 17th of January 2016, and that's going to be 4:48:20 pm.

Q Alright. And then there's more photos in the back of that?

A (Nonverbal response).

Q Okay. And then showing you State's 56. That was the one that was created on January 17th of 2016, 2017, 2016, I'm sorry, is that right?

A It's hard to tell because there's several sequential images that are very similar to each other.

Q But it was created on that date?

A Yes, ma'am, yes.

Q Alright. That would be that January 17th, 2016. I'm going to show you 57, that too was created, 57 also created on that same date, that January 17th?

A Yes, ma'am.

Q Alright.

MS. WELLS: May I have a moment, please, Your Honor? Your Honor, those are the questions I have for Mr. McGraw at this time.

THE COURT: Okay. Thank you. Ladies and gentlemen,

jury, and Mr. Foreman, it's just a little after 12 and as I told you yesterday, we would be breaking sometime between 12 and 12:30. The State is through asking questions of Mr. McGraw at this point in time and Mr. Grose will certainly have some, but I as a lawyer used to hate breaking up somebody's testimony, you know, so I'm not going to let him just go for a couple questions. So we'll break now for lunch. We're going to return at 2 pm, return at 2 pm, be ready to work at 2 pm. And we'll all be here ready to go. Okay. Sir, you may leave the stand and have lunch, refresh yourself, you just can't talk to anyone about your testimony until the testimony is over.

MR. MCGRAW: Yes, sir.

THE COURT: Okay. You may step down, please. Mr. Foreman, ladies, and gentlemen, do not talk about the case, it's certainly not over and we're going to resume the trial at 2 pm. Mr. Foreman.

(Jury exiting.)

THE COURT: We're going to recess until 1:50, then I'm going to give you a chance to put something on the record before a jury comes back in.

MR. GROSE: Fair enough. I understand.

THE COURT: I'll see you at 1:50.

(Off the record)

THE COURT: Okay. We'll be back on the record in the matter of the State versus Jonathan Batchelor. And Defense

counsel, solicitor and I had a sidebar meeting, and I'm going to allow Mr. Grose to put his objection on the record so as to preserve the record. Yes, sir, Mr. Grose?

MR. GROSE: Yes, sir. Are the exhibits up here?

MS. WELLS: (Nonverbal response).

MR. GROSE: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. GROSE: During the witness that's currently on the stand, the solicitor introduced several exhibits, of course, there was the, the four DVDs which are 60, 61, 62, and 63. We did have a sidebar about them where those are the entire phone dumps as they were referring to them. And we did have a conversation that there was a lot of stuff on that that would not go to the jury, would not be something the jury would be looking through, and I didn't object to it because of that caveat. State's 52, I did not object to, State's 52 was the one with the three phone calls from the night of the incident. One was an incoming call from the Crown Vic number, one was an incoming call from Ms. Batchelor, and one was the outgoing call on the 911 tape. And I reference that because the Crown Vic number is a number that is associated with Sydney, that's Sydney's number and there was testimony to that effect. If you recall in the pretrial brief and in our hearings last week, we had objected to anything coming in about the affair under rule,

well, all of 404, but particularly 404(b). We acknowledge, even at that point, that the Court didn't have to look into the sufficiency of the evidence or weigh the evidence that 404(b) requires you to, to determine whether it's clear and convincing. We weren't contesting that; we were just contesting whether or not it was relevant and whether or not the prejudicial effects substantially outweigh any probative value. And after you ruled on that on, on Monday morning, we had to make a decision. And we actually opted to go ahead and address that in opening statement and we did not object to it when they brought in evidence of the relationship yesterday. We did that in part because once we had a ruling on Monday, I think we also had an understanding that, you know, this wasn't going to be a character trial that, that would be, you know, that there would be certain limitations that would be placed on it. We weren't going to turn it into a Family Court hearing, for lack of a better term. So when we got to State's Exhibits 53, 54, 55, 56, 57, 58, and 59, we objected to all of those coming in as, under rule 403, that the prejudicial value or prejudicial effects substantially outweighed any probative value. And we were concerned that this was going too far into the relationship, getting beyond what was relevant. We had already acknowledged that and had not contested it at any point, and you know, I realize that the State is probably going to respond as they did at the sidebar and say that they have a

lot more that they could have used, and that they drew the line. Our contention is is the line was drawn in the wrong place, that it should have been drawn after State's 52, 53 through, I guess, 59 are sort of over the top and has turned this into that, sort of Family Court type of hearing that we were wanting to try to avoid. So that would be our position.

THE COURT: Solicitor?

MS. WELLS: Thank you, Your Honor. The State did say at sidebar that one, that when we initially talked about the records, I said I wasn't going to direct the jury to look into the records any further, that they were the underlying basis for these additional exhibits, and those were admitted without objection. And again, as I did, Mr. Grose is right, you're absolutely going to hear me say we could have put in a lot more and they know that they've got these records and they know what are on those phones. There's a lot, and we very much limited to what we felt like was relevant to this case as to motive, as to state of mind, as to all of those things that I've stated at sidebar. We think that this is relevant, I mean, all evidence is prejudicial, but this is not more prejudicial than probative. It serves to allow the jury to understand what was going on between these parties during the time frame in which this happened. So Judge, we do think this is admissible and for the reasons stated here today.

THE COURT: Yeah, the Court allowed that because

it is relevant evidence and, and there are, I don't know because I haven't listened to all those tapes or viewed whatever is in them, but I understand it would probably be several hours or several pages of documents if you printed them. And both counsel are right, we had this discussion, we're not going to turn this into a Family Court affair. And those discs were put in without objection understanding that, and this Court already considered that in the event a jury wanted to, to see something or hear something from that rather than them have a computer back there, we would bring them back at will if they do that, we'll bring them back to the Courtroom so that, so that we don't turn it into a Family Court affair. So anyway, I know that Defense wants to draw the line at number 52, but 53 through 59 are some pictures, well, it's in the records, so if anybody wants to review that, but they're pictures of them hugging and kissing and professing feelings for each other and they are limited, very limited, there are not that many of them. Not that many documents, not that many pictures, I think it's five pictures, maybe, and three of them, I think, are the same picture or one that was turned sideways on the screen, or it may have been taken three times, I don't know how that works, but nonetheless, they're limited pictures, but it does show affection with each other. So this Court will find that there's relevant evidence and it goes to motive. Again, the State is not required to prove motive, but it may do

so, and if the probative value exceeded the prejudicial effect with certain limitations, and those limits have been met. But you are protected, Mr. Grose, on the record.

MR. GROSE: Thank you, Your Honor.

THE COURT: Thank you. Do I have anything else? I have the jury ready.

MS. WELLS: Judge, I don't know, do you want to put anything on the record about Dr. Thurston, I don't know that we have to, I just bring that up.

THE COURT: I think we'll see what happens first.

MS. WELLS: Okay. That sounds good.

THE COURT: Okay. We're ready for the jury.

(Jury entering.)

THE COURT: Okay. Mr. Foreman, anything from the jury? Everybody's good. Counsel?

MR. GROSE: May it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. GROSE:

Q Mr. McGraw, I put State's Exhibit Number 52 back up on the screen and I think this was from Jonathan's cell phone?

A Yes, sir.

Q And there were three calls. There was the incoming call that's number 75, then there was the incoming call that was from Stephanie Batchelor, is that correct?

A Yes, sir.

Q And that's, I guess, the middle row, is that correct?

A Yes, sir.

Q Alright. And if that call came in at 2:23:36, when you do the calculation for the time, that would have been at ---

A 9:23 pm.

Q That's what I was trying to get to, 9:23 pm. And that lasted for, actually, over 13 minutes, 13 minutes and 39 seconds?

A Yes, sir.

Q Okay. And then there was an outgoing call to 911, right?

A Yes, sir.

Q And it looks like that call went out at 10:13 and 18 seconds?

A Yes, sir.

Q Alright. And that's after we do the calculations for the local time?

A Correct.

Q Alright. And that call lasted for 11 minutes and 32 seconds?

A Yes, sir.

Q Okay.

MR. GROSE: Thank you. That's all the questions I have.

THE COURT: Okay. Anything as to that?

MS. WELLS: No, sir, Your Honor.

THE COURT: Alright. Sir, you may step down, please be careful.

MS. WELLS: Judge, may we approach for one second?

THE COURT: Oh, yeah.

(Whereupon, a bench conference was held in the Presence of the jury but out of hearing of the jury.)

MS. WELLS: Your Honor, may Mr. McGraw be released from his subpoena?

THE COURT: Any objection?

MR. GROSE: Absolutely not.

THE COURT: Sir, you can stay or go, whichever you choose.

MR. MCGRAW: Thank you, sir.

THE COURT: Solicitor?

MS. WELLS: Thank you, Your Honor. Your Honor the State's next witness will be Dustin Tiller.

MR. GROSE: And I just note our prior objections, Your Honor.

THE COURT: Yes, sir.

MADAM CLERK: Do you swear or affirm that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth so help you God?

MR. TILLER: Yes, ma'am.

MADAM CLERK: Thank you.

THE COURT: Sir, you may lower your mask if you're comfortable doing so. And you can adjust the microphone, and I'm going to ask you to speak using your outside voice. She has to record your voice, okay?

MR. TILLER: Yes, sir.

THE COURT: Sir, tell us who you are and spell your last name, please.

MR. TILLER: Dustin Tiller, T-i-l-l-e-r.

THE COURT: Thank you. Solicitor?

MS. WELLS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. WELLS:

Q Mr. Tiller, as we talked about previously, you have kind of have a low voice and a little bit of an accent, so don't be afraid to sit close to the microphone if you need to, okay?

A Yes, ma'am.

Q Alright. Mr. Tiller, where do you currently live?

A Spartanburg County Detention Center.

Q Spartanburg County Detention Center. And is that where you're staying full-time, or do you have another full-time home?

A My full-time home is Yazoo City, Mississippi, federal penitentiary.

Q Alright. You're in the federal penitentiary in Yazoo, Mississippi. What are you there for?

A Drug trafficking.

Q Alright. And did you plead guilty to drug trafficking charges in Federal Court?

A Yes, ma'am.

Q Alright. Mr. Tiller, I'm going to show you what's been marked for identification purposes as State's 64. Take a look at this document and let me know if you recognize it.

A Yes, ma'am.

Q You recognize it?

A Yes, ma'am.

Q How are you able to recognize it?

A That's my plea agreement.

Q Your plea agreement. When you say plea agreement, what do you mean?

A What I pled guilty to to the Court's, I signed it.

Q Okay. So you had a written plea agreement?

A Yes, ma'am.

Q Who was that with?

A The government.

Q The government. And who was the attorney for the government?

A Andy Moorman.

Q Alright. I'm going to have you look at the last two pages of this agreement. Page 14 and 15, do you recognize the signatures at the end of this agreement?

A Yes, ma'am.

Q Okay. Whose signatures are they?

A Mine, my lawyer's, and the prosecutor.

Q And this is a copy, you've had a chance to look at this before, this is a copy of your complete plea agreement with the government?

A Yes, ma'am.

Q Alright.

MS. WELLS: Your Honor, I'd offer State's 64 at this time with permission to publish.

MR. GROSE: No objection.

THE COURT: Without objection. Yes, ma'am, you may publish.

MS. WELLS: Thank you, Your Honor.

(Whereupon a plea agreement was submitted as State's Exhibit Number 64 for identification and entered into evidence.)

Q Alright. Mr. Tiller, I'm going to ask you some questions about this agreement, okay?

A Yes, ma'am.

Q Alright. You said that the agreement was with the US government?

A Yes, ma'am.

Q And that, you said Andy Moorman?

A Yes, ma'am.

Q And he was the attorney for the government?

A Yes, ma'am.

Q So was he a federal prosecutor?

A Yes, ma'am, he's a federal prosecutor.

Q And you said you had an attorney?

A Yes, ma'am.

Q Okay. What's your attorney's name?

A James Bannister.

Q James Bannister, does he go by any other name?

A Jim.

Q Jim. And where is Mr. Bannister from, do yo know?

A Greenville.

Q Alright. And so you were represented by Mr. Bannister when you signed this agreement?

A Yes, ma'am.

Q And did Mr. Bannister go through this agreement with you before you signed it?

A Yes, ma'am.

Q Did you understand every term of this agreement when you signed it?

A Yes, ma'am.

Q Alright. And you signed it, I'm going to flip to page 14, do you, what date did you sign this agreement with the government?

A March 16th, 2017.

Q Alright. Let's go through this agreement now, okay? And I'm, you pled guilty to count one of your indictment?

A Yes, ma'am.

Q Okay. And what was count one for?

A Conspiracy to trafficking meth.

Q To traffic meth?

A Yes, ma'am.

Q And Mr. Tiller, you have a prior record?

A Yes, ma'am.

Q Alright. And you have a prior state drug conviction?

A Yes, ma'am.

Q And you have a prior federal drug conviction?

A Yes, ma'am.

Q And because of those two drug convictions, what did that make your sentence, your mandatory sentence be in federal prison?

A Mandatory life.

Q Okay. Now, and you understood that when you signed this agreement?

A Yes, ma'am.

Q Now, did the government agree, I'm just moving these out of my way for a second. Did the, I'm pointing you specifically to paragraph 3. Did the government or Mr. Mormon agree to dismiss any charges against you?

A Yeah. All of them but one count.

Q When you say all of them but one count, what count was that?

A The conspiracy.

Q Okay. And that count carried?

A Mandatory life.

Q Alright. So, and, but was the government able to use any of that information against you at any point in time?

A At sentencing, yes, ma'am.

Q At your sentencing?

A Yes, ma'am.

Q Okay. Because you agreed to that?

A Yes, ma'am. It's in my plea agreement.

Q Alright. And that's in paragraph 3?

A Yes, ma'am.

Q Okay. And paragraph 3 says provided the Defendant complies with all the terms of this agreement, the United States agrees to move to dismiss the remaining counts of the indictment and any other indictments under this number at sentencing. The Defendant understands the Court may consider these dismissed counts as relevant conduct pursuant to a particular provision of the United States Sentencing Guidelines. Did you and Mr. Bannister go over that before you signed it?

A Yes, ma'am.

Q Okay. And what did that mean to you?

A That on the counts is going to be dropped into one.

Q Okay. And did that have any impact at this point on your sentence?

A No, ma'am.

Q Alright. I'm going to have you look at paragraph, let's look at paragraph 5 together. The Defendant understands matters sentencing is within the sole discretion of the Court and that the sentence applicable to the Defendant's case will be imposed after the Court considers as advised through the United States Sentencing Guidelines. It talks about some other things the Court can consider as well as some statutory information. Did you understand that?

A Yes, ma'am.

Q Okay. So it talks about the Court in this document. Who was the Court to you?

A Judge Childs.

Q Judge Childs. Where is Judge Childs, is she a State Judge?

A No, ma'am. She's a Federal Judge from Greenville.

Q Okay. And she was the sentencing Judge in your case?

A Yes, ma'am.

Q Okay. Now, you also understood, did you understand also under paragraph 5 the Defendant also understands that the Defendant's sentence is not yet determined by the Court, and that any estimate of any probable sentence the Defendant may

have received, the sentencing range the Defendant may have received from the Defendant's attorney, the government, or the United States Probation Office is only a prediction, not a promise, and is not binding on the government. Did you understand that?

A Yes, ma'am.

Q What does that mean?

A That no matter what my lawyer says, or what the prosecutor says they going to recommend, the Judge ain't got to go for what they recommend.

Q Alright. Then it says the Defendant further understands that the government retains the right to inform the Court of any relevant facts to address the Court with respect to the nature of the offense, to respond to questions raised by the Courts, to correct any inaccuracies or inadequacies in the pre-sentence report to respond to any statements made to the Court by or on behalf of the Defendant and to summarize all evidence which would have been presented at trial to establish factual basis for the plea. Did you understand that part?

A Yes, ma'am.

Q What did that mean to you?

A That the Court, the government can use everything that was said or anything in my case to the Judge at my sentencing.

Q Okay. And then there's a section on page 6 that says cooperation and forfeiture. Did you and Mr. Bannister

go through that section?

A Yes, ma'am.

Q I'm going to direct you to paragraph 7. Defendant agrees to be fully truthful and forthright to federal, state, and local law enforcement agencies by providing full, complete, and truthful information about all criminal activities about which the Defendant has knowledge. Did you understand that?

A Yes, ma'am.

Q The Defendant must provide full, complete, and truthful debriefings about these unlawful activities and must fully disclose and provide truthful information to the government including any books, papers, or documents or any other items of evidentiary value to the investigation. Did you understand that?

A Yes, ma'am.

Q The Defendant must also testify fully and truthfully before any grand juries or at any trial or other proceedings when called up to do so by the government subject to prosecution for the penalty of, for perjury for not testifying truthfully. Did you understand that?

A Yes, ma'am.

Q Okay. What does this paragraph mean to you so far, understanding there's a couple more sentences in here?

A That when I went to proffer to the government, that I had let them know everything I know about any

criminal activity and it had to be true.

Q Alright. The failure of the Defendant to be fully truthful and forthright at any stage will at the sole election of the government cause the obligations of the government within this agreement to become null and void. Further, it is expressly agreed that if the obligations of the government within this agreement become null and void, and due to the lack of truthfulness on the part of the Defendant, then you understand a number of following things, is that right?

A Yes, ma'am.

Q Okay. You understand the Defendant will not be allowed to withdraw the plea of guilty to the offenses described above?

A Yes, ma'am.

Q You understood that all charges known to the government may be filed in the appropriate district?

A Yes, ma'am.

Q You understood the government will argue for the maximum sentence for the offense to which the Defendant has pleaded guilty?

A Yes, ma'am.

Q And the government will use any and all information and testimony provided by the Defendant pursuant to this agreement or provide any prior proffer agreement to the prosecution and Defendant on all charges. Did you understand that?

A Yes, ma'am.

Q What did all of that mean to you in paragraph 7? That's a whole lot.

A If I come in when I proffer to the government over anything that I do, if I get caught in any kind of lie, my plea agreement is void and I'm facing mandatory life.

Q Alright. Looking at paragraph 10. Provided the Defendant cooperates pursuant to the provisions of this plea agreement and the cooperation is seen by the government as providing substantial assistance in the investigation or prosecution of another person who has committed an offense, the government agrees to at the Defendant's selection to do one of two things. And you elected one of these things, is that right?

A Yes, ma'am.

Q That was which one?

A The 5k one, downward departure.

Q Okay. You wanted that? State's also filed the information saying that because of your prior convictions you would receive a life sentence?

A That's right, yes, ma'am.

Q So instead of getting rid of the information, you agreed to have, if the government deemed it appropriate, to file a motion for downward departure on your behalf?

A That's right.

Q Is that right? And that's what that sets out in paragraph 1 under number 10?

A Yes, ma'am.

Q That's got a lot of lawyer words in there, but one, move the Court for a downward departure or reduction of sentence pursuant to United States Sentencing Guidelines. You said 5(k)121 and there are a couple of other ones in here, 3553(e) or rule 35(b). The Defendant understands that such a motion by the government is not binding on the Court, and should the Court sentence the Defendant within the guidelines to the maximum penalty provided by law, prescribed by law or refuse to reduce the sentence imposed, the Defendant will have no right to withdraw his plea. Did you understand paragraph 10-1?

A Yes, ma'am.

Q What did that mean? Tell the, talk to, make sure the jury can see, talk to them.

A When I went in and I proffered, they got me an option to either have the 5(k)1 or drop my 851 which is an enhancement and put me to the mandatory life and I took the 5(k)1, but at any time if they find that you're lying or anything, it goes off the table and you back facing mandatory life and use everything against you.

Q And who made the final decision about your sentencing? Did Mr. Moorman make that decision?

A No, ma'am. Judge Childs.

Q Judge Childs made that decision?

A Yes, ma'am.

Q Now, Mr. Tiller, you signed this agreement, you entered a plea before Judge Childs, is that correct?

A Yes, ma'am.

Q Alright. And Judge Childs eventually sentenced you?

A Yes, ma'am.

Q And what sentence did you receive?

A 220 months.

Q How many years is that?

A 18 years.

Q Okay. While you were waiting for your federal sentence, where were you housed?

A Spartanburg County.

Q Where in, where particularly in Spartanburg County?

A Spartanburg County Detention Center.

Q Are you from Spartanburg?

A No, ma'am.

Q Where are you from?

A Anderson.

Q Had you ever been to Spartanburg before coming to the detention center?

A I've been through here, but never around the town or nothing.

Q Okay. Where did you grow up in Anderson?

A Off Flat Rock Road towards Star, Iva.

Q Like, give me a town?

A Star, Iva.

Q Star what?

A Star, Iva.

Q Star, Iva. Okay. Thank you. Sorry, my Andersoneez [sic] was not working there. So I want to direct your attention back then to the fall of 2017 while you were here. Do you know the Defendant in this case, Jonathan Batchelor?

A Yes, ma'am. He's sitting right there.

Q Okay. I don't know if you can reach, can you pull that microphone a little close to you or sit a little closer? Thank you. Close but not that close. There you go. Alright. Do you know the Defendant, Jonathan Batchelor?

A Yes, ma'am.

Q How do you know him?

A From Spartanburg County.

Q From Spartanburg County. Okay. Now, where did you meet him in Spartanburg County?

A The detention center.

Q Okay. Where were you being housed in the detention center?

A Pod 3.

Q Alright. Where was Mr. Batchelor being housed in the detention center?

A Pod 3.

Q And how long were you in there with him, if you know?

A It had to be over a year.

Q Alright. How did you get to know Mr. Batchelor?

A Through a Bible study.

Q And whose Bible study was it?

A Mine.

Q And where did you hold that Bible study?

A Inside the pod.

Q Was Mr. Batchelor the only person to attend that Bible study?

A No, ma'am.

Q Okay. But that's how you got, other folks in the pod attended that as well?

A Yes, ma'am.

Q Okay. Now, I wanted to talk to you about, did, at any point did Mr. Batchelor ask you any questions about his pending charges?

MR. GROSE: Note our prior objections, Your Honor.

THE COURT: Yes, sir, so noted.

Q At any point did Mr. Batchelor ask you about his pending charges?

A Yes, ma'am.

Q Can you tell the members of the jury about the first time you recall that happening?

A Yes, ma'am. The first time he asked me, he asked me what kind of questions they ask him if they go to trial.

Q Okay. And what did you say?

A I told him if you innocent, you ain't got to worry about what kind of questions if you go to trial.

Q And do you recall about when that conversation happened?

A It was towards the end of 2017.

Q Okay. And how long at that point had to you been in the pod with Mr. Batchelor?

A At least 10 months.

Q Now, was he the only person who asked you legal questions?

A No, ma'am.

Q Why was that, if you know?

A I mean, I guess it was because my lawyer used to send me law cases and law books all the time, and I'd just study my case over at night.

Q Okay. So because you were studying law books and looking at things, folks asked you things?

A Yes, ma'am.

Q And after that first question about what do you think they'll ask me at trial, did you try to talk to Mr. Batchelor about his case?

A No, ma'am.

Q Alright. And was that the only conversation that you had with Mr. Batchelor about his case?

A No, ma'am.

Q Okay. Can you tell the members of the jury

what the next recollection you have to Mr. Batchelor talking to you about his case?

A The next time Mr. Batchelor came, he tried to ask me the same question. I told him, I said, man, if you innocent, man, you ain't got to worry about asking no questions like that. And that's when he was, like, man, man, I shot my wife, man. And then he told me, he was like, you're the first one I ever told that to, he said, he was like, man, that's like a weight off me. And then he just started just telling me.

Q So he asked you about just, I'm trying to understand. He asked you about what kind of questions he, you, he thought you thought he might get asked, and then you were, like, I don't know, I mean, if you're innocent, you don't have to worry about it, right?

A Yes, ma'am.

Q And then he just came out and said I shot my wife?

A Yeah.

Q What did he tell, and you said he went on to tell you about it?

A Yes, ma'am.

Q Okay. Can you tell the jury what Mr. Batchelor told you?

A Jon told me, he said he talked to his wife until they turned on, until she turned on the road that he lived on and then he got off the phone and went and hid outside. And he said, whenever she pulled up, she went in, that's when he came

out and he said he shot her. And he said he thought she was dead, and he went to go hide the gun, but when he come back, he said the wife done went to the car, done crawled to the car and he threw her out the car. And he said there was a truck and he made it look like it was a drug deal or a robbery, but there was like white powder all over that truck, he showed me a picture. And he said he put her purse down and make it look like a robbery and then he said that he got into the car and drove it to the bridge and dumped the car and he said when he ran back, that's when he called the police.

Q Okay. Alright. I want to back up and talk about a couple things. You said that he was talking to his wife until she got to?

A The road they lived on.

Q Alright. And he, and then he told you that, what did he tell you next?

A He said whenever she turned on the road, that's when he went outside and posted up [sic] outside.

Q And did he tell you where she parked the vehicle?

A In the driveway.

Q Did he tell you that, anything about what the police thought about that?

A He told me, when the police came, he told me that he could have kept the gun in his back pocket because they didn't even pat search him or nothing, he said they really

ain't do no investigation when they came the first time.

Q So he said that, where, he said she parked and then what happened?

A He said when she parked, that's when she was walking in the house, and he said that's when he came out and that's when he shot her.

Q Did he tell you what he used to shoot her?

A He did at the time; I don't remember what it was.

Q Okay. Did he tell you who the weapon belonged to?

A He said he shot her with her own gun.

Q And then what happened?

A After he shot her?

Q Yes.

A He went to go hide the gun because he thought she was dead, and when he came back, that's when he seen that she was still living.

Q Did he tell you where he hid the gun?

A No, ma'am.

Q Okay. Did he tell you if he ever moved the gun?

A No, ma'am.

Q And what happened when he came back from hiding the gun?

A When he came back from hiding the gun, that's when he seen his wife was still alive.

Q Did he tell you where she was?

A Yeah. At the car.

Q Did he tell you what side of the car?

A The passenger's side.

Q And did he, was he surprised by that?

A I'm pretty sure he was.

Q And then what did he do?

A That's when he went and ditched the car.

Q Did he tell you anything about the clothes that he had on?

A Yeah. He said that after he ditched the car, he went and changed his clothes out and that's when he came back and called the cops.

Q Did he tell you whether or not his children were present?

A Yes, ma'am. He said the children was in the house.

Q Did he tell you whether or not the police had collected any forensic evidence against him?

A What he always say is they ain't got no GSR, no fingerprints, they ain't got nothing on me.

Q And you talked about a white powder on the hood of a vehicle?

A Yes, ma'am.

Q And why was that done?

A He said that he put the white powder on there, it looked like somebody came and rob her, like it was a robbery or something.

Q So what was the white powder supposed to be?

A Your guess is as good as mine.

Q Did he tell you why he did this?

A What he told me, he said, you know, they, his wife had gained a lot of weight and they was arguing a lot. And he working with this girl, some redheaded girl, they was working on the job together, and I guess, they got intimate with each other and he fell in love with another girl.

Q Did he tell you, if you recall, what that girl's name was?

A I don't remember her name. I just remember she was a redhead.

Q And did he tell you anything about her, about the redhead?

A I mean, he told me she had two kids like him, said that her kids, her baby daddy beat on her, and...

Q Did he ever tell you whether or not she had her kids around his kids?

A Yes, ma'am. He said that she used to bring her kids over there and, and she had two kids, he had two kids, the kids used to play, and they do what they do.

Q When you say they do what they do, what do you mean?

A Have sex.

Q Did he tell you whether or not, did he talk to you, let me ask you this. Did he talk to you about a search that was conducted at his home?

A Yeah. The, the, yes, ma'am.

Q Okay. And did he say whether or not Sydney was there, I mean, excuse me, the girlfriend was there?

A Yes, ma'am.

Q Okay. And what did he say about that?

A He told me when the police came back the second time, the girl was in there naked, he told me, he said if they would have just came a few minutes later, they'd have seen something they didn't want to see.

MS. WELLS: May I have a moment, please, Your Honor?

THE COURT: Yes, ma'am.

MS. WELLS: Your Honor, those are the questions that I have for Mr. Tiller at this time.

THE COURT: Thank you. Counsel?

MR. GROSE: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. GROSE:

Q I put State's Exhibit 64 back on the screen, can you see that?

A Oh, yes, sir.

Q Okay. And when the solicitor was asking you questions, you talked about pleading guilty to count one of the indictment?

A Yes, sir.

Q And then that was a conspiracy?

A Yes, sir.

Q Alright. And what it says in here is, you see where it says number 1 and then A?

A Yes, sir.

Q And number 1, it says you agree to plead guilty to count 1 of the indictment now pending, and that's what you've already talked about?

A Yes, sir.

Q Alright. And then A says count 1 charges that beginning at a time unknown to the grand jury, but beginning at least in 2015, within the district of South Carolina and elsewhere, that the Defendant, that means you, and others conspired to possess with intent to distribute 500 grams or more of a mixture of substance containing methamphetamine, is that right?

A Yes, sir.

Q It was a lot more than 500 grams, wasn't it?

A Yes, sir.

Q It was pounds?

A Yes, sir.

Q Now, this drug conviction from this plea agreement, that's not your first rodeo as they say, right?

A No, sir.

Q In fact, you've been convicted for dealing or trafficking in drugs before?

A Yes, sir.

Q Alright. I think you have a prior conviction probably for the same type of stuff in Federal Court?

A Yes, sir.

Q And you also have a conviction, they call it trafficking in State Court, but you have a conviction for trafficking?

A That's right.

Q Alright. Now, I think that when you went to your, your sentencing hearing, part of the presentation was is that you had finished some time in Federal Court, in federal prison and then you got sent back to the South Carolina Department of Corrections?

MS. WELLS: Judge, I'm going to object to getting into anything, specifics about the sentencing hearing. I think we've covered ---

MR. GROSE: It's goes to his motive, Your Honor. And I'm allowed to cross examine on motive.

THE COURT: I'll give him just a little leeway.

MR. GROSE: Thank you, Your Honor.

Q Alright. You went back to the South Carolina Department of Corrections?

A I was never in federal prison. When I got sentenced from the Federal Court, then they took me back to the State Court.

Q Okay. Fair enough. So you go back to the South Carolina Department of Corrections ---

A That's right.

Q --- that's right? And almost immediately within a couple weeks of going back to Department of Corrections, you got contacted by a guy named Perez?

A That's right.

MS. WELLS: Again, I'm going to object to the underlying conduct here.

MR. GROSE: It goes to the motive, Your Honor.

THE COURT: Let's see the attorneys.

(Whereupon, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

Q When we left off, I was asking you about getting a call from a guy named Perez?

A That's right.

Q And Perez is part of a drug cartel, right?

A Yes, sir.

Q And he was connected to your first federal case, wasn't he?

A Yes, sir.

Q And you still owed Perez money?

A Yes, that's right.

Q Alright. And Perez wanted that money back?

A That's right.

Q He threatened your family?

A That's right.

Q And so in order to pay Perez back, what you did was you started another drug operation?

A Yes, sir.

Q And you ran this operation out of South Carolina

Department of Corrections?

A Yes, sir.

Q And you were using some of that money to pay off Perez and the cartel?

A Yes, sir.

Q You were using some of that money to buy gifts for women?

A Yes, sir.

MS. WELLS: I think we've gone outside the, what the State's objected to.

MR. GROSE: I'll move on after this question.

THE COURT: Okay.

Q To buy stuff for women?

A Yes, sir.

Q Okay. And eventually, you got shut down and charged with what led to this plea agreement in State's Exhibit 64, right?

A Yes, sir.

Q Okay. Alright. In fact, I think Judge Childs was the Judge in both of your federal cases?

A That's right.

Q Okay. And so you are familiar with Judge Childs and how she handles things, right?

A I mean, I seen her just a few times, I can't say I'm familiar with her.

Q Well, come on, I mean, you, you learn about the Judges that are assigned to your cases, don't you?

A I mean, I only seen her a few times, I mean, I went and pled guilty, she sentenced me, I mean ---

Q You asked your lawyer about her?

MS. WELLS: I'm going to object to the attorney, client privilege at this point.

MR. GROSE: Hey, he's already waived that, Your Honor, he waived that on direct when they were asking about what she talked, or he ---

MS. WELLS: We need to have a sidebar, please.

(Whereupon, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: Move along.

Q So are you telling these jurors that you didn't do anything to learn about Judge Childs?

A This is what I'm saying. I only seen Judge Childs a few times, of course, people said, you know, Judge Childs is a good Judge. Which she's fair, she's been fair to me in my first sentencing, if that's what you asking, yes.

Q Did you ever indicate that you trusted Judge Childs more than even your own lawyer?

A Yes, ma'am.

Q You did?

A I meant, yes, sir.

Q Alright. And while Judge Childs makes the final decision in your case, I think it's fair to say that there's a process

that you go through before she makes that decision, is that right?

A Yes, sir.

Q Alright. And the, the process, I guess, began long before you entered your guilty plea, right?

A Yes, sir.

Q Because you had to, your lawyer had to negotiate this agreement that's in Exhibit 64?

A Yes, sir.

Q Okay. And after you entered your guilty plea, you had to talk to the federal law enforcement agency, right?

A That's right.

Q And specifically one of the things that they're interested in is you talking to them and telling them everything about this drug conspiracy that you were involved in, right?

A Yes, sir.

Q Okay. And we already talked about the fact that you were running this conspiracy out of the department of corrections, right?

A Yes, sir.

Q Alright. And so that led into you also giving information about other people who you were serving time with in the department of corrections?

MS. WELLS: Judge, I'm going to renew my objection as to going into the, I thought we had covered all that.

MR. GROSE: All of this gets to, they haven't gone through all of his hopes for reward out of this, and this goes directly to that.

THE COURT: I understand. Go ahead.

Q Alright. Alright. So you provided information about other inmates to the department of corrections, right?

A That's right.

Q You also provided information about employees of the department of corrections that were engaged in corruption?

A Yes, sir.

Q Alright. You also provided assistance on another federal case involving somebody named Josh Peace, is that right?

A Yes, sir.

Q Alright. And what all of this goes to is is when you signed this plea agreement, you were facing a mandatory life sentence without the possibility of parole, right?

A That's right.

Q How old are you?

A 35.

Q 35. 35. And you got an 18-year sentence?

A Yes, sir.

Q And so the way it works is, and you, you talked with this, with the prosecutor that you elected to have the government move for a downward departure, right?

A Yes, sir.

Q And what that means is is even though the life sentence that was mandatory, if the government moved for a downward departure, you could get less than life?

A That's right.

Q Alright. And even though you've been sentenced, you still got a chance to cut that 18 years down even more, don't you?

A I mean, if I provide substantial assistance in a case, yes.

Q Okay. In the plea agreement, or in the sentencing hearing, there was discussion about what's called a rule 35 motion, wasn't there?

A Yes, sir.

Q Alright. And you know what rule 35 is, of course?

A A downward departure.

Q It's, it could be another downward departure.

A That's what I said, a downward departure.

Q Okay. And, and what you and your lawyer were doing was putting on the record the fact that you and he may be back with the government in front of Judge Childs for an additional downward departure?

A That's right.

Q Okay. And your involvement in this case was put on the record at your sentencing hearing?

A That's right.

MS. WELLS: Your Honor?

THE COURT: Yes, ma'am?

MS. WELLS: I'm, let's ---

(Whereupon, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: Mr. Foreman, I got a matter to take up with the lawyers, I'm going to ask you take the jury out. Don't talk about the case, it's certainly not at an end.

(Jury exiting.)

THE COURT: Okay. Go ahead, Ms. Wells.

MS. WELLS: Thank you, Your Honor. The State just rises to readdress something we had talked about last Friday in pretrial motions, which is the State's concern about opening the door to the prior conviction of Mr. Batchelor [sic] at his plea in this case. As the Court is aware, and we have gone into the record on the sentencing of Mr. Tiller, and on page, I believe it's page 8, this is the portion in which I've been forced to talk about all this in front of Judge Childs. I said we, this is 17, we immediately turned that information over to Mr. Moore, shortly thereafter, Mr. Batchelor, believing Mr. Batchelor might enter a guilty plea, but not sure, Mr. Batchelor told his attorney based on information Mr. Tiller had provided that he was going to enter a guilty plea and he did enter a guilty plea to attempted murder before Judge Cole on the morning of trial. If he asks the question about whether or not I spoke on his behalf, one, it's making me a witness

because I have to be able to explain whether Mr. Tiller remembers what I said or not, if he does, if I ask him about it, he's going to say yeah because he pled guilty. So we're just opening the door here to getting in the facts that this Defendant agrees he pled guilty. I do not want a mistrial on this case, Judge, and I think that's where we're headed. And the Defendant's going to have to make their own motion for a mistrial because it's going to bring, I don't see how we don't talk about this. So I mean, it just, I just have some very large concerns about going any further with this. One, Mr. Tiller could have testified to it just by asking the question. I mean, Mr. Tiller doesn't know that he's not necessarily supposed to talk about this guilty plea. And it's an incredibly dangerous road to hoe. So I will just ask the Court to instruct Defense counsel not to ask him about it. It's ---

THE COURT: Where are we going with that?

MR. GROSE: Well ---

THE COURT: I don't want to get too close to that.

MR. GROSE: Your Honor, I mean, the, the South Carolina Rules are pretty generous as far as being able to cross examine somebody about motive, particularly somebody that's in the situation that, that Mr. Tiller is in. And the rules are pretty generous about getting into how somebody has been rewarded. And based on that transcript, and he downplayed it this morning, I think he knows that the United States

Attorney was originally going to offer or recommend 240 months and then because of the cooperation in Mr. Batchelor's case, they knocked 20 off of his sentence, off the recommendation. And a, I know Judge Childs makes the final decision, as you do in State Court when you're taking pleas, but also, I've been doing this long enough to know that a, you know, a recommendation from the government carries a lot of weight because Judges know that that doesn't come without the prosecution knowing their case and having reasons for doing what they were doing, and that was put on the record. And so, you know, what, what the State is trying to do here is essentially to have their cake and eat it too because they want to go through this plea agreement and bolster about you got to tell the truth, you got to tell the truth, you got to tell the truth, and then they want to keep me from getting into exactly what he got out of it and what he hopes to keep getting out of it. I think we can do this and since we're bringing this up, Mr. Tiller can be instructed not to go in the fact that Mr. Batchelor entered a plea before. We don't have to get that far, but I have to get far enough so that these jurors know that, you know, this is kind of like how he paid his debt to the drug cartel, he does whatever it takes, you know. And, and I've got to be able to show the jurors this.

THE COURT: Yeah. I understand, but, but here's the way we can get there without going as far as getting into Mr.

Batchelor's prior plea, no matter what it was, okay? But he can be asked about the 240 months, he can be asked about the 220, and you do it like anything else when you have prior sworn statement of some sort. You can say isn't, something along the facts, I'm not giving you the question to ask, but isn't it true that as a result of your cooperation in another case, which that would be another case, didn't you get 20 more months shaved off.

MR. GROSE: He got 20 months shaved off because of the cooperation in this case.

THE COURT: No, sir. He got it, 20 months off of the first case, not this case. That's a prior statement, it'd be a prior sworn statement before the Court. So you can do it in that case without mentioning Mr. Jonathan Batchelor. And the other thing, while we're on it is is that we're not going to get into that Ms. Wells spoke because she did speak as an Assistant United States Attorney, but she was under subpoena to be there, and that's not necessary to get where you want to go. Where you want to go is that he's already received a benefit and he is looking forward to getting another benefit, and he said that this morning, he knows it and I know it, and you know, everybody in this Courtroom knows.

MR. GROSE: But I think I need to get into the fact that he's already received 20 months ---

THE COURT: You can do that.

MR. GROSE: For, for ---

THE COURT: No, sir. You can say in another case.

Mr. GROSE: But that wouldn't be true.

THE COURT: It is true.

MR. GROSE: It's not true.

THE COURT: That case is a separate case from the one that's being tried.

MR. GROSE: No, it's not.

THE COURT: Yes, sir, it is. That's, that is prior sworn testimony, that's the way you can handle that. In a prior sworn statement, it was, he was sworn when he was talking to the Judge and to everybody else. You can ask him if he got a benefit then he can say yes or no.

MR. GROSE: But what the record says is, what Andy Moorman says is I was going to recommend 240 months but based on what he did in the Batchelor case, I'm recommending 220 months. And he got that recommendation for what he did in this case. I may be misunderstanding you, but ---

THE COURT: That's, he can say, he doesn't have to call the name of the case, you can get to the same point that Andy Moorman shaved another 20 months because of his cooperation in a case without naming Mr. Batchelor's case.

MR. GROSE: But that doesn't, that doesn't let me get the information I need to get to this jury because they need to know that he's already received a benefit for his

cooperation with the solicitor's office and Spartanburg Sheriff's Office in this case and he still hopes to get more time cut off in the future.

THE COURT: I understand where you're going with that. I'm telling you that you're already there, you know, without saying the Batchelor case, because I'm not going to have that conviction come in in front of this jury.

MR. GROSE: And I agree, it shouldn't come in, but if, if I don't, if I don't get to ask him those questions then we do not get our confrontation clause right, we don't get that under the State Constitution and the Sixth Amendment.

THE COURT: Well, I respectfully disagree. So we're not going to talk about his case. You can ask him did he get time shaved off, did he get a benefit for cooperation in a case, if you don't want to say another case, you can say a case. And we all understand, and he understands and the jury understands because they hear, hey, he already did something and he got 20 months knocked off.

MR. GROSE: Alright. Just to complete the record ---

THE COURT: Yes, sir.

MR. GROSE: --- the sentencing transcript is already in the record as an exhibit to the pretrial brief, that would be my proffer. I also want to put on the record, one of our other sidebars where they objected to me asking questions about the conversation between Mr. Tiller and Jim Bannister, it was

my impression and belief this morning and again in front of these jurors, that when Ms. Wells went into the fact that Mr. Tiller and Mr. Bannister talked about all these provisions in this plea agreement, that, and then what his understanding was that at that point he had waived attorney, client privilege. Then I asked him questions about conversations during the proffer and he again waived the attorney, client privilege. And my proffer for, because you sustained the State's objection, my proffer is the questions that I asked Mr. Tiller this morning with regards to his conversations with Jim Bannister, my belief that he had already waived the attorney, client privilege, as well as the fact that I argued that it's Mr. Tiller's right to assert and not Ms. Wells' right to assert, and Mr. Tiller didn't assert it.

THE COURT: I understand. Solicitor?

MS. WELLS: Judge, I'll just say what I said at sidebar which is it's inappropriate for us to have discussions about attorney, client conversations in front of this jury. Additionally, Mr. Tiller did not waive his right to attorney, client privilege by the State simply inquiring whether or not he understood after conversations with his lawyer what the plea agreement meant. The State did not attempt to illicit details of his conversations, just merely whether or not they had been had and whether or not he had an understanding subsequent to. So Judge, we don't believe Mr. Tiller has waived his attorney,

client privilege, and we don't think it's appropriate for that testimony to be before the jury.

THE COURT: No, he hasn't waived it. It has to be an affirmative waiver of his right, and I haven't heard him say anything about that. So when we come back, you can talk with him, certainly, about him getting a benefit in a case, you don't have to say another case, you can say a case, that's just like a prior sworn statement and then we're going to leave out about her speaking.

MR. GROSE: And just to, to complete the record, loop it back to our motion that we made before. What we've gotten into this afternoon is exactly why we believe our motion should have been granted. That he not be a witness because we, all the factors that I think that we're supposed to be able to get into, both for Your Honor to make that decision, and then to put in front of these jurors, we're not being able to get into them. And so ---

THE COURT: He has a right to, you have a right to impeach his testimony, that's what you do on cross examination, and you're doing a fine job of it, but you don't have to get into every minute detail.

MS. WELLS: And Judge, I would just say that this is exactly what Breeze, State versus Breeze, which we talked about last Friday anticipated. I mean, I think that he can ask, I mean, you know, I would have said you can ask the question,

just know that then prior conviction's coming in, the rest of this comes in. So I think that the Court has come up with a good middle ground. We're not entitled to go into every single piece of this ---

THE COURT: No.

MS. WELLS: --- to be able to impeach.

THE COURT: I don't want that.

MR. GROSE: And this is the problem that the State's making, they choose who they call and who they don't call and, you know, once they made the decision to call him, that, that puts certain things into play.

MS. WELLS: It doesn't give the Defense free rein to do anything they want to with any witness just because the State elects to call the witness.

THE COURT: Okay. Well, we know what the rules are.

MS. WELLS: Yes, sir.

THE COURT: We going to take a break while we got everybody out and refresh ourselves and you need to be back at about 10 til. Sir, if, the officer will tell you what to do.

(Off the record.)

THE COURT: All is good, Mr. Foreman?

MR. FOREMAN: Yes, sir.

THE COURT: Very good. Yes, sir?

MR. GROSE: May it please the Court, Your Honor?

THE COURT: Yes, sir.

CROSS EXAMINATION (cont'd)

BY MR. GROSE:

Q There was a point in your federal case where you were expecting the United States Attorney to recommend 240 months, right?

A Yes, but it was never no 240 months. I was facing mandatory life and my lawyer said that they were going to file a downward departure to the Court. When my lawyer came and talked to me, he said they going to recommend 220, that's what my lawyer said.

Q I'm going to hand you a copy of your, the sentencing hearing in Federal Court. Do you recognize that as a transcript of it?

A Yes, sir.

Q Alright. With those cuffs on, I don't know that you can turn the pages, let me do that for you. I'm going to turn to page 15, you see at line 10? Can you read that? Just read it to yourself. And you would agree with me that says the government was originally considering offering, or recommending 240 months, but then they changed it to 220?

A That's right.

Q Alright. And you were there when that was said in Court?

A That's right.

Q And you got that 20-month reduction and the recommendation because of your assistance in a case?

A Yes, sir.

Q Okay. Alright. And now, I think we've already gone over this before, but you're hoping to go back on another downward departure?

A Yes, sir.

Q And part of that is is that you're, that Ms. Wells and her office will put in a good word for you with the US Attorney?

A That's right.

Q And you're hoping that the US Attorney will then put in the motion?

A That's right.

Q And you're hoping that you, you and your attorney will get a chance to go back in front of Judge Childs and argue why more time could be cut off your sentence?

A That's right.

Q And so while you're serving 18 years today instead of mandatory life, you're hoping that you won't even serve that full 18 years?

A Yes, sir.

Q Okay. When they were asking you about the, the case, about your cooperation in this case, you mentioned something about clothing and you mentioned something about a gun, right?

A Clothing and a gun?

Q Yes, sir.

A You talking about in this case right here?

Q Yeah.

A I mean ---

Q You don't remember that?

A (Nonverbal response).

Q Okay. They didn't recover any additional physical evidence because of any assistance that you gave, did they?

A No, sir.

Q Okay. I think you testified earlier that you were in the same pod at the jail as Jonathan Batchelor?

A Yes, sir.

Q And you were aware that Mr. Batchelor had a folder where he kept some of his Court papers?

A Yes, sir.

Q And when you were interviewed by law enforcement, and I think Ms. Wells, you told them that you were aware of where Mr. Batchelor had a folder where he kept legal papers?

A I mean, I, I mean, it's in his room.

Q Alright. But you were aware of it?

A (Nonverbal response).

Q But my question is you also told them that you were aware of that?

A Yes, sir.

MR. GROSE: Thank you. That's all I have.

THE COURT: Okay.

MS. WELLS: Briefly, Judge.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MS. WELLS:

Q Okay. Couple things, Mr. Tiller, I want to go over with you. Today, here in this Courtroom, is this the first time you and I have talked?

A No, ma'am.

Q We've met together how many times?

A Twice.

MR. GROSE: Your Honor, may we approach?

THE COURT: Yes, sir.

(Whereupon, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

MR. GROSE: Thank you, Your Honor.

THE COURT: Thank you.

Q This is not the first time we've talked, Mr. Tiller?

A No, ma'am.

Q And you said how many times before?

A Twice.

Q Have I ever met with you alone?

A No, ma'am.

Q Alright. When I met with you previously, has there been a law enforcement representative present both times?

A Yes, ma'am.

Q And on one occasion, was your attorney, Mr. Bannister, present?

A Yes, ma'am.

Q At any point, at any time, in any conversation that you and I have had, have I ever made you any promises?

A No, ma'am.

Q Have you asked me for anything?

A No, ma'am.

Q Have I offered you anything?

A No, ma'am.

Q Mr. Grose asked you about whether or not the Defendant talked to you about clothing. Did he talk to you about what he did with the clothes?

A I mean, he said that when he came back, he changed clothes and hid the clothes when he came back to the house and called the police.

Q And Mr. Grose asked you about a gun in this case. Did the Defendant talk to you about the gun?

A I mean, he said he, he hid the gun.

Q Okay. Did you ask him any follow up questions about that?

A I just let him talk.

Q Okay. Mr. Grose also asked you about the Defendant having legal papers in the pod, and you said you were aware of that?

A That's right.

Q In fact, you had given that information in a statement,

you were aware of that?

A That's right.

Q Did you have access to Mr. Batchelor's cell?

A We were in two different cells.

Q And what, did you look at his paperwork without his permission?

A No, ma'am.

Q You said he had shown you a picture?

A Yes, ma'am.

Q Outside of anything that he showed you, did you have an opportunity to look at any of his paperwork that he had?

A No, ma'am.

Q Would you let anybody look at your paperwork?

A No, ma'am.

MS. WELLS: One moment, please. Your Honor, those are all the questions I have.

THE COURT: Okay. Anything?

RECROSS EXAMINATION

BY MR. GROSE:

Q So you're saying that you had all these conversations with him, and you never asked any questions?

A The man just said that, he tell, he was just telling, this is ---

Q Alright. You got to slow down; I can't understand you.

A The man, yeah, I asked him one time, I asked him, I said man, what was you thinking.

Q Okay. So you did ask questions. I mean, somebody doesn't just sit down and just spill their, their beans to you. I mean, you, that just doesn't happen, does it?

MS. WELLS: Objection. I don't know if that's a question.

MR. GROSE: That was a question.

THE COURT: He asked a question.

A What was the question?

Q Well, you've been making a point when they're asking you questions to say that you didn't ask Mr. Batchelor any questions. Assuming these conversations ever took place ---

MS. WELLS: Objection.

Q --- it couldn't take place without you asking questions, could it?

A No. As far as me asking questions about his case, I was, like, I was never, like, oh, this, this, no. But whenever he told me about, I went, I said, man, what was you thinking.

Q Right. Well, and getting back to, you actually met with her three times to talk about this case. You met with her back ---

MS. WELLS: Objection.

Q You met ---

THE COURT: Let me get the question first. Go ahead.

MS. WELLS: He can ask the question, but...

MR. GROSE: Thank you.

Q You met with her twice in the detention center at Spartanburg, right?

A That's right.

Q Once a few years ago, right?

A That's the first time.

Q Once last week?

A That's the second time.

Q And then you met with her again today with Lieutenant Gary right before you got on the witness stand?

A Yes, sir.

MR. GROSE: That's all I have.

THE COURT: Okay.

MS. WELLS: Just, just one, I know normally you don't, but I just want to clarify something.

FURTHER DIRECT EXAMINATION

BY MS. WELLS:

Q When I met with you just before Court, it was not to interview you for this, correct?

A That's correct.

Q Alright.

A That's why I said two times.

Q Okay.

MS. WELLS: That's it.

MR. GROSE: Nothing further.

THE COURT: Alright. Sir, you may step down, please be careful.

MS. WELLS: May we approach?

THE COURT: (Nonverbal response).

(Whereupon, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: Mr. Foreman, ladies, and gentlemen, we're going to stop at this point for today, and the reason, I don't mind telling you at all, the next witness is anticipated to be a medical doctor and he is unavailable right now. In fact, it's been a question all afternoon as to whether or not the doctor would be with us this afternoon or first thing in the morning. And we are now informed that he cannot get here from the hospital or wherever he is at this point in time. So we're going to have to stop this afternoon. But we will anticipate him being here in the morning, and he will be here early so that we can get started right at 9 am tomorrow morning. I'm going to let you go a little bit early today. Don't talk about the case, don't do any research, it is certainly not at an end. And we'll expect to hear from a medical doctor in the morning. Mr. Foreman, if you'd take your jury out. And the Braves play at 8, 8:09.

(Jury exiting.)

THE COURT: Yes, sir?

MR. GROSE: I think, not the scheduling sidebar but the sidebar before that, during redirect when Ms. Wells went into the times that she had met with him for the purpose of showing that she hasn't made him any promises. I wanted to be able to go into the fact, I thought that that opened the door back up to go into the fact that she appeared at his sentencing hearing and spoke on his behalf. I think that that's information that the jurors are entitled to know that directly contradicts the image that they're trying to paint of Mr. Tiller in this Courtroom. And you indicated that you were standing by your prior ruling, and we indicated that we would put this on the record later. I also want the, I think the record to reflect, I think we all have the understanding here when Mr. Tiller testified, I referenced my objections, and when they first brought up about Mr. Batchelor's case, I referenced the prior objections. I did not object to the plea agreement going in, but, and I don't want that to be misconstrued as any kind of waiver on that. I think we all understood that I was maintaining the objections to him being a witness at all.

THE COURT: Yes, sir. Alright. Anything further on the record for this afternoon?

MS. WELLS: Not from the State.

THE COURT: Okay. We'll be back in the morning at 9. I understand the good doctor is going to be asked to be here at 8:45. And keep me posted later about whether or not he is

available, especially if we need to do something. And by the way, my law clerk took the time to look into the order, so the Supreme Court order does allow the Webex to be used in an extreme, for a witness in any criminal case in an extreme circumstance. And Sarah's got the case pulled up, it's Maryland versus Craig, 497US836, a 1990 case, it says with the consent of the parties, the Judge may allow the witness to testify using its ERCT, electronic consent to be placed on the record. In a criminal case, the Judge must question the Defendant to ensure his consent. Without the consent of the parties, a Judge may allow a witness to testify using ERCT if the Judge finds a sufficient justification to do so in a criminal case. This justification must rise to a level to satisfy the standard established by Maryland versus Craig. So either way, we ought to be able to get, hopefully, he will be here in person. Anything further?

MS. WELLS: No, sir.

THE COURT: Okay. See everybody in the morning.
(Whereupon, the trial will resume the next morning at
9:00 a.m.)

November 3, 2021

THE COURT: Everybody ready?

MS. WELLS: State's ready, Your Honor

THE COURT: Alright. We'll have the jury.

(Jury entering.)

THE COURT: Good morning ladies and gentlemen. Mr. Foreman, everybody good? Thumbs up. Solicitor?

MS. WELLS: Thank you, Your Honor. May it please the Court? The State would call Dr. Brian Thurston to the stand, please.

MADAM CLERK: Do you swear or affirm the testimony you give will be the truth, the whole truth, and nothing but the truth so help you God?

DR. THURSTON: I do.

THE COURT: Good morning, doctor. If you would, you may, yes, there you go. And if you'll adjust that microphone to suit yourself, please. We're going to ask that you speak louder than usual and tell us who you are and spell your last name for my Court reporter.

DR. THURSTON: Yes, Your Honor. My name is Dr. Brian Thurston, T-h-u-r-s-t-o-n. I am a trauma surgeon and the trauma medical director at the Spartanburg Regional Medical Center.

THE COURT: Thank you. Solicitor?

MS. WELLS: Thank you, Your Honor. You took my first question from me.

DIRECT EXAMINATION

BY MS. WELLS:

Q How long have you been a trauma care surgeon at Spartanburg Regional?

A In some capacity since 2008, and in my current capacity since 2014.

Q Okay. And when you say your current capacity, what do you mean?

A So that would be a full-time attending trauma surgeon, board certified in both surgery and critical care, and the trauma medical director.

Q Alright. Can you tell the members of the jury a little bit about your educational background?

A Sure. I received a Bachelor's Degree from the University of Texas. I received a Doctor of Medicine Degree from Texas Tech University Health Sciences Center. I completed an internship at Spartanburg Regional Medical Center, and then a general surgery residency, also at Spartanburg Regional Medical Center. I then did an additional fellowship in trauma and surgical critical care at UT Southwestern Parkland Medical Center in Dallas, Texas.

Q And then you returned, at some point you returned back to Spartanburg?

A Yep. They liked me enough to let me come back, so I have been full time employed by Spartanburg Regional Medical Center since 2013.

Q And can you tell the members of the jury, you said you were board certified. What's your board certification or board certifications in?

A Sure. I have two board certifications, both by the American Board of Surgery, one in general surgery and one in surgical critical care.

Q And can you tell the members of the jury a little bit about your day-to-day work at Spartanburg Regional.

A Sure. So Spartanburg Regional is a certified level 1 trauma center, so we admit between 2 and 3,000 trauma patients a year. Those are going to be everything from car wrecks, falls from standing to what we refer to as penetrating trauma which are shootings and stabbings. We also do the emergency surgery, so people who have appendectomies, gall bladder disease. And then we run the surgical intensive care unit which is commonly thought of as the life support machines in the ICU.

MS. WELLS: Your Honor, at this time I would offer Dr. Thurston as an expert in trauma and critical care.

THE COURT: Any questions?

MR. GROSE: No objection.

THE COURT: He is so qualified. Ladies and gentlemen of the jury, normally a person cannot give opinion testimony. Witnesses must testify as to what they see, hear, or sense by smell or something of that nature. An exception exists when someone is qualified due to their education, experience, knowledge skill, or training. This doctor, this witness is testifying as a witness as an expert in trauma and

critical care.

Q And Your Honor, I can ask. How many times, you've been qualified as an expert previously?

A Yes, ma'am.

Q And how many times?

A Around 10.

Q Okay. As an expert in trauma critical care?

A Yes, ma'am.

MS. WELLS: Sorry, Judge. I neglected to ask that question.

Q Dr. Thurston, I'm going to direct your attention back to January 2016. You were, obviously, based on your previous testimony, employed at Spartanburg Regional at that time?

A Yes, ma'am.

Q Directing your attention specifically to January 7th, did you have reason to have interaction with Stephanie Batchelor on that date?

A Yes. I believe I was the trauma surgeon on call at the time of her admission.

Q And can you tell the members of the jury what, what your initial contact with her was?

A So she would have been brought in as a trauma activation by EMS, so they call in from the field and the notification, I don't have the exact wording, but the page would have notified us that they had a female who had been the victim of a gunshot

wound. She then arrived into our trauma bay and we would have seen her immediately upon her arrival and, January of 2016. So I did go back and review her medical records, but it was a female victim who had sustained multiple gunshot wounds, the most serious of which was to her face and head.

Q Okay. And second, well, and just, did she have any other injuries, did she have any fractures?

A She appeared to have sustained wounds to her extremity, so, on her hand area as well as face. And so we assumed that that was a fracture of her hand which was also later confirmed.

Q Okay. And she had fractures to her face as well?

A Certainly, yes.

Q Was she given pain medication upon admission?

A I would have to review the record; I believe it would be our normal practice to administer pain control following the rule out of life-threatening injuries that might otherwise preclude that.

Q Okay. And when you have someone with a gunshot wound to the head and face like Stephanie did, what is the, do you have a, do you have a primary concern there?

A So gunshot wounds to the head are life threatening and so our first concern is prevent someone from dying. And the way that you die from gunshot wounds is really, particularly to the, the face and the head is really one of two things. You can immediately bleed to death, so that was our first concern,

or you can have brain swelling which can then subsequently cause you to stop breathing and die.

Q Okay. What is a GCS?

A So a GCS is the Glasgow Coma Scale. It is used to assess people who have brain injuries. It is a scale that goes from 3 to 15, 15 being the highest. All of us in this room would qualify as a 15. Three being the lowest, you ironically cannot have a zero on the scale, three being the worst.

Q Alright. And Ms. Batchelor in this case came in as a Glasgow Coma Scale as 14?

A Yes, ma'am.

Q And what is decompensation?

A So decompensation means your number on the scale decreases. So we think of it as an altered level of consciousness, a layman's term would be, goes into a coma, passes out, becomes comatose. Those are all words that get thrown around as interchangeable. The medical term would be decompensate which means that you go from a higher number to a lower number on the scale.

Q Alright. And do you recall, when Ms. Batchelor came into the hospital, she was conscious?

A She was conscious. Again, she, she was not responding as briskly as we would like to see her. In other words, when we ask patients to follow commands, we would like to see immediate responsiveness, absolute, like, perfect clarity and speech.

You lose points for things like slow responsiveness or slurred speech or anything like that. So she would have gotten a 14 on that, but still awake, alert, able to tell us her name and a brief description of what had happened.

Q Okay. And during that, this, she came in during the late evening hours of January 7th?

A I believe so, yes, ma'am.

Q And then on January 8th, she decompensated to an 8 on the Glasgow Coma Scale. What is the significance of that?

A So decompensation by definition implies ongoing brain trauma, and the significance of her decompensation, we were concerned for both bleeding and brain swelling. She decompensated, when you go from a 14 to an 8, that becomes a life-threatening event. She would have been placed on a life support machine and immediately discussed for life saving brain surgery.

Q And in fact, was brain surgery performed on Ms. Batchelor?

A Yes, ma'am, it was.

Q And at that point, based, your opinion, what was the likelihood of her surviving her injuries at this point, we're talking about here, I guess, the early morning into the morning hours of the January the 8th?

A We were not optimistic about her chances at that point, given the degree of decompensation and the speed at which it occurred. Again, we were being aggressive, she was young, we

wanted to intervene quickly to give her the best chances, but we were fearful that she would die as a result of these injuries.

Q Okay. And you testified previously that this is a case where you would discuss brain surgery, and did that happen in this case?

A Yes. So neurosurgery, I believe, was Dr. Esce was called in and did in fact agree that she needed lifesaving brain surgery if she was to have any chance of survival.

Q And we, so, what is that lifesaving brain surgery that Dr. Esce performed?

A As crude as it sounds, we, we take a piece of the skull off to allow the brain to swell further and to stop any bleeding and evacuate any blood. Brain injuries are unique in the sense that there is both the direct trauma to the brain that is caused by wherever it is struck or in this case, a foreign body or bullet, something would go through it. And then much like, if anyone has ever sustained a bruise or twisted their knee or their ankle, and then over the next several days, that swells, and you notice that. Your brain, when it is injured also swells, and that swelling in many cases is actually the life-threatening portion of a brain injury as opposed to the immediate trauma. And so the surgery is we remove a piece of the patient's skull to allow the brain to have more room to swell and to control the swelling in an area

that does not kill them. If the brain swells upward, we can deal with that, if the brain swells downward, it will kill a patient.

Q And obviously, she was admitted to Spartanburg Regional for her care?

A Yes, ma'am. She was admitted to the neurosurgical trauma intensive care unit.

Q And you were the doctor who supervised her critical care subsequent to that admission, is that correct?

A Yes, ma'am.

Q So some of the diagnoses in this case, acute hypoxic respiratory failure, what does that mean?

A So that means that she was struggling to breath and was placed on a life support machine and her oxygen saturations were low.

Q And what is a life support machine entail, I feel like we probably all know a little bit more about that in 2021 than we did in 2016, but what does that actually entail from a medical standpoint?

A So in this case, a breathing tube would be placed through the patient's mouth for a period of one to two weeks. If they need something longer than that, we actually directly place it into the windpipe. And then a machine supplies air and oxygen to the patient at whatever settings we deem necessary for the patient.

So we take over the work of breathing for the patient.

Q Alright. Also, she was diagnosed with multiple gunshot wounds to the head?

A Yes, ma'am.

Q Was there anything that stood out to you about those gunshot wounds?

A The wounds were in two, at least two separate locations which was consistent that this had been something that was done to her and would have been very inconsistent with a self-inflicted wound. The wounds, if I recall, also I think there was, they appeared to have the pattern of somebody who was sort of surprised by these wounds having been occurred. You can at least imagine a scenario whereby you can get shot in the hand and the face by somebody doing this, again, I wasn't at the scene, but having taken care of tens of thousands of trauma patients in my career at this point, that, that seems to be a consistent scenario.

Q And did the multiple gunshot wounds initially, was that helpful to her prognosis?

A So the fact that she had fractures of her face and her skull probably did help her survive. If you have, because if you think about it, when the bones are broken, the brain can push out a little more, it can push out upwards and it can push forwards through the face, as crude as that sounds. That probably contributed to her being able to survive these wounds.

Q Was it surprising to you that she was conscious and able to speak when she came into the ER, was that, is that expected, unexpected?

A It's hard to say. Every gunshot wound can be a little different. You know, I think if you were just to ask my opinion on a random patient, you know, based on everybody I've seen, gunshot wounds to the head, more often than not they are not talking to us, but that is certainly something that happens enough that it wouldn't have struck us as completely abnormal.

Q Okay. And those gunshot wounds to the head, you testified previously were life threatening?

A Absolutely life threatening.

Q She also had, in the, as a diagnosis, a depressed skull fracture. What can cause a depressed skull fracture?

A In this case, so a depressed skull fracture means simply that the bone is broken and instead of sticking out, it is pressed into the brain. You can fall and have that happen, again, you can imagine hitting your head and it pushing it in. The more likely explanation in her case would be as the bullet went in, it pushed a piece of the bone in with it.

Q Okay. Could it also be from blunt force trauma?

A It could be, yes, ma'am.

Q As to the gunshot wound to the face, did that result in eventually Stephanie having to have to have some reconstructive surgery once she, well, let's talk

about that, to repair some of that damage?

A Yes, ma'am. She would have had by definition what we call open fractures to the face which means there's now a communication between the bones that live in our face and in her case, both the outside world, the air because the skin has been broken by the bullet and communicating with her cranial space which is the area where the brain is. So those would need repair. The priorities in taking care of brain injuries are you have to save the patient's life first, and then you have to go back to restoring both normal function and cosmetics or appearance as best you can. So we follow those principles, but she absolutely would have required that.

Q And in fact, in this case she had to have reconstruction to her auditory canal because of the damage to her ear, is that correct?

A Yes, ma'am.

Q She also had a gunshot wound to her chest, I believe the right upper chest, is that your recollection?

A Yes, ma'am, that is my recollection.

Q Was that life threatening as well?

A Absolutely can be. You know, once a bullet enters a body, we have no control over where it goes. And you can imagine, there's a lung that lives here, there are main blood vessels, there are major nerves. You know, any time that a bullet enters your face, your head, your chest area, your

abdomen, it has the potential to kill you.

Q And she was admitted to, and I'm probably, I'm going to say ICU, but you have a very specific name for it, it is, you say ---

A Sure. Yeah. It's the neurosurgical trauma ICU, intensive care unit is, is fine.

Q Okay. Alright. And she was admitted to the ICU on life support, and she was in there for approximately a week, is that correct?

A One point of clarification, she was admitted on, for observation and then once she decompensated, was placed on a life support machine. Making sure we're following that, but yes, I believe she was in the intensive care unit for roughly a week which would have been an expected period of time. We would have prognosticated a week to two weeks of life support level care for someone with an injury like that.

Q Did she have to have a tracheotomy?

A I believe she did, but I would have to double check in the records to be sure and the timing of that.

Q If you had a tracheotomy, why would you need a tracheotomy in a case like this?

A A tracheotomy would be necessary because someone is not ready to fully breath on their own off of a life support machine. And if we leave a tube through the mouth too long, it causes, a; it's extremely uncomfortable for a patient and so it

makes us keep them sedated longer than we would like, and b; it can cause erosions to the mouth, the tongue, those types of things, and we try to take that out.

Q And what is a peg tube?

A A peg tube is a feeding tube that goes directly into the stomach so that we can provide nutrition when a patient is unable to eat. It is, a short-term option is to place a tube through the nose to go into the stomach, and that's uncomfortable, and in her case, also problematic because she has these facial fractures and other things. So it can be done for a temporary period of time. But it's a direct feeding tube placed in the stomach.

Q And so, how, nutrition is taken in, I know there's different types of tubes ---

A Sure.

Q --- you can have a button placed on your stomach, which one is the, which one is the peg, is the peg the one that goes through the nose?

A No. The peg, it directly comes out of the stomach, but it's a little longer.

Q Okay.

A Sort of about this long or so and the patient can connect it to a feeding pump or directly pour nutritional supplements in it.

Q And she was released from Regional at the beginning

of February, on or about February 2nd of 2016?

A I believe that's correct.

Q Can you talk to the members of the jury about your observations as to her recovery in this case? Were you surprised to see any progress she made?

A I was very surprised at the degree of progress that she made. As I said, given the degree of her decompensation, we were fearful that she would not survive at all from her injuries. One of the things we know about prognosticating traumatic brain injuries is doctors at times can be overly pessimistic, and patients do have the ability to recover and recover full function. But you absolutely have to be aggressive early on. Given all that and her age, we were, we were giving her every chance to do that, but we were very unexpectedly pleasantly surprised at the degree of her recovery.

MS. WELLS: May I have a moment, Your Honor?

THE COURT: Yes, ma'am.

MS. WELLS: Your Honor, those are the questions I have for Dr. Thurston at this time.

THE COURT: Counsel?

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

THE COURT: Yes, sir.

MR. GROSE: No questions, Your Honor. Thank you for your patience.

THE COURT: Yes, sir.

MS. WELLS: Your Honor, may Dr. Thurston be released from his subpoena?

THE COURT: Any objections?

MR. GROSE: No objections.

THE COURT: Sir, you may step down, and you may stay or go, whichever you choose.

DR. THURSTON: Thank you, sir.

MS. WELLS: Your Honor, one moment, please. Your Honor, the State rests.

THE COURT: The State rests. Mr. Foreman, ladies and gentlemen, the State has now rested its case in chief, that means that they do not intend to call another witness to the stand at this time. And they do not intend to put any more evidence before you such as a document or a picture of whatever it might be. That brings us to a matter of law that I have to take up, and as I told you, sometimes I have to do that outside of your presence, and this is one of those times. So if Mr. Foreman, you would take the jury out and do not begin to deliberate, the case has not ended at this time, but I just take up a matter of law.

(Jury exiting.)

THE COURT: Matters from the State?

MS. WELLS: Nothing from the State, Your Honor. The State has rested.

THE COURT: Matters from the Defense?

MR. GROSE: Your Honor, at this time, we would move for a directed verdict because the State has failed to present any direct evidence, or any substantial circumstantial evidence based upon which a jury can convict beyond a reasonable doubt.

THE COURT: You want to be heard Solicitor?

MS. WELLS: Your Honor, we have placed evidence on every element of the crime before this jury and the State believes this case can survive a directed verdict motion and would ask the Court to deny the Defense's motion.

THE COURT: Yes. The Court does not weigh the evidence but considers whether there's a scintilla of evidence or any evidence in the light most favorable to the nonmoving party, which is the State, so the motion for directed verdict is denied. Anything else from the Defense?

MR. GROSE: Not at this time.

THE COURT: Okay?

MS. WELLS: Nothing from the State, other than, the Defense had indicated the Defense was going to put up a case, so I don't know if the Court wants to make inquiry as to Mr. Batchelor at this time as to whether or not he's going to testify. I had also indicated; Mr. Grose had asked for my assistance in locating, potentially, some law enforcement witnesses. I informed him this morning our witnesses came this week without being subpoenaed, they came voluntarily, but I

would be able to assist him if he needed that. I would need those names at this point ---

MR. GROSE: Well, it's just Walsh.

MS. WELLS: Okay. Sorry, I didn't know if it was anybody else. I just wanted to let the Court know the State's willing to assist, I just need the names so we can get that part moving too.

THE COURT: Okay. Do you need him here now?

MR. GROSE: It depends on if, if you want us to start now because it's still a good time before lunch. I'm going to recall Investigator Gary, that'll probably be pretty short, just to clarify a few points. It's 10:00 now, so I would say probably if we could get him up here this morning. And then Mr. Batchelor's going to be our other witness, and I would suggest taking that up after lunch because he's going to be more lengthy.

THE COURT: Okay.

MS. WELLS: And it may be, if Mr. Batchelor's going to testify, I mean, and I'm not asking Mr. Grose to, to exactly tell me what the questions are going to be, but the State may have some objections to either the questions as to Investigator Gary or Sergeant ---

THE COURT: Walsh?

MS. WELLS: Thank you. I was having a moment. So I don't know if that's a, I guess we'll just cross that bridge

when we get there. And I'll reach out to Sergeant Walsh right now. It might be easier for me to reach him by phone if I could step out the Courtroom.

THE COURT: Sure.

MS. WELLS: Thanks, Judge.

MR. GROSE: And I could use a quick break just to go to the restroom.

THE COURT: Okay. Well, let's do that and she's going to call the sergeant for you.

MR. GROSE: Yeah, thank you, and I appreciate that.

THE COURT: Yes, sir.

(Off the record.)

THE COURT: Okay. What we're going to do, talking with the lawyers is, is we're going to break here momentarily until 1:00, break until 1:00, got a couple of officers that are needed and they're tied up right now, so we're going to break and come back at 1:00. But in the meantime, first thing we're going to do is have a colloquy with Mr. Batchelor. Mr. Batchelor, if you would stand and be sworn, sir.

MADAM CLERK: Raise your right hand. Do you swear or affirm the testimony you give will be the truth, the whole truth, and nothing but the truth so help you God?

MR. BATCHELOR: Yes.

MADAM CLERK: Thank you.

THE COURT: Sir, you may lower your mask if

you feel comfortable to do so, okay? Mr. Batchelor, we have reached a stage in this trial where you may present a defense. You have the right to claim the protections given to you by the Fifth Amendment to the Constitution of the United States which states in part no person shall be compelled in any criminal case to be a witness against themselves. Additionally, you have the right to claim the protections given to you by article 1, section 12 of the South Carolina Constitution which states in part no person shall be compelled in any criminal case to be a witness against themselves. Sir, this means that you cannot be required to testify, you have the right to testify but no one can make you do so. This is a personal right, and no one can waive this right except you. If you decide to testify, you'll be subject to the same rules that govern other witnesses, and you may be examined and cross examined on any relevant issue. Additionally, if you have any convictions involving dishonesty or a false statement or for crimes punishable by imprisonment for more than one year and this Court determines the probative value of admitting the evidence outweighs its prejudicial effect, the solicitor will be able to introduce your record to attack your credibility. If you decide to testify, the decision must be made freely, intelligently, and voluntarily with the knowledge of the protections given to you by the Constitutions of the United States and this State. If you decide not to testify I will

instruct jurors they cannot give the fact that you did not testify any consideration whatsoever and there is to be absolutely no prejudice to you because you did not testify. The decision is entirely yours. Sir, do you understand what I have explained?

MR. BATCHELOR: Yes, sir.

THE COURT: Do you have any questions about what I have explained?

MR. BATCHELOR: No, sir.

THE COURT: Have you discussed with your lawyer whether you should or should not testify?

MR. BATCHELOR: Yes, sir.

THE COURT: Do you wish to speak with your lawyer regarding this matter further?

MR. BATCHELOR: No, sir.

THE COURT: Sir, do you wish to testify or not testify?

MR. BATCHELOR: Yes, sir, I do.

THE COURT: You do wish to testify?

MR. BATCHELOR: Yes, sir.

THE COURT: Alright, sir. And sir, please do not be offended, but let me ask. Are you under the influence of any medication or any substance that interferes with your clear and free thinking?

MR. BATCHELOR: No, sir.

THE COURT: You know what you're doing?

MR. BATCHELOR: Yes, sir, I do.

THE COURT: And this is your decision?

MR. BATCHELOR: Yes, sir.

THE COURT: Thank you, sir. Mr. Grose, any questions?

MR. GROSE: No, sir.

THE COURT: Anything from the State?

MS. WELLS: No, sir, Your Honor.

THE COURT: Thank you, sir, you may be seated.

Alright. Without further ado, I think what we'll do is recess in here and we're going to talk briefly about some charges, maybe, while we're, have some time, or do we need to do that a little bit later?

MS. WELLS: Judge, we can probably have a preliminary conversation. What I, I told the Court yesterday I was going to take a look at some things, and as I sit here, I realize I may have left it, I may have left my notes to myself on the desk. So I'll defer to the Court, I don't think I brought it down because I didn't think we would get there this morning. I've got some case law, but I don't have my research notes.

THE COURT: Okay. You want a few minutes or ---

MS. WELLS: Yeah, that's fine, that's fine. I can run upstairs real quick and I don't know if you want to do it on the record or how you want to do it?

THE COURT: Oh, no. We're going to get off the record, we'll get off the record now.

(Off the record.)

BAILIFF: Court come to order, remain seated, please.

THE COURT: Thank you, thank you. I think we have everyone? We have everybody, is everybody here and ready? State's ready.

MR. GROSE: Yes, sir. We're ready.

THE COURT: Okay. We'll have the jury.

(Jury entering.)

THE COURT: Good afternoon. Mr. Foreman, everybody ready?

MR. FOREMAN: We're good.

THE COURT: We're ready. Counsel?

MR. GROSE: Thank you, Your Honor. May it please the Court? I would call Sergeant Walsh.

THE COURT: Okay.

MADAM CLERK: Do you swear or affirm the testimony you'll give will be the truth, the whole truth, and nothing but the truth so help you God?

SERGEANT WALSH: I do.

THE COURT: Sergeant, if you will adjust the microphone and I'm going to ask you to speak louder than usual and tell us who you are and spell your last name for my Court reporter, please.

SERGEANT WALSH: Yes, sir. I am Sergeant Mike Walsh, Michael Walsh, I am patrol sergeant for the Spartanburg County Sheriff's Office.

THE COURT: And spell the last name.

SERGEANT WALSH: W-a-l-s-h.

THE COURT: Thank you. Counsel?

DIRECT EXAMINATION

BY MR. GROSE:

Q I think you just said that you're currently employed by Spartanburg City?

A Spartanburg County Sheriff's Office.

Q Okay. My mistake.

A Sure.

Q Back in January of 2016, were you also employed with Spartanburg?

A I was employed by the sheriff's office, yes, sir.

Q Sorry. And were you part of the investigation involving Stephanie Batchelor and Jonathan Batchelor?

A Yes, sir, I was.

Q Okay. And what was your role in that investigation?

A I was one of the lead investigators looking into this incident where Ms. Batchelor had been shot.

Q And when you say lead investigator, one of the lead investigators, there were multiple investigators involved, is that correct?

A That's correct.

Q Okay. Alright. And as part of your investigation, either late in the night of January 7th, early morning hours of January 8th, did you go to Spartanburg Regional Hospital?

A Frankly, I don't recall exactly when I initially went to the hospital, I believe I was actually made aware of it on the morning of the 8th.

Q Okay. Let me, is that your report that you have in front of you?

A Yes, sir, it is.

Q If you would, refresh your memory by looking at that part going through that paragraph on the next page.

A Okay. Yes, sir.

Q Okay. And the part that you just reviewed, is that part of your report from your activities on January 8th?

A Yes, sir. I believe it was from the 8th.

Q Okay. And without going into any of the contents, did you have a conversation with Timothy Gibson who's Stephanie's father?

A Yes, sir.

Q Okay. And did Mr. Gibson put Jonathan's name in as a suspect?

MS. WELLS: I'm going to object to any hearsay, Your Honor.

MR. GROSE: I don't think that's hearsay because it's not offered for the truth of the matter asserted, and I'm just asking him if that name was given.

THE COURT: Solicitor?

MS. WELLS: Judge, I think it's, one; he's leading now, and two; it is hearsay, it's something that someone else said that's not available for cross examine and does go to the truth of the matter asserted.

THE COURT: I'm going to allow it. Go ahead.

A Without going into context as you instructed, no, he did not tell me that Jon was a suspect.

Q Well, did he tell you that he believed that Jon was involved?

MS. WELLS: Objection.

THE COURT: That's a different question now. That's sustained.

MR. GROSE: I still think it's, I mean, it ---

THE COURT: Okay.

MR. GROSE: I just ---

THE COURT: No, sir. That's a different question.

MR. GROSE: Okay. Alright.

Q Okay. The question I think I asked, though, was is did he put Jon's name into the investigation?

A I mean, I can read what I wrote if you prefer that I do that?

Q I'd just like for you to answer the question. Did he put Jon's name in the investigation or not?

A He did mention Jon's name, yes.

Q Okay. Alright. Now, as part of your investigation did you have several times where you spoke with Stephanie?

A I would probably classify it as a few, not necessarily several times.

Q Okay. But you did speak with her?

A Yes, sir, I did.

Q Alright. And if you would turn to your report for the 18th of January.

A Yes, sir.

Q Okay. Was that one of the days that you were able to speak with Stephanie?

A Yes, sir. Per this report on the 18th.

Q Alright. And was she able to communicate verbally at that point?

A No, sir.

Q Alright. How did you communicate with her?

A I believe, if I recall correctly, I would ask or speak to her and she would write, I believe on a white board. There might have been paper, I can't really recall, but she was able to communicate through writing.

Q Okay. And as part of that interview, did you ask her whether Jon was the person who shot her?

A Yes, I did ask her that.

Q Okay. And did she say that Jon shot her?

A No. She didn't say anything, she shook her head to indicate no.

Q That Jon didn't shoot her?

A Yes.

Q Okay. And in that interview, did it come up with the location of where Stephanie parked the car before she got assaulted?

A Yes, sir.

Q And where did she say she parked the car?

A At that time, she said she parked the car in the driveway.

Q Alright. And did you also go back on January 25th?

A Yes, sir.

Q And was, was that interview at that time recorded?

A I believe so. Yes, I believe, it's reported that it was, I believe.

Q This is on both sides, but I want to show you that and see if you recognize that as a transcript from the interview?

A From what I recall, this looks to be it, yes.

MS. WELLS: Judge, I'd just like an opportunity to review it.

MR. GROSE: My apologies.

Q And on page 16 of that transcript, can, beginning here, can you read the question that you asked Stephanie?

A I said you love Jon so much, and you, do you remember all of this from your own memory. Has anybody told you any of this, no.

Q And then what is the rest of her answer on the next line?

A I remember this until I, after you were here, they gave me pain meds to put me to sleep.

Q Okay. And do your notes reflect that they had give pain meds on the 18th?

A I'll have to go back and review this.

Q Okay.

A From what I can read, she indicated that she was in pain and needing medication and the interview was ended at that time.

Q Okay. So that was the reason you ended the interview?

A Yes.

Q Did then sergeant, now Lieutenant Gary asked you and Deputy Clark to follow up on a lead about a vehicle that was seen leaving the area?

A I do not recall.

Q Okay. If you would, would you take a look on my computer screen, I can enlarge that if it's too small, and review that report.

A I don't recall this, but this also isn't my report.

Q So you don't have any recollection of that?

A Not, no, I do not recall that.

Q Okay.

MR. GROSE: Thank you. That's all the questions I have, Your Honor.

THE COURT: Counsel?

MS. WELLS: Just briefly, Your Honor.

CROSS EXAMINATION

BY MS. WELLS:

Q Sergeant Walsh, you're currently in the process of leaving the sheriff's office and moving, is that correct?

A That's correct.

Q And you've been unavailable for Court testimony until today, is that right?

A Yeah. Actually, I think I was supposed to be available starting tomorrow.

Q Okay. Jonathan Batchelor did not become a suspect in this case based on any conversation you had with Stephanie's father, correct?

A That's correct.

Q That happened because of, of a conversation that Mr. Batchelor had with investigator, now Lieutenant Gary, correct?

A Yes. That was one of the conversations.

Q Mr. Grose asked you about an interview you conducted with Stephanie on January the 18th of 2016 while she was still at Spartanburg Regional. This would have been the first interview that you did with her where she was unable to speak, but was

able, was able to write notes, I think you said on a white board, do you recall that?

A I do. And I'll just clarify, I'm not sure if it was a white board or paper, but she was able to communicate via writing.

Q Okay. And she told you that she recalled the shooting?

A Yes, ma'am, she did.

Q And she told you about an altercation a week prior?

A Yes, ma'am, she did.

Q Okay. Can you, based on your observations of Ms. Batchelor and, which, did you feel like she was able to recall the incident well?

A Yes, ma'am.

Q Okay. And based on what?

A Body language is usually a big indicator, just from personal experience, professional experience. The way someone might react, you know, to memories or questions. Ability to maintain eye contact or inability to do so or unwillingness to do so are, from my professional experience, some good indicators of, you know, what someone might remember and what, the information they provided.

Q And was there a point in time where her body language changed?

A Yes, there was.

Q And what was, when was that?

A So in recalling the incident, it appeared to me that she was well able to recall and until we got to the point of asking if she knew who had done it, she would actually stop a quick response, which is a change in behavior. She would look down; she would no longer maintain eye contact. And I believe she'd, you know, shake her head or shrug her shoulders which would also be a change in the way in which she was communicating which was typically written.

Q And when you began to ask her who did this, did she end the interview?

A Yes, ma'am, effectively.

Q And as Mr. Grose asked you on direct, she said that she remembered this incident independently and no one told her what to say or what they believed happen, is that correct?

A That is correct.

Q Alright.

MS. WELLS: May I have a moment, please, Your Honor?

THE COURT: Anything at all?

REDIRECT EXAMINATION

BY MR. GROSE:

Q She just asked you about Stephanie ending the interview. Before she ended her interview, she shook her head no regarding whether Jon had shot her?

A Correct.

Q And she ended the interview when she said she

was in pain and wanted pain medication?

A That's correct. I suppose it would probably be better to say that I ended the interview at that time.

Q You did, not her?

A I chose to, yes. I wasn't going to interview someone under the influence of medication.

Q Alright. That makes sense.

MR. GROSE: Thank you.

THE COURT: Thank you. Anything at all as to that?

MS. WELLS: No, sir.

THE COURT: You may step down sergeant.

SERGEANT WALSH: Thank you, sir.

THE COURT: Please be careful.

MR. GROSE: May he be excused?

THE COURT: Yes, sir. Sir, you may stay or go, whichever you choose.

SERGEANT WALSH: Thank you, sir.

THE COURT: Thank you.

MR. GROSE: At this time, Your Honor, I would recall Sergeant Gary.

THE COURT: Swear him again.

MADAM CLERK: Do you swear or affirm the testimony you give will be the truth, the whole truth, and nothing but the truth so help you God?

SERGEANT GARY: I do.

MADAM CLERK: Thank you.

THE COURT: Lieutenant, if you'll adjust the microphone and tell us again who you are and spell your last name for Madam Court reporter please.

LIEUTENANT GARY: Lieutenant William Gary, G-a-r-y.

THE COURT: Counsel?

MR. GROSE: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. GROSE:

Q Of course we spoke with each other on Monday when you testified the first time. I want to start off by just following up on a couple of things. You remember us talking about who it was that turned off Stephanie's car when it was located?

A I'm, I don't remember you and I speaking of that.

Q Okay. When we spoke, I thought that both of us were confused that it was a highway patrolman, do you remember that?

A I don't remember where it came up about the patrolman during my testimony with you.

Q Okay.

A But I do remember it coming up.

Q Alright. And there's been other testimony that it was a firefighter, would you agree with that?

A Yes.

Q Okay. I think I also asked you a question about

the, the canine that tried to, the canine team that was called out and tried to follow a trail from the car?

A Yes, sir.

Q And I think I asked you whether or not you were aware whether the dog had ever committed to a track or not?

A Yes, sir.

Q Okay. And I want to show you, I want to just show you this two page, well, it's not even a full two-page report. You're welcome to look at all of it, but specifically, I want you to look at that area.

A Okay.

Q Alright. What was the name of the dog?

A Bruno.

Q And does it say whether or not Bruno was able to commit to a track?

A It says he never committed to a track.

Q Okay. We also, I think asked some questions about some of the evidence that was examined, but I don't think I asked you at that time about the, the projectiles, the bullets that were recovered. How many bullets were recovered in this investigation?

A My recollection's two projectiles.

Q Okay. And where did they, where were they recovered?

A One was recovered in the edge of the garage and driveway and the other I recovered from Dr. David Wrenn

with the pathology department at Spartanburg Regional.

Q Okay. And were both of those placed into evidence?

A They were.

Q And were those sent anywhere for examination?

A They were sent to Greenville County to their lab.

Q Okay. And do you know whether or not they were able to definitively determine whether those two bullets matched each other?

A I don't know right off hand.

MS. WELLS: I mean, Judge, he said he didn't know, I mean, I think that stands.

MR. GROSE: Well, I'm going to offer this to refresh his memory.

Q If you could take a look at that report.

A Okay.

Q Alright. And who was that report addressed to?

A It was addressed to Officer Walsh and myself.

Q Okay. And ---

MS. WELLS: I'm going to object. This is not Investigator Gary's report, this is a report that's been done by another law, a firearms expert in Greenville, not Investigator Gary.

THE COURT: Okay. It's not his report?

MR. GROSE: It's not his report, but he received it and I just want to know if this refreshes his memory, whether

or not they were able to definitively match the two projectiles.

MS. WELLS: May we approach?

THE COURT: Yeah.

(Whereupon, a bench conference was held in the presence of the jury but out of hearing of the jury.)

Q Lieutenant Gary, you've had a chance to look at the report?

A Yes, sir.

Q And is the report definitive or not definitive on whether those two projectiles matched each other?

A They're both consistent together with Hornady manufacturer, but insufficient microscopic marks to permit a positive identification to each other.

Q Alright. So that would be it's not definitive?

A I guess not.

Q Okay.

MR. GROSE: Thank you. That's all I have.

THE COURT: Solicitor?

MS. WELLS: I don't have any follow up.

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

MR. GROSE: At this time I call Jonathan Batchelor.

THE COURT: Alright, sir. Mr. Batchelor, come up and be sworn, sir.

MADAM CLERK: Do you swear or affirm the testimony you give will be the truth, the whole truth, and nothing but the truth so help you God?

MR. BATCHELOR: I do.

THE COURT: Sir, you may remove your mask if you feel comfortable doing so. And please adjust the microphone and tell us who you are and spell your last name.

MR. BATCHELOR: My name is Jonathan Batchelor, B-a-t-c-h-e-l-o-r.

THE COURT: Thank you. Will you pull that microphone just a little closer? Thank you, sir. Counsel?

DIRECT EXAMINATION

BY MR. GROSE:

Q And Jonathan, make sure to speak up, okay?

A Alright.

Q Did you shoot Stephanie?

A No.

Q Did you try to kill her?

A No.

Q Now, you've been here, did you hear the testimony about Sydney?

A I did.

Q Alright. Did you and Sydney have a sexual relationship?

A Yes.

Q And did the police ask you, or did that come up

in interviews with the police?

A Yes.

MS. WELLS: Judge, I'm going to object to leading questions. I know it's easy to slip as to that when you've been cross examining, but...

MR. GROSE: I've got to at least let him know what subject I'm talking about.

MS. WELLS: We've been here all week, Judge.

THE COURT: Rephrase it.

MR. GROSE: Alright.

Q Do you remember the conversation that Lieutenant Gary testified that you and he had at the hospital?

A Yes.

Q Alright. And did something come up in that about what would be found on your phone?

A Yes.

Q And what did you tell them?

A I told him that I was not having an affair, that there was nothing going on right now.

Q And was that the truth?

A No.

Q Alright. You heard the testimony of Dustin Tiller yesterday?

A Yes.

Q Do you know Dustin Tiller?

A Yes.

Q And how did you meet Dustin?

A We were in pod 3 together in the Spartanburg County Jail.

Q Okay. And where were, where was his room in relation to yours?

A On the other side of the pod.

Q And did you ever have any conversations with Dustin Tiller?

A Yes.

Q And what did you and Dustin talk about?

A We talked about a lot of things. Church, life in general, what we did before we got locked up. I talked about, you know, going through my divorce that I went through, things like that.

Q Okay. And what kind of personal things did you share with him?

A The fact of my kids, not being able to see them, not being around them hurt, you know, not being around my family.

Q Alright. And did that also, well, what types of things did you tell him about the divorce?

A I mean, I told him that, you know, I had an affair, that was a big issue. I mean, the father of my ex-wife, we never really got along. Things like that.

Q Did you talk to him about your criminal charge?

A No.

Q Tell the jurors a little bit about how that section

of the jail is laid out.

A It's a big, open room. You got upstairs, downstairs. The rooms, when you come out on rotation you get six hours a day, your door stays open. So anybody can walk in, you can go in and out as you please. You can go in and hang out with somebody else in their room, you can sit down downstairs and play cards, watch TV, and go to rec, whatever you want to do.

Q And is that how this was set up at the period of time that you and Dustin knew each other?

A Yes, sir.

Q Okay. Could you always see your room from where you might be when you're out on, when you're out?

A I mean, as long as you're facing that direction, typically yes, unless you go outside on the rec yard, but, yeah, typically.

Q I want to talk a little bit about your background. Where are you originally from?

A Spartanburg.

Q And where did you grow up?

A Spartanburg.

Q And how far have you gone in school?

A Through college.

Q Alright. And back in January of 2016, were you working?

A I was.

Q And where were you working?

A Spartanburg Dodge, as a mechanic.

Q Alright. And can you tell the jurors a little bit about what your responsibilities were as a mechanic?

A Whenever somebody would trade in a new car or Spartanburg Dodge would buy some used cars from the auction, let me rephrase that, when somebody would trade in a used car, they would bring it to me or another used car technician, which is what I was. We'd go through the car, make sure everything looked good, there wasn't no issues with the car, and we'd right a report. And if they told us to fix it, we would fix it, if not, they'd send it to the auction.

Q And at some point, did you step ---

A Say that again, sorry.

Q As some point, did you meet Stephanie?

A Yes.

Q Alright. And tell the jurors how that came about.

A I was actually seeing another woman at the time, and I just had a child with that woman while seeing a woman before that. And the one, married, that I was seeing when I met Stephanie is who introduced me and her.

Q Okay. And did you and Stephanie start dating?

A We did. It was a little while after that, but yes, sir, we did.

Q And was she aware of any affairs that you had?

A She was. She was aware that while I was with Sarah,

I had an affair with Mary and ended up with a child from the relationship.

Q And was she aware of any affairs that you and, that you had while you were dating her?

A She was, yes.

Q And about when was it that y'all, you and Stephanie started dating?

A Probably 2010, sometime around there, I would think. Maybe halfway through, somewhere around in there.

Q Alright. And when did you and Stephanie get married?

A 2012, September 21st.

Q Did you know any of her family?

A Yes, I did.

Q Alright. And who all in her family did you know?

A Pretty much all the immediate family. Father, stepmother, step siblings, the mother, aunt, uncles, grandparents.

Q And what was your relationship like with Stephanie's father?

A We didn't particularly get along. He, like every dad, he wants the best for his daughter, no man's ever going to be good enough, which I don't blame him, if I had a daughter, I'd be the same. I don't blame him at all.

Q Was there friction between y'all?

A He grew up as, well, he's a mechanic as well. He owns his own business, and he's done good, very good. And at one time

Stephanie told me that he wants better for her, not somebody to follow in his lines, meaning being a mechanic. So he wants life better for her. So when she met me and I was a mechanic, he already was wanting her to find somebody better.

Q Did he ever catch you having an affair on Stephanie?

A He did, yes.

Q Alright. Tell the jurors about that.

A I was at Lowe's with a female named Tasha, and her father and her stepmother pulled up while we were having an affair in the truck. While we were together in the truck.

Q Could you tell whether he approved of that or not?

A Oh, he definitely did not.

Q Back in January of 2016, can you tell me a little bit about your routine. First of all, where were you living?

A I was living at [REDACTED] Reidville Road, it was a house that we had bought.

Q And when you say we, who are you talking about?

A Me and Stephanie, my wife, ex-wife.

Q And who were the people who lived at that house?

A It'd be me, her and our two little boys, Timothy, and Paul.

Q Alright. And in January of 2016, how old were your boys?

A They were one and three, but they were fixing to be two and four.

Q Okay. What was the daily household routine like

in January of 2016?

A We were, we were both working, I was working for Spartanburg Dodge. She was working for my sister at a jewelry store during the holidays. She would work nights; I would work mornings. I would get up and go to work and then I would come home, sometimes she would bring the kids to the shop so I can bring them home on her way to work. That way neither one of us had to be late or leave early. Sometimes she would drop them off at her aunt's house, depending on what time she had to be there which was right around the corner from my shop. I'd pick them up there and take them home.

Q Alright. And so what time, well, what were your work hours?

A I typically worked from about 8 to 5 ---

Q Okay.

A --- roughly.

Q And what were Stephanie's work hours?

A They kind of varied, sometimes she went in at 4, usually about 5 to about 9:00, 9:30.

Q Alright. And so when you got off work, were you responsible for the kids?

A Yes, sir.

Q And what was the typical routine like with the kids at that period of time?

A I, I'd feed them dinner, usually around 6 or 7,

whenever they told me they got hungry. I put them to sleep, I'd put them to bed, rather, usually try around 8:30ish. They're little, they don't always go to bed right away, but I try to keep them in the routine that she had them on.

Q And after you'd put them to bed, what would typically happen?

A I'd sit down and watch TV, play on the play station.

Q And when would Stephanie typically come home?

A She usually got home between 9:30 and 9:45ish, somewhere around in there. She usually followed the closer to the bank to drop off the deposit, and then she'd be home after that.

Q And after she got home, what would the routine be like?

A Sometimes she'd want me to run to the gas station, which would be the 7-11 right across the street on the corner. Sometimes she'd want boiled peanuts, sometimes I would want a Yoo-hoo, a snack. So sometimes I'd get dressed, run to the store three or four times a week.

Q Alright.

A Or out to Netflix, it could be a movie, or the Redbox, sorry.

Q And what time would y'all usually go to bed?

A Usually around midnight, 11:30, 12.

Q Do you remember January 7th of 2016?

A I do.

Q Alright. And what time did you get up that day?

A I probably got up about 7:00.

Q Alright. And did you go to work that day?

A I did.

Q What hours did you work that day?

A I went to work about 8:00 and then I left about 4:30.

Q And when you left at 4:30, what did you do?

A I went to the house because Steph was keeping my sister's son, and she had to be at work, my, Steph had to be at work at 5, so I left about 4:30, it took me about 15 minutes to get home. She left, went to work, my sister come picks her son up roughly around 5:30.

Q Alright. And did you put the children to bed that night?

A I did. I put them to bed roughly about 8:30, between that range.

Q Alright. And at some point that night, did you and Stephanie have contact?

A We did.

Q And how did that come about?

A She called me when she was at the bank dropping off the deposit, well, following the lady dropping off the deposit.

Q Alright. And about what time was that?

A Earlier it was stated on the screen, 9:23.

Q Okay. And what, was it typical for her to call you on the way home?

A Yes. She would either call me or her grandmother.

If she called her grandmother and talked to her on the way home, she always texted me, that way I'd at least know she was on the way home.

Q And how long were you on the phone with her that evening?

A We stayed on the phone for a little while, I think, the time call was 13 minutes, I believe is what it said.

Q And what did you talk about?

A She just talked about her day, she had a good day that day. She was, she basically said she had a good day. She was just talking about her day.

Q And at some point, did you realize that she was almost home?

A Yeah. I usually try and ask her, you know, how close you are, you know, where you at, just to keep track.

Q Okay. And did that happen that day?

A It did.

Q Alright. And what did you do when that happened?

A She said she was fixing to pull in the driveway, so I told her I was going to go jump in the shower.

Q Okay. And did you do that?

A I did.

Q Alright. And how long were you in the shower?

A I usually take between a 30- and 45-minute shower.

Q And why is that?

A I've got a bad back and I've got a bad knee from

manual labor and improper lifting. I hurt myself and it's just never healed.

Q And why does that cause you to take long showers?

A The hot water helps soothe the pain in my back, helps soothe the muscles and the pain.

Q And when you got out of the shower, what happened next?

A I didn't see her in the house, so I went to the backdoor, which would be where the kitchen is, and I looked out and I didn't see her car. So I opened the door and there was blood on the ramp.

Q And you said you opened the door ---

A I opened the door to the garage from the kitchen.

Q Okay. And what did you do after you saw the blood on the ramp?

A I could hear her, I could hear somebody saying something, so I walked down the ramp and I could hear her calling my name when I got to the bottom of the ramp.

Q Alright. And what did you do after that?

A I ran to her.

Q And then what happened?

A And then I called 911.

Q Alright. And do you recall how long you were on the phone with 911?

A It felt like hours. I don't recall how long; I think the time they had was 10 or 11 minutes. It seemed like

a very long time for them to get there.

Q Okay. And did they get there?

A Eventually, yes.

Q And what happened when they got there?

A Police arrived first, EMS took much longer, but eventually showed up as well, as well as fire, fire department.

Q And what happened after EMS arrived?

A They took Stephanie to the hospital.

Q Okay. And did that happen right away?

A No. They checked, they briefly checked her out in the yard to see what was going on, what had happened.

Q And what were you doing while they were checking Stephanie out?

A I knew that they were going to be taking her the hospital because they already stated that, so I requested to go get my keys for my truck so I could, because they weren't going to let me ride to the hospital because I had kids in the house. So I called, when police and EMS got there, I called her aunt which, Paula, Paula Cash, and told her to come stay with the kids so I could go to the hospital. And then I went to go get my keys from inside the house so I could drive because I had to wait on Paula to get there. I wouldn't be able to ride in the ambulance.

Q After the first responders, law enforcement and EMS arrived, were you next to Stephanie the entire time?

A No.

Q Alright. Did you go to the hospital that night?

A I did.

Q Alright. And how did you get there?

A I drove my truck.

Q Alright. And how long were you at the hospital that night?

A I didn't leave for, like, about three or four days, about three days.

MS. WELLS: May we approach, Your Honor?

THE COURT: Yes, ma'am.

(Whereupon, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: Okay. Mr. Foreman, ladies, and gentlemen, I have a matter of law that I'm going to have to address. You might take this time to refresh yourselves because we probably will before we bring you back. And maybe consider this our afternoon break or one of our breaks. Mr. Foreman, if you'll take the jury out. Don't talk about the case yet.

(Jury exiting.)

THE COURT: Okay. What is the issue?

MS. WELLS: Judge, Defense seeks to introduce two items of evidence through Mr. Batchelor. First, Defense is going to seek to introduce the 911 call made by Mr. Batchelor

on the night in question. Two, the Defense seeks to introduce the body cam from Deputy Malpas that the State had already taken great care in editing, in fact, just introducing photographs from that body cam because the Defense raised the objection in the State's case about the introduction of the body cam, wanted the body cam edited, wanted other people's statements out of the body cam and now the Defense seeks to admit the body cam that they objected to in the State's case in chief. So the State is objecting at this point because the State believes that is a prior, that they are seeking to admit prior consistent statements of the Defendant. We don't think that they, pursuant to 801(d)(1)(b) of the South Carolina Rules of Evidence, and for a prior consistent statement to be admissible, and Judge, I'm looking at State versus Salts, I'm happy to hand a copy of that up to Your Honor. That's 346 South Carolina 411, that's a Court of Appeals case out of Richland County from Judge Jimmy Williams. I'm looking at page 5 at the bottom, declarant must testify, for this type of evidence to be admissible pursuant to 801(d)(1)(b), declarant must testify, be subject to cross examination, opposing party must explicitly or implicitly accuse the Defendant of recently fabricating the statement or of acting under improper motive or influence and the statement must be consistent with the declarant's testimony. I'll provide a copy to Mr. Grose as well, I apologize. So we don't think that that has occurred at

this point. He has not, obviously, been subject to cross exam. No one's been, there's been no accusation of fabrication or anything like that. So we think at this point it's not appropriate to introduce these items through the Defendant as we sit here at this moment. So the State is registering its objection to the admission of these items at this time. That's, that's the beginning of our objection, we can address that and then go from there.

THE COURT: Mr. Grose?

MR. GROSE: Okay. Well, first thing is, you know, I, I did raise in the pretrial brief under the potential evidentiary issues a single paragraph on the use of body worn cameras and the, what I had in there was more or less boiler plate because there's concerns that can go with some of that type of evidence. Not all of that evidence is inadmissible, in fact, a lot of that evidence is admissible and the, if the State's wanting to use some of that, then what we typically do in the trials I'm involved in is figure out what we can agree to and not agree to and if there's anything left over, we're presenting the Court with a more narrow issue. I'll be honest, I didn't expect them not to want to introduce some of this stuff, I just, and I wasn't going to object to all of it. You know, and that was just a matter of trying to get these issues out in front of the Court before, you know, we started on Monday to help keep things moving. Now, I don't mean to sound

sarcastic, but she's almost asking you to forget everything that you've heard in this trial up to this point because all they've done is accused Mr. Batchelor of lying when he called the 911, when he, they've accused him of staging a crime scene, and telling them things that aren't true. And I think that that's going to be their argument to the jury that he, he staged, you know, something that appeared to be a robbery. Actually, I don't think you ever hear him use the word robbery, I mean, he's talking about finding his wife who's been attacked, he's talking about, he does talk about the car being missing, but you know, he's looking at the, from his perspective, he's looking at the circumstances that he's discovering there. I also think it's significant that the portions that we're wanting to play, the State, or well, through the State's witness, we've already, also laid the foundation of those being, you know, excited utterances because you remember Deputy Malpass, I asked her about Jon's demeanor and her words was that he appeared to be in shock. And also, there was testimony from Deputy Malpass that, that they're going to use to argue that the reason why Stephanie never named Jonathan that night is because Jonathan was there the whole time, and that the deputy was never alone with her. What this video tape is going to show is is that the, I start Deputy Malpass' body worn camera when she's, after she's gotten out of her car and is going towards where Jonathan and Stephanie are

and I end it when you see the ambulance leaving. And there's a period of time, roughly a minute, maybe not, where you can tell on the video that Jonathan is not there while Deputy Malpass is still talking to Stephanie and there's a period of time when Stephanie's still on the scene because the ambulance hasn't left and Jonathan is not with her at the ambulance. And this is our Sixth Amendment Right, I'm not sure exactly which rights are involved here because we've got, you know, due process, right to present a defense. We've got a right to confront the State's evidence, we've got a right to present our own defense. And I think that this raises, what we're wanting to introduce, raises to a level of those Constitutional concerns that if we're not able to do this, we would effectively be denied the right to present a defense and confront the State's case.

MS. WELLS: And Judge, I would disagree. I think Salts actually addresses that. It talks about when the Defense, in this case both the State and the Defense had issues with prior consistent statements, and the rule is the same either way. And additionally, you know, the very arguments that, you know, that one might make, and, in fact, the Defense made on page 4 of his pretrial motion are the very arguments that we would make here, you know, that this, that there's a confrontation right. Well, here, I mean, the Defendant's not even done testifying, he can testify about all these things, he's available, you know ---

MR. GROSE: Judge, can I just remind you the confrontation clause doesn't protect the State, it has no application to the State, it only applies to the Defense.

THE COURT: Okay. Let's not interrupt her ---

MR. GROSE: I'm sorry.

THE COURT: --- and I won't let her interrupt you. Go ahead, Ms. Wells.

MS. WELLS: Thank you, Your Honor. Your Honor, the thing is here is that one, it's, the State contends, and based on the evidence before this Court at this point this is not an excited utterance because the event happened 40 minutes before he called law enforcement. Two, nowhere have we addressed the fact that this is a issue of prior consistent statement and they have not met the elements to be able to introduce these things. Three, the State already agreed to just introduce photos to avoid any appellate issues as to the body cam and all these things, all these other people that need to come out and all this and that and the third. And then here we are, the Defense is going, seeking to admit it. And then I will guarantee you what we will all hear in closing is the State didn't want you to hear this, they, if they wanted to play it in their case in chief and they never did. So, Judge, we attempted to avoid this issue by just introducing the photos and now they want to introduce the Defendant's statements, but the State has absolutely no obligation to admit, plus all these

other statements of other people that they said we would have to redact. So again, one; prior consistent statement, two; really we could have just played this in the case in chief, but now, you know, we didn't, and I don't think that they get to then play it now and us hear about, you know, hiding ball in closing argument.

MR. GROSE: Alright. Well, I think at this point I want to ask the Court to allow me to play the 911 call and this body cam for you. You know, what, what the State has done is they have presented evidence that Mr. Batchelor is the reason why Stephanie didn't identify him that night and we get to refute that evidence and I believe the video does that. I think that as far as, you know, prior consistent statements, they've accused him of fabricating, fabricating this whole thing and staging it and I think that what we'll see on this video tape refutes that. I think as the Court's aware, the amount of time is, you know, not necessarily the only determinant for an excited utterance. The, the only testimony we have in this case is that when Deputy Malpass got there, that Jonathan was in shock. And you know, and I think that the jurors, you know, need to hear that and see that and you can make your own judgements by his demeanor in both the calls and, you know, on the tape. There's also been substantial testimony elicited by both the State and the Defense about the conversation that was taking place when, after Deputy Malpass

arrived and before Stephanie left the scene, and this is the best evidence of that. And like I say, it's going to refute some of what the State said and add additional information.

THE COURT: Well, let's see it, I don't know what's on there yet, so.

MS. WELLS: And Judge, the State, I'm happy to play it, playing it in, the State has no objection to you watching it in chambers as well.

THE COURT: Can we play it right here?

MR. GROSE: I can play it right here, that's ---

THE COURT: Yeah.

MR. GROSE: Or right there?

THE COURT: No. I just thought it, what ---

MR. GROSE: Oh, yeah, yeah. I just need a moment to hook up my computer. I apologize I keep having to walk back and forth across the room to get my glasses. Are you ready?

THE COURT: Yes, sir.

(911 recorded call playing.)

THE COURT: I can't hear it.

MR. GROSE: I'm sorry?

THE COURT: I can't hear it over there. Maybe we can play it up here, I don't know.

MR. GROSE: They're telling me there's a speaker.

THE COURT: Spencer's right behind you.

MR. GROSE: I'll restart it, Judge.

THE COURT: Okay.

(911 recorded call playing.)

MR. GROSE: I could let Your Honor look at this on your ---

THE COURT: Yeah. I guess we'll just go back here. Everybody be at ease.

(Off the record.)

THE COURT: Looking to the cases that have been handed up and reading our rules, the Court finds that both the 911 call and the, the part of the body worn camera that is being offered will come in. It's evidence in the case, number one, and I tried to look at it outside of rule 803 and 801, it's just evidence in the case. And the State can put evidence in that's in the case as well as the Defense. But also, under, I think under the 911 call, under 803, excited utterance, it also comes in as being perceived by the declarant, he's the declarant, and it is a prior consistent statement under 801(d). I don't know that it's been raised as to where he's fabricated anything at this point in time, I haven't seen that, but it's evidence in the case.

MR. GROSE: Well, I ---

THE COURT: I understand they're attacking his, that he made all this up, and I understand that, but he, you know, but anyway. No, I understand, but it's evidence in the case, the video tape and, and the, and the body worn camera is just

evidence in the case, it can be put in by the State or the Defense. If the State wants to put in some other evidence that's on that body worn camera then the State certainly has a right to do that. I don't know what else is on it because I haven't seen it.

MS. WELLS: I'm just making sure that I understood the Court's ruling, you're going to allow both of them in, correct?

THE COURT: Yes.

MS. WELLS: Alright. I would just respectfully renew my objection pursuant to the rules of evidence previously cited that the State's position is this is a prior consistent statement they have not met the elements needed to be able to admit these statements at this time.

THE COURT: I understand. And again, if there's something that's on that, something else on there, the State can offer that, I don't know.

MR. GROSE: They set up another computer and I just want to see what I have to do. We should be good.

THE COURT: It's good?

MR. GROSE: Yeah.

THE COURT: Everybody ready to bring the jury back?

MS. WELLS: Yes.

THE COURT: We'll have the jury.

(Jury entering.)

THE COURT: Mr. Foreman, everybody good?

MR. FOREMAN: We're all good.

THE COURT: Counsel?

MR. GROSE: Your Honor, may it please the Court?

DIRECT EXAMINATION (cont'd)

BY MR. GROSE:

Q Jon, I want to show you what's been marked as Defendant's Exhibit Number 1. Take a look at that. Do you know what that is?

A I do.

Q And what is it?

A It's a partial video from Deputy Malpass' body camera and the 911 call I made that night.

Q Okay. Let's start with the 911 call. I think you just answered this, but who made the 911 call?

A I did.

Q And is the, what's on this flash drive, is that a fair and accurate recording of your call to 911?

A Yes, sir.

Q And you said there was a portion of Deputy Malpas' video on this flash drive?

A Yes, sir.

Q Are, do you appear in that video?

A I do.

Q Who else appears in that video?

A Stephanie.

Q Alright. And is this what is on this flash drive, is that a fair and accurate depiction of what occurred that night?

A It is.

MR. GROSE: Your Honor, at this time, I would move Defendant's Exhibit Number 1 into evidence.

THE COURT: Over objection.

MS. WELLS: Yes, sir.

(Whereupon a 911 recorded call and video of body cam were submitted as Defendant's Exhibit Number 1 for identification and entered into evidence.)

(911 recorded call and body cam video playing.)

MR. GROSE: Jonathan, answer any questions that the Solicitors have.

THE COURT: Solicitor?

MS. WELLS: Thank you, Your Honor. May I approach?

THE COURT: Yes, ma'am.

CROSS EXAMINATION

BY MS. WELLS:

Q Mr. Batchelor, I'm going to show you what's been admitted into evidence as Exhibit 56 in this case. That is you and Sydney Allen, is that correct?

A Yes, ma'am.

Q And that was taken on January 16th of 2017?

A Whatever the day was, I don't remember.

Q Okay. But ---

A Hopefully y'all confirmed that earlier, though.

Q Okay. So on the day that we showed on the records earlier, that's the date it was taken, is that right?

A (Nonverbal response).

Q And on that date Stephanie is in neuro ICU, is that correct?

A I believe so.

Q You met with Investigator William Gary at the hospital on January the 8th of 2016?

A I did.

Q Alright. And when you talked to him, you said today that you had taken a 45-minute shower?

A 30, 45 minutes.

Q 30 to 45 minutes. Do you know how, you don't know how many gallons your hot water heater has, do you?

A No.

Q What year was your house built?

A I don't know.

Q You don't know? You don't have a tankless heater at that house, y'all didn't have a tankless heater?

A Not to my knowledge. We just bought the house.

Q Okay. You know what a tankless heater is, though?

A Not entirely, no. I work on cars, not houses.

Q Alright. So you don't know how many gallons

your water heater has, but it was a 40, 45, 30, 45-minute shower. And that you had told Investigator Gary you were not having an affair with anyone else at that time. Maybe you've been dishonest before, but nobody else right then, right?

A (Nonverbal response).

Q Okay. Showing you now what's been admitted into evidence as State's Exhibit 54, you'll recall these text messages from the State's case.

MS. WELLS: It might be helpful, Your Honor, if I approach the witness.

THE COURT: Yes, ma'am.

Q So do you remember us talking about this on direct with, I think, Lindsey McGraw?

A I do.

Q Okay. And this is, let's see, it says 1-9-2016, do you remember the conversation about the ---

A Drop five hours.

Q Drop five hours. Okay. So that says 12:37:34, is that right?

A Yes.

Q So, this is going to require me to do math. So this is actually on the 8th of January, correct?

A It is.

Q Okay. Looking at, let's just look at line, I need glasses, I can't tell. Can you read it? Line 258, that's a

text message you sent Sydney, you called her baby, is that right?

A Yes.

Q Okay. And then I'm going to pull this out and go back. You'll have a series of text messages there. Let's see if we can make it readable. On the 8th of January, to her, baby, I love you, I'm sorry, baby. And then she tells you that she loves you, is that right?

A Yes.

Q And you tell her that you have to leave soon, or she tells you she has to leave soon, I apologize. And then this is a message to her saying, yeah, hang on and then 2:48, when are you leaving, 2:49, she's worried about not seeing you that night, on the 8th, right?

A Yeah.

Q And you tell her that Stephanie, her aunt, you mean Stephanie there, right?

A Yes.

Q She's going to bring you down to the parking lot and you direct her car a little ways down from you, right?

A Yes.

Q Alright. And she tells you she's out by your truck, and you go out there and you meet her, correct?

A Yeah.

Q Alright. And then you have her, you said come here

real quick, that's because she's actually in the hospital that night, right?

A I don't remember, I really don't.

Q Okay. Who is Baker?

A He's a friend of the family, he's like a brother to me, he used to live with us for a little while.

Q Okay. You tell her in 154, in the room, look for Baker. Baker was there with you that night, right?

A Yes.

Q Okay.

A Baker stayed at the hospital a lot.

Q Okay. So you tell her to look for Baker that's because you're having her come to the hospital to see you, right? She came up there, Jon, right?

A Yeah.

Q Yeah.

A A lot of people from work did.

Q Okay. And then she sends you a text, not being able to kiss you right now is killing me. And you asked if she found him, meaning Baker, and then you tell her me too. And then you ask her in 146, do you want to walk back to see her, I mean not to make it weird, but I am just asking, correct?

A Yes. There was a group of people that worked with me at Spartanburg Dodge that knows her father and the family, and they came to visit.

Q She's in neuro, Stephanie, Stephanie is in neuro ICU and you're inviting Sydney to come back and take a look, is that right?

A Yeah.

Q Okay. Alright. Just making sure we're all on the same page. And she says no, I'll cry, being in hospital rooms freaks me out and seeing tubes and stuff, no, and you say me too. And she tells you it's inappropriate because of the nature, because of your relationship that y'all have, correct, 129?

A Yeah.

Q Alright. And then you tell her, but we are the only ones that know?

A Yeah.

Q She said I can't stand the thought of you being here for a month, I'm going to hate not seeing you, and you say me too, that's at 119 and 120. And then you tell her at 115, I'm going to go walk out the door to the left, give me a minute then act like you have a phone call and come. And I just want to back up, you said that at 115, correct? I think I missed a batch. Here we go at 139, I want to make sure we go back and talk about that one. Right there at the top, I'm moving this all around. You invite her to go back with you and see Stephanie, and you say I could kiss you on the way, lol, yes?

A Yeah. It's there.

Q Alright. So it wasn't a group of people going back there, it would have been just the two of you because you wouldn't have kissed her in front of a whole group of people because only the two of you knew?

A There's only two people allowed at one time in ICU.

Q So you would have elected to take your girlfriend back to see your wife while she was in neuro ICU?

A A lot of people went back.

Q You would have elected to take, since only two people could go, your girlfriend back to see your wife, right?

A Well, I stayed back there so only one other person ---

THE COURT: Sir ---

Q And ---

THE COURT: Wait a minute. Sir, answer the question.

A Yes.

Q The day that this happened on January the 7th of 2016, Sydney was at your house earlier that day, correct?

A She was.

Q She was. Your boys were there?

A Yes.

Q And she left just prior to Stephanie heading home, correct? Because y'all texted about it.

A She left about 7:00, 7, 7:30, I believe, if I recall right, I may be wrong.

Q Okay.

MS. WELLS: May I approach?

THE COURT: Yes, ma'am.

Q Mr. Batchelor, I'm going to show you what's been marked for identification purposes as State's Exhibit 65. Do you recognize those as text messages from Sydney's telephone?

A No. That's my phone.

Q That's your phone?

A Yeah.

Q Okay. That's your phone number?

A Yeah.

Q Okay. And this was from Sydney?

A Okay.

Q Okay?

A Alright.

Q That top message is an outgoing message to you from Sydney, is that right? It says sent, outgoing, Jon?

A Correct.

Q Correct?

MS. WELLS: Your Honor, I'd offer 65 at this time.

THE COURT: Any objection?

MR. GROSE: No objection.

THE COURT: Without objection, it's admitted.

MS. WELLS: Thank you.

(Whereupon text messages were submitted as State's Exhibit Number 65 for identification and entered into evidence.)

Q And I mean I guess I could stay there, and we can read it along together since it's kind of small. And she writes to you baby -- if I miss one, let me know because it's kind of small, I need my glasses. Baby, just wanted to let you know how much I love you and how much I want to be with you. You're so unbelievably special to me and I don't even want to imagine a life without you in it. You're amazing and perfect for me. I can't wait to be able to call you mine and not have to share you with anyone. I can't wait to be your fiancé and then your wife. I can't wait to be yours and wake up every morning to your face and your smile. I can't wait to come home to you and our kids together as one family. I love you with all of my heart and I am very impatiently waiting for the day that I become Mrs. Batchelor. She sent that to you on the 7th about 3:00, is that right?

A I believe so, yeah. Whatever time that is.

Q Okay. And you wrote her back at 711, let me, and I think this is already in evidence, but you said right here, awe baby, I love you too, and you mean the world to me. I can't wait either, correct?

A Yeah.

Q Okay. While Stephanie was in the hospital, y'all discussed, you and Sydney discussed wedding bands?

A I don't recall.

Q What's your dog's name?

A Come here.

Q The dog never barked?

A Yeah.

Q You never heard your dog, your dog didn't bark that night?

A I was in the house in the shower.

Q So you don't hear gunshots in the shower?

A Gunshots are common, in that area, gunshots are common.

Q But you didn't hear him?

A I don't remember hearing him, no. I wasn't paying him any attention if I did.

Q And your dog was in the house?

A She was in the, well, it would be the sunroom on the back side of the house.

Q How many square foot house is that?

A I have no idea.

Q Sydney's family, you went on vacation with them?

A Sydney's family?

Q I mean, excuse me, Stephanie's family, you went on vacation with them?

A Yes.

Q They helped support your family?

A Yep.

Q They help support your boys?

A Yeah.

Q They took care of your boys if y'all wanted to do anything or y'all had work. Her family was supportive of y'all?

A Correct.

Q They provided childcare for you?

A Yep.

Q And when Stephanie's dad caught you with another woman in the parking lot, Stephanie never said a word to you about it, did she?

A No.

Q Never said a word? But she confronted you about Sydney?

A Yes.

Q Now, when you were in the pod 3, you could get written up for not standing up for head count?

A Yep.

Q You could get written up for not making your bed?

A Correct.

Q You could get written up for congregating outside the cells?

A No. That's what the day room was for.

Q You could get written, so people didn't get written up for congregating?

A I mean, you had to be standing to be wrote up, but they just told you to sit down. It's not like an actual write up, you were just told to sit down.

Q Okay. So no one that you're aware of was ever written

up for congregating outside of a cell ---

A I don't know.

Q --- you don't know anything about that?

A They would just tell you to move. I mean, you got some people, some CO's that would push the issue, and that's only if you were told multiple times to go have a seat.

MS. WELLS: Just a moment, Judge, I'm looking for something.

THE COURT: You're fine.

MS. WELLS: Thank you. May I approach?

THE COURT: Yes, ma'am.

MS. WELLS: Thank you.

Q Looking at some other message from Stephanie, from Sydney's phone, I'm going to show you what's been marked for identification purposes as State's 66. This was a second telephone number that you had. At some point you had to get a second phone, is that right?

A Yes.

Q Okay. And this is on the 24th of January of 2016, correct?

A Correct.

Q Alright. And y'all are planning a family day together?

A (Nonverbal response).

Q So this is from you to Sydney. Let's look at from you to Sydney at 3992, that line, 3992, see that?

A I do.

Q Alright. I don't know, I just want us together for a while as a family.

A That says incoming.

Q Incoming because, right.

A She sent it to me.

Q No. This is from you incoming to her phone, these are her messages, okay?

A Oh, okay.

Q I just want us to get together for a while as a family, just us spend a day together, correct?

A Correct.

Q Okay. And she tells you I read the part about being a family and I swear, I melted?

A Correct.

Q And you said I do mean, lol, I do mean that?

A Correct.

Q And then on the next page, this is incoming, and daddy and husband and wife, right?

A (Nonverbal response).

Q And then she says oh the melting is intense over here?

A Correct.

Q And then you tell her I just want us to start being a family, and doing things as a family, a whole family?

A Correct.

MS. WELLS: May I have a moment, please?

THE COURT: Yes, ma'am.

MS. WELLS: Your Honor, I'd offer 66 at this time.

THE COURT: Any objection?

MR. GROSE: No objection.

THE COURT: Without objection, it's admitted.

(Whereupon text messages were submitted as State's Exhibit Number 66 for identification and entered into evidence.)

MS. WELLS: Your Honor, those are the questions I have for Mr. Batchelor.

THE COURT: Thank you. Counsel?

REDIRECT EXAMINATION

BY MR. GROSE:

Q Jonathan, did you try to kill Stephanie so you could be with Sydney?

A No.

MR. GROSE: That's all I have.

THE COURT: Thank you. Anything to that one question?

MS. WELLS: Oh, no.

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

MR. GROSE: At this time, Your Honor, we rest.

THE COURT: Let me see the lawyers for scheduling purposes.

(Off the record.)

THE COURT: Okay. I was talking to the lawyers about time. Mr. Foreman, ladies and gentlemen, the Defense has now rested, and what that means to you is that the Defense does not intend to call another witness to offer another exhibit, piece of paper, a picture, nothing, they're done. The State may, don't know that they will, but the State may call a rebuttal or sometimes called a response witness or a rebuttal witness. And they may, but they're not required to, and it's up to them, I don't know what they're going to do about that, but if so, that would be tomorrow morning. And then that would likely be the last witness. Now, what this means to you is that tomorrow, somewhere before lunch, or very close to lunchtime, you're going to get this case to decide because if the State were to call a rebuttal witness, that would be a short witness because it would be in rebuttal to something. After which we'd take a quick break and then the lawyers would make closing statements to you after which I would then charge you on the law in this case and give this case to you for your consideration. So you can expect that to happen in the morning before lunch. I will tell you ahead of time that lunch will be ordered for you, so you will not need to concern yourself about lunch tomorrow, it'll be ordered for you. Steaks, baked potatoes, no, but we'll have something for you. So we'll have lunch ordered for you. When you park your car you won't have to worry about

going to lunch and coming back and so forth and so on, it will be ordered and be ready for you. Okay. Do not do any independent research, don't try to learn anything about this case. I haven't seen any media coverage, but I don't know when something might pop up. I haven't seen anyone here in the Courtroom, so if something does appear, do not read it, just lay it aside and you can read that later, okay? Again, do not try to do any independent research or anything about the case. Mr. Foreman, I'm going to let you take your jurors out and be excused for the evening. I need you at 9 am, ready to work. The lawyers will be here with me at 8:00, but I need you at 9.

(Jurors exiting.)

THE COURT: Alright. While we have a few minutes and the jury is out, any matters for the State at this point?

MS. WELLS: No matters for the State at this point, Judge.

THE COURT: For the Defense?

MR. GROSE: Yes, sir. We're going to move for a mistrial based on the excessive show of force during Mr. Batchelor's testimony. At the beginning of it, I didn't realize that the officer walked over and was standing over his shoulder during testimony. I didn't see that until later and at some points it looked like he was perhaps just standing by the door, but then what I did observe just a minute ago was him walking back in front of the jury next to Mr. Batchelor. And I

don't know, but Mr. Batchelor says that there's, like, excessive number or two handcuffs coming out of the back of the officer's uniform with one of them already being opened. I wasn't in position with the way they were walking to observe that, but the jurors probably would have been. And so I'd like the Court to inquire into that a little bit more.

THE COURT: Well, I saw it and I'm the one that nodded for the officer to go over there because this door leads into the Judge's chambers area. And the officer looked at me and I nodded for him to go, that's exactly what he did, I wanted him to stand right there by that door.

MR. GROSE: Okay. And I appreciate that, but what you don't, are not aware of is is that while you were back in chambers reviewing, well, we reviewed the audio and the video together, but while you were still in chambers and we came back out here, the officers were sitting in the jury box, and nobody was standing by the door. So I appreciate that concern and at that point, you were actually back in Judge's chambers. There, I mentioned earlier in the week, Deck versus Missouri, and I appreciated that you made that decision, but prior to you having made that decision, we should have had a hearing on that so that we could have had an opportunity to be heard and you would have had to make certain findings under Deck after we had an opportunity to be heard before Your Honor could have made

that decision. Just as a matter of due process under the US Supreme Court precedent.

THE COURT: Well, you want to have a hearing on that?

MR. GROSE: Well, it's too late now. I mean, the, the, you know, the, I mean, it's already happened. The point of Deck is is that it's supposed to happen before the extra security measures are used in the Courtroom.

THE COURT: Okay. Well, do you want to have it on this, or I could reconsider my ruling just now if that's what you want to have is a hearing.

MR. GROSE: Well, what I want now is a mistrial.

THE COURT: Okay. Solicitor?

MS. WELLS: Judge, when the jury's not in here, it's completely appropriate for our deputy, the one deputy who's assigned to this Defendant to sit in the jury box because if he decides to run out the back door, he can jump on him real quick, it's not a big deal. When the Judge is in here, it's, literally, one deputy. I have had many more deputies in close proximity to folks who were in, not free to leave the Courtroom. And so I don't think it's an excessive show of force. I don't think that I, I asked, I leaned back to Lieutenant Gary, and I said could you see that, because he's the closest one situated to see what the jury can see, and he said he didn't see any of that. So I don't, I don't think it's an excessive show of force, in any way, shape, or form, I mean,

that's a protective measure for your fellow Judges and for yourself while you're in here. And look, listen, I'll be frank with the Court, I would need to research Deck because I've never had anybody raise this issue before in my 20 years of practice, I've never had this issue being raised. And I certainly don't think this rises to the level of a mistrial in this case, Judge.

THE COURT: Yes, sir?

MR. GROSE: I'm not sure what she's saying as to what Lieutenant Gary could see or couldn't see because certainly everybody could see, you know, where the deputy was standing, and the deputy walking back and forth. So I don't think they're saying that he didn't see anything.

MS. WELLS: He's saying he didn't see two sets of handcuffs. It went from his position which was part of the allegation Mr. Grose made.

MR. GROSE: Well, can we inquire of the handcuffs the officer has?

THE COURT: Well, how many, you got two sets?

OFFICER: I do, and I can explain why. The first set is my normal set, it's part of my uniform. The second set's the open set for when we have them in the jail chains. This isn't mine; this is from the jail.

THE COURT: Thank you.

MR. GROSE: The other thing I would say is is I

don't think it was just, you know, two deputies in the Courtroom because you have a deputy who's assigned to you who I believe is in the Courtroom while you were in the Courtroom, in which when you were in chambers, and having gone back to chambers several times this week, there's often been other deputies in the area and there's, you know, I think we still have an investigator sitting here and I'm not sure who all these people are sitting on the back row, but they may have been law enforcement, and they're in street clothes. But to suggest that there was only one deputy providing security in the Courtroom is, is not the complete picture.

THE COURT: Well, we'll put it on the record that there's a deputy who testified, Sergeant Walsh previously, and he remained in the Courtroom. And there's a, Deputy Shay is back at the back there for the backdoor in a uniform, and my officer is in uniform, and the officer from the jail. So there are four uniformed officers in the Courtroom, so the Court finds that's not an excessive show of force, but you're on the record. Anything further?

MR. GROSE: No, sir.

MS. WELLS: Not from the State.

THE COURT: Okay. Alright. Sarah, if she hasn't already, is going to send you the proposed jury charge and then, let's meet tomorrow morning about 8:45 and we can meet in this jury room back here, it's away from the jury because they

will be assembled in the large room, so we'll meet right back here. Bring a cup of coffee, if you want, and we'll talk about it if there's anything to talk about, and we'll start promptly at 9. We're off the record.

(Whereupon, the trial will resume the next morning at 9:00 a.m.)

November 4, 2021

BAILIFF: All rise and come to order. The Honorable Keith Kelly presiding.

THE COURT: Thank you, thank you. Good morning everyone, good morning. Okay. Anything before we bring in the jury? Everybody ready?

MS. WELLS: State's ready, Your Honor.

MR. GROSE: The only thing that I would say is I've had a chance to review the exhibit and there are some parts in the very, very end that I will find objectionable, but they're not going to play those, and so I don't think we have an issue there. But I just wanted to put that on the record.

MS. WELLS: That's right. We played it almost in its entirety and I told Mr. Grose at which point we were going to stop and he was fine with that.

MR. GROSE: Right. I have no objection to that.

THE COURT: Okay.

MS. WELLS: And Ms. Paris is going to help me present that and she knows exactly where to stop to ensure any issue.

THE COURT: Very good.

MS. WELLS: I trust her more than I trust myself.

THE COURT: We'll have the jury.

(Jury entering.)

THE COURT: Good morning ladies and gentlemen. Mr. Foreman, everybody good?

MR. FOREMAN: Yes, Your Honor.

THE COURT: Okay. Pay attention to the solicitor. Solicitor?

MS. WELLS: Thank you, Your Honor. The State would recall one witness and that is Deputy Kristen Malpass, Sergeant, now, Kristen Malpass.

THE COURT: Sergeant, if you'll come forward and be sworn.

MADAM CLERK: Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth so help you God?

SERGEANT MALPASS: I do.

THE COURT: Sergeant if you will adjust the microphone, please. And tell us who you are and spell your last name using your outside voice.

SERGEANT MALPASS: Sergeant Kristen Malpass, M-a-l-p-a-s-s.

THE COURT: Thank you. Solicitor?

MS. WELLS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. WELLS:

Q Sergeant Malpass, you testified in this trial previously before this jury, correct?

A Correct.

Q Okay. And during your testimony, you indicated that you were wearing a body worn camera during your interactions with the Defendant and the victim in this, January the 6th, excuse me, January the 7th, 2016?

A I was.

Q Okay. I'm going to show you what's been marked for identification purposes as State's Exhibit 65. Are you able to recognize that?

A Yes.

Q How are you able to recognize that?

A It's got my initials.

Q And the date that you ---

A And the date.

Q And you reviewed this prior to Court today?

A I did.

Q And is this a fair and accurate depiction of the, what I would call, the southern portion of your body worn camera?

A Yes.

MS. WELLS: Your Honor, we'd offer State's 65 at this time.

MR. GROSE: No objection.

THE COURT: Is it 65? I think we already have a 65.

MS. WELLS: Do we have a 65, I'm sorry, then ---

THE COURT: You have a 66, is this 67?

MS. WELLS: It will be 67 and I will correct that right now.

THE COURT: Without objection, State's 67 is admitted.

MS. WELLS: Thank you, Your Honor.

(Whereupon a body cam recording was submitted as State's Exhibit Number 67 for identification and entered into evidence.)

MS. WELLS: And Your Honor, obviously, I'm also asking to publish it to the jury as well?

THE COURT: Yes, ma'am.

MS. WELLS: Alright. Thank you.

(Body cam recording is being played.)

Q What are you doing here, Deputy Malpass?

A I'm checking on the children.

Q Okay.

(Recording continuing.)

Q And you said the shower was still wet. Was it warm wet or cold wet?

A I couldn't really tell; it didn't feel either way.

Q Okay. Alright.

MS. WELLS: Your Honor, I don't have any further questions for Deputy Malpass.

THE COURT: Okay.

MR. GROSE: No questions.

THE COURT: No questions. Sergeant, you may step down. Please be careful.

MS. WELLS: And may she also be excused.

MR. GROSE: No objection.

THE COURT: You may stay or go, whichever you choose.

SERGEANT MALPASS: Thank you.

THE COURT: Yes, ma'am.

MS. WELLS: That's everything in reply, Judge.

THE COURT: That's everything in reply?

MS. WELLS: Yes, sir.

THE COURT: Alright. Mr. Foreman, ladies and gentlemen, the State has put up one witness in reply and all of the evidence that's going to be in this case is now in this case and before you. At this time, I'm going to take up a matter of law and I'm going to give them about 15 minutes to collect their thoughts before they make charges. So when I send you out, do not begin your deliberations, but that will be coming very shortly. When you return, the lawyers are going to have their equipment set up, we'll give them a few minutes to try to set up the computer, so it'll be ready to go. And when you return, the lawyers are going to be making closing

statements to you. When the lawyers finish making closing statements, I'm going to charge you on the law in this case and send you out to deliberate, okay? Alright. Mr. Foreman, if you'd take your jury out for about 20 minutes.

(Jury exiting.)

THE COURT: Matters?

MS. WELLS: Nothing from the State, Judge.

THE COURT: Nothing from the State. From the Defense?

MR. GROSE: Your Honor, at this time we would renew our motion for directed verdict of acquittal based on the same reasons that we stated at the close of the State's case with the additional reasons that after the presentation of the Defense case and reply case, the State has failed to present any direct evidence, or any substantial circumstantial evidence based upon which these jurors can convict beyond a reasonable doubt.

MS. WELLS: Your Honor, as the State stated previously and remains to be true, the State has presented evidence on each of the elements that will be before this jury and therefore has overcome any directed verdict motion in this case. We'd ask the Court to deny the motion.

THE COURT: Yes, sir. The motion is denied. Looking at the evidence in the light most favorable to the nonmoving

party, which is the State, there is evidence to go to the jury.

Yes, sir, next?

MR. GROSE: And the next thing, Your Honor, is I would renew our motion for mistrial for the same reasons argued yesterday afternoon.

THE COURT: Alright. Does the State want to be heard?

MS. WELLS: I would just, same arguments we made, there's no excessive show in force, Judge.

THE COURT: Yes. And for the same reasons annunciated yesterday, it's denied. Anything further?

MR. GROSE: No, sir.

THE COURT: Okay. Anything?

MS. WELLS: No, sir.

THE COURT: Alright. Why don't I give you two about five minutes til or thereabouts to collect your thoughts, hook up whatever you want to hook up and I'll come right back and take the bench. How about that?

MR. GROSE: And the problem with hooking it up is we can only hook up one at a time and ---

MS. WELLS: That which, I think what happened is when I, when we unplugged our equipment, because we watched everything on this one, on the TV this morning. When we switched Charles' equipment, it reset everything on ours, which I apologize, we just ---

THE COURT: That's fine. But yours is going to be set up first ---

MS. WELLS: Ours is going to be set up, ready to go, it is now set up ready to go.

THE COURT: Okay.

MS. WELLS: Where I'm going to use a disc instead of my personal laptop ---

MR. GROSE: And it can be a little finicky, I'll do my best to, I mean, I've got everything ready to switch out. If it works, it'll take less than a minute. If it doesn't, we'll have that uncomfortable silence.

THE COURT: Okay.

MS. WELLS: Well, it can be your turn then.

THE COURT: Alright. I'm going to get off the bench for about 15 minutes or so.

(Off the record.)

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

MS. WELLS: Thank you, Your Honor, may it please the Court?

THE COURT: Yes, ma'am.

(Closing arguments from the State.)

MS. WELLS: Ladies and gentlemen, thank you because this has been a long week, I know for all of y'all, and you've taken time out of your life and your personal life and your

work life to be here, so thank you for being here and your attention and your patience this week through this case. As I said to you on, what seems like a long time ago, Monday, the State would come back before you at the end of this case and ask you to find Mr. Batchelor guilty of attempted murder. And for us to be able to do that, the State has to prove two things. That the Defendant had the intent to kill, and the Defendant attempted to kill with malice of forethought, either express or implied. So what does that mean? Attempted murder involves performance of an act that tends to kill a human being but failed where the act is done with express malice. The deliberate intention to kill unlawfully. So basically, when somebody tries to kill somebody and just doesn't get the job done, right? You try to shoot somebody, try to stab somebody, something like that. In this case, you shoot someone, you physically assault them, and they don't die. You know, Dr. Thurston told you Stephanie should have died, there were life threatening injuries. When he was over here, he told you that it was, basically, a miracle that she lived. That they had very low expectations of her survival when she decompensated from that 14 when she came in, to 8 by the next morning on January the 8th. So this was, and he told you it was multiple gunshot wounds, a depressed skull fracture. Said she had to have surgery to repair an ear canal and those were life threatening injuries. But what is malice? Malice imports

wickedness, it springs from depravity. It involves things of hatred or ill will or just hostility towards another person. The intentional doing of a wrong act without just cause or excuse in an intent to kill someone, and that's what we have here. I don't think anybody's going to tell you that there was no intent to kill Stephanie Batchelor here. She has a depressed skull fracture that could be from a gunshot wound, that could be from blunt force trauma, someone being struck with an instrument like Stephanie described. She said she felt like she'd been hit over and over again, she said I feel like I've been hit with a baseball bat. And she described to you when she took the stand what that instrument looked like, she didn't know what it was, but she described it to you. Then she described how her husband shot her in the garage, shot her, she had her arm up. And Dr. Thurston described the defensive wound and what he believed, in his opinion, was a defensive wound to her arm. Criminal intent is part of that definition. What is criminal intent? State of mind which when operated jointly with an act is the commission of crime, the mental state is conscious wrongdoing. It's not an act, didn't, didn't happen accidentally. Multiple gunshot wounds, effective gunshot wounds she had, if you'll recall from the video body cam of Deputy Malpass, she had two pretty graphic gunshot wounds to her chest. When Deputy Malpass was able to get to her, she comes in and Stephanie is face down with a blanket just kind of

draped over the back of her, if you look at the photo of the blanket, it's got no blood on it, it's got almost no blood on it, that's because she was face down. When she rolls over, the blood is matted all in the front of her hair because that's how she'd been this whole time is face down. So conscious wrongdoing, did he mean to do it, yes, he did. The Judge is going to talk to you and talked to you actually in the beginning of this case, if you remember he talked about direct versus circumstantial evidence. Direct evidence is proof that this is in fact doesn't require deduction. Clearly I'm old, I've been around a little bit, I've heard this described a few different ways. Some people say, you know, so direct evidence is something a witness has personally observed, they've seen, they can tell you what they heard, what they saw, what they smelled, what they touched. That's direct evidence. Circumstantial evidence, it's on the screen, proof of a chain of facts and circumstances indicating the existence of that fact. For example, if you go outside or you go to bed at night, it's dry outside, maybe you got a dog, take the dog out, dry, when you go out. Then you wake up in the morning and you've got that same dog, that dog's got to go out, you take that dog out again, the ground is wet, there's water dripping from the front porch. You can determine from circumstantial evidence, that it probably rained overnight. That's what circumstantial evidence is. And the Court will tell you,

they're of equal weight and you can use both of them. And in this case, the circumstantial evidence needs to support the direct evidence in this case. And you've got both, there's no question about that. The direct evidence you have here is from this witness stand. Ms. Batchelor took this witness stand and Stephanie told you what happened to her. She was working at Kay's, she followed, we did the drop that night with her coworker, Rhonda. She drove home, and as she often did, she said she usually called her grandma, or she called her husband to see if they needed anything on the way home. And she did that on January 7th of 2016, and he said he didn't need anything, they were good, and they talked. Where are you, well, I'm here, I'm passing this, where are you, I'm passing this. And she said that she hung up when she passed the church that was right across the street from their house. And when she pulled into the driveway, she had to stop, she couldn't get the garage door to open. She comes into the, comes into the garage and she's sitting in her car, listening to music. The car door opens, and she says she sees the Defendant, she sees her husband. It's confusing she says. And he pulls her out, no conversation, she says she's trying to head toward the ramp to go into the house, and you've seen those photos with the ramp going up to the back of the residence. And that she felt something hit the back of her head and she turned around, and her husband had an object that she described to you, and she

said she felt like he was, she was getting hit with a baseball bat and he struck her over, and over, and then he shot her. And she put her hands up, and he shot her. That's direct evidence. She's telling you what she saw, what she felt, what she heard that night. She's telling you the Defendant committed this offense. Now, did she tell law enforcement, no, and we'll talk about that, but she's telling you what she saw. The other direct evidence that you have from this case is Dustin Tiller. You'll remember him, he came in here in an orange jumpsuit and he told you that he was a drug dealer, multiple times over, three times drug convicted drug dealer, drug trafficker. But he said he was in the pod with Jonathan and that Jonathan had talked to him about some, maybe strategy, or something about what should he do if he goes to trial, what are they going to ask me. He said don't worry about it, man. At least, and then he said well, basically, I did do it, and told him about it. That's direct evidence because it came straight from Mr. Batchelor's mouth to, through Mr. Tiller here on the stand. Let's talk about a timeline. So on January the 27th, excuse me, January the 7th of 2016, there are text messages between Sydney Allen, who was Mr. Batchelor's, I don't know, lover, affair partner, his mistress, and those come in around 3:56 that day before the assault happened. This is Exhibit 65, and you'll have an opportunity to have these documents back in the back with you when you deliberate. And

that top text message, and this is to Mr. Batchelor, baby, I just wanted to let you know how much I love you and how much I want to be with you. You're unbelievably special to me, you're amazing, you're perfect, I can't wait to call you mine and not have to share you with anyone. I can't wait to be your fiancé and then your wife. I can't wait to be yours and wake up every morning to your face and your smile. I can't wait to come home to you and our kids together as one family. I love you with all of my heart and I'm very impatiently waiting for the day I become Mrs. Batchelor. And then he responds down in line 711, awe baby, I love you too, you mean the world to me, I can't wait either. Just an insight into Mr. Batchelor's mind that day, what he was thinking that day. Then on January, later that day, this would be about 9:07 pm, there are more texts. And this is Exhibit 53 and then you'll have this back with you, this is, again, lines 1373 from Sydney, I can't wait to be able to talk to you at night too, and I love you. And he says that I love I with all my heart, that's what he tells her, I love you with all my heart. And then around 9:13, there are more messages. It's 1371, she home yet, 1370, in line 1370, no, on her way. So and then you see the phone call, again, on January the 7th starting about 9:16, there's a conversation between Sydney and the Defendant that lasts about four minutes and she's Crown Vic, you'll remember that Lindsey McGraw, he was the former forensic examiner talked about that, that Sydney was

saved in Mr. Batchelor's phone two ways, she was saved in there as Crown Vic and she was also saved in there as Sydney. So Crown Vic is Sydney, so they talk, and that phone call was deleted. And then next the call to Little Wifey, and you'll remember from Mr. McGraw's testimony, that's how Mr. Batchelor had Stephanie saved in his phone. And that's that 13 minute and 39 second phone call while she is on her way home from work and they're talking to each other, she's making sure they don't need anything. And then you'll see the outgoing call from Mr. Batchelor, the 911, that's at 13, 3:13:18, so 3:13:18 is 10:13 Eastern Standard Time. So the call from Stephanie to the Defendant at 9:23 lasts 13:39, that takes us to approximately 9:37, and the 911 call doesn't go out until another 35 minutes. What did Stephanie say, she said when I got home, sat in the car for a minute, listened to the song and he pulled me out. He pulled her out, beat her, shot her, and left her laying there. She was freezing, she was covered in blood, the blood is, it's clotting at this point, it's clumping in her hair, that's how long she'd been out there. And he left her out there to go hide the gun, to get rid of the car because she didn't die. When law enforcement gets on scene, there's all this blood on the side of the driveway closest to the Defendant's truck, right? It's all over there. And then, why is it on that side? Because it's over on the ramp and then there's all this blood over here. And we'll talk about that in

a second, I don't want to get sidetracked. But, and Investigator Gary told you he clocked the time from the house to the car, where the car was found, three minutes driving and that's catching lights. And then he had a deputy get out and walk it back, total round trip, 25 minutes, 25 minutes. That gives him time to do all the things that he told Mr. Tiller that he did. Hid the gun, take the car, come back, get rid of the clothes, and get dressed and then call 911. You saw the body worn camera yesterday from Deputy Malpass, and you'll have that back with you, as well, and you can watch that body worn camera. And I would tell you and submit to you, and you can go back and check yourself, at 1:17, that's the time that's going to be on that camera at that bottom. If you look at 1 minute, 17 seconds in, he tells Deputy Malpass, I took a shower and then I put the kids down, that's what he said. He hadn't said that he said in here that he put the kids down around 8:30 and then he took a shower. But that's not what he told Deputy Malpass right there on the scene in the moment, he said I took a shower and then I put the kids down. And then at 1:20 he's having that same conversation, I come outside to check on her, and he told you when he testified, he got out, she wasn't there, he came right out to look for her and found her on the ground. At 12 minutes, 34 seconds on the body cam he tells Deputy Malpass, well, it's in the house, at 13:32 he tells Deputy Malpass his ID is in the last bedroom on the left and

then at 14:17, he tells, Deputy Malpass says hey, the investigators have been notified. Y'all remember this, they kind of at, there's kind of a big, kind of bushy looking tree along the side of the house and he's kind of standing there with his hands on his head. And she says, don't worry, we've notified the investigators. And when you go back and watch it, see what his reaction is. He starts breathing kind of heavy, and then I didn't even catch this until yesterday when we played this in Court. These are screen shots from Defendant's Exhibit 1. So this is at 14:32, like I said, standing there, hands on the head. And then he walks over to his truck, that red truck, the one he talks on the 911 call, he's got a big, jacked up Ford F150, yeah, you know, that's something that they need to be looking for. He walks over to that truck, puts his hand on it, puts something in his hand, rubs it, it's white powder, let's it fall. Nobody asks him about it, but it's interesting, I ask you to watch that because the State will submit to you he's hoping somebody is going to ask him about it. Let me look through those pictures because it's 14:32, 14:33, 14:34, he walks over there, touches that white powder that he told Dustin Tiller that he put out there hoping that somebody would notice it and think it was a robbery or some sort of drug deal. Why would you do that? Why are you doing that unless you want somebody to notice. And like he told Dustin, nobody did, nobody even patted him down, they went with

what his theory was, they were, like, oh, maybe it was a carjacking, maybe that's what it was and that's what they went with. And then when you watch the body worn camera, he tells deputy at 16:25, I took a shower so we could go to bed. That is not what he told y'all in here today, I mean, yesterday y'all. He said, the indication was, you know, well, sometimes Stephanie would come home, and I would do this and I would, maybe I needed a Yoo-hoo and some boiled peanuts and I would run back out. But that's not what he told deputies that night. He told him he took a shower so he could go to bed, and what did Stephanie tell you when she testified, when he took a shower and went, after he took a shower and what he slept in, he slept in gym shorts, maybe a t-shirt, just think about that. Let's talk about the crime scene. This is State's Exhibit 11, you'll have that back with you. Crime scene, purse dumped out in one area, wallet, you heard Deputy Malpass say that on this body cam, wallet's still there, phone is still there. State's Exhibit 10, you can see the ramp going up to the house just like Stephanie described about a quarter of the way, maybe a little bit more of the way up, there's the, she said I was walking on the ramp when it happened. There's the blood, and what I would submit to you are drag marks coming from that pulling her, like Dustin talked about, pulling her away into that yard. This is Exhibit 7, kind of a wider view of that, and right there to the right of that is where that truck is

parked. And you can see the large amount of blood on the right-hand side of the driveway. And then Exhibit 28, this is the one that he talked to Mr. Tiller about, the white powder on the car that he goes and actually touches during the body cam video, how strange. Then Exhibit 41, Stephanie identified this, that's her vehicle and there's blood on the passenger's side of the vehicle, not the driver's side, the passenger's side, and all in the passenger side door. What did Mr. Batchelor tell Mr. Tiller about this. I went to get rid of the gun and when I came back, she had drug herself, and drug herself up in the passenger's side of this vehicle. And what did Deputy Hogsed tell you, that's her blood, that's her blood, nobody else's, it's hers. And just like Mr. Tiller said, all in the passenger seat, very little if anything on the driver's side from a substantial amount of blood standpoint, but a whole lot on the driver's side, so what do we have? The Defendant had the intent to kill, did Mr. Batchelor intend to kill Stephanie? Oh, absolutely. There's no doubt about that. He intended to kill her, and when Mr. Tiller asked him why, he said because he'd met this, Stephanie was fat, she's fat, they argued, you know, that was enough, that was enough. Sydney was thin and redhead. And then he attempted to kill with malice and forethought. And you only need it for a second. You only have to have that ill will or that malice for one, a moment, but he had it for more than a moment. He probably had it for a

while. Stephanie described a relationship that was not going well. And while she knew that he had been unfaithful, it didn't mean she liked it, I mean, she confronted him about Sydney, if she didn't care, she wouldn't have pulled in the Chick-fil-A parking lot that day. She wouldn't confronted him about it that night, they wouldn't have argued about it, it would be just, hey, this is how it is, this is just how it goes, you know, I'm okay with this. Just because you choose to forgive someone for adultery because you want to hold your family together because you have gone through your parents, your own parents getting divorced, you didn't want to do that to your boys. Because she had decided and made those decisions to do that didn't mean that she liked it. And it's not the same as when somebody shoots you and assaults you and then you decide I'm done, I'm done protecting this man, I'm done pretending like these things are okay, and this is it. So Mr. Batchelor's trial testimony, he told you, Stephanie's dad doesn't like him, but yet he also testified that her family supported them. They provided childcare for them and that even though her dad saw him cheating on her, he didn't tell her. Stephanie never confronted him about it, never said a word. And she told you that's because she didn't know, her dad didn't tell her for months later. So this idea that the Defense has tried to plant that this is somehow some sort of manipulation by Stephanie's dad to get back at her for something, is

ridiculous. And the investigators told you, we talked to him, he did mention Jonathan's name, but that's not when he became a suspect. I mean, investigators do that all the time, you know, they interview a lot of people, people put a lot of people's name on stuff. But that's not when he became a suspect, he became a suspect when he lied to William Gary and told him he wasn't having an affair. That's when William Gary said, hold up, wait a minute, I think we need to treat this person a little more suspiciously than we have up until this point. What else did Mr. Batchelor tell you? He said, oh, yeah, yeah, yeah, this Yoo-hoo, these boiled peanuts and sometimes I've been back out and got her stuff. That's just an anticipation of what we're going to talk about now which is the fact that, well, we'll go over that, let's talk about that. He said he put the kids down between 8 and 8:30 which is not what he told Deputy Malpass, he said he had taken a shower and then he put the kids down. And he told y'all that he took a 45-minute shower, 45 minutes. Maybe I'm not living right, but I've never had a 45-minute hot shower that didn't run out of water. I mean, and he said he got out of the shower and went straight to check on her. And he ran right to her when he heard her calling and he called 911. But then how do you explain this? Oh, hold on. Okay. Look at what this man has on. Is this a man who just got out of the shower? Stephanie said he wore gym shorts to sleep in, what does this man have on? A hoodie, he's

got on boots, he has on jeans, he has on a winter cap, it's cold outside. This is a man dressed to be outside for an extended period of time. This is not a man who just took a shower and said, hey, got out and was like, hey, where's Little Wifey at and went to look for her and she's not there. That's somebody that's going to be outside freezing their fanny off in gym shorts and maybe a towel if you're lucky. So did he find Stephanie and go back and put these clothes on? No, no, no, he didn't tell you all that, that's not what he said. This was how he was dressed, and I submit to you because he knew he was going to be outside because it was cold when he drove that truck down there, it was cold y'all. And when he ran back, he was probably cold then too. So he spent 25 minutes outside, maybe, maybe not even 25 minutes, I don't know, he's a young guy, wasn't wearing full equipment like the deputy was that William made run back. This man is dressed to be outside for a while, and that's because he was cold, he wanted to be warm, he wanted that hoodie, he wanted that front pocket, wants that hat on. This is not a man who just got out of a shower and then walked out just curious wondering where his wife was because he would have on something completely different. This is not even a man who was going to the store later to get some Yoo-hoo and some boiled peanuts because that's not what's up. Because if that's what you're getting ready to do, if you're waiting for her to get home and then you're going to go to the store, if

you're strolling out to head to the, to the Quick Trip or the 7-11, or wherever you're going, you're going to have your wallet in your pocket because that's where you're headed, but he does not. He tells them twice, it's back in the room. No, no, you're walking out the door to go buy some boiled peanuts and a Yoo-hoo, that wallet is on you. And he didn't talk about that at all. Again, on 1-8 which is that next day, investigator, sorry, Lieutenant Gary talked to y'all about talking to Jonathan that day. He said yeah, you'll see some things on that phone maybe we weren't getting along, and I've made some mistakes in the past, but there's nothing going on right now. Then on that same day, we have State's Exhibit 54. This is line 145, I wanted to hug you so bad when I saw you, from Sydney. And then he asks her do you want to walk back to see her, I mean, not to make it weird, but I'm just asking. This tells you where this man's mind is at. His wife has been shot, well, he shot her, but let's go with the theory that he didn't shoot her, State's got it wrong. Some stranger has come and shot your wife, and you got your girlfriend up there and now you're going to make her a display, something for y'all to talk about and you've got two people, he told you, you get two people to take back there. Did he take her dad, no, did he take her stepmother or her siblings, no, no, no. Who did he offer to take, his girlfriend, his girlfriend who was at the hospital. I mean not to make it weird, but do you want to come

back and see her. And then at line 139 at the top there, I could kiss you on the way, lol. If you want insight into Mr. Batchelor's state of mind, there you have it. I mean, he's putting this in the rearview mirror, he's put Stephanie in the rearview mirror, this is done. She's in neuro ICU, I mean, basically, fingers crossed, right? Like, let's just hope that these doctors are right and then I can get moving on with my relationship with Sydney. But Sydney had the decency to say no, I'll cry, being in hospital rooms freaks me out and seeing tubes and stuff, no, I know I'd feel weird about it, and he says but we are the only ones that know, just you and me, baby, it's just you and me and no one will know why I'm taking you back there so you could see my wife on life support while I'm here trying to find a way to make out with you in the hospital. Because he told her this at line 115, I'm going to go for a walk out the door to the left, give me a minute and then act like you have a phone call and come. So not done yet, because Sydney's not, it's not appropriate for her to go back there, she told him because of their relationship, but since that's not going to work, let me find another way to sneak a little time with you before you have to go, Sydney. And then she says I still don't know how you're going to swing this weekend while she's still here. I mean, they're planning, they got plans, they got plans to do things together, they got plans to be together. She said that, he said just, I'll deal with that.

She said how are you going to handle people seeing my car in your driveway. He said I'll deal with that; you can just ride with me. And he dealt with it because that they packed that minivan up in that garage and closed the door and then when the deputies get there, they were dealing with it, dealing with each other and also dealing with the fact that the neighbors were going to see her car with her name plate on the front of it parked there while everybody knew Stephanie was literally fighting for her life the hospital. And they're going to say, well, yeah, I mean, he's made some bad decisions, he made some bad decisions, you know, but that doesn't mean he did it. Motive, y'all, intent, state of mind, this tells you those things. And Stephanie, if Stephanie doesn't remember or Stephanie has been, you know, her dad told her what to say, I don't know what they're going to tell you about how Stephanie's version of this isn't accurate, I guess we'll see. But what we do know is that on the 17th of December [sic] while Stephanie is still, probably, she may have a tracheotomy at this point because as Dr. Thurston talked about when you've been on life support for so long, they have to actually cut your throat open so that they can assist you in breathing. So she, this is what she's dealing with and he's over taking, because he takes photos with his girlfriend, that's what he's doing. And then on the 24th, Exhibit 66, that's them talking about, let's be together, I want to do things together, I want us for a while

as a family, just us to spend the day together. Then she says, awe, that makes me melt, that just makes me melt, and he says, they want to be together as mommy and daddy and husband and wife. He's been gone, this is a man who has put this relationship that he wanted to be over, but wasn't, apparently, man enough to end in the proper way. He's got that in the rear, Stephanie is in the rearview, y'all, I mean, he has, all breaks, all gas, no breaks, headed straight on, has moved on, left her behind, literally, left her behind and started a new life with this other woman, she's not even dead, they're not even divorced. But together, as a family with their four children going out spending time together as mommy, and daddy, and husband, and wife. Stephanie told y'all, she came in here and she told you that it was hard for her to accept that Jonathan had done this to her, and in fact, she says it on the body cam, I wish this were a bad dream, I wish it were a dream. This man that I have two children with and have been together, let's see was 24 when this happened, that's, and they had been married for four years, she was 20, a baby when they got married. And she had forgiven and forgiven and forgiven because she wanted to stay with this man, she wanted to do right by her children. And she told you I was afraid, he was right there, she didn't know, she told you on the stand, she said I didn't know who was talking to me, I heard a voice asking me questions, asking me my name, my date of birth. She

didn't know who it was. On cross examine, she actually said he, Mr. Grose said, well, you know now that it's Stephanie [sic] Malpass. Well, she knows now that it was law enforcement, but at the time, it was just another voice talking to her, she said, I didn't know anything, he just tried to shoot me. And then got to the hospital, I mean, she clearly, painfully clear when they moved her to that board which was incredibly difficult for anybody to watch, she is in intense pain, she is struggling, she is crying out, she is trying to, basically, claw her way, I mean, she's trying to sit up, she's trying to do all these things, but they say no, you have to lay down, you have to do these things, but she is hurting and she keeps saying that over and over and over again. And get to the hospital, all the things that go along with being in the trauma bay, all the people in there, she doesn't even remember talking to law enforcement, as she talked about, she doesn't remember that. And she said, basically, when she testified in here, I just didn't want it to be true, and then I had to admit to myself that it was, and I could not go home to that, I could not go home to that. Again, it's one thing to forgive infidelity, and she had done that time and time again. But it's another to forgive someone trying to take your life, and she tried to do it, she tried, she didn't want to tell them. What did Sergeant Walsh say when he took the stand, that when she remembered everything, she was able to quickly answer the

questions and then her body language changed when he asked her who did it. She dropped her head, she looked down, she wouldn't make eye contact, she knew, she just wasn't ready. And then she did tell them, and again, she's writing at that point, she can't even speak, she knew, and she told you when she took the stand exactly what happened that day. And he told people too, he told Mr. Tiller, and Mr. Tiller told you what he said. And Mr. Batchelor said, well, we're free to kind of wander around the jail because that's how jails generally work because you're free to wander around, they just let you go anywhere you want to; we just wander around and go into people's cells. But he admitted that you could get written up for things like that, but I guess just not getting, you'd get written up for not standing up for headcount, but I guess you couldn't get written up for going in somebody's cell. I'm not sure about that, but the implication is is that he'd say Mr. Tiller went in his cell, I mean, he didn't say that he had all this paperwork in here. I mean, but y'all, you can see the amount of work that we're dealing with here, the number of exhibits that you have here, the number of people that are coming to testify here, that's just, you know, a little bit, the thousands of pages of medical records, all those things. The implication is that Mr. Tiller went into Mr. Batchelor's cell and, I guess, read all of this stuff, I guess at his leisure because they could just go anywhere they wanted to,

just kind of kick back in the cell reading all this, all the paperwork in this case and just came to this conclusion that this has all happened. I mean, he's good, I mean, really, really good, y'all. I mean, if he just made all this up or to glean it from the, you know, from the information that Mr. Batchelor may or may not have had in his cell with him, I mean, that's really impressive that he'd be able to come up with all this and then would just happen to line up exactly with all the evidence in the case. Wow. But that's not what happened. But he knows this because Mr. Batchelor told him, Mr. Batchelor admitted that he talked to Mr. Tiller and they did do this church, the Bible study stuff together, and he did talk to him, he just didn't want to admit that he told him what he did. I mean, that's kind of embarrassing, right, to have done that and then have somebody come in and testify that you did that. But he did and Mr. Tiller told you what he knows from what Mr. Batchelor told him. So what do you have? You have Stephanie's eyewitness account of what happened, you have Mr. Tiller telling you what Mr. Batchelor told him, and then you have all the other evidence that supports those witnesses. You have the blood on the passenger's side or the passenger's side where the floor would be, you have the dragging, you have the blood on the ramp, you have the body cam. And this case is almost yours, use your common sense. I told you in the beginning, don't check it at the door, it's important, it's more important

now than ever. You've got to be firmly convinced that he did it, and I submit to you you can be. You will have all this evidence back there, you'll have an opportunity to review it if you need to but take your common sense that gets you through what you do every single day in this world, working, raising a family, being a friend. Take that common sense, apply it to the facts, apply the law to the facts, and I submit to you, ladies and gentlemen, you'll find this Defendant guilty of attempted murder.

MR. GROSE: May we approach, Your Honor?

THE COURT Yes, sir.

(Whereupon, a bench conference was held in the presence of the jury but out of hearing of the jury.)

(Closing argument by the Defense.)

MR. GROSE: I think by now you, you have a good idea about the process that we go through, that we started almost two weeks ago. I would also imagine right now that y'all are feeling emotions. We're all different, some of you may be feeling certain emotions, some of you may be feeling other emotions. You may be feeling a combination of emotions. I image that some of you are feeling a lot of sympathy and empathy for Stephanie. Because there's no doubt that what happened to her should never happen to anybody, there's no doubt that she almost died, it's no doubt that she's been through a horrible experience. In fact, there's no doubt that

this is tragic for her and her family. And I would even suggest to you that you're not human if you aren't feeling some of those emotions. I imagine that you also are probably pretty angry with Jonathan Batchelor, pretty angry because he had so many affairs, pretty angry because of how he dealt with this affair while his wife was in the hospital. Probably angry at him because he started off lying to the police, and he shouldn't have done that. And I told y'all at the beginning of this case on Monday morning that Jonathan had exercised some bad judgement. And you've been in here for the last three days and now the fourth day and you've seen a lot of evidence that Jonathan exercised a lot of bad judgement. And while Jonathan did some things that he shouldn't have done, there is still a lot that has to go from there before you can get to the point where you can say somebody tried to kill their wife, that is a different level. And I'm going to ask that you all, I'm going to ask that you all pay attention to the law that Judge Kelly is going to talk to you about at the end of the case. They talked about some of it in their closing argument, I'm going to talk about some of it in my closing argument, some is going to be different, some is going to overlap a little bit, but some of the things that the Judge is going to talk to you about, we're going to go through these in a minute, are the presumption of innocence, that the requirement that the State has to prove their case beyond a reasonable doubt. We've

already heard a little bit about direct and circumstantial evidence. I'm going to tell you a little bit more about circumstantial evidence, and we're going to talk about credibility of the witnesses. Solicitor, near the end of her closing made a statement about wonder what they're going to say about why Stephanie, what she told you in here wasn't true, and we're going to get to that. And it's not so much that she was lying about what happened. What you're going, when we talk about it a little bit later, we're going to talk about the fact that she just didn't know, she does not know what happened to her, but she's probably come to believe that it was Jonathan. The presumption of innocence. Jonathan has pled not guilty to the indictment and that puts the burden of proof on the State of South Carolina to prove that he's guilty beyond a reasonable doubt. A person who committed, who is charged with committing a criminal offense is never required to prove himself innocent. The burden of proof is always on the State, and that burden of proof is the State has the burden of proving Jonathan guilty beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. And I know that there's, and the Judge is going to tell you, there's very few things in the world that we know with absolute certainty, they don't have to overcome all doubt, but they do have to firmly, leave you firmly convinced. The Judge is also going to tell you that a reasonable doubt may be

described as a kind of doubt that would cause a reasonable person to hesitate to act. Reasonable doubt can arise from the evidence which is in the case or from the absence or lack of evidence in the case, and we're going to talk about that. And if you think that there's a real possibility that the Defendant is not guilty, you must give him the benefit of the doubt. And the Judge is also going to talk to you about being fair and impartial jurors. Everybody agreed that was the purpose of the process to go through, that we went through last Monday or two Mondays ago over in the auditorium is so that you would come to this case with no friends to reward, no enemies to punish and that whatever your verdict is, the Judge is going to tell you to speak up and say it. And what this presumption of innocence and what this burden of doubt that we're talking about means is, and this is a picture of State's Exhibit Number 2.

Jonathan, certainly it means that Jonathan and I don't have to prove exactly what happened, we don't have to prove what happened at that incident location, that's on the State. It also means that you as the jurors in this case don't have to figure out what happened. In this process, we're not asking you to take this evidence and if there's doubts and it can be looked at one way or another way, nobody's asking you to figure out what happened. In fact, what we're asking, what the law is asking, what Judge Kelly's going to ask you to do is determine whether or not the State has met their burden of proof of

proving Jonathan guilty beyond a reasonable doubt. And if they haven't done that, then we're going to ask you to speak up and say that. Direct and circumstantial evidence, and the Judge is going to tell you what those are, and we've already heard a little bit of talk about that. The Judge is also going to tell you what's highlighted there that circumstances must be consistent with each other and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. Point, when the circumstances are taken together, point conclusively to the guilt of the accused. Because what you've heard in this trial, and we're going to talk about it in a few minutes, what you've heard in this trial is you heard some evidence that is circumstantial evidence and it does not point to Jonathan, it does not point to Jonathan. And you're going to hear some more language about the burden of proof, that when the State relies all or in part on circumstantial evidence or a combination thereof, they have to meet the burden of proof beyond a reasonable doubt. And I tell you that because the State is relying on the direct evidence, but they did acknowledge that there is a combination of direct and circumstantial evidence here. And when they rely on that, you have to take everything together, you have to look at all the evidence and see, as we talked a minute ago, whether or not that conclusively points to guilt. Alright. Credibility of witnesses. You're going to hear this in the Judge's charge.

The testimony of an informer who provides evidence against a Defendant for pay, for immunity from punishment or for personal advantage or vindication must be examined and weighed by the jury with greater care than the testimony of an ordinary witness. The jury must determine whether the informer's testimony has been effected by an interest or by prejudice against a Defendant. You're going to have that as Dustin Tiller's plea agreement, you're going to have that. And when he was on the witness stand, I asked him about that part right there. In the case that he entered into that plea agreement with, he was facing mandatory life in prison without a possibility of parole, never going to get out. What do we know about Dustin Tiller? Before he entered into this plea, he already had, not one, two prior convictions for dealing with amounts of drugs. This was over 500 grams, he said it was pounds, pounds that he was dealing with. And after he entered his second plea and he went back to the Department of Corrections in South Carolina, he got a call from a man named Perez who was in a drug cartel. Because Dustin Tiller still owed Perez and that drug cartel money, still owed them money, and what did he do? He went back to running a drug trafficking operation from the South Carolina Department of Corrections. And after he got caught, he's going to turn in other inmates and correctional officers for drug dealing and corruption. And after he got caught and he was facing life in prison without

the possibility of parole, what did he do? He turned in the people in the Department of Corrections, he talked about his own case, and he helped them in a case on somebody named Josh Peace, and he becomes a convenient witness for the government in this case. You heard him, he knows the law, I mean, he, he had law materials coming into him from his lawyer. He knew that what he had to do to get out of that life without parole sentence that was mandatory is he had to come up with as much as he could come up with to help out his situation. He even testified that for one of the cases, he got the United States Attorney to recommend dropping from 240 months to 220 months, getting it down to 18 years. And he said he was 35 years old, life without parole for somebody that age is an awful long time, an awful long time, way more than 18 years. You saw the process, they got to go after me this morning. If they had a witness that could come up here and tell you that those cell doors weren't open for six hours when they were out on rotation, they would have done it. You heard Dustin Tiller say that he knew where Jonathan kept his legal materials. You've observed in this Courtroom this week that everything is documented by reports, you don't have all the reports, but they were using them to refresh their memory. You've seen a lot of the photographs, and yes, there's a lot of stuff, but there was nothing that Dustin Tiller told you this week that he couldn't get from looking through the discovery and the photographs,

nothing. Because y'all heard the testimony of those very same things being documented in the reports or being documented by the photographs. And did Dustin Tiller add anything of value to the State? No, he didn't. You know, he says that, claims that Jonathan said where he hid the clothes, did they ever find that, no. He claims that Jonathan hid the gun? No. Did he do something that hurt the State? Yes, he did. And that was something she talked about a few minutes ago. He claims that Jonathan left Stephanie there and went off and hid the gun and came back and then by implication because the car was still there, had to go off again. And when we get to the timeline, and we're going to talk about the timeline too, when we get to the timeline, they've got Jonathan doing so much stuff that it's impossible to do all of that. So I suggest to you, that you've got to set Dustin Tiller aside because as I said a minute ago, you're going to get this instruction on credibility of the witness and if he's effected by any interest and it's his freedom, he wants to cut it down, he's anticipating going back into Court and cutting down that time and getting out earlier. And they know his freedom is the most important thing to him, they know that because it's all memorialized in this plea agreement where he gets to try to get a downward departure. His was memorialized in the sentencing hearing when they put on the record that he could come back again one day and try to get another downward departure. And you saw it in

here, not only did he testify in an orange jumpsuit, he testified in chains, handcuffs, ankle cuffs chained together. Why is that? They know he wants his freedom, and they didn't trust him enough not to try to run away, they don't trust him, you shouldn't trust him. Credibility of the witnesses, you're going to hear instruction about that. In determining the facts of the case, you have to determine the credibility of the witnesses that testified, you're the sole judges of the credibility and credibility is believability. You can believe one witness, you ask questions, can I believe this witness, is this witness credible, what is the value and the weight to be given to the testimony of the witness is in your sound discretion and you must decide what the truth is. There are several things that you can take into account, and I've highlighted some of these in here. You can take the appearance of the manner that the witness testified on the witness stand, like when Dustin Tiller got really nervous the other day. You can take into consideration whether the witness' testimony is consistent or did it contain discrepancies, and we're going to talk about some of the discrepancies in Stephanie's testimony in a minute. Was the testimony of the witness corroborated and made stronger by other testimony and evidence. And that's where we get back to the circumstantial evidence, that circumstances have to point conclusively to Jonathan's guilt. And we're going to talk about how the evidence not only does

that, but it suggests something else. And this part talks about how you can believe part of a witness, you can believe all of the witnesses. You really have a lot of discretion to determine what parts you believe and what parts you don't believe, and what parts you rely on. And I think that's an important concept, what parts that you rely on for determining whether or not you're firmly convinced. I said we were going to talk about Stephanie's statement. You know, it's, the reasons that things are documented is because it's the way the human memory works, you know this from your own life, over time, you forget things, but you can go back and look and refresh your memory. The reason why it was important that you watch the video tape and listen to the 911 call and look at the video tape of what was observed that night is because that is some of the, the most pure evidence that we can give, you know, that's not effected by somebody's memory by how they write it down or how they remember several years later. And you know, on the night that it happened, you know, Stephanie even, not only did she say she didn't know who shot her, she said she didn't see who shot her. And I know it was obvious that she was in a tremendous amount of pain, and it was difficult to watch that video, and that's why I talk about, you know, analyzing it and looking at it and setting aside the emotions that you might feel from that because there's several things that were important. One is, you could hear Jonathan's

demeanor, you could hear how upset he was. They talked about one particular point where he started breathing heavy, but he did that a lot. On the 911 call, he was even stuttering he was so upset. He had to think through to get certain things right, and you could tell it was because he's upset. And I would suggest to you that you go back, and you listen to the 911 call, and you look at that video tape again. Another reason it's important is you remember when Deputy Malpass testified the first time, she said that there was never a time when she was alone with Stephanie to ask her questions where Stephanie could feel free to tell what happened. Well, they're not talking about that anymore because when you look at the video, there's a couple of times where Jonathan, you can tell that he's left, you can tell when he comes back. There's also a portion at the end where Jonathan is more towards the house and they're taking Stephanie into the ambulance, and so there were plenty of opportunities to talk. And every one of those officers that you see, well, you know, Deputy Malpass was in her uniform because she was wearing her, her body cam, and the other officers that you see are there in uniform. Yes, she may not have known who they were, but I think she had an ideal that there were police officers there because you heard that despite her injury, despite how much pain she was in, she was able to give the personal information. Alright. January, well, before we get to January 18th, and you know from Lieutenant Gary that

Stephanie's father was the first person to bring up Jonathan's name. Actually, that came from Investigator Walsh, that Stephanie's father was the first person to bring up Jonathan's name as being involved in this. And while they may split hairs and say that didn't make him a suspect at that time, that that happened later, it's something that happened. And this is a family, and you can tell that there was some issues going on, but if Stephanie's father wasn't the first person to bring up Jonathan's name and there wasn't tension between Jonathan and Stephanie's father, I think they would have put Stephanie's father on the witness stand and refute that, and they didn't do that. Now, he's been in the Courtroom all week. By January 8th, 18th, Stephanie is aware that the police and her father think it's Jonathan. And in the conversation with the investigator, not only did she not identify the person who attacked her, she said she parked the car in the driveway. On January 25th when she finally identified Jon, knowing that that's who they were wanting her to identify, she said that they parked the car in the garage. Why is that important? It's a discrepancy, and this gets back to some of the circumstantial evidence that we've been talking about. That's State's Exhibit Number 10 on the screen, and you can see how the garage was cluttered that night. And you can get a sense in that picture, and we'll look at some other pictures in a second, you can get a sense from that picture as to how little

room there is in that garage. In fact, this is from the day that they came to do the search warrant. And on this side over here, the outside of the garage, you can tell how close it is there. And when you come over to this picture, this is 29 and 30, you can see, you can kind of see that ramp sort of down at the bottom and see how close it is, how tight it is to get in there. Now, why is this important? I said a minute ago that Stephanie just doesn't know what happened. The evidence, the photographs, the circumstantial evidence suggests that it could not have been, the car could not have been parked in the garage, yet that's what she ultimately settled on. And does that make her a liar? No. What it makes her is is somebody who doesn't know what happened and has because she kept getting questioned and questioned about it, tried to piece together things and ultimately came up with something that wasn't accurate. Alright. So I want to talk about the physical evidence. We heard that, about two bullet projectiles. One that was found at the, on the driveway, one that was removed from Stephanie at the hospital, and those were sent to the lab to be examined. And they were, what they determined was is that they were similar, but insufficient microscopic marks permit a positive identification to each other. That means they can say that there are some similarities, but they can't say that those two bullets were fired by the same gun. Bruno, Bruno was the dog, the canine that came out to where they found

Stephanie's car. Bruno never committed to a track, and we may never know why that is and of course, you all don't have to figure that out just like Jonathan doesn't have to figure it out. But why did Bruno never commit to a track? Is there a real possibility that there wasn't a track there to commit to? And what I mean by that is if did somebody other than Jonathan did this, they would have arrived in a vehicle and if there was two people, one would have driven Stephanie's car away and the other would have driven away in the other car. The person who put Stephanie's car in the ditch would have gotten in the other car, and there's no track for Bruno to commit to. If, as they say Jonathan walked back or tried to run with his bad back and his bad knee, there would have been a track for Bruno to follow right back to Jonathan, and you don't have that. There's no fingerprints, there's no GSR on Jon's hands. Now, there was some testimony about how easy it is to get GSR, how delicate it can be because what it is is GSR is from the powder that comes out of a gun when it's fired ---

MS. WELLS: Judge, I'm going to object. I don't think this was in the testimony.

MR. GROSE: That's fine, I'll move on. There is no GSR. And so for their story to work and their timeline, they have to have a way for Jonathan to get the GSR off of his hands. And then the DNA evidence. This is State's 43, and there's some other pictures of it, this is the steering wheel

from Stephanie's car, SUV. This technology, you've seen that it fails us sometimes and sometimes when we put things on the screen, it's a little bit harder to look at. You're going to have these pictures and you can go through them, but what do they talk about? They talked about finding blood on both sides of that steering wheel at what was described as 10 and 2 which is how you're, some of us don't drive that way, but that's how you're taught to drive. And it wasn't just DNA, it was blood, it was Stephanie's blood. And while you can't always tell how long DNA has been somewhere, sometimes the circumstances help you narrow that down. And what you have is somebody with Stephanie's blood on their hands drove that car and within that blood, and that was Stephanie's blood, and within that blood, there is DNA from an unknown male. Jonathan's DNA is not in the blood on the steering wheel. If Jonathan put Stephanie's blood on that steering wheel by driving that car, it stands to reason that his DNA would be there, but they ruled him out. There's a man's DNA mixed with Stephanie's blood, and they put it in a system to try to identify that person one day, and maybe one day a hit's going to come back and we're going to find out who put that there, but we don't know that now. It's not our job to figure out who's it is and it's not y'all's job to figure out who it is because it's just certain things that are too much to ask you to do. This is just a picture of the car, and I probably should have had that in there a little bit

earlier, but that kind of goes back to the ideal that I talked about a minute ago that because Bruno didn't pick up a track, somebody could have rolled the car down the hill, got in the other car with their partner in crime and drove away. I want to talk about the timeline. This is Exhibit 52, you're going to have that in there. And yes, you know, there is the call to Sydney there, but what is significant about all this is that this helps us to really begin to narrow down the timeline. And you're going to have that, and I suggest that when y'all go through and review the evidence that y'all make your own calculations. But this is what I come up with is at 9:23 and 36 seconds, Stephanie calls Jon and that call lasts for 13 minutes 39 seconds. And that's based off of that last exhibit that we looked at. The call, that call ends at 9:37 and 15 seconds, and then at 10:13 and 18 seconds, Jon calls 911 and that call lasts for 11 minutes, 23 seconds, and that's the call that you heard, and you'll be able to listen to it if you want to. And then the dispatch time that I think they testified to was 10:19, but what is really the most significant in all of this is that part right there. The time that the call ends and the time that Jon calls 911 which is 36 minutes, roughly, I mean, give or take a few seconds, it's 36 minutes. And so I think it's, you know, important to think about what has to happen in that 36 minutes in order for their theory to hold up. You've already heard what the investigator's testified to, that

if you drive from the house to where the car was and walk back, that's a little bit over 25 minutes. It's a mile and a half. We had two witnesses testify that it's a mile and a half, okay? They're going to suggest to you like they did earlier that maybe Jonathan was running with his bad back and the bad knee that you heard him talk about and testify about. But if you believe what they're telling you, you have to have this attack. Jonathan has to leave and go hide the gun because Dustin Tiller is saying Jonathan left and hid the gun and came back and Stephanie had crawled around to the car, of course, Dustin can't tell you where that gun is. Then you have to get rid of the car which they've already suggested could take 25 minutes to do. Then somehow Jonathan has to get the GSR off his hands, are they also going to suggest that maybe he planted some other dude's DNA there? If they do, that's just ridiculous. They're putting a lot on Jon for things that had to happen in 36 minutes. They're also putting a lot on you; they're asking a lot of you to conclude that all of these things that are necessary happened. They're putting a lot on you to ignore the fact that Bruno doesn't corroborate that Jonathan walked or ran back from that car. They're putting a lot on you to ignore that male DNA evidence that's mixed in Stephanie's blood on the steering wheel. They're putting a lot on you to come up with ways of how Jonathan got rid of all of this evidence, the gunshot residue, the gun, the clothing, putting a lot on you.

I don't know what they're going to tell you, I don't know what they want you to believe about whether Jon took a shower that night or not. I don't because when Deputy Malpass testified up here on Monday, she says it was just a little bit wet, they were trying to suggest that maybe he didn't take a shower. But they played the rest of her tape today and you heard her say that the shower in the master bedroom was, was still wet. If they're going to try to suggest that Jonathan took a shower to get rid of all this evidence, of course, that's different than what they suggested the other day. That's yet another thing that they're asking you to believe that he did to get rid of all the evidence. Both Stephanie and Jon testified about the routine. She would come home, he would often get a shower, and it was not uncommon for both of them to want him to run to the store and get something, they agreed on that, it happened on a regular basis. You saw Deputy Malpass from her camera walk in and go down the hall to the bathroom in the master bedroom and then come back to the kitchen that goes to the garage. They were trying to suggest, oh, Jon gets out of the shower and just immediately goes and checks on Stephanie. The layout of the house, gets out of the shower, he gets dressed, he walks down through the house, he's expecting Stephanie to be there and she's not. He goes outside, car's not there, he hears her screaming. We talked earlier that proof beyond a reasonable doubt is proof that leaves you firmly convinced of the

Defendant's guilt. We also talked about is there, reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act, and then if you think that there's a real possibility that the Defendant is not guilty, you must give Jonathan the benefit of the doubt. I told you on Monday that I don't know where the term, giving somebody the benefit of the doubt comes from, but I suspect that it probably comes from this process, from this criminal justice system, the way we've done jury trials and evaluated evidence in the Courtroom for hundreds of years. And that's because of the burden of proof, the presumption of innocence and the fact that the State has to prove it, we don't have to and y'all are not required to figure it out. So I've given you some things to think about and hopefully that y'all will talk about in the jury room. But is there a real possibility that Dustin Tiller is just trying to cut his sentence, is there a real possibility that Dustin Tiller went through the discovery and made what he said match what the police already had? Is there a real possibility that Stephanie does not know who shot her, but came to believe that it was Jon? Doesn't make her a bad person, but you can see from this evidence that her father thought it was Jon then the police thought it was Jon and then it was weeks later when she named Jon. Is there a real possibility that that unknown male DNA mixed with Stephanie's blood on the steering wheel belongs to the shooter or somebody who participated in this crime? Is

there a real possibility that Bruno didn't commit to a track or a trail because two people were involved and then drove away together? That's what the evidence suggests. And if there's a real possibility that Jon didn't shoot Stephanie, the affair and his bad judgement notwithstanding, if there's a real possibility then that's reasonable doubt. This is the last time that I'm going get to talk to you. The Solicitor's going to get a chance to speak to you again after I sit down, but that is not the final word. This, closing arguments are our opportunities to suggest to you what we think is important in this case, and what you should look at and what you should talk about. I take it a step further, I think you should look at everything, I think that's what the process is asking you to do, to look at everything. But don't do it out of emotions, do it with an eye to figure out is this evidence that we can rely on to be firmly convinced. Do the circumstantial evidence in the case support the testimony that you heard or does it contradict it. And I talked to you about why I think it does. And it's not your job to try to piece that evidence together and figure out what really happened. What the Judge is going to tell you is is that if the State does not meet their burden of proof, if you have some hesitation, if you're not firmly convinced, if there's a real possibility this evidence says what we think it says then speak up and find Jonathan Batchelor not guilty.

(Further closing arguments by the State.)

MS. WELLS: Thank you, Your Honor. I know y'all are sick of listening to lawyers talk, so I'll try to be brief. The law of this case is the law as Judge Kelly gives it to you, he told you that in the beginning and he will tell you that again. The law of this case is as Judge Kelly gives it to you, not as anybody else gives it to you. And I ask you to keep that in mind and listen very carefully when Judge Kelly gives his charge to you which will happen here in a little bit. The Defense wants to talk to you about a few things and I do too. Dogs track, sometimes they don't track. That's not dispositive and the State ---

MR. GROSE: Objection ---

MS. WELLS: --- and it certainly ---

THE COURT: Rephrase.

MS. WELLS: The dog not tracking in this case is not dispositive of whether or not this Defendant committed the crime. The dog didn't track, that doesn't mean that two other people that there's absolutely no evidence of came in and committed this crime. Literally, a theory pulled from nowhere, nowhere. David Hogsed, you remember, he works at Wofford College now, he's been in law enforcement for a long time, he talked to you about that DNA evidence, and he said, one; there had been people out there with that car that night. There was a guy named Lamont, just a good Samaritan who had stopped on

the side of the road and called that in at 10:18 pm that there was a car out there running, he thought it might have been, I don't know, it was disconcerting to him that there was a car out there running on the side of the road on January the 7th, you know, getting close to, you know, moving into the late evening hours, and he called in. You have that person who was out at that car whose DNA was not submitted according to Hogsed. You have the firefighter, the first people that responded, they actually did submit one of theirs because that was the guy who leaned in, and then you had a State Trooper who was out there, whose fingerprint actually showed up on the car. I mean, this kind of stuff happened, and can it be explained? He said, the boys didn't, were not, were, their DNA was not collected. She had two boys, you saw that car, it was full of kids' stuff, two car seats and a stroller in the back. There are male, males all in this car all the time. What's more suspicious to me is that the Defendant, who's a mechanic and her husband, had no DNA anywhere at all, isn't that strange? Isn't that weird that his DNA somehow would not be anywhere in this car. I mean, wouldn't it be, I mean, in the passenger's seat? I mean, they did a bunch of DNA swabs over there where all her blood was. Oddly, his didn't show up at all. Maybe because, I mean, that's just strange, right? Shouldn't your husband's DNA be in your car? Maybe it's because he didn't want it to be there. The timeline gives you plenty of time. I

talked about that in my opening, closing to y'all. He had more than enough time. This bad back thing, this is, again, watch the body cam, he crouches on the ground, hand on her, baby, baby, just talk to me, baby. You know, crouches on the ground for a long time. People who run Iron Man can't crouch that long. People who are super fit can't crouch that long. He, you know, does all these other things. He's also able to, I think, he told you himself, have an affair with a girl in a truck, you know, have sexual relations in a truck. 00 I mean, that would take some back strength, one would think or some ability to use their knees. He can do that, but his back keeps him from, you know, hustling up the road, that's ridiculous, that's ridiculous. He's just fine. Nobody was taking a 45-minute shower because what do you see on the body cam when Kristen Malpass goes back there, that's a little bathroom, it's small, there's no fan running, where's the steam at? Where's the foggy mirror? This was January. That thing, you took a 45 minute, maintaining 45 minutes a hot water like he was at some hotel or something, that bathroom is going to be fogged to death. I mean, you're going to be cutting your way through it, you're going to need a knife because it's tiny. At least the mirror would still be foggy, it would be humid in there. That's not what's on that body cam, that's not what she said. When she was in here earlier this week, she said it didn't, there was nothing that stood out to her about it, it was just a

regular bathroom. It might have been wet, he took a shower after Sydney left, sure, yeah, I mean, you got to get Sydney off of you before Stephanie comes home. But he didn't take a shower because he didn't have time to take a shower in that time frame. But he had time to do other things, wipe his hands off, maybe run to the sink and do something real quick. But Stephanie wasn't dying, this had not worked out the way Jon wanted it to work out, I mean, it's a failure, right, failure to actually murder her. He tried, did his best, but he didn't do it, didn't get it done. So he was working in this time frame, but, you know, you saw it, like, he didn't have to run out of the house to dump the gun, y'all saw the pictures of the shed in the backyard. I mean, you probably could have put two or three bodies in there and nobody would have found them for a week or so, right? I mean, that place is cluttered, it is not, I mean, not what you think of when you think of, like, a mechanic's shop, there was more than mechanic-y stuff in there, you can see that in the photos. I mean, but you could have stuffed all sorts of things in there and nobody would have noticed. And you know, that goes back, it takes me to, and that's not that far, I mean, they testified, I think Lieutenant Gary testified about that, that's just right off the driveway, he didn't have to go far to get rid of that stuff, it's just right there. And so that takes me to Mr. Tiller, he's an informant, right, I mean, we owned that, you know, we didn't

try to dress him up and take him out, make him something that he wasn't, bring him in here in a suit and tie. He is in federal prison, y'all, the State's not running from that. But, and he told you, there are no promises, there's no promises, he'd like to have a promise, sure, he'd like to be like, I can do nine now, but there were no promises now or then. And the only person making that decision is a Federal Judge. He told you who that was, he told you how that happened, and that's the person who's making that decision and nobody else. The US government doesn't get to make that decision, his Defense attorney doesn't get to make that decision, I certainly don't get to make that decision. The only person who does that is the Judge who's in control of his case, and nobody else. And you know what? If you're gonna make it up so you can get this time cut and you can get all these things then make it good, make it good, I mean, earn that time cut. I mean, why can't you tell them where the gun is? You don't know? Why not, I mean, get up here and tell us where the gun went, yeah, he dug a hole and he buried it somewhere. He stuffed it under the seat of his truck, I mean, he knew that truck existed. I mean, this happened in January of '16. Tiller and Batchelor didn't even talk until '17, there's a year. Who cares where it is, who cares where the gun, just make something up if you want to make it good and while you're making all the rest of it up, make it good. Hide that gun for me, tell me where it was, I

mean, we know it's not there now. Find those clothes, just, just make it up, it doesn't matter. He knew there was a store, just hide it somewhere. If he were, if that's what he was doing, and he wanted to pack all this stuff in to make it fit the State's theory in this case, somehow, because he could Devine that, but where he said in pod 3 of the detention center, then make it worth my while. But he didn't do that, and that's how you know he's telling you what this guy told him because he didn't have all the answers. If he were making it up, he'd have all the answers, he'd have those T's crossed and those I's dotted because it could have been anything at that point, but he didn't. He told you what Jonathan told him and what Jon was hoping would be in confidence, but it was not. And he knew the risk, Tiller knew the risk when he came in here because he read it to you, this plea agreement is off the table and the government can file every single charge it has against me, and he'll face life in prison again. That's the consequence for coming in here and making something up for y'all, and he knows it. There was discussion of the videos and phone calls and hear Jonathan's emotion, you can hear how upset he is. Please compare those to his text messages right before and right after to Sydney. I submit to you that is manufactured, that's how he's supposed be. But when you get a glimpse into the personal where nobody else is looking, where it's just me and you babe, we're the only ones who know, that's

where you see how Jon really felt about all this. I mean, he's probably panicked, I mean, he tried to kill his wife and she didn't die, I mean, I'm sure that was a shock. He was shocked because of that, not because he was particularly concerned with Stephanie. He was more concerned about figuring out how to hook up with Sydney Allen and where they were going to go and this special weekend and how they're going to get her car up in his house so they can be together. Those were the things Jon Batchelor was worried about. He didn't care about Stephanie, other than the fact that it just didn't, he hasn't succeeded. There was no panic, no concern, it was all Sydney all the time. The Defense is trying to be nice; they don't want to come right out and call Stephanie a liar. They tried really, really hard not to, that's what they're doing. They're telling you she lied to y'all, that's what they want y'all to believe, that she got in here and lied to you. That she was, that she made this up to try fill some void for somebody, and I submit to you that's not the truth. You had an opportunity to observe her on the stand and hear her talk about what happened and how it happened. I understand, they don't want to call her a liar, that would make them look bad, and that's exactly what's going on here. Jon did not become a suspect, again, because her dad didn't like him or because Stephanie conjured this or because she got some pressure from law enforcement. Law enforcement didn't pressure her, they asked her, she dropped her head, they

left. I mean, they weren't in there going, we know who it is, you need to tell us. I mean, Sergeant Walsh said, she dropped her head, she told me no, she asked for pain medicine, I left, I walked out, there was no question. When she was able to talk, investigators went back, and she said it was him the whole time and I just couldn't tell you. It was him, it's him, it continues to be him after all this time. Jonathan Batchelor and the evidence support beyond a reasonable doubt. He's the one who stuck his wife with that orange tool that Stephanie described. She turned and saw her husband who she had stood by for all this time strike her again, and again, she put her hands up, tried to protect herself. He was done with her, she was fat, wasn't fun anymore, they were arguing, small kids. And then he produced a gun then he shot her, then he shot her again, then he shot her again, then he shot her again, she fell to the ground, she bled there on that ramp, dragged her to the side yard, dumped the gun. She crawls to the car, tries to get in the vehicle, takes her off, drives it, hustles back, does what he needs to do, has plenty of time to do it in and he calls the police. Find him guilty. Thank you.

THE COURT: Mr. Foreman, ladies, and gentlemen of the jury, we have been running now for an hour and 48 minutes. We're going to take about a 15, 18-minute break before I charge you, I want you to refresh yourselves. I don't usually like to run more than about 90 minutes, an hour, and a half, but I

don't want to break up any comments. So take about, I'm going to give you about 20 minutes, 15, 20 minutes, refresh yourselves, come back, I'm then going to charge you and give the evidence to you, and you can begin your deliberation. Mr. Foreman, if you'll take your jury out, don't deliberate yet.

(Jury exiting.)

THE COURT: Any matters from the State or Defense before we break?

MS. WELLS: Nothing from the State, Judge.

MR. GROSE: Yeah, Judge. I got to admit, I goofed up. I realized this during my closing, and I don't know how I didn't catch it, but in the, and I'm going to check again, but during the, your credibility of witnesses' instruction, you have a sentence in that that says throughout this entire process you have but one single objective that is to seek the truth regardless of what source that truth may come. I think that that's probably the exact language out of the Daniels' case that preceded the babies, the baby case. And, honestly, I always look for that, and it's been a long week, and I goofed up. But I did want you, to ask you to fix that, and I'll look at it again, but I, I'm pretty sure that's probably the only place that it's at.

THE COURT: Okay. I really haven't looked at it, but I think we copied yours.

MR. GROSE: And you may have, and that would be ---

THE COURT: Because I don't have it in mine.

MR. GROSE: And normally, I would use that one, but take that out.

THE COURT: Alright.

MR. GROSE: Like I say, I probably had a series of goof ups, you know.

(Off the record.)

THE COURT: Okay. Are we about ready for the jury?

MS. WELLS: State's ready, Judge. So long as we're in agreement we can proceed without the clerk.

THE COURT: She's gone to check on food. I don't know if we need her. Do you want me to wait?

MR. GROSE: I'm fine with proceeding, Judge.

MS. WELLS: Okay. I just wanted to make sure we were all on the same page.

THE COURT: Okay. We'll have the jury.

(Jury entering.)

THE COURT: Jury ready to work, Mr. Foreman?

MR. FOREMAN: Yes, sir.

(Jury charge.)

THE COURT: Alright. Mr. Foreman, ladies, and gentlemen of the juror, you have seen and heard the evidence presented as well as the arguments of the lawyers and it is now my duty and my obligation to instruct you on the law. It will then be your duty and your obligation to begin your

deliberations through which process you will decide the facts, apply the law as I now instruct it, and render a fair, and impartial verdict. It is your exclusive duty to determine what the facts are in this case and you will do that based on your commonsense evaluation and examination of the testimony and other evidence received during this trial. You 12 jurors alone will decide what effect, value and weight is to be given to any particular testimony or evidence received. Quite simply, your obligation as jurors is to give both the State and the Defendant a fair and impartial trial based on the evidence presented and the law in this case. The indictment number 2016-GS-42-1345 charges this Defendant with the offense of attempted murder. The State alleges that this Defendant, Jonathan Olin Batchelor, did in Spartanburg County, South Carolina, on or about January 7, 2016, with malice and forethought attempt to kill Stephanie Batchelor by shooting her with the intent to kill her in violation of our code section 16-3-29. I remind you that the fact that this Defendant was arrested, charged, and indicted is not evidence in this case and cannot be considered by you as evidence of guilt. Nor does it create any presumption or inference of guilt. The indictment is simply a written instrument which contains the charge made against this Defendant. Ladies and gentlemen, it is a formal document by which this case is brought before this Court. The Defendant has entered a plea of not guilty to the

indictment. That plea puts the burden on the State of South Carolina to prove his guilt beyond a reasonable doubt. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you it is a cardinal, important, and vital rule of law that in a criminal trial, no matter what the seriousness of the charge may be for which he stands charged, the Defendant is presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt. This presumption of innocence does not end when you begin your deliberations. It accompanies this Defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of guilt beyond a reasonable doubt. The presumption of innocence is not a legal theory nor is it a legal phrase. It is a substantial right to which every Defendant is entitled unless you 12 jurors are satisfied from the evidence of his guilty beyond a reasonable doubt. I remind you that during this trial, you and I have certain duties to perform. As the trial Judge, it is my responsibility to preside over this trial and additionally, I have the duty to rule on admissibility of evidence offered during the trial. You are to consider only the competent evidence before you. If there were any testimony ordered stricken from the record during this trial, you must disregard it. You are to consider only the testimony which has been

presented from the witness stand, the exhibits which have been received and made part of the record and any stipulations by the lawyers. Additionally, I have the duty to charge you on the law in this case. As presiding Judge, I am the sole Judge of the law, and it is your duty as jurors to accept it and apply it as I now state it to you. If you have any idea as to what the law is or what the law ought to be or what it should be and it does not agree with what I now tell you it is, you must abandon your idea because you have sworn to accept it and apply it as I've stated it to you. Ladies and gentlemen, in every case tried in this Courtroom before a jury, you 12 become the sole and exclusive judge of the facts. A trial Judge cannot make a comment on or a statement to a trial jury about a fact. You 12 are the sole judge of all facts and you are not to infer from anything that I have said or done during the progress of this trial in ruling on admissibility of evidence, or otherwise that I have an opinion about a fact in this case. I tell you and I charge you that South Carolina law does not allow me or any other trial Judge to have an opinion about a fact in this case. This is a matter solely for you 12 to determine. The State of South Carolina has the burden of proving this Defendant guilty beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of this Defendant's guilt. There are very few things in this world that we know with absolute certainty and in

criminal cases, the law does not require proof that overcomes every possible doubt. A reasonable doubt may also be described as the kind of doubt that would cause a reasonable person to hesitate to act. Reasonable doubt may arise from evidence in a case or from the absence or lack of evidence in a case. If you think there is a real possibility this Defendant is not guilty, you must give this Defendant the benefit of the doubt. If you have such a doubt as to the guilt of this Defendant, then say so and return a verdict of not guilty. Based on your consideration of the evidence, if you are firmly convinced beyond a reasonable doubt this Defendant is guilty of the crime charged, then say so and find him guilty. You 12 alone must make the determination of whether or not reasonable doubt exists as to the guilt of this Defendant. There are two types of evidence which are generally presented during a trial, and they are known as direct evidence, and circumstantial evidence. Direct evidence directly points and proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given either direct or circumstantial evidence. However, to the extent that the State relies on circumstantial evidence, the circumstances must be consistent with each other and when taken together point conclusively to the guilt of the

accused beyond a reasonable doubt. If these circumstances merely portray the Defendant's behavior as suspicious, the proof has failed. The State has the burden of proving the Defendant guilty beyond a reasonable doubt and this burden rests with the State regardless of whether the State relies on direct or circumstantial evidence or a combination of the two. In determining what the facts are, you, it is necessary in this case, out of necessity, you must pass upon the credibility of the witnesses who have testified. You are the sole judge of the credibility of witnesses who took the stand. Credibility in law means believability. Can I believe this witness, is this witness credible. The value and weight to be given their testimony is in your sound discretion. But you alone must decide the force and effect of the testimony. In making a determination as to the credibility of a witness, there are factors that you may and should take into consideration. Such as the appearance or manner of the witness as he or she testified from the witness stand, known in the law as the demeanor of a witness. Did the witness have an interest in the outcome of the trial, was the witness forthright or hesitant, was the witness' testimony consistent or did it contain discrepancies. And what was the ability of the witness to know about the facts concerning which he or she gave testimony. Did the witness have a cause or reason to be biased or prejudiced in favor of the testimony that he or she gave. Was the

testimony of the witness corroborated or made stronger by other testimony and evidence or was it made weaker and impeached by other testimony and evidence presented. As jurors, you have the right to believe a small portion of a witness' testimony and disregard the larger part, or ladies and gentlemen, you may believe a larger part of a witness' testimony and regard the smaller portion. You may believe a witness' testimony in its entirety or completely reject a witness' testimony in totality, not doing that arbitrarily, but if you have sound reason in the record for doing so. You may believe the testimony of a single witness against many or many witnesses against one. Most certainly, you do not determine the matter of credibility or believability merely by counting the number of witnesses for either side. Throughout this process, you have but one single objective, and that is to find facts. The testimony of an informer who provides evidence against a Defendant for pay or for immunity from punishment or for personal advantage or vindication must be examined and weighed by the jury with greater care than testimony of an ordinary witness. The jury must determine whether the informer's testimony has been effected by interest or by prejudice against a Defendant. Now our rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions, but an exception exists to this rule for a witness we call an expert witness. A witness who by education, experience, training has become an expert in

some art, science, profession or calling as to a relevant material, may give an opinion. You should consider expert opinion testimony and evidence in this case, and like all evidence, give it the weight you think it deserves. If you decide that the opinion of the expert is not based on sufficient education or experience or if you conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard it in its entirety. Ladies and gentlemen, an expert witness' testimony is to be given no greater weight than that of other witnesses simply because that individual was qualified as an expert. Furthermore, you are not required to accept an expert's opinion even if it's not contradicted. Now criminal intent is a necessary element of each crime that must be proved by the State beyond a reasonable doubt. Criminal intent is a matter that must be determined by you 12 from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty. Criminal intent is a state of mind which when operated jointly with an act is the commission of a crime. It is a mental state, it is a conscious wrongdoing, so it's up to you 12 to determine what this Defendant intended to do based on the circumstances shown to have existed. I tell you that the State must prove criminal intent beyond a reasonable doubt, just as it must prove every element beyond a reasonable doubt. While the State may prove motive, it is

unnecessary for the State to do so, but I charge you the State must prove criminal intent. The Defendant is charged with attempted murder. In order to prove the crime, the State has to prove to you beyond a reasonable doubt the Defendant attempted to kill another person with malice of forethought. Attempted murder requires a specific intent to kill that person with malice of forethought. Malice imports wickedness, it springs from depravity, a depraved spirit, a heart devoid of social duty and fatally bent on mischief. It involves such things as hatred, ill will or hostility towards another person. It is the intentional doing of a wrong act without just cause or excuse and with an intent to kill the person. Malice of forethought does not require that the malice exists for any particular length of time, but it must exist in the mind of the accused before and at the time the act was committed. Therefore, there has to be a combination of the previous evil intent and the act itself. Intent means intending the result that actually occurred. Not something that occurs accidentally or involuntarily. Attempted murder requires the State to prove expressed malice, which is the deliberate intention to kill a human being unlawfully. It requires the State to prove that the Defendant consciously intended the completion of the act of murder but failed. Attempted murder involves the performance of an act that tends to kill a human being but fails where the act was done with expressed malice the deliberate intention to

kill unlawfully. Now, you 12 have been selected as fair and impartial jurors sworn to impartially try and determine the facts of this case and you are to decide this case according to the testimony that you have heard from the witnesses along with the exhibits and evidence that have been received into evidence. Ladies and gentlemen, your verdict must be unanimous. Mr. Foreman, when the jury agrees on the verdict, you will indicate the verdict in the space provided on a verdict form and sign your name as the foreman of the jury then knock on the jury room door, inform the bailiff that you have reached a verdict, and at that time we will return you to the Courtroom to receive your verdict. Mr. Foreman, this is a verdict form of which I speak. My law clerk that's been with me all week creates this in every case that I try. It has the caption of this case, and it has the indictment number and that is nothing more than it matches up to that indictment right there. And it has, it says, we the jury unanimously find the Defendant, Jonathan Olin Batchelor, on the charge of attempted murder of Stephanie Batchelor not guilty or guilty. I tell you, there is no significance as to whether not guilty or guilty comes first on this piece of paper, this is the order that I put them in in every case. It then says, I certify this decision was the unanimous decision of the jury. Mr. Foreman, it has a place for you to sign and put a date. It already has Spartanburg, South Carolina on the form. Now, Mr. Foreman, the

verdict of the jury must be clear and unambiguous to the clerk and to me. You can put a check mark, you can x mark, you can put an initial, it matters not, but make sure that whatever the decision of the 12 jurors is is clear and unambiguous to the Court. Alright. There are several pieces of evidence, as you have seen, I think 67 different pieces of evidence. I'm getting ready to send all 14 of you to the jury room. Jurors 275, ma'am, where are you? And juror 177? Okay. You two are my alternates, right?

MS. WELLS: That's correct, Judge.

THE COURT: Okay. Alright. You two are my alternates. All 14 of you are going to the jury room in just a few minutes and when all 14 of you go there, do not begin your deliberations. I practiced law in this Courtroom and others for many years before coming up here, and in making closing arguments, it is so very easy to be talking to a jury, pick up a piece of evidence, show it to the jury, walk back to the counsel table, lay it down face down and now it's missing. When you leave the room, I am going to ask these lawyers to come up and meet with my Court reporter, she has a list of all 67 pieces. They are going to verify that all 67 pieces are there, and they haven't done something that Keith Kelly's done before, not meaning to, and lay it down face down on my table. Once it's determined by both lawyers that all 67 pieces are there, the bailiff is going to bring this document, this

verdict form along with the evidence to you, Mr. Foreman. And when he or she brings that to you, they will leave with my two alternates and you two alternates will return to the Courtroom and be dismissed from here, on the record. Okay. So do not deliberate until the bailiff brings this to you, Mr. Foreman, and leaves with the two alternates, it would not be proper for those two to be with you during deliberations. Alright. Mr. Foreman, if you'll please take your jury out.

(Jury exiting.)

THE COURT: Any matters from the State as to what I have told the jury?

MS. WELLS: No exceptions to the charge, Judge.

THE COURT: From Defense?

MR. GROSE: No, sir.

THE COURT: Okay. Ladies and gentlemen, if you will kindly look and see if everything's there.

MS. WELLS: The State's satisfied.

MR. GROSE: I am, too.

THE COURT: Okay. Mr. Bailiff, if you will take that and bring both alternates back here so we can do it on the record.

(Bailiff bringing alternates back into Courtroom.)

THE COURT: Ladies. Ma'am, you are Veronica Littlejohn?

MS. LITTLEJOHN: Yes.

THE COURT: And Lisa Gray?

MS. GRAY: Yes, Your Honor.

THE COURT: Your service has now ended on this case, you will be released, but your lunch has been bought, so if you'll have a seat over there, they'll give you your lunch. And you're free to go, you're free to stay with us. In fact, a lot of times jurors do stay because you've been here all week and you might want to see what happens, but you're necessarily not required to. But if you'd be kind enough to have a seat, they'll get your lunch. It's right here, okay. They'll get your lunch right here then you're free to go or stay, whichever you choose. Anything for the record before we eat lunch ourselves?

MS. WELLS: Not from the State, Judge.

MR. GROSE: The, and this doesn't necessarily have to be on the record.

(Off the record.)

THE COURT: Okay. We'll be in recess, and we'll get off the bench and be in chambers.

(Off the record.)

THE COURT: Did she go get the foreman?

COURT REPORTER: Yes, sir.

THE COURT: Mr. Foreman, does the jury wish to view some video?

MR. FOREMAN: No. We were just asking if it, what would be involved to do that.

THE COURT: If the jury wishes to view some video, we'll bring all 12 of you in here and we'll play it in here.

MR. FOREMAN: Alright. Sounds good. Thank you, sir.

THE COURT: Thank you.

MR. FOREMAN: Appreciate it.

THE COURT: Any objection by the State on what I said?

MS. WELLS: No, sir, Judge.

THE COURT: To the Defense?

MR. GROSE: No, sir.

THE COURT: Okay. We'll stand at ease until and if they wish to do so. So I told Mr. Bogen to make sure that they bring the video because we don't have it.

MS. WELLS: It's Defense 1 and State's, it looks to be 67.

THE COURT: If they'll just bring all the videos they've got when they come, how about that? And I'll make that a Court's Exhibit.

(Whereupon a note from the jurors was submitted as Court's Exhibit Number 5 for identification and entered into evidence.)

(Off the record.)

(Jury entering.)

THE COURT: Okay. Mr. Foreman, we understand that the jury wishes to see body camera video?

MR. FOREMAN: Yes, Your Honor.

THE COURT: Okay. Madam Solicitor, I think that's it right there.

MS. WELLS: And Judge, just for the record, this is sealed, I'm going to unseal it so that we can play it. It's Defendant's 1 that is sealed in an envelope.

(Both videos of body cam playing.)

MS. WELLS: That's both videos, Judge.

THE COURT: That's both of them?

MR. GROSE: Yes, sir.

THE COURT: Okay. Mr. Foreman, anything else?

MR. FOREMAN: No, sir.

THE COURT: Alright. If you'll return to the jury room and resume your deliberations, please.

MR. FOREMAN: Thank you.

(Jury exits.)

THE COURT: Anything from the State?

MS. WELLS: Nothing from the State, Your Honor.

THE COURT: Anything from the Defense?

MR. GROSE: No, sir.

THE COURT: Okay. Thank you. We'll stand at ease.

(Off the record.)

THE COURT: Everybody ready?

MR. GROSE: I have a matter before the jurors come in.

THE COURT: Okay.

MR. GROSE: I just want the record to reflect that Mr. Batchelor's now in full body chains at his wrists and ankles and chained to his belly. This is the exact scenario of Deck versus Missouri and I just note our objection for the record.

THE COURT: But the jury has reached a verdict, we haven't taken the verdict yet.

MR. GROSE: Well, we haven't heard the verdict and if they're polled and say it's not unanimous then we're going to be in a mistrial situation because they'll be able to see underneath the table when they come through the door.

THE COURT: Okay. Is there a reason that, can we, Sergeant Brannon?

SERGEANT BRANNON: That's policy for Spartanburg that any time once a verdict is being passed down because he's still incarcerated and under our supervision, they all go in full restraints just like when they're being transported.

THE COURT: Solicitor, you want to be heard?

MS. WELLS: I mean, I understand that's the policy, I mean, Judge, I leave it to your discretion. You know, I ---

THE COURT: Well, I don't want to put us in a mistrial situation. Solicitor Barnett, you want to be heard?

MR. BARNETT: Judge, the reason why I think the policy is there to protect Mr. Grose as well as other people in the Courtroom because I've seen Defense attorneys get attacked before, we've heard of that before. But if the Court sees fit, as long as the officers are here I think he can't do anything else then you can remove those things. But understand, Mr. Grose must understand the risk, he's right beside him.

MR. GROSE: I'm not worried about that.

THE COURT: Okay. Well, let's don't get us in a mistrial. I've had that asked before, but we'll see. I think we have enough manpower. Anything else?

MR. GROSE: No, sir. Thank you, Your Honor.

THE COURT: Alright. Before the jury comes in now, I know we have some family members, I've not met any of you and everything's been very nice and low key this week, but I know tensions are high. So if you cannot control yourselves, I'm going to ask you to please leave now, okay? Because if somebody yells out, claps, applauds, celebrates one way or the other, including Mr. Batchelor, I'm going to have somebody in custody, okay? This is a Courtroom. Alright. Hearing the no, no one leaving, we'll have the jury.

(Whereupon, the jury came into open court with the verdict.)

THE COURT: Mr. Foreman, has the jury reached its verdict?

MR. FOREMAN: Yes, Your Honor.

THE COURT: If you would give that to the bailiff, please. Madam clerk will publish.

MADAM CLERK: In the State of South Carolina, Court of General Sessions in the County of Spartanburg, indictment number 2016-GS-42-1345, Jonathan Olin Batchelor. We the jury unanimously find the Defendant on the charge of attempted murder of Stephanie Batchelor guilty, signed by the foreperson this 4th day of November, 2021 in Spartanburg, South Carolina. Ladies and gentlemen of the jury, is this your verdict and still your verdict? If so, please raise your right hand.

THE COURT: Thank you. Poling of the jury by the State?

MS. WELLS: The State is not requesting poling, Your Honor.

THE COURT: From the Defense?

MR. GROSE: We request it, Your Honor.

THE COURT: Yes, sir. Madam Clerk?

MADAM CLERK: Ladies and gentlemen of the jury, at this time, I will pose a question. Is this your verdict and still your verdict? When your juror number and name is called, please stand and respond to the question. Juror number 140, Dewaren Fernandez, is this your verdict and still your verdict?

JUROR 140: Yes.

MADAM CLERK: 235, Gena Johnson?

JUROR 235: Yes.

MADAM CLERK: Thank you. 103, Tyler Crawford?

JUROR 103: Yes, ma'am.

MADAM CLERK: Okay. 461, Demonte Wade?

JUROR 461: Yes, ma'am.

MADAM CLERK: Okay. 72, James Caldwell?

JUROR 72: Yes, ma'am.

MADAM CLERK: Thank you. 69, Tonya Burney?

JUROR 69: Yes, ma'am.

MADAM CLERK: 78, Robert Caulten?

JUROR 78: Yes, ma'am.

MADAM CLERK: 300, Christopher Meadows?

JUROR 300: Yes, ma'am.

MADAM CLERK: 56, Elizabeth Brickwell?

JUROR 56: Yes, ma'am.

MADAM CLERK: Thank you. 166, Ashley Garcia?

JUROR 166: Yes, ma'am.

MADAM CLERK: 81, Cynthia Carole?

JUROR 81: Yes, ma'am.

MADAM CLERK: Thank you. 179, Joseph Greer?

JUROR 179: Yes, ma'am.

MADAM CLERK: Thank you. Your Honor, the jury has been polled.

THE COURT: Anything from the State at this time?

MS. WELLS: Nothing from the State, Your Honor.

THE COURT: From Defense at this time?

MR. GROSE: No, sir.

THE COURT: Thank you. Mr. Foreman, ladies, and gentlemen, I thank you. Mr. Foreman, if you would kindly come forward to see Madam clerk, you have to sign the indictment, please. Thank you, sir. Mr. Foreman, ladies, and gentlemen of the jury, thank you for service. This will conclude your jury service this week. There is not another jury trial behind this one. I'm going to be working tomorrow, but I don't need a jury, so this will conclude your jury service. I'm getting ready to send you out with the bailiffs and you're going to turn your badges in. If you would like to come and be with us for the remainder of the proceedings in here, we're going to proceed to sentencing momentarily, you may do so. But you would come around and come in the backdoor here, you will see that the alternates who were with us decided to stay with us for the afternoon, so if you would like to do so, you are welcome to, you are not required to do so. I also invite you anytime to come to the Courthouse, this Courthouse belongs to you and me. This is Spartanburg County Courthouse, and you're welcome anytime in any of our Courtrooms. Again, thank you so much for your service this week. Mr. Foreman, if you'll take your jury out to be excused and you can stay or go whichever you choose.

(Jury exiting.)

THE COURT: Matters from the State?

MS. WELLS: Nothing from the State, Your Honor.

THE COURT: Matters from Defense?

MR. GROSE: Your Honor, we're going to take the 10 days to file post-trial motions.

THE COURT: Certainly. Alright. We have sentencing sheets?

MS. WELLS: I do, Your Honor. I'll let them sign that.

THE COURT: Let's give anyone a chance to come around if they would like to. I invited them to do that, I don't know that anyone will come, but.

MS. WELLS: Judge, we'll stand over here, if that pleases the Court.

THE COURT: Okay. Is there any indication that anyone's coming?

BAILIFF: I'll go check right quick.

THE COURT: Okay. Yeah, one of the things I need to know is number of days.

MS. WELLS: I do not have number of days. Mr. Grose may have it.

THE COURT: Mr. Grose, do you have the number of days?

MS. WELLS: I believe he's been in custody consistently since the day of his arrest, Judge.

MR. GROSE: Yeah, I think if you just check the box entitled to credit by statute, there's no other charges that come into play on it, so it won't get ---

THE COURT: Okay. On the new sentencing sheet, there is a place, if you have it, I can put it on.

MR. GROSE: Okay.

MS. WELLS: I can run it, I've got it on my phone where we can run it from the date of his, the actual date of arrest, but I just don't, I don't want to do that while we're on ---

THE COURT: No, we can do that.

MS. WELLS: I can do that when we get done, Judge.

THE COURT: Okay. Okay. Alright. We're here for sentencing on Mr. Batchelor and I'm going to hear from the Defendant and then I'm going to hear from the family. Mr. Grose, anything from your client?

MR. GROSE: Your Honor, I think you've heard a little bit about his background from the, the witness stand. Mr. Batchelor has gone to school through college, I don't know if he got a degree, but he's at least attended college. And, you know, he's been consistently employed, you know, between the time that he did that and until he was arrested in this case. I also want the Court to know that, you know, his father is very supportive of him, and his father wanted to be here for the trial. However, a few weeks ago, his father was

hospitalized with Covid, and had some complications. He's out now, but he's on oxygen and still recovering, so it's difficult for somebody in that condition to come up here. Your Honor, as far as sentencing goes, I think we're in a situation where I've never really found myself in before, but we have a situation where he was sentenced once before, and the active amount of time was 18 years. And I think that there's some case law out there indicating a sentence beyond what was previously imposed runs the risk of punishing him for exercising his right to post conviction relief in this case, unless there is some new evidence that has come to light. And there has been no new evidence that's come to light since the time that he was previously sentenced. And so we'd ask that whatever sentence you impose not exceed the 18 years active sentence he previously received.

THE COURT: Thank you. Solicitor, you want to be heard on that?

MS. WELLS: I do, Your Honor. Your Honor, the State believes that this case, we are reset, we are literally back at ground zero for sentencing in this case and the sentencing here is in the Court's discretion. Your Honor, this is a Defendant who has shown absolutely no remorse for his crimes, not even, you know, I'm sorry that you went through this. He doesn't have to admit guilt to say that he's sorry, that, that Stephanie went through this. But that did not even happen as

we sit here today. So Judge, the State is here asking you to impose a 30-year sentence in this case. This was an incredibly vicious attack. Not only did it involve blunt force trauma, but also involved multiple gunshot wounds, and the Court heard all the evidence, I don't need to go through it again, but the State is asking and urging this Court to impose the maximum sentence at this point. We are back at ground zero for sentencing purposes as far as the State's concerned. Stephanie does want to be heard and her father would like to be heard as well, and I'm going to ask Stephanie if she'll, unless your dad wants to go first, I'm going to ask the Court to allow Stephanie to go first.

THE COURT: I know who you are, ma'am, but tell me again for the record, okay?

MS. BATCHELOR: My name is Stephanie Batchelor, B-a-t-c-h-e-l-o-r.

THE COURT: Yes, ma'am.

MS. BATCHELOR: And Your Honor, I'm asking that you give him the absolute max that he can get so me and my children can move on with our lives from this point. This has been an absolute nightmare for six years. I just want to move on, and my children to be safe.

THE COURT: Thank you, ma'am. Sir, would you like to speak?

MR. GIBSON: I do. Do I speak to you, or do I

speak to him?

THE COURT: No, sir, you have to talk to me. Tell me your name, please.

MR. GIBSON: My name is Timothy Doc Gibson, I'm the father of Stephanie Gibson. And I also would like to request the maximum sentence. Whatever you can, you know, when you say someone shot, someone has, you know, brain damage, and is not living it, when you're there, this person can't walk, this person can't talk. Someone, an entire family had to come together to support this, my daughter, and her children. It ruined our lives financially, it ruined our lives emotionally, it ruined our lives in every way you can imagine over someone's selfishness who shows no remorse, no concern. You know, the purpose of the father is to take care of the family. My family sleeps at night because I'm there, that's my job. That's the job I gave him to protect, not to murder my daughter, not to endanger my daughter, not to endanger my grandchildren. And I'm taking that back from him. So I'll take her back, but if you would, please, do what you can to make sure I don't go through this again with the same person, I would greatly appreciate it.

THE COURT: Thank you for your comments. Anyone else

MS. WELLS: Just briefly, Judge. The State's position is we are, not only was the clock reset for sentencing

purposes, but we are in a different position, Judge, in the sense that Stephanie is, the State would not be in a position to make the, the negotiations that the State made before, today. Stephanie is physically much stronger, she was very, very frail at the time this case was ready for trial. And the State, I mean, in discussions with the family made some really tough decisions about trying to resolve this case. But, and in resolving it when it gave this Defendant a great benefit and a benefit that he did not want. So Judge, I'd ask you to take that into consideration as well.

(Sentence of The Court.)

THE COURT: This Court never punishes anyone for exercising your Constitutional Right to a jury trial. In fact, many of us in this Courtroom, I look around at the law enforcement officers that I know personally served and carried a weapon for their right to do that very thing. But we are back at ground zero, and this Court is not bound by anything that happened previously. 2016-GS-42-1345, sir, you're confined to the department of corrections for a period of 30 years. I'll give you credit for any time you're entitled. Best of luck to you, sir.

MR. GROSE: Your Honor, before they take him off, I get 2,109 days. I don't know if the State has calculated it yet.

MS. WELLS: I have not, Judge, I just sat

back down, hang on.

THE COURT: I'll give him credit for the time he's entitled.

MS. WELLS: The date of arrest is 1-27-16, Judge. Beg the Court's indulgence. Let me find my calculator.

MR. GROSE: I think if you just write credit since January 27, 2016, that will probably satisfy the department of corrections.

MS. WELLS: 2,109 days.

THE COURT: 2109?

MS. WELLS: Yes, Judge. Five years, nine months.

THE COURT: Okay. 2 ---

MR. GROSE: Yeah ---

THE COURT: 2109.

MS. WELLS: I didn't hear what Mr. Gross said.

MR. GROSE: That's what I had, too.

MS. WELLS: Okay.

THE COURT: Credit for 2,109 days. Best of luck to you, sir. Anything further from the State?

MS. WELLS: Nothing further from the State, Your Honor.

THE COURT: From the Defense, Mr. Grose?

MR. GROSE: Not at this time, but I'll get our motions to you.

THE COURT: Yes, sir. Nice working with both

of you, always good to work with good lawyers.

MR. GROSE: Thank you, appreciate it, Your Honor.

MS. WELLS: Thank you, Your Honor.

(Whereupon proceedings were concluded at 3:14 pm.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

I, the undersigned Lisa G. Amick, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Spartanburg, South Carolina, on the 1st, 2nd, 3rd, and 4th days of November 2021.

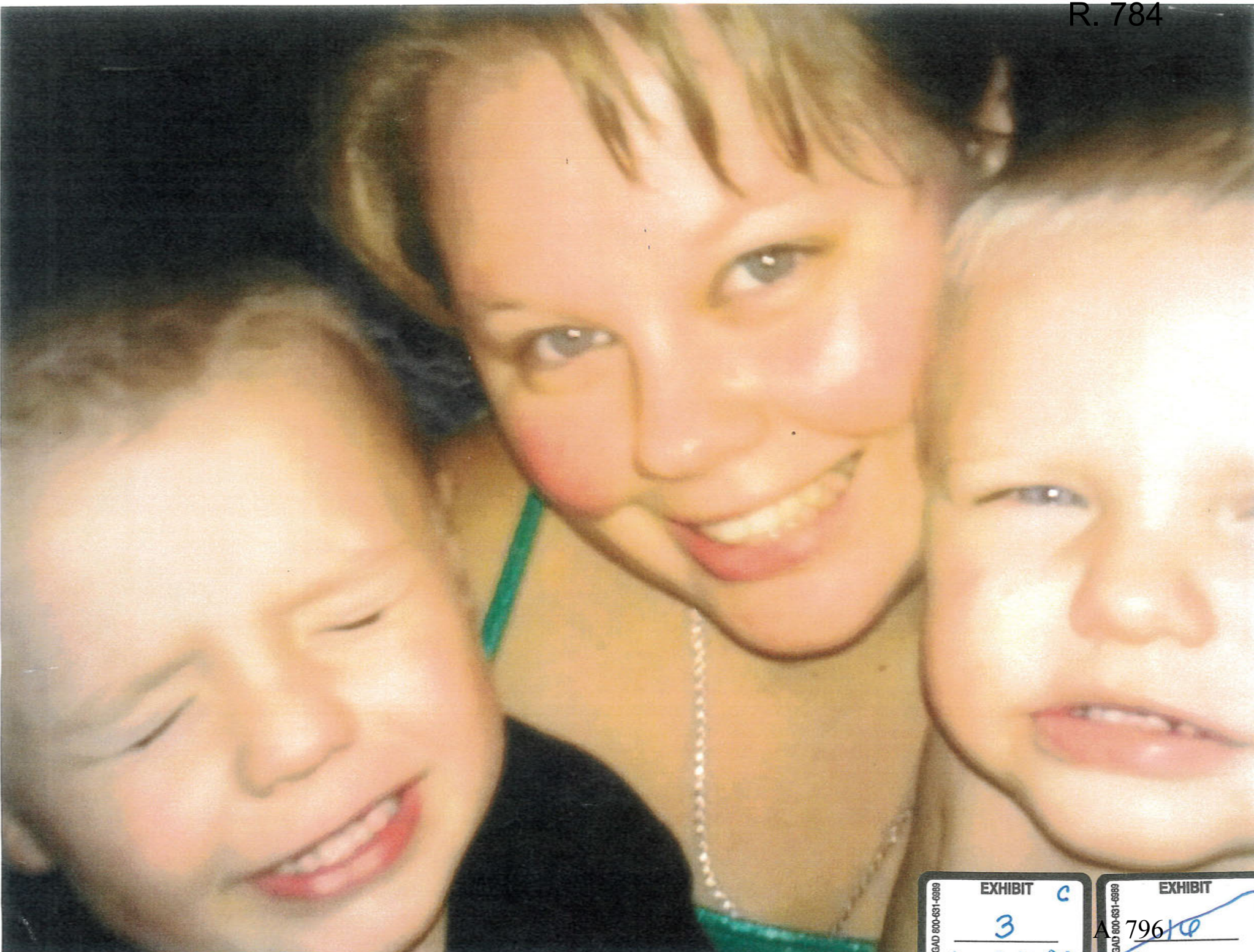
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 23rd, 2022

Court Reporter

My commission expires: June 30th, 2025

R. 784



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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UNITED STATES OF AMERICA

Criminal No: 6:16-707

v.

PLEA AGREEMENT

DUSTIN TILLER

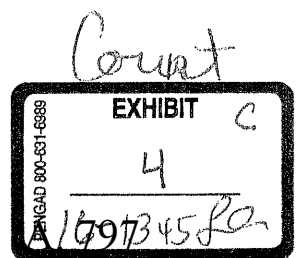
General Provisions

This PLEA AGREEMENT is made this 17th day of March, 2017, between the United States of America, as represented by United States Attorney Beth Drake, Assistant United States Attorney Andrew B. Moorman, Sr.; the Defendant, Dustin Tiller, and Defendant's Attorney, James Bannister, Esquire.

IN CONSIDERATION of the mutual promises made herein, the parties agree as follows:

1. The Defendant agrees to plead guilty to Count 1 of the Indictment now pending.

a. Count 1 charges that beginning at a time unknown to the Grand Jury, but beginning at least in 2015, within the District of South Carolina and elsewhere, the Defendant and others conspired to Possess with the Intent to Distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, a schedule



II controlled substance, in violation of Title 21, United States Code, Section 841(a), (b)(1)(A), and 846.

In order to sustain its burden of proof as to Count 1, the Government is required to prove the following:

- ONE: The conspiracy described in the indictment was willfully formed and was existing at or on about the alleged time; and,
- TWO: The accused willfully became a member of the conspiracy.

Possible Penalties Pursuant to Count 1- in a case involving 500 grams or more of mixture or substance containing methamphetamine and two or more prior felony drug convictions - a mandatory term of life imprisonment, no probation, no parole, a fine of \$20,000,000, plus a special assessment of \$100.

2. The Defendant understands and agrees that monetary penalties [i.e., special assessments, restitution, fines and other payments required under the sentence] imposed by the Court are due immediately and subject to enforcement by the United States as civil judgments, pursuant to 18 USC § 3613. The Defendant also understands that payments made in accordance with installment schedules set by the Court are minimum payments only and do not preclude the government from seeking to enforce the judgment against other assets

of the defendant at any time, as provided in 18 USC §§ 3612, 3613 and 3664(m).

The Defendant further agrees to enter into the Bureau of Prisons Inmate Financial Responsibility Program if sentenced to a term of incarceration with an unsatisfied monetary penalty. The Defendant further understands that any monetary penalty imposed is not dischargeable in bankruptcy.

- A. Special Assessment: Pursuant to 18 U.S.C. §3013, the Defendant must pay a special assessment of \$100.00 for each felony count for which he is convicted. This special assessment must be paid at or before the time of the guilty plea hearing.
- B. Restitution: The Defendant agrees to make full restitution under 18 U.S.C. § 3556 in an amount to be determined by the Court at the time of sentencing, which amount is not limited to the count(s) to which the Defendant pled guilty, but will include restitution to each and every identifiable victim who may have been harmed by scheme or pattern of criminal activity, pursuant to 18 U.S.C. § 3663. The Defendant agrees to cooperate fully with the Government in identifying all victims.

C. Fines: The Defendant understands that the Court may impose a fine pursuant to 18 U.S.C. §§ 3571 and 3572.

3. Provided the Defendant complies with all the terms of this Agreement, the United States agrees to move to dismiss the remaining counts of the Indictment [and any other indictments under this number] at sentencing. The Defendant understands that the Court may consider these dismissed counts as relevant conduct pursuant to §1B1.3 of the United States Sentencing Guidelines.
4. The Defendant understands that the obligations of the Government within the Plea Agreement are expressly contingent upon the Defendant's abiding by federal and state laws and complying with any bond executed in this case. In the event that the Defendant fails to comply with any of the provisions of this Agreement, either express or implied, the Government will have the right, at its sole election, to void all of its obligations under this Agreement and the Defendant will not have any right to withdraw plea of guilty to the offense(s) enumerated herein.

5. The Defendant understands that the matter of sentencing is within the sole discretion of the Court and that the sentence applicable to Defendant's case will be imposed after the Court considers as advisory the United States Sentencing Commission Guidelines, Application Notes and Policy Statements, as well as the factors set forth in Title 18, United States Code, Section 3553(a). The Defendant also understands that Defendant's sentence has not yet been determined by the court, and that any estimate of a probable sentencing range Defendant may have received from Defendant's attorney, the Government or the United States Probation Office is only a prediction, not a promise, and is not binding on the Government, the Probation Office or the Court. The Defendant further understands that the Government retains the right to inform the Court of any relevant facts, to address the Court with respect to the nature of the offense, to respond to questions raised by the Court, to correct any inaccuracies or inadequacies in the presentence report, to respond to any statements made to the Court by or on behalf of the Defendant and to summarize all evidence which would have been presented at trial to establish a factual basis for the plea.

6. The Defendant agrees that all facts that determine his offense level under the Guidelines and pursuant to any mandatory minimum (including facts that support any specific offense characteristic or other enhancement or adjustment) can be found by the court at sentencing by a preponderance of the evidence standard and the court may consider any reliable evidence, including hearsay. By executing this Agreement, the Defendant understands that he waives any argument that facts that determine his offense level under the Guidelines and pursuant to any mandatory minimum should be alleged in an indictment and found by a jury beyond a reasonable doubt.

Cooperation and Forfeiture

7. The Defendant agrees to be fully truthful and forthright with federal, state and local law enforcement agencies by providing full, complete and truthful information about all criminal activities about which he has knowledge. The Defendant must provide full, complete and truthful debriefings about these unlawful activities and must fully disclose and provide truthful information to the Government including any books, papers, or documents or any other items of evidentiary value to the investigation. The Defendant must also testify fully and truthfully before any

grand juries and at any trials or other proceedings if called upon to do so by the Government, subject to prosecution for perjury for not testifying truthfully. The failure of the Defendant to be fully truthful and forthright at any stage will, at the sole election of the Government, cause the obligations of the Government within this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the Government within this Agreement become null and void due to the lack of truthfulness on the part of the Defendant, the Defendant understands that:

- a. the Defendant will not be permitted to withdraw plea of guilty to the offenses described above;
- b. all additional charges known to the Government may be filed in the appropriate district;
- c. the Government will argue for a maximum sentence for the offense to which the Defendant has pleaded guilty; and
- d. the Government will use any and all information and testimony provided by the Defendant pursuant to this Agreement, or any prior proffer agreements, in the prosecution of the Defendant of all charges.

8. The Defendant agrees to submit to such polygraph examinations as may be requested by the Government and agrees that any such examinations shall be performed by a polygraph examiner selected by the Government. Defendant further agrees that refusal to take or failure to pass any such polygraph examination to the Government's satisfaction will result, at the Government's sole discretion, in the obligations of the Government within the Agreement becoming null and void.

9. The Government agrees that any self-incriminating information provided by the Defendant as a result of the cooperation required by the terms of this Agreement, although available to the Court, will not be used against the Defendant in determining the Defendant's applicable guideline range for sentencing pursuant to the U.S. Sentencing Commission Guidelines. The provisions of this paragraph shall not be applied to restrict any such information:

- a. known to the Government prior to the date of this Agreement;
- b. concerning the existence of prior convictions and sentences;

c. in a prosecution for perjury or giving a false statement; or

d. in the event the Defendant breaches any of the terms of the Plea Agreement.

10. Provided the Defendant cooperates pursuant to the provisions of this Plea Agreement, and that cooperation is deemed by the Government as providing substantial assistance in the investigation or prosecution of another person who has committed an offense, the Government agrees to, at the Defendant's selection, EITHER:

(1) move the Court for a downward departure or reduction of sentence pursuant to United States Sentencing Guidelines §5K1.1, Title 18, United States Code, § 3553(e) or Federal Rule of Criminal Procedure 35(b). The Defendant understands that any such motion by the Government is not binding upon the Court, and should the Court sentence the Defendant within the Guidelines, to the maximum penalty prescribed by law or refuse to reduce the sentence imposed, the Defendant will have no right to withdraw his plea; OR

(2) withdraw at sentencing one enhancement(s) contained in the Information previously filed pursuant to 21 U.S.C. § 851 seeking an enhanced minimum penalty

based on two prior felony drug conviction(s), such that the Defendant should be held accountable for one prior felony drug conviction(s) described in that Information.

11. The Defendant agrees to voluntarily surrender to, and not to contest the forfeiture by, the United States of America of any and all assets and property, or portions thereof, owned or purchased by the Defendant which are subject to the forfeiture pursuant to any provision of law and which are in the possession or control of the Defendant or Defendant's nominees. The Defendant further agrees to prevent the disbursement, relocation or encumbrance of any such assets and agrees to fully assist the government in the recovery and return to the United States of any assets, or portions thereof, as described above, wherever located. The Defendant further agrees to make a full and complete disclosure of all assets over which Defendant exercises control and those which are held or controlled by nominees. The Defendant further agrees to submit to a polygraph examination on the issue of assets if it is deemed necessary by the United States.

12. The Defendant agrees to forfeit all interests in the properties as described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title and the signing of any other documents necessary to effectuate such transfers. The Defendant agrees not to object to any civil forfeiture proceedings brought against these properties pursuant to any provision of law and the Defendant further understands that any such civil proceedings may properly be brought at any time before or after acceptance of Defendant's guilty plea in this matter and agrees to waive any double jeopardy claims he may have as a result of the forfeiture of these properties as provided for by this Agreement.

Merger and Other Provisions

13. The Defendant stipulates and agrees that he has two prior felony drug conviction(s) that has/have become final and that the Attorneys for the Government have filed an Information pursuant to 21 U.S.C. § 851 which subjects him to a mandatory minimum term of imprisonment of life on Count 1 . The Defendant further stipulates and agrees that this paragraph and the Information that has been filed pursuant thereto fulfills the requirements of § 851,

including service, and constitutes adequate and sufficient notice of a prior felony drug conviction for purposes of that statute. The Defendant agrees to not contest the Information that has been filed pursuant to 21 U.S.C. § 851 in accordance with this paragraph.

14. The Defendant represents to the court that he has met with his attorney on a sufficient number of occasions and for a sufficient period of time to discuss the Defendant's case and receive advice; that the Defendant has been truthful with his attorney and related all information of which the Defendant is aware pertaining to the case; that the Defendant and his attorney have discussed possible defenses, if any, to the charges in the Indictment including the existence of any exculpatory or favorable evidence or witnesses, discussed the Defendant's right to a public trial by jury or by the Court, the right to the assistance of counsel throughout the proceedings, the right to call witnesses in the Defendant's behalf and compel their attendance at trial by subpoena, the right to confront and cross-examine the government's witnesses, the Defendant's right to testify in own behalf, or to remain silent and have no adverse inferences drawn from silence; and that the Defendant, with the advice of counsel, has

weighed the relative benefits of a trial by jury or by the Court versus a plea of guilty pursuant to this Agreement, and has entered this Agreement as a matter of the Defendant's free and voluntary choice, and not as a result of pressure or intimidation by any person.

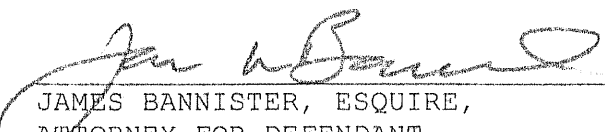
15. The Defendant is aware that 18 U.S.C. § 3742 and 28 U.S.C. § 2255 afford every defendant certain rights to contest a conviction and/or sentence. Acknowledging those rights, the Defendant, in exchange for the concessions made by the Government in this Plea Agreement, waives the right to contest either the conviction or the sentence in any direct appeal or other post-conviction action, including any proceedings under 28 U.S.C. § 2255. (This waiver does not apply to claims of ineffective assistance of counsel or prosecutorial misconduct raised pursuant to 28 U.S.C. § 2255, or future changes in the law that affect the defendant's sentence.) This Agreement does not affect the rights or obligations of the Government as set forth in 18 U.S.C. § 3742(b). Nor does it limit the Government in its comments in or responses to any post-sentencing matters.

16. The Defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

17. The parties hereby agree that this Plea Agreement contains the entire agreement of the parties; that this Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement shall not be binding on any party until the Defendant tenders a plea of guilty to the court having jurisdiction over this matter; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements, whether made prior to, contemporaneous with or after this Agreement, are null and void.

3/16/17
Date


DUSTIN TILLER, DEFENDANT


JAMES BANNISTER, ESQUIRE,
ATTORNEY FOR DEFENDANT

BETH DRAKE
UNITED STATES ATTORNEY

3/23/17
Date

Andrew B. Moorman, Sr.
ANDREW B. MOORMAN, SR. (#10013)
ASSISTANT UNITED STATES ATTORNEY

A TRUE COPY

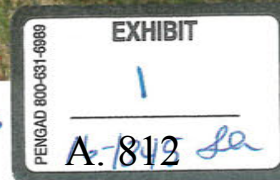
Attest: Robin L. Blume

By: [Signature]
DEPUTY CLERK

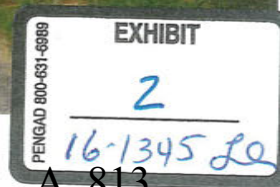
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State's



R. 801



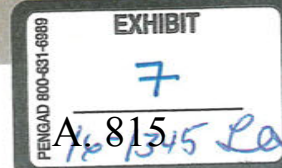
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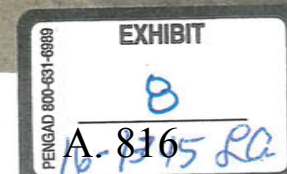
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State





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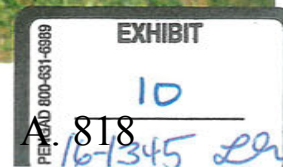
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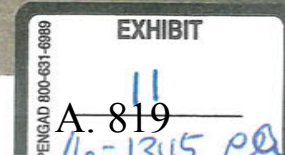
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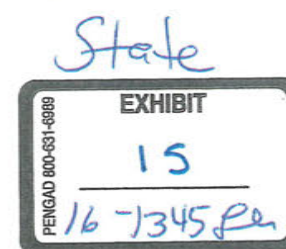
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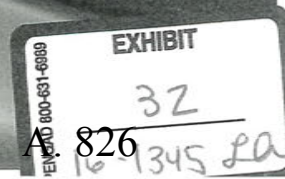
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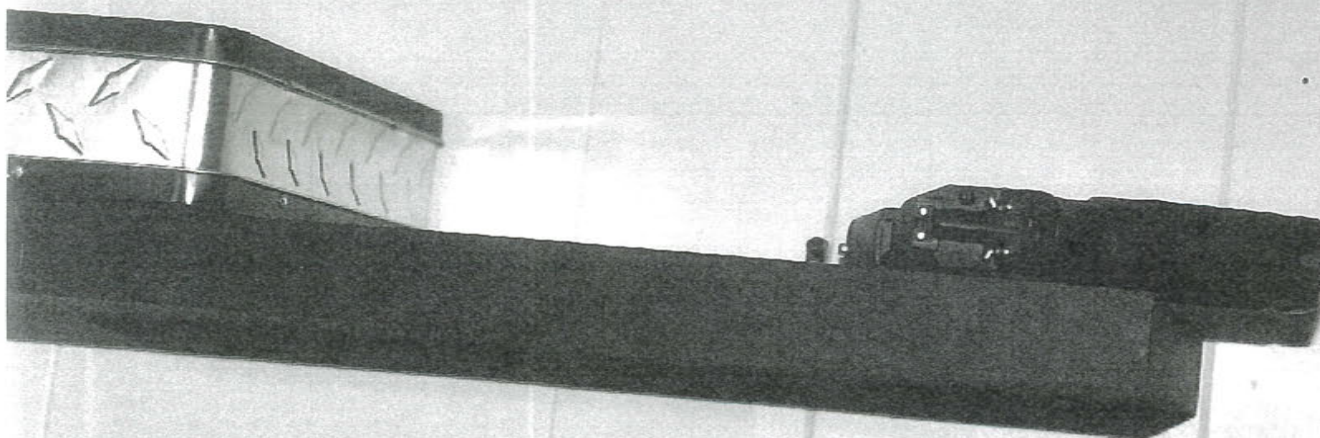
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R. 814

SPARTANBURG



R. 815



PENGAD 000-631-6089
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A. 827

R. 816



RENGAD 800-631-6009

EXHIBIT

34

A. 828

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R. 817



PENGAD 800-631-6069

EXHIBIT

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A. 829

10-13-15 RQ

R. 818



EXHIBIT

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R. 819

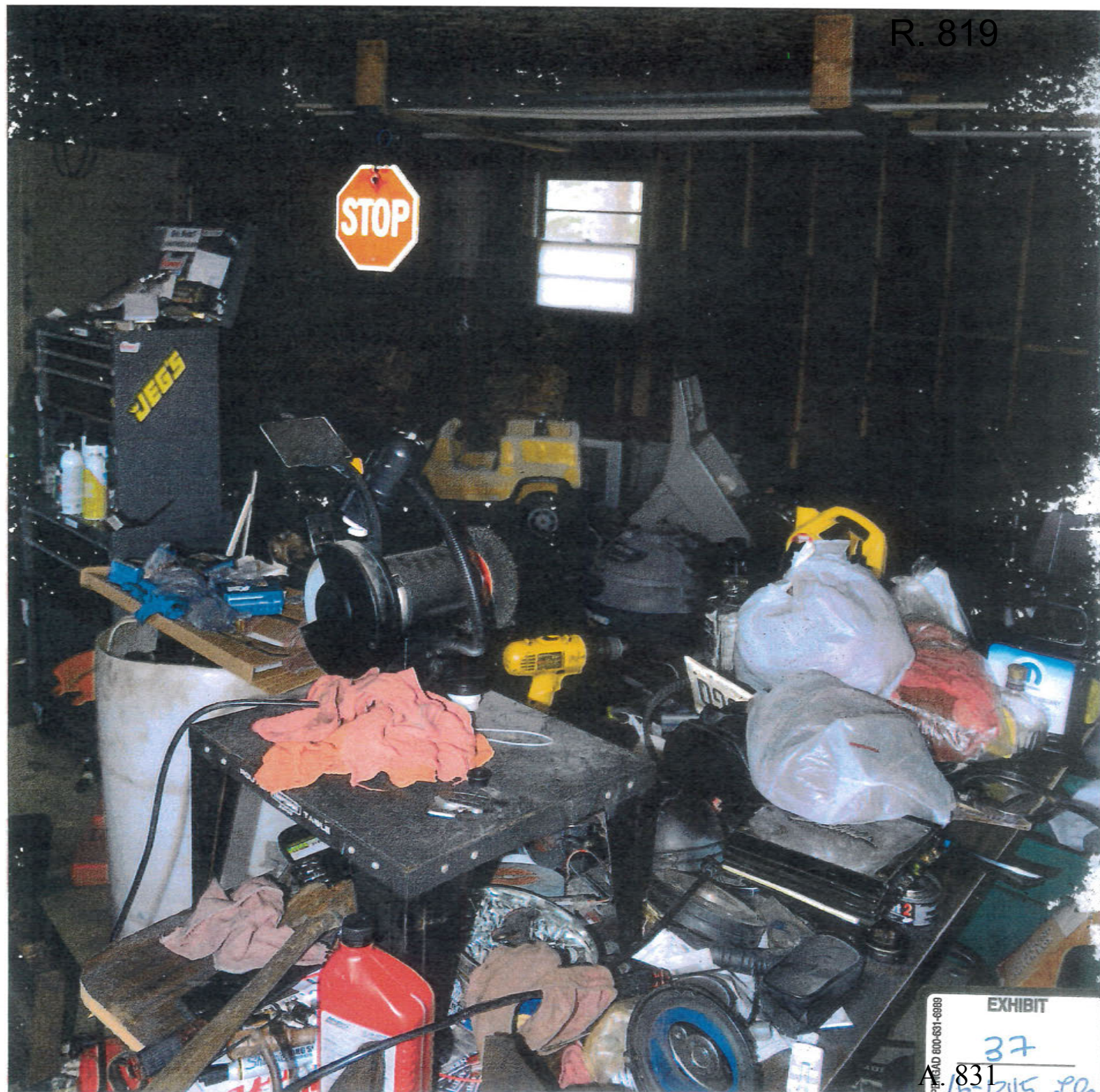


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EXHIBIT

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R. 820



EXHIBIT

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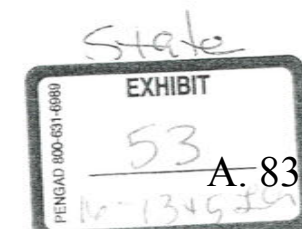
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PERGAD 800-631-6699

73	Outgoing	→ 911	1/8/2016 3:13:18 AM (UTC+0)	00:11:32					Logs Table	
74	Incoming	→ 18647060857 Lil' Wifey	1/8/2016 2:23:36 AM (UTC+0)	00:13:39					Logs Table	
75	Incoming	→ 18643849419 Crown vic	1/8/2016 2:16:06 AM (UTC+0)	00:04:42					Logs Table	Yes



1387	[+18643849419 Sidney*	1/8/2016 1:57:48 AM (UTC+0)			Unknown n	Aww baby I love u to and u mean the world to me I	
1388	*[+18643849419 Sidney*	1/8/2016 1:56:59 AM (UTC+0)			Unknown n	No they're not mad	
1389	*[+18643849419 Sidney*	1/8/2016 1:56:28 AM (UTC+0)			Unknown n	Baby I just wanted to let you know how much I love	
1390	[+18643849419 Sidney*	1/8/2016 1:56:23 AM (UTC+0)			Unknown n	They mad at u?	
1391	[+18643849419 Sidney*	1/8/2016 1:19:59 AM (UTC+0)			Unknown n	I love u	



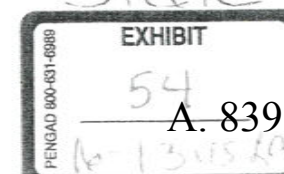
1382		* +18643849419 Sidney**	1/8/2016 2:00:27 AM (UTC+0)			Unknow n	Cause we weren't together long before we did	
1383		* +18643849419 Sidney**	1/8/2016 2:00:25 AM (UTC+0)			Unknow n	Yea	
1384		* +18643849419 Sidney**	1/8/2016 2:00:14 AM (UTC+0)			Unknow n	Really?	
1385		* +18643849419 Sidney**	1/8/2016 1:59:53 AM (UTC+0)			Unknow n	I've felt this way before we slept together baby	
1386		* +18643849419 Sidney**	1/8/2016 1:59:01 AM (UTC+0)			Unknow n	I would have said the same thing had we never slept	

1377	☐ +18643849419 Sidney*	1/8/2016 2:02:30 AM (UTC+0)			Unknow n	Not was is	
1378	✦ +18643849419 Sidney*	1/8/2016 2:02:19 AM (UTC+0)			Unknow n	I don't understand what it was about me... I'm jus	
1379	☐ +18643849419 Sidney*	1/8/2016 2:01:45 AM (UTC+0)			Unknow n	Something about u had me from the beginning	
1380	✦ +18643849419 Sidney*	1/8/2016 2:01:02 AM (UTC+0)			Unknow n	Why you start feeling that way so early?	
1381	☐ +18643849419 Sidney*	1/8/2016 2:00:38 AM (UTC+0)			Unknow n	I know	

1372	☎ +18643849419 Sidney**	1/8/2016 2:07:52 AM (UTC+0)			Unknown n	Me 2 baby	
1373	☎ +18643849419 Sidney**	1/8/2016 2:07:34 AM (UTC+0)			Unknown n	I can't wait to be able to talk to you at night to	
1374	☎ +18643849419 Sidney**	1/8/2016 2:07:23 AM (UTC+0)			Unknown n	And I love you	
1375	☎ +18643849419 Sidney**	1/8/2016 2:04:15 AM (UTC+0)			Unknown n	That I love with all my heart	
1376	☎ +18643849419 Sidney**	1/8/2016 2:03:20 AM (UTC+0)			Unknown n	Well I'm still just me. There's nothing really spe	

1368	☎ +18643849419 Sidney™	1/8/2016 5:40:52 AM (UTC+0)			Unknow n	I hope she's ok babe	
1369	☎ +18643849419 Sidney™	1/8/2016 3:05:33 AM (UTC+0)			Unknow n	Hey	
1370	☎ +18643849419 Sidney™	1/8/2016 2:15:48 AM (UTC+0)			Unknow n	No On her way	
1371	☎ +18643849419 Sidney™	1/8/2016 2:13:06 AM (UTC+0)			Unknow n	She home yet?	
1372	☎ +18643849419 Sidney™	1/8/2016 2:07:52 AM (UTC+0)			Unknow n	Me 2 baby	

254	Inbox	+18643849419 Sidney*	1/9/2016 12:37:34 AM (UTC+0)	Network: 1/9/2016 12:37:33 AM (UTC+0)	+12063130 057	Read	K	
255	Sent	+18643849419 Sidney*	1/9/2016 12:37:15 AM (UTC+0)			Sent	Let me see what I can do	
256	Inbox	+18643849419 Sidney*	1/9/2016 12:36:42 AM (UTC+0)	Network: 1/9/2016 12:36:41 AM (UTC+0)	+12063130 057	Read	Also why I really want to hold you too	
257	Sent	+18643849419 Sidney*	1/9/2016 12:36:14 AM (UTC+0)			Sent	I'm srr	
258	Sent	+18643849419 Sidney*	1/9/2016 12:36:12 AM (UTC+0)			Sent	Baby	



250	Sent	[+] +18643849419 Sidney*	1/9/2016 1:01:47 AM (UTC+0)			Sent	I love u	
251	Sent	[+] +18643849419 Sidney*	1/9/2016 1:01:45 AM (UTC+0)			Sent	I'm srr baby	
252	Inbox	*[+] +18643849419 Sidney*	1/9/2016 12:59:21 AM (UTC+0)	Network: 1/9/2016 12:59:20 AM (UTC+0)	+12063130 057	Read	I love you	
253	Inbox	*[+] +18643849419 Sidney*	1/9/2016 12:51:11 AM (UTC+0)	Network: 1/9/2016 12:51:10 AM (UTC+0)	+12063130 057	Read	I have to leave soon...	

246	Sent	[ +18643849419 Sidney**	1/9/2016 1:03:11 AM (UTC+0)			Sent	Yea hang on	
247	Inbox	[ +18643849419 Sidney**	1/9/2016 1:02:59 AM (UTC+0)	Network: 1/9/2016 1:02:58 AM (UTC+0)	+12063130 057	Read	Soon... can you get away?	
248	Sent	[ +18643849419 Sidney**	1/9/2016 1:02:37 AM (UTC+0)			Sent	When r u leaving	
249	Inbox	[ +18643849419 Sidney**	1/9/2016 1:02:11 AM (UTC+0)	Network: 1/9/2016 1:02:10 AM (UTC+0)	+12063130 057	Read	I'm not gonna see you tonight am i?	

241	Sent	 +18643849419 Sidney**	1/9/2016 1:09:50 AM (UTC+0)			Sent	Her aunt is bringing me	
242	Sent	 +18643849419 Sidney**	1/9/2016 1:09:40 AM (UTC+0)			Sent	Park a little ways down from me	
243	Inbox	 +18643849419 Sidney**	1/9/2016 1:09:39 AM (UTC+0)	Network: 1/9/2016 1:09:37 AM (UTC+0)	+12063130 057	Read	I'm by your truck	
244	Sent	 +18643849419 Sidney**	1/9/2016 1:09:15 AM (UTC+0)			Sent	I'm coming	
245	Inbox	 +18643849419 Sidney**	1/9/2016 1:03:20 AM (UTC+0)	Network: 1/9/2016 1:03:19 AM (UTC+0)	+12063130 057	Read	K	

236	Sent	[+] +18643849419 Sidney**	1/9/2016 2:32:46 AM (UTC+0)			Sent	u Ok?	
237	Sent	[+] +18643849419 Sidney**	1/9/2016 2:17:30 AM (UTC+0)			Sent	I love u	
238	Sent	[+] +18643849419 Sidney**	1/9/2016 1:29:37 AM (UTC+0)			Sent	Come here real quick	
239		[+] +18643849419 Sidney**	1/9/2016 1:29:35 AM (UTC+0)			Unknow n	Come here real quick	
240	Inbox	[+] +18643849419 Sidney**	1/9/2016 1:12:16 AM (UTC+0)	Network: 1/9/2016 1:12:15 AM (UTC+0)	+12063130 057	Read	I'm on the side row in front of your truck. You should still see me	

154	Sent	[+18643849419 Sidney**	1/9/2016 8:51:23 PM (UTC+0)			Sent	In the room look for baker	
155		[+18643849419 Sidney**	1/9/2016 8:51:20 PM (UTC+0)			Unknow n	In the room look for baker	
156	Inbox	*~ +18643849419 Sidney**	1/9/2016 8:26:20 PM (UTC+0)	Network: 1/9/2016 8:26:20 PM (UTC+0)	+12063130 057	Read	Bout to leave mcds	
157	Sent	[+18643849419 Sidney**	1/9/2016 8:23:42 PM (UTC+0)			Sent	Where yall at	
158		[+18643849419 Sidney**	1/9/2016 8:23:39 PM (UTC+0)			Unknow n	Where yall at	

149		 +18643849419 Sidney*	1/9/2016 9:56:34 PM (UTC+0)			Unknown	I know same here	
150	Inbox	 +18643849419 Sidney*	1/9/2016 9:56:23 PM (UTC+0)	Network: 1/9/2016 9:56:23 PM (UTC+0)	+12063130 057	Read	Not being able to kiss you right now is killing me	
151	Inbox	 +18643849419 Sidney*	1/9/2016 9:25:19 PM (UTC+0)	Network: 1/9/2016 9:25:18 PM (UTC+0)	+12063130 057	Read	Yes... and you btw ;)	
152	Sent	 +18643849419 Sidney*	1/9/2016 9:03:00 PM (UTC+0)			Sent	U find him	
153		 +18643849419 Sidney*	1/9/2016 9:02:58 PM (UTC+0)			Unknown	U find him	

144		☐ +18643849419 Sidney**	1/9/2016 9:57:19 PM (UTC+0)			Unknown	Me 2	
145	Inbox	☑ +18643849419 Sidney**	1/9/2016 9:57:14 PM (UTC+0)	Network: 1/9/2016 9:57:14 PM (UTC+0)	+12063130 057	Read	I wanted to hug you so bad when I saw you...	
146	Sent	☐ +18643849419 Sidney**	1/9/2016 9:57:07 PM (UTC+0)			Sent	Do u want to walk back to see her I mean not to make it weird but I am just asking	
147		☐ +18643849419 Sidney**	1/9/2016 9:57:05 PM (UTC+0)			Unknown	Do u want to walk back to see her I mean not to ma	
148	Sent	☐ +18643849419 Sidney**	1/9/2016 9:56:36 PM (UTC+0)			Sent	I know same here	

139		1/9/2016 9:58:21 PM (UTC+0)			Unknown	I could kiss u on the way lol	
140	Sent	+18643849419 Sidney**	1/9/2016 9:58:15 PM (UTC+0)		Sent	Ok same here	
141		+18643849419 Sidney**	1/9/2016 9:58:13 PM (UTC+0)		Unknown	Ok same here	
142	Inbox	+18643849419 Sidney**	1/9/2016 9:57:38 PM (UTC+0)	Network: 1/9/2016 9:57:37 PM (UTC+0)	+12063130 057	Read	No. I'll cry. Being in hospital rooms freaks me out and seeing tube and stuff.... no
143	Sent	+18643849419 Sidney**	1/9/2016 9:57:21 PM (UTC+0)		Sent	Me 2	

129	Inbox	→ +18643849419 Sidney**	1/9/2016 10:02:21 PM (UTC+0)	Network: 1/9/2016 10:02:20 PM (UTC+0)	+12063130 057	Read	I would be though. It's inappropriate just cause of my relationship with you	
130	Sent	┐ +18643849419 Sidney**	1/9/2016 10:01:54 PM (UTC+0)			Sent	I promise	
131		┐ +18643849419 Sidney**	1/9/2016 10:01:52 PM (UTC+0)			Unknow n	I promise	
132	Sent	┐ +18643849419 Sidney**	1/9/2016 10:01:47 PM (UTC+0)			Sent	U wouldn't be	
133		┐ +18643849419 Sidney**	1/9/2016 10:01:44 PM (UTC+0)			Unknow n	U wouldn't be	

124		[+18643849419 Sidney*	1/9/2016 10:05:46 PM (UTC+0)			Unknown	Me 2	
125	Inbox	[+18643849419 Sidney*	1/9/2016 10:03:10 PM (UTC+0)	Network: 1/9/2016 10:03:10 PM (UTC+0)	+12063130 057	Read	But it is killing me :(	
126	Inbox	[+18643849419 Sidney*	1/9/2016 10:03:03 PM (UTC+0)	Network: 1/9/2016 10:03:02 PM (UTC+0)	+12063130 057	Read	I know but I'd feel weird about it	
127	Sent	[+18643849419 Sidney*	1/9/2016 10:02:43 PM (UTC+0)			Sent	But we are the only ones that know	
128		[+18643849419 Sidney*	1/9/2016 10:02:41 PM (UTC+0)			Unknown	But we are the only ones that know	

119	Inbox	✉ +18643849419 Sidney**	1/9/2016 10:42:48 PM (UTC+0)	Network: 1/9/2016 10:42:48 PM (UTC+0)	+12063130 057	Read	I can't stand the thought of you being here for a month.... I'm gonna hate not seeing you	
120	Sent	✉ +18643849419 Sidney**	1/9/2016 10:42:09 PM (UTC+0)			Sent	Me 2	
121		✉ +18643849419 Sidney**	1/9/2016 10:42:06 PM (UTC+0)			Unknow n	Me 2	
122	Inbox	✉ +18643849419 Sidney**	1/9/2016 10:41:36 PM (UTC+0)	Network: 1/9/2016 10:41:35 PM (UTC+0)	+12063130 057	Read	 I need a kiss so bad	

115	Sent	+18643849419 Sidney*	1/9/2016 10:43:50 PM (UTC+0)			Sent	I'm going to go for a walk out the door to the left give me a min then act like u have a phone call and come	
116		+18643849419 Sidney*	1/9/2016 10:43:47 PM (UTC+0)			Unknown	I'm going to go for a walk out the door to the left	
117	Sent	+18643849419 Sidney*	1/9/2016 10:43:09 PM (UTC+0)			Sent	U will see me babe	
118		+18643849419 Sidney*	1/9/2016 10:43:07 PM (UTC+0)			Unknown	U will see me babe	

108	Sent	[*] +18643849419 Sidney*	1/9/2016 10:58:30 PM (UTC+0)			Sent	I'll deal with that u can just ride with me	
109		[*] +18643849419 Sidney*	1/9/2016 10:58:28 PM (UTC+0)			Unknown	I'll deal with that u can just ride with me	
110	Inbox	[*] +18643849419 Sidney*	1/9/2016 10:57:41 PM (UTC+0)	Network: 1/9/2016 10:57:40 PM (UTC+0)	+12063130 057	Read	And handling people seeing my car in your driveway?	

111	Sent	+18643849419 Sidney**	1/9/2016 10:56:59 PM (UTC+0)			Sent	I am
112		+18643849419 Sidney**	1/9/2016 10:56:57 PM (UTC+0)			Unknown	I am
113	Inbox	+18643849419 Sidney**	1/9/2016 10:44:14 PM (UTC+0)	Network: 1/9/2016 10:44:14 PM (UTC+0)	+12063130 057	Read	Which door?
114	Inbox	+18643849419 Sidney**	1/9/2016 10:44:10 PM (UTC+0)	Network: 1/9/2016 10:44:09 PM (UTC+0)	+12063130 057	Read	Not like I want. And I still don't know how you're gonna swing this weekend with me when she's still here

124	File Name: 20160117_164829.jpg Stored File Name: 0226~20160117_164829.jpg File Path: Phone/Pictures/John/ File Source: Phone File Size: 1446634 Bytes File Date/Time: 01/18/2016 09:47:47 MD5: 4C5E637821A56305267BDB371D16B50C SHA256: C4975AC4 9D13DB3 4116FCD C0F0231 6528EC9 415A867 7DC2141 626D217 051E76F	Resolution: 72x72 (unit: inch) Pixel Resolution: 2560x1440 Camera Make: samsung Camera Model: SM-N910V Date/Time: 2016:01:17 16:48:29	
125	File Name: 20160117_164827.jpg Stored File Name: 0227~20160117_164827.jpg File Path: Phone/Pictures/John/ File Source: Phone File Size: 1457368 Bytes File Date/Time: 01/18/2016 09:47:47 MD5: 921E1A70C04B950756FB0436E2237379 SHA256: D28CE3EA 85C5CE4 E0B6F85 29B8B61 1D7ED7D F9A4069 56EC62C 3A4270E B90A79E	Resolution: 72x72 (unit: inch) Pixel Resolution: 2560x1440 Camera Make: samsung Camera Model: SM-N910V Date/Time: 2016:01:17 16:48:27	
126	File Name: 20160117_164823.jpg Stored File Name: 0228~20160117_164823.jpg File Path: Phone/Pictures/John/ File Source: Phone File Size: 1426552 Bytes File Date/Time: 01/18/2016 09:47:48 MD5: 850C8B7F9C60466E565FC11C71A79D17 SHA256: 51679D1B 99862C2 827A24B CFF8E7F 313FBB9 5C1D6FA 46CFDB1 E62186A E51C32D	Resolution: 72x72 (unit: inch) Pixel Resolution: 2560x1440 Camera Make: samsung Camera Model: SM-N910V Date/Time: 2016:01:17 16:48:23	



127	File Name: 20160117_164820.jpg Stored File Name: 0229~20160117_164820.jpg File Path: Phone/Pictures/John/ File Source: Phone File Size: 1328235 Bytes File Date/Time: 01/18/2016 09:47:48 MD5: F4F01FCA78B418319F3FF0097DA5A766 SHA256: C7301238 7AE6D6A 86511E1 E8B3255 ACBB451 FEBDF31 6126C77 60A67B9 3F887F4	Resolution: 72x72 (unit: inch) Pixel Resolution: 2560x1440 Camera Make: samsung Camera Model: SM-N910V Date/Time: 2016:01:17 16:48:20	
128	File Name: 20160117_162617.jpg Stored File Name: 0230~20160117_162617.jpg File Path: Phone/Pictures/John/ File Source: Phone File Size: 1298890 Bytes File Date/Time: 01/18/2016 09:47:49 MD5: 5240D164F0E681F49810DF9B62D01078 SHA256: 8F91C072 0967EC5 9E4334D D406321 76613AF 4E7A887 369F148 7BE8933 22572BB	Resolution: 72x72 (unit: inch) Pixel Resolution: 2560x1440 Camera Make: samsung Camera Model: SM-N910V Date/Time: 2016:01:17 16:26:17	
129	File Name: 20160117_162613.jpg Stored File Name: 0231~20160117_162613.jpg File Path: Phone/Pictures/John/ File Source: Phone File Size: 1330910 Bytes File Date/Time: 01/18/2016 09:47:49 MD5: 7DA32446E1248C7F5E89F4993230B6D7 SHA256: 7416B0B6 686E711 D580F9A 53A0ECF BFF1900 F15EFA5 C8381E6 1E931C1 6D40898	Resolution: 72x72 (unit: inch) Pixel Resolution: 2560x1440 Camera Make: samsung Camera Model: SM-N910V Date/Time: 2016:01:17 16:26:13	

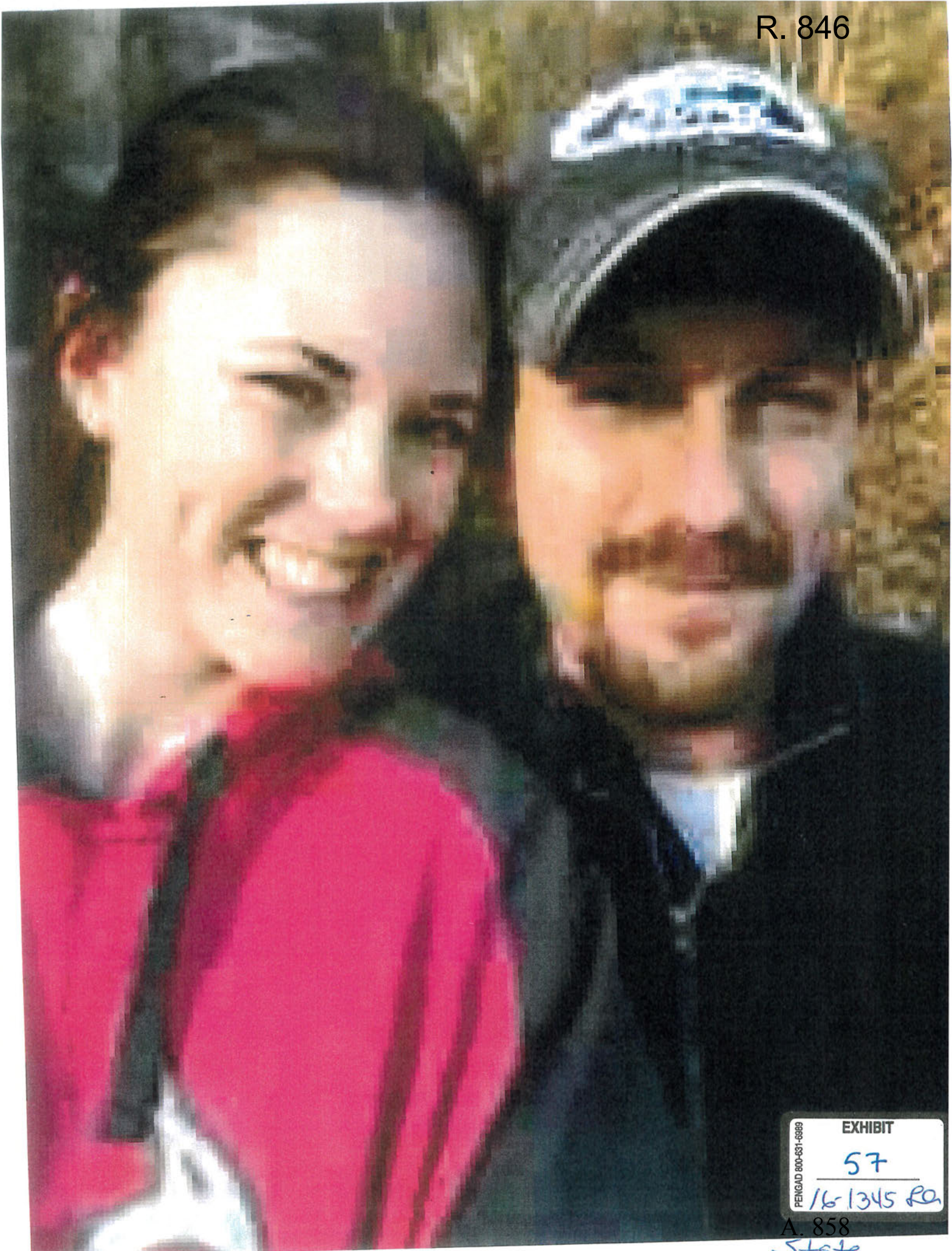
130	File Name: 20160117_162508.jpg Stored File Name: 0232~20160117_162508.jpg File Path: Phone/Pictures/John/ File Source: Phone File Size: 937734 Bytes File Date/Time: 01/18/2016 09:47:50 MD5: F7F4AC38F89C3C4F27E7D211E2B8CCEE SHA256: CE3A29F9 81914C9 13C4221 BEFE7F0 9EAAE30 3B69F19 6AFC0E2 501F0D7 EE4C608	Resolution: 72x72 (unit: inch) Pixel Resolution: 2560x1440 Camera Make: samsung Camera Model: SM-N910V Date/Time: 2016:01:17 16:25:08	
131	File Name: 20160117_162443.jpg Stored File Name: 0233~20160117_162443.jpg File Path: Phone/Pictures/John/ File Source: Phone File Size: 1204079 Bytes File Date/Time: 01/18/2016 09:47:50 MD5: 5737CEFD27654D8A6EC681DB56C71106 SHA256: C3FB583C 16A4BAB 050AFB8 F7321A0 962111A 6D2F8CA 86EA5A2 6449FC6 8C8F949	Resolution: 72x72 (unit: inch) Pixel Resolution: 2560x1440 Camera Make: samsung Camera Model: SM-N910V Date/Time: 2016:01:17 16:24:43	
132	File Name: 20160117_162608.jpg Stored File Name: 0234~20160117_162608.jpg File Path: Phone/Pictures/John/ File Source: Phone File Size: 1293093 Bytes File Date/Time: 01/18/2016 09:47:50 MD5: 2C21B5D3563F9F658FC8BB80FB864F51 SHA256: 31ABAC52 F9C9F44 1C16B14 2905CC6 6800841 37E4DB0 C5571D7 4E4850B 94A7AA2	Resolution: 72x72 (unit: inch) Pixel Resolution: 2560x1440 Camera Make: samsung Camera Model: SM-N910V Date/Time: 2016:01:17 16:26:08	

R. 845



EXHIBIT
56
16-1345 RQ
A. 857

R. 846



PENGAD 800-631-6969

EXHIBIT

57

16/1345 RQ

A. 858

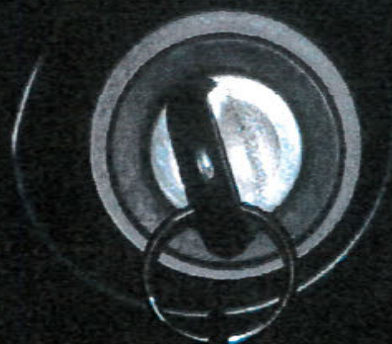
State

R. 847



EXHIBIT
58
A. 859
11-12-15-16

R. 848



EXHIBIT

59

APR 18 2008 800-631-6969
A 860 1345 LON

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UNITED STATES OF AMERICA

Criminal No: 6:16-707

v.

PLEA AGREEMENT

DUSTIN TILLER

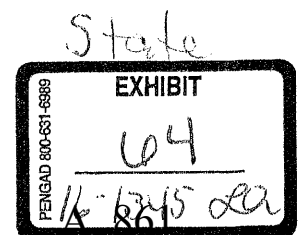
General Provisions

This PLEA AGREEMENT is made this 17th day of March, 2017, between the United States of America, as represented by United States Attorney Beth Drake, Assistant United States Attorney Andrew B. Moorman, Sr.; the Defendant, Dustin Tiller, and Defendant's Attorney, James Bannister, Esquire.

IN CONSIDERATION of the mutual promises made herein, the parties agree as follows:

1. The Defendant agrees to plead guilty to Count 1 of the Indictment now pending.

a. Count 1 charges that beginning at a time unknown to the Grand Jury, but beginning at least in 2015, within the District of South Carolina and elsewhere, the Defendant and others conspired to Possess with the Intent to Distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, a schedule



II controlled substance, in violation of Title 21, United States Code, Section 841(a), (b)(1)(A), and 846.

In order to sustain its burden of proof as to Count 1, the Government is required to prove the following:

- ONE: The conspiracy described in the indictment was willfully formed and was existing at or on about the alleged time; and,
- TWO: The accused willfully became a member of the conspiracy.

Possible Penalties Pursuant to Count 1- in a case involving 500 grams or more of mixture or substance containing methamphetamine and two or more prior felony drug convictions - a mandatory term of life imprisonment, no probation, no parole, a fine of \$20,000,000, plus a special assessment of \$100.

2. The Defendant understands and agrees that monetary penalties [i.e., special assessments, restitution, fines and other payments required under the sentence] imposed by the Court are due immediately and subject to enforcement by the United States as civil judgments, pursuant to 18 USC § 3613. The Defendant also understands that payments made in accordance with installment schedules set by the Court are minimum payments only and do not preclude the government from seeking to enforce the judgment against other assets

of the defendant at any time, as provided in 18 USC §§ 3612, 3613 and 3664(m).

The Defendant further agrees to enter into the Bureau of Prisons Inmate Financial Responsibility Program if sentenced to a term of incarceration with an unsatisfied monetary penalty. The Defendant further understands that any monetary penalty imposed is not dischargeable in bankruptcy.

- A. Special Assessment: Pursuant to 18 U.S.C. §3013, the Defendant must pay a special assessment of \$100.00 for each felony count for which he is convicted. This special assessment must be paid at or before the time of the guilty plea hearing.
- B. Restitution: The Defendant agrees to make full restitution under 18 U.S.C. § 3556 in an amount to be determined by the Court at the time of sentencing, which amount is not limited to the count(s) to which the Defendant pled guilty, but will include restitution to each and every identifiable victim who may have been harmed by scheme or pattern of criminal activity, pursuant to 18 U.S.C. § 3663. The Defendant agrees to cooperate fully with the Government in identifying all victims.

C. Fines: The Defendant understands that the Court may impose a fine pursuant to 18 U.S.C. §§ 3571 and 3572.

3. Provided the Defendant complies with all the terms of this Agreement, the United States agrees to move to dismiss the remaining counts of the Indictment [and any other indictments under this number] at sentencing. The Defendant understands that the Court may consider these dismissed counts as relevant conduct pursuant to §1B1.3 of the United States Sentencing Guidelines.

4. The Defendant understands that the obligations of the Government within the Plea Agreement are expressly contingent upon the Defendant's abiding by federal and state laws and complying with any bond executed in this case. In the event that the Defendant fails to comply with any of the provisions of this Agreement, either express or implied, the Government will have the right, at its sole election, to void all of its obligations under this Agreement and the Defendant will not have any right to withdraw plea of guilty to the offense(s) enumerated herein.

5. The Defendant understands that the matter of sentencing is within the sole discretion of the Court and that the sentence applicable to Defendant's case will be imposed after the Court considers as advisory the United States Sentencing Commission Guidelines, Application Notes and Policy Statements, as well as the factors set forth in Title 18, United States Code, Section 3553(a). The Defendant also understands that Defendant's sentence has not yet been determined by the court, and that any estimate of a probable sentencing range Defendant may have received from Defendant's attorney, the Government or the United States Probation Office is only a prediction, not a promise, and is not binding on the Government, the Probation Office or the Court. The Defendant further understands that the Government retains the right to inform the Court of any relevant facts, to address the Court with respect to the nature of the offense, to respond to questions raised by the Court, to correct any inaccuracies or inadequacies in the presentence report, to respond to any statements made to the Court by or on behalf of the Defendant and to summarize all evidence which would have been presented at trial to establish a factual basis for the plea.

6. The Defendant agrees that all facts that determine his offense level under the Guidelines and pursuant to any mandatory minimum (including facts that support any specific offense characteristic or other enhancement or adjustment) can be found by the court at sentencing by a preponderance of the evidence standard and the court may consider any reliable evidence, including hearsay. By executing this Agreement, the Defendant understands that he waives any argument that facts that determine his offense level under the Guidelines and pursuant to any mandatory minimum should be alleged in an indictment and found by a jury beyond a reasonable doubt.

Cooperation and Forfeiture

7. The Defendant agrees to be fully truthful and forthright with federal, state and local law enforcement agencies by providing full, complete and truthful information about all criminal activities about which he has knowledge. The Defendant must provide full, complete and truthful debriefings about these unlawful activities and must fully disclose and provide truthful information to the Government including any books, papers, or documents or any other items of evidentiary value to the investigation. The Defendant must also testify fully and truthfully before any

grand juries and at any trials or other proceedings if called upon to do so by the Government, subject to prosecution for perjury for not testifying truthfully. The failure of the Defendant to be fully truthful and forthright at any stage will, at the sole election of the Government, cause the obligations of the Government within this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the Government within this Agreement become null and void due to the lack of truthfulness on the part of the Defendant, the Defendant understands that:

- a. the Defendant will not be permitted to withdraw plea of guilty to the offenses described above;
- b. all additional charges known to the Government may be filed in the appropriate district;
- c. the Government will argue for a maximum sentence for the offense to which the Defendant has pleaded guilty; and
- d. the Government will use any and all information and testimony provided by the Defendant pursuant to this Agreement, or any prior proffer agreements, in the prosecution of the Defendant of all charges.

8.

9. The Government agrees that any self-incriminating information provided by the Defendant as a result of the cooperation required by the terms of this Agreement, although available to the Court, will not be used against the Defendant in determining the Defendant's applicable guideline range for sentencing pursuant to the U.S. Sentencing Commission Guidelines. The provisions of this paragraph shall not be applied to restrict any such information:

- a. known to the Government prior to the date of this Agreement;
- b. concerning the existence of prior convictions and sentences;

- c. in a prosecution for perjury or giving a false statement; or
- d. in the event the Defendant breaches any of the terms of the Plea Agreement.

10. Provided the Defendant cooperates pursuant to the provisions of this Plea Agreement, and that cooperation is deemed by the Government as providing substantial assistance in the investigation or prosecution of another person who has committed an offense, the Government agrees to, at the Defendant's selection, EITHER:

- (1) move the Court for a downward departure or reduction of sentence pursuant to United States Sentencing Guidelines §5K1.1, Title 18, United States Code, § 3553(e) or Federal Rule of Criminal Procedure 35(b). The Defendant understands that any such motion by the Government is not binding upon the Court, and should the Court sentence the Defendant within the Guidelines, to the maximum penalty prescribed by law or refuse to reduce the sentence imposed, the Defendant will have no right to withdraw his plea; OR
- (2) withdraw at sentencing one enhancement(s) contained in the Information previously filed pursuant to 21 U.S.C. § 851 seeking an enhanced minimum penalty

based on two prior felony drug conviction(s), such that the Defendant should be held accountable for one prior felony drug conviction(s) described in that Information.

11. The Defendant agrees to voluntarily surrender to, and not to contest the forfeiture by, the United States of America of any and all assets and property, or portions thereof, owned or purchased by the Defendant which are subject to the forfeiture pursuant to any provision of law and which are in the possession or control of the Defendant or Defendant's nominees. The Defendant further agrees to prevent the disbursement, relocation or encumbrance of any such assets and agrees to fully assist the government in the recovery and return to the United States of any assets, or portions thereof, as described above, wherever located. The Defendant further agrees to make a full and complete disclosure of all assets over which Defendant exercises control and those which are held or controlled by nominees. The Defendant further agrees to submit to a polygraph examination on the issue of assets if it is deemed necessary by the United States.

12. The Defendant agrees to forfeit all interests in the properties as described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title and the signing of any other documents necessary to effectuate such transfers. The Defendant agrees not to object to any civil forfeiture proceedings brought against these properties pursuant to any provision of law and the Defendant further understands that any such civil proceedings may properly be brought at any time before or after acceptance of Defendant's guilty plea in this matter and agrees to waive any double jeopardy claims he may have as a result of the forfeiture of these properties as provided for by this Agreement.

Merger and Other Provisions

13. The Defendant stipulates and agrees that he has two prior felony drug conviction(s) that has/have become final and that the Attorneys for the Government have filed an Information pursuant to 21 U.S.C. § 851 which subjects him to a mandatory minimum term of imprisonment of life on Count 1 . The Defendant further stipulates and agrees that this paragraph and the Information that has been filed pursuant thereto fulfills the requirements of § 851,

including service, and constitutes adequate and sufficient notice of a prior felony drug conviction for purposes of that statute. The Defendant agrees to not contest the Information that has been filed pursuant to 21 U.S.C. § 851 in accordance with this paragraph.

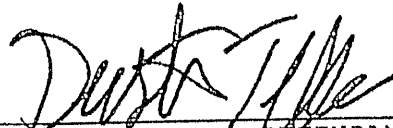
14. The Defendant represents to the court that he has met with his attorney on a sufficient number of occasions and for a sufficient period of time to discuss the Defendant's case and receive advice; that the Defendant has been truthful with his attorney and related all information of which the Defendant is aware pertaining to the case; that the Defendant and his attorney have discussed possible defenses, if any, to the charges in the Indictment including the existence of any exculpatory or favorable evidence or witnesses, discussed the Defendant's right to a public trial by jury or by the Court, the right to the assistance of counsel throughout the proceedings, the right to call witnesses in the Defendant's behalf and compel their attendance at trial by subpoena, the right to confront and cross-examine the government's witnesses, the Defendant's right to testify in own behalf, or to remain silent and have no adverse inferences drawn from silence; and that the Defendant, with the advice of counsel, has

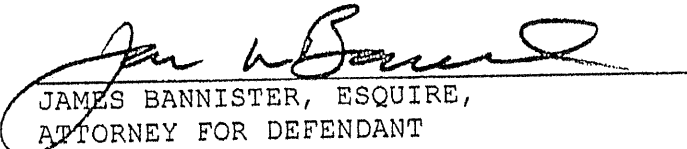
weighed the relative benefits of a trial by jury or by the Court versus a plea of guilty pursuant to this Agreement, and has entered this Agreement as a matter of the Defendant's free and voluntary choice, and not as a result of pressure or intimidation by any person.

15. The Defendant is aware that 18 U.S.C. § 3742 and 28 U.S.C. § 2255 afford every defendant certain rights to contest a conviction and/or sentence. Acknowledging those rights, the Defendant, in exchange for the concessions made by the Government in this Plea Agreement, waives the right to contest either the conviction or the sentence in any direct appeal or other post-conviction action, including any proceedings under 28 U.S.C. § 2255. (This waiver does not apply to claims of ineffective assistance of counsel or prosecutorial misconduct raised pursuant to 28 U.S.C. § 2255, or future changes in the law that affect the defendant's sentence.) This Agreement does not affect the rights or obligations of the Government as set forth in 18 U.S.C. § 3742(b). Nor does it limit the Government in its comments in or responses to any post-sentencing matters.

16. The Defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.
17. The parties hereby agree that this Plea Agreement contains the entire agreement of the parties; that this Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement shall not be binding on any party until the Defendant tenders a plea of guilty to the court having jurisdiction over this matter; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements, whether made prior to, contemporaneous with or after this Agreement, are null and void.

3/16/17
Date


DUSTIN TILLER, DEFENDANT


JAMES BANNISTER, ESQUIRE,
ATTORNEY FOR DEFENDANT

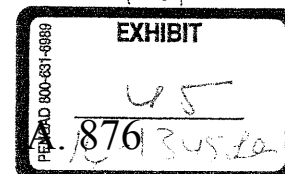
3/23/17
Date

BETH DRAKE
UNITED STATES ATTORNEY

Andrew B. Moorman, Sr.
ANDREW B. MOORMAN, SR. (#10013)
ASSISTANT UNITED STATES ATTORNEY

A TRUE COPY
Attest: Robin L. Blume
By: [Signature]
DEPUTY CLERK

708	8645049052	* John	01/07/2016 20:56:22 (GMT-5)		Sent	Sent	Phone	Outgoing	Baby I just wanted to let you know how much I love you and how much I want to be with you. You're so unbelievably special to me and I don't want to even imagine a life without you in it. You're amazing and perfect for me. I can't wait to be able to call you mine and not have to share you with anyone. I can't wait to be your fiancé and then your wife. I can't wait to be yours and wake up every morning to your face and your smile. I can't wait to come home to you and our kids together as 1 family. I love you with all of my heart and I am very impatiently waiting for the day I become Mrs Batchelor.
709	8645049052	* John	01/07/2016 20:56:27 (GMT-5)		Read	Inbox	Phone	Incoming	They mad at u?
710	8645049052	* John	01/07/2016 20:56:56 (GMT-5)		Sent	Sent	Phone	Outgoing	No they're not mad
711	8645049052	* John	01/07/2016 20:57:53 (GMT-5)		Read	Inbox	Phone	Incoming	Aww baby I love u to and u mean the world to me I can't wait either
712	8645049052	* John	01/07/2016 20:58:58 (GMT-5)		Sent	Sent	Phone	Outgoing	I would have said the same thing had we never slept together too just so you know
713	8645049052	* John	01/07/2016 20:59:56 (GMT-5)		Read	Inbox	Phone	Incoming	I've felt this way before we slept together baby
714	8645049052	* John	01/07/2016 21:00:11 (GMT-5)		Sent	Sent	Phone	Outgoing	Really?
715	8645049052	* John	01/07/2016 21:00:25 (GMT-5)		Sent	Sent	Phone	Outgoing	Cause we weren't together long before we did



State of South Carolina	)	
	)	
County of Spartanburg	)	
State of South Carolina,	)	2016-GS-42-01345
	)	
Plaintiff,	)	
	)	
v.	)	Transcript
	)	
Jonathan Olin Batchelor,	)	of
	)	
Defendant.	)	Posttrial Hearing
	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	

Date: December 8, 2021

Time: 2:32 p.m.

Location: Via Webex for All Parties

Reported by
Amber Payne, CVR

APPEARANCES

Presiding: The Honorable R. Keith Kelly

For the Plaintiff: Jennifer E. Wells, Esq.
Spartanburg County
180 Magnolia St.
Spartanburg, SC 29304

For the Defendant: Charles Grose, Esq.
The Grose Law Firm, LLC
404 Main St.
Greenwood, SC 29646

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EXHIBITS

There were no exhibits marked during this hearing.

1 PROCEEDINGS

2 THE COURT: (To the Defendant) Sir, we're on
3 -- what's known as posttrial motions. And I
4 know your lawyer's talked with you about
5 those. And so that's -- that's what we're
6 going to try to do this afternoon, so . . .

7 If we recognize -- it's the defense
8 counsel's motion. So we'll recognize defense
9 counsel. Mr. Grose.

10 MR. GROSE: All right. Thank you, Your Honor.
11 As a housekeeping matter upfront, when I
12 pulled up a copy of the motion to get ready
13 for this hearing, the motion referenced some
14 attachments, and I'm not sure that those
15 attachments got included. If you do not have
16 them, I can -- I can send those in later
17 today.

18 THE COURT: I do not have them. My law clerk
19 printed this morning ten pages, the ninth page
20 being your signature page, and the tenth page
21 being the service of the motion.

22 MR. GROSE: Okay.

23 THE COURT: But I don't have any attachments.

24 MR. GROSE: All right. Well, I will -- I will
25 get those to everybody after we get done with

1 this hearing.

2 You know, I -- you have the written
3 motion, Your Honor. And I divided it, I
4 think, into three sections. The first section
5 was the motion for a new trial based on trial
6 error, and under that, I raised, you know, a
7 number of issues.

8 You know, one issue that I raised was the
9 Court not asking, you know, several of our
10 voir dire questions. And I think that motion
11 probably pretty much speaks for itself. But
12 the -- the voir dire questions were tailored
13 towards issues that I thought would arise in
14 the case, in which they did arise in the case.
15 And I think it would have been helpful for the
16 jurors to have heard those questions.

17 I know that at least some -- some of the
18 cases that the State has cited in response to
19 my motion are capital cases. And, of course,
20 in capital cases, the jurors are individually
21 voir dired and receive much more extensive
22 voir dire than they typically do in a criminal
23 case in South Carolina.

24 The second issue that was raised regarded
25 the admission of the testimony of Dustin

1 Tiller. Of course, we had a hearing on that,
2 and we took testimony, and that was -- was
3 ruled on during the trial. I know in response
4 to the motion, the State is indicating that
5 our motion to exclude Mr. Tiller's testimony
6 at trial was based on a publication from the
7 Innocence Project.

8 And -- and they're correct to the extent
9 that we did provide a copy of that to Your
10 Honor and cited in our pleading, but I also
11 cited to a number of law review articles where
12 the Courts, you know, have found, you know,
13 problems with the admission of, you know,
14 testimony by jailhouse informants. So I think
15 -- well, and we have cited, you know, a good
16 bit of law for Your Honor to rely on. And one
17 of the issues that, you know, we -- we're
18 raising in this motion is the fact that --
19 that the Court felt that it did not have the
20 authority to rule on the motion, because it
21 got into potentially weighing evidence.

22 And I think we mentioned at trial, but we
23 also cited a number of cases where, you know,
24 the Court does have to consider the
25 reliability of the testimony and perhaps even

1 weigh it for the purposes of determining the
2 reliability and the admissibility of it in a
3 trial. And I think that that's different.
4 That the role that the Court does is -- in its
5 gatekeeping function is different than the
6 Court's role, you know, at a directed verdict
7 stage.

8 The third issue that we raised in -- in
9 the trial error section is the Court's
10 limitation on our cross-examination of Dustin
11 Tiller. In response, the -- the State is
12 indicating that that would have required for
13 the Jurors to learn that Mr. Batchelor had
14 previously pled guilty to these charges. We
15 disagree that that's the case. And I think
16 our rules in South Carolina -- our rules of
17 evidence are pretty -- I don't know -- pretty,
18 pretty liberal or pretty robust as far as
19 allowing somebody to cross-examine a witness
20 about, you know, a motive or bias or -- or
21 prejudice in a criminal case. And I think it
22 was important for the Jurors to know that Mr.
23 Tiller had already received consideration for
24 his assistance in this case, that the
25 Solicitor's office participated, you know, in

1 his sentencing hearing where he received that
2 consideration.

3 And I think that, you know, not only were
4 we prejudiced by not allowing to introduce any
5 of that, the State was allowed to paint a
6 picture to the jury that it -- it had no
7 control over -- or rather, opportunity to
8 influence, you know, what Mister, you know,
9 Tiller's future downward department --
10 departure might look like. And so we -- we
11 think we were prejudiced both in the closing
12 argument and not -- and for not being allowed
13 to do the cross-examination.

14 The next issue goes to what we consider
15 to be an improper show of force when Mr.
16 Batchelor was testifying. The -- the State
17 wants Your Honor to read the Deck versus
18 Missouri case very narrowly. I don't think
19 it's that narrow. I think it has -- you know,
20 goes to the -- the due process with regards
21 to, you know, what kind of security is
22 visible, you know, to the jurors in the
23 courtroom.

24 And, you know, I don't think there can be
25 any -- any doubt in this case that when an

1 officer escorts somebody to the witness stand,
2 stands by him while he testifies, escorts him
3 back, that that's a show of force. In fact,
4 I've had officers testify, you know, in -- in
5 some cases that part of the use of force
6 policy is just being in uniform and having
7 that presence. But this was more than just a
8 uniform. The officer was, you know, wearing,
9 you know, body armor, and carrying, as we
10 determined, a couple pairs of -- of handcuffs.
11 And in the shackling context, you know, I've
12 been involved in cases where it was at least
13 proposed, and I think in some cases done
14 where, you know, they -- the security has the
15 ability to use restraints that are not, you
16 know, visible because they're under the
17 clothing or something of that nature. And
18 certainly, you know, it's our position that a,
19 you know, less restrictive, less obvious means
20 could have been fashioned to accomplish the --
21 the same security concerns.

22 The second section is based on the
23 insufficiency of the evidence. In that
24 section, I think, as Your Honor's aware, you
25 know, we're -- we're sort of reasserting the

1 directed verdict motions that we made during
2 trial and asking for a new trial based on
3 those same reasons.

4 Finally, you know, without, you know,
5 waiving any of our motions or grounds for a
6 new trial, we do have a motion to reconsider
7 the sentence. And I think this is reiterating
8 and, you know, maybe expanding a little bit on
9 the -- the argument that I made at trial that,
10 you know, absent some sort of showing of -- of
11 new evidence or new information, that it would
12 violate due process to sentence Mr. Batchelor
13 to an active sentence greater than what he
14 received following the Alford plea.

15 THE COURT: Okay. Thank you. Solicitor.

16 MS. WELLS: Thank you, Your Honor. May it
17 please it the Court.

18 Your Honor, the State basically rests on
19 what the State submitted in its response to
20 the Defense's motion. I did want to touch on
21 a couple of things outside of that.

22 First -- let's see. I don't know that I
23 have anything to add to the inadequate -- the
24 proposition that the voir dire wasn't
25 adequate. The State maintains that it was.

1 And the Court obviously is -- the -- I mean,
2 even as far as they are -- their -- some of
3 the cases the State cites are cases where the
4 -- where they were capital cases. But even in
5 those cases, the Courts agree that the trial
6 court has broad latitude in its indiscretion
7 and what questions the Court asks in voir
8 dire. And I don't think asking these two
9 questions caused this trial to be
10 fundamentally unfair to the Defense.

11 Again, as to the admission of Dustin
12 Tiller testimony, the Court had the
13 opportunity to hear Mr. Tiller, to address any
14 concerns the Court had with his testimony or
15 any, you know, agreements between the State
16 and the Defendant in that case and I think the
17 Court properly admitted Mr. Tiller's testimony
18 at trial.

19 As to the cross-examination of Mr.
20 Tiller, the State again feels that there is
21 really no other outcome that would have come
22 from allowing the Defense to inquire as to my
23 presence at Mr. Tiller's federal sentencing
24 than for us to have to explain all of it. And
25 I think that's exactly where we would have

1 gone should the Court have allowed that
2 testimony; and I believe that I brought that
3 up when we argued it. There's no way to
4 sanitize that. There's no way to get around
5 it.

6 The State had no control over what Mr.
7 Tiller's sentencing was. And the State had no
8 wish to participate in Mr. Tiller's
9 sentencing.

10 As the Court will recall from the
11 transcript of the federal sentencing, the
12 State was there not because the State asked to
13 be there, not because the State wanted to be
14 there. The State was there, because the State
15 was subpoenaed to be there by Mr. Tiller's
16 defense attorney, Mr. Bannister.

17 I mean, the State did -- I can tell you, as an
18 officer of this court, I begged Jim Bannister
19 not to make me go. I did not want to be
20 there. I mean, in large part -- well, one, as
21 I've said a hundred thousand times before this
22 Court, my daughter had literally been released
23 from the hospital just -- no more than 48
24 hours -- it might have been 24 hours before
25 that hearing. And that's acknowledged in

1 there. Additionally, I mean, what a mess that
2 it has created for us that that happened.
3 So I just don't think there would be any way
4 that this Court would not -- the State
5 would -- I mean, there's no way that it
6 wouldn't have come in. I don't know how we
7 would have kept that from happening. So I
8 think the Court was absolutely right and that
9 -- and it was not -- it was -- all the --
10 everything else came in. The plea agreement,
11 he was a federal defendant, all those things
12 the Court -- the State has already addressed
13 in its response to the Defense's motion.

14 As to Deck -- the Deck versus Missouri
15 argument, I think the case should be read
16 narrowly, because that's how the Courts
17 instruct us to read cases is to read them
18 narrowly. And if the Court wanted to expand
19 on what it did in Deck, it had the opportunity
20 to do that in U.S. versus Bell, which the
21 State cited in its response at one -- excuse
22 me. 819 F.3d 310. That's a Seventh Circuit
23 Case. That case was denied cert at the
24 Supreme Court.

25 The Supreme Court could have visited the

1 -- revisited this issue in Bell, and they
2 chose not to. That was -- that cite is 138 S.
3 Ct. 283. That's a 2017 denial of cert from
4 the Supreme Court. The Supreme Court didn't
5 wish to expand on Deck, and I think that to
6 argue . . .

7 One, I -- I do want to make the record
8 clear, this was not -- this deputy was not
9 wearing body armor. That is not what -- he
10 was dressed in the standard Spartanburg County
11 uniform that all of our deputies in the
12 courtroom were wearing. And when I say all of
13 them, I think there were two of them. I think
14 it was your deputy and then the deputy who was
15 assigned to Mr. Batchelor, which is -- he was
16 in custody, and that was appropriate.
17 And no one -- there was no banners or, you
18 know, anything that -- to raise any concerns
19 as to that other than -- I mean, that -- he
20 wasn't -- he wasn't shackled. It -- there was
21 nothing -- this is not a G. Ross Anderson, you
22 know, taping the Defendant in the courtroom
23 kind of situation. This is someone who was in
24 custody and a very minor, you know -- he had
25 been sitting with him -- next to him the whole

1 trial, and he walked up there and stood, you
2 know, out of the way during the Defendant's
3 testimony, nothing more. And not wearing body
4 armor.

5 So I do want to -- I do think that was
6 just -- and I know that they wear their --
7 sometimes some of them wear their vest on the
8 outside, but that's not body armor; that's
9 standard-issue Spartanburg County uniform. So
10 I do want to correct that.

11 So outside of that, Judge, I do think
12 that, you know, again, the State put forth
13 evidence on each count of this indictment
14 enough in the light most favorable to the
15 State for that to proceed. And that -- for
16 that portion, the new trial should be denied.
17 And we don't think that, you know, that
18 there's any reason to reconsider the sentence
19 here.

20 There's absolutely no evidence that this
21 was retaliatory in any way on behalf of the
22 State. You know that Ms. Batchelor asked for
23 the maximum. The State joined her in that.
24 And the reasons I stated at the -- at the
25 sentencing as well as restated in my response.

1 And I don't have anything additional to add to
2 that either, Judge. We just ask you to deny
3 all of these motions, and I guess we can see
4 each other at the Court of Appeals.

5 THE COURT: Okay. Let me ask this. Mr. Grose
6 is going to send me a couple of attachments
7 that -- that didn't make it to me. Now, once
8 I review those and make a decision on these,
9 do you want something in writing, or do you
10 want us to reconvene on the record? Which
11 way, Mr. Grose, you want it?

12 MR. GROSE: I think we're going to need
13 something in writing. If -- I mean, either
14 way, I mean, if you grant the motions, you
15 know, there's going to need to be something in
16 the file for -- for the new trial, or they'll
17 be -- need to be something in the file for,
18 you know, the amended sentence. If you deny
19 the motions, and I don't have an order to send
20 in on that, they're probably going to be
21 calling me looking for one, so . . .

22 THE COURT: Well, then, the easiest thing to
23 do is just get back on the record one day next
24 week and then you have a transcript.

25 MR. GROSE: Do you want a transcript? I'll

1 probably need a -- a written order is what I
2 really need.

3 THE COURT: Well, Solicitor?

4 MS. WELLS: Your Honor, I defer to you. I
5 know that you've done orders on the record
6 before, and the A.G.'s office just requests a
7 transcript. So I'll leave it at the Court's
8 discretion. The State doesn't have a
9 position.

10 THE COURT: Okay. I'll -- I'll figure out
11 which way to handle it.

12 I'm in York County next week, but I'm
13 told that trials are falling over there, as
14 well, as we all know sometimes happens this
15 time of year. So we'll see what happens. But
16 -- but how about everybody's schedule if I can
17 get us back on the record? Mr. Grose, you
18 going to be in town? You're going to be
19 traveling or anything next week?

20 MR. GROSE: I'm traveling on Thursday and
21 Friday of next week for cases --

22 THE COURT: Okay.

23 MR. GROSE: -- in the 12th and the 15th
24 Circuit.

25 THE COURT: Okay. So anytime -- a little

1 flexible Monday through Wednesday, maybe?

2 Especially in the afternoon?

3 MR. GROSE: Yes, sir.

4 THE COURT: Okay. Ms. Wells, does that work
5 for you?

6 MS. WELLS: That should, Judge. I was -- as
7 the Court knows, we have a trial calendar next
8 week. So -- so long as I have not been called
9 by Judge Cole to appear before trial, I am
10 available.

11 THE COURT: Okay. Okay. And nothing magic
12 about it next week. I was just -- I know that
13 I've talked with folks over in York County
14 earlier this morning and -- to see if we -- if
15 we -- the trial that they had up was going to
16 go. And the murder trial got moved to
17 January. And I understand other -- other
18 things behind it start falling as they
19 sometimes do once the -- the big trial pleads
20 out or is continued. And their Chief Admin
21 Judge, Judge McKinnon, actually moved that
22 case to the January term. So things are kind
23 of falling.

24 And so it may be that -- that the pleas
25 and motions and things that I do in the

1 morning and maybe not have too much in the
2 afternoon. So I -- and I'll have a court
3 reporter, so it can get back on the record.
4 All right?

5 MS. WELLS: Yes, sir.

6 MR. GROSE: Judge, looking at my calendar, I
7 do have a couple of minor hearings in the
8 afternoons --

9 THE COURT: Okay.

10 MR. GROSE: -- on Monday and Wednesday, but
11 they should be easy to work around.

12 THE COURT: Okay. Okay. Very good. All
13 right. Well, we'll get some emails back out.
14 If you don't mind, send me that too, and I'll
15 -- I'll jump in and read those, Mr. Grose, if
16 you send the attachments.

17 MR. GROSE: All right. I'll send it in the
18 next 15 to 30 minutes.

19 THE COURT: That's good. Thank you.

20 (Whereupon the within hearing was
21 concluded at 2:52 p.m.)

22 (*This transcript may contain quoted material.
23 Such material is reproduced as read or quoted
24 by the speaker.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

CERTIFICATE

Be it known that Amber J. Payne took the foregoing proceeding and hereby attests:

that I was then and there a notary public in and for the State of South Carolina-at-large;

that the foregoing transcript represents a true, accurate, and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

that I am neither a relative nor an employee of any of the parties hereto, nor of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

that, if a recording of an event was supplied by another party for purposes of transcription and I was not present during that event, the foregoing pages were transcribed to the best of my skill and ability; additionally, any identifications of speakers were provided to me by the party supplying the recording;

that, in the event of a nonappearance by the witness, the foregoing details for the nonappearance are accurate.

In witness thereof, I have hereunto affixed my signature and title.

Amber J. Payne, CVR

Date: 5/16/2022
Notary public for South Carolina
My commission expires August 12, 2029

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

IN GENERAL SESSIONS COURT
7th JUDICIAL CIRCUIT

3 STATE OF SOUTH CAROLINA,
4
5 Plaintiff,

VIDEO CONFERENCE

6 vs.

CASE NO. 2016-GS-42-01345

7 JOHNATHAN OLIN BATCHELOR,
8 Defendant.

ORIGINAL

9
10 HEARING BEFORE: HONORABLE R. KEITH KELLY, virtually

11 DATE: February 3, 2022
12
13
14
15

16 REPORTED BY: LORA L. McDANIEL, virtually
17 Registered Professional Reporter
18

19 APPEARANCES:

20 ATTORNEYS FOR THE PLAINTIFF
21 JENNIFER E. WELLS, ESQ., virtually

22 ATTORNEYS FOR THE DEFENDANT
23 E. CHARLES GROSE, JR., ESQ., virtually
24
25

STATE OF SOUTH CAROLINA v. JOHNATHAN BATCHELOR

1 THE COURT: We're here on the matter of State of
2 South Carolina versus Jonathan Olin Batchelor on certain
3 motions that were made post-trial. They were properly and
4 timely filed by defense Counsel. They consist of, I'm counting
5 here, nine pages of -- actually nine pages plus the service
6 page makes it page 10. And This Court has carefully considered
7 those along with responses that were also timely made and filed
8 and sent to The Court.

9 We're on the record, and I'm just going to get
10 right to it.

11 MR. GROSE: Your Honor, if I could interrupt for a
12 second in order to preserve the record. I would want to renew
13 our request to resume in the courtroom of the trial for the
14 reasons stated in the e-mail and the proffers that I submitted.

15 THE COURT: Okay. Does the State want to be heard
16 on that?

17 MS. WELLS: No, sir, Your Honor. I mean, the
18 courtroom is simply not available. I mean, it's being used for
19 civil court this week.

20 THE COURT: It is. But nonetheless, The Court
21 denied the defense's request. You're protected, sir. You can
22 file that, do whatever you need to do with it. I'm not
23 reconvening in the courtroom.

24 The motion in front of me is for a new trial based
25 on several different issues that were raised; the first one

1 being inadequate voir dire. This Court was careful to ask
2 questions proposed by both the State and the defense. And This
3 Court admits not every question proposed by either of the
4 parties was asked. One final question was asked, whether or
5 not there was any juror for any reason why he or she should not
6 serve as a juror in this particular case. That question was
7 intended to be all encompassing and to ensure the Defendant had
8 a fair and impartial jury.

9 The jury was aware of the nature of the case and
10 the potential jurors were given an opportunity to express any
11 concerns they had.

12 As to the testimony of Dustin Tiller, this Court
13 did not advocate its gatekeeper role in admitting the testimony
14 of Dustin Tiller. Testimony was relevant, and it was admitted.
15 The finders of fact weighed its reliability, not The Court.
16 The term gatekeeper is generally used regarding a witness'
17 qualification as an expert. And here his testimony was
18 relevant to an issue before The Court and was properly
19 admitted.

20 Additionally, This Court agreed to Defendant's
21 request to charge number five under United States versus Lobe.
22 The jury was charged to give attention to this witness'
23 testimony that may be for financial gain or other
24 consideration.

25 As to the limited cross-examination, This Court

STATE OF SOUTH CAROLINA v. JOHNATHAN BATCHELOR

1 finds that it actually allowed a little more leeway on
2 cross-examination of Dustin Tiller than is generally allowed.
3 The record will speak for itself. This Court determined it was
4 necessary in this particular case to allow defense Counsel to
5 flesh out some things before the jury that could either impeach
6 the witness or establish a motive for him to embellish the
7 story.

8 As to the show of force, there was no show of
9 force. Approximately five uniformed officers were in the
10 courtroom; one of whom was summoned by defense Counsel and he
11 testified.

12 There was no shackling of this Defendant
13 whatsoever. The officer who accommodated the Defendant to and
14 from the witness stand was wearing a standard issued uniform
15 from the Sheriff's Office. He was not wearing body armor nor
16 was he armed with multiple firearms or a long gun. He simply
17 accompanied the Defendant to and from the witness stand, never
18 touching him.

19 I will call your attention to Holbrook,
20 H-O-L-B-R-O-O-K, versus Flynn, 106 Supreme Court 1340. That's
21 a 1986 case where there were four uniformed state troopers, two
22 deputy Sheriff's, six committing squad officers present and the
23 presence of those officers did not brand the Defendant with the
24 unmistakable mark of guilt. It was not inherently prejudicial
25 to the Defendant; likewise here, again, there was no show of

STATE OF SOUTH CAROLINA v. JOHNNATHAN BATCHELOR

1 force.

2 As to the insufficiency of the evidence, Stephanie
3 Batchelor's testimony alone describing the event and
4 identifying this Defendant as her assailant was sufficient to
5 withstand the Defendant's directed verdict motion.

6 As to the reconsideration of the sentence, there
7 was no retaliation for going to trial. No matter what comments
8 the State made, This Court independently issued the sentence.
9 The Court is not bound by the State's request nor is The Court
10 bound by the victim's request. This Court fashioned the
11 appropriate sentence and imposed a legal sentence on this
12 Defendant who was convicted by a jury of his peers.

13 I believe that addresses all of the issues.
14 Mr. Grose.

15 MR. GROSE: Just for clarification, is there going
16 to be a written order or is this the final order?

17 THE COURT: This is it. I'm not issuing a final
18 order. It's on the record.

19 MR. GROSE: Fair enough. I just wanted to know
20 for -- just to know so I knew what the record is going to be.
21 I appreciate that, Your Honor.

22 THE COURT: Absolutely. Always good to see you.
23 Anything from the State?

24 MS. WELLS: No, sir, Your Honor.

25 THE COURT: That will conclude this hearing. We're

STATE OF SOUTH CAROLINA v. JOHNATHAN BATCHELOR

1 going to stay on the Webex. You're welcome to stay and join
2 us. We're going to do a minor settlement in a motor vehicle
3 case as soon as the lawyers can get everybody together.

4 MS. WELLS: Yes, sir. Thank you, Your Honor.

5 MR. GROSE: Thank you, Judge.

6 THE COURT: SCDC, if you're there, thank you as
7 always for the help.

8 (The video conference hearing was concluded.)
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STATE OF SOUTH CAROLINA v. JOHNATHAN BATCHELOR

CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to, nor counsel for, any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 28th day of May, 2022 at Spartanburg, Spartanburg County, South Carolina.


Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
August 9, 2026

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Aug 15 2023

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
R. Kieth Kelly, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2022-000160

The State, ...Respondent

v.

Johnathan Olin Batchelor,.....Appellant.

Rule 210, SCACR Certification

Undesigned Counsel certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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Attorney for Johnathon Batchelor

July 10, 2023
Greenwood, South Carolina

RECEIVED

Apr 17 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2022-000160

The State, ...Respondent,

v.

Johnathan Olin Batchelor,.....Appellant.

INITIAL REPLY BRIEF OF APPELLANT

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Question III

Did the trial court err by limiting Johnathan Batchelor's cross-examination of Dustin Tiller—in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution—by prohibiting Mr. Batchelor from questioning Mr. Tiller about his conversation with his plea counsel after waiving the attorney-client privilege by testifying about those conversations, prohibiting Mr. Batchelor from questioning Mr. Tiller about the Solicitor speaking in favor of Mr. Tiller at his federal court sentencing hearing, and limiting Mr. Batchelor's questioning of Mr. Tiller regarding the twenty-month reduction in his federal that he already received for his cooperation in Mr. Batchelor's prosecution?	8

Question IV

Did the trial court err as a matter of law by ordering a uniformed deputy, wearing body armor, and visibly carrying two sets of handcuffs, to escort Johnathan	

Batchelor to the witness stand, stand next to Mr. Batchelor during his testimony, and escort Mr. Batchelor back to the defense table, without conducting a hearing required by the Fourteenth Amendment to determine whether these unusual and enhanced security measures were necessary under the specific circumstances of this case and specific characteristics of Mr. Batchelor? 10

Question V

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Question VII

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Did the trial court err—in violation of the Sixth Amendment to the United States Constitution, Article I, Section 14 of the South Carolina Constitution, and statutory law, by not ordering disclosure of counseling records of Stephanie Batchelor when Johnathan Batchelor moved for disclosure of these records in order to be able to confront and cross-examine Ms. Batchelor? 17

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INTRODUCTION

Johnathan Batchelor replies to the State's Brief of Respondent to correct misstatements of facts and misleading arguments. Some of the misstatements of fact occurred in the State's Statement of Facts, which will be addressed prior to replying to each questioned presented.

STATEMENT OF FACTS

The State contends Sergeant Malpass "did not have much chance to talk with Victim alone because Appellant hovered nearby" and "repeated the same questions over and over, interfering with [her] ability to talk with Victim." Brief of Respondent, at 4. This contention is refuted by Officer Malpass' body worn camera video, which is in evidence as Defense Exhibit 1.

The State contends, "Sergeant Malpass noted blood collected inside the garage, pooling on one side of the garage as if something was parked there at the time the blood accumulated." Brief of Respondent, at 4. Mr. Batchelor, however, contested the fact that there was room enough to park a car inside the garage at the time of the crime, as the garage was cluttered at the time of the crime. Tr. 439, State's Exhibit 10, R. *.

The State contends Ms. Batchelor saw her husband "walking hand-in-hand with another woman." Brief of Respondent, at 4-5. This statement misrepresents the trial testimony. Tr. 68 ("I saw Jonathan walking with some woman side by side, just about holding hands with each other").

The State describes the assault that occurred after Ms. Batchelor "opened the garage door and drive inside." Brief of Respondent, at 5. As seen above, whether there was room

to park a car inside the garage was disputed at trial. This account of the events of the crime is evidence of memory issues that formed part of the defense at trial.

The State contends Ms. Batchelor did not know about Mr. Batchelor's "pre-marital affair until after she woke of from the coma." Brief of Respondent, at 6. Ms. Batchelor testified she knew about Mr. Batchelor's pre-marital affairs before they got married. Tr. 95. She claimed she did not know that her father had caught Mr. Batchelor in one of the affairs until after she woke up from the coma. Tr. 96.

The State's brief implies Lieutenant Gary found an unfired hollow point round by the garage that matched the live .38 Hornady rounds found inside the home. Brief of Respondent, at 7. Lieutenant Gary, who was never qualified as an expert, actually testified he found a fired round. Tr. 122. The State further relies on Lieutenant Gary's overstatement about the consistency of the two fired rounds recovered during the investigation. Brief of Respondent, at 10. Whether this fired round was a .38 or a 9mm was contested at trial and relevant to this Court's resolution of Question I, *infra*.

Regarding informant Dustin Tiller's testimony, the State contends Mr. Batchelor told the informant that he "wait[ed] outside" and implies the assault occurred in the driveway. Brief of Respondent, at 9. As seen above, Ms. Batchelor testified she parked inside the garage. The inconsistencies between Ms. Batchelor's account of events and Mr. Tiller's testimony illustrates the inherent dangers of relying on jailhouse informants, which is relevant to this Court's resolution of Questions II and III, *infra*.

ARGUMENTS IN REPLY

Question I

Did the trial judge err as a matter of law by denying Johnathan Batchelor's motion to dismiss when law enforcement destroyed the physical evidence in the case without providing Mr. Batchelor with his due process opportunity to independently examine two projectiles to establish that two weapons were used in the assault on his wife, thereby contradicting the State's theory of the case and establishing his actual innocence?

The State acknowledges that “[t]wo bullet fragments were destroyed.” Brief of Respondent, at 13. Mr. Batchelor argues these two bullet fragments “possessed an exculpatory value apparent before the evidence was destroyed and [he] cannot obtain other evidence of comparable value by other means.” *State v. Cheeseboro*, 346 S.C. 526, 538-39, 552 S.E.2d 300, 307 (2001); *see also Arizona v. Youngblood*, 488 U.S. 51 (1988). After acknowledging a hospital employee identified the fragment recovered from Ms. Batchelor as a 9mm, the State argues, “The prosecutor advised the trial court that the analyst determined both fragments were .38s.”¹ Brief of Respondent, at 13. The prosecutor actually stated, “It’s not a thirty-eight. It’s a .38.” Tr. 14. The prosecutor then argued “9mms and .38s can also often be used interchangeably”² and pointed to the firearms report. *Id.* The

¹ Statements of counsel are not evidence. It is well settled “[a] court cannot consider facts appearing only in argument of counsel.” *Shinn v. Kreul*, 311 S.C. 94, 102, 427 S.E.2d 695, 700 (Ct. App. 1993) (citing *Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 184 (Ct.App.1986). *Cf. McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E. 473, 475 (1933) (“This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.”). The Supreme Court of South Carolina recently reaffirmed this rule in *Owens v. Stirling*, Howard Adv. Sheet. No. 5, (Op. No. 28132) (Jan. 26, 2023), at 19 (“[W]e cannot rely on the arguments of counsel to fill in the record.”).

² The State failed to produce any evidence to corroborate the argument that 9mms and .38s are interchangeable. As seen in footnote 1, *supra*, “[a] court cannot consider facts appearing only in argument of counsel.” *Kreul*, 311 S.C. at 102, 427 S.E.2d at 700. Expert testimony would be necessary to support this assertion. *See* Rule 702, SCRE.

firearms report described the bullet fragments as “38/9mm fired bullet specimen[s]” and ultimately opined the bullet fragments “bear similar but insufficient microscopic marks to permit a positive identification to each other.” R. *.³

The State did establish that the bullets were fired from the same weapon. Nor did the State establish the bullets were the same caliber. That the bullets might be different calibers fired from different weapons is readily apparent from the firearms report. Additional, independent examination of the bullet fragments might reveal these bullet fragments came from different firearms, supporting the defense theory that two people participated in the assault of Ms. Batchelor. *Compare* Tr. 440-47 (defense counsel arguing a “real possibility” that two people other than Mr. Batchelor committed this crime) *with* Tr. 448 (prosecutor arguing “there’s absolutely no evidence” two other people committed this crime). Independent examination of the two bullet fragments would have resolved this controversy. Mr. Batchelor, accordingly, satisfies the requirements of *Cheeseboro*, and this Court should reverse the trial court and dismiss the charge.

³ The State assigns significance the bullet fragments are consistent with Hornady ammunition and “[l]ive .38 Hornady rounds were recovered from the [Batchelor] house.” Brief of Respondent, at 7; R. *. Mr. Batchelor does not contest the live rounds found in his house. Rather, he points to the need for further examination of the recovered bullet fragments. Hornady manufactures ammunition in multiple calibers. <https://www.hornady.com/bullets/handgun/#!/> (last viewed April 7, 2023). The Firearms examiner did not match the bullet fragments to the live ammunition recovered from the house.

Question II

Did the trial court err by failing to exclude the testimony of Dustin Tiller, a jailhouse informant, serving a federal court sentence for conspiracy to traffic methamphetamine, when the trial judge operated under the mistaken impression that the court lacked the authority to evaluate the reliability of the informant’s testimony?

The State acknowledges jailhouse informant Dustin Tiller “obviously testified with the hope of a benefit – a downward departure.” Brief of Respondent, at 16; *id.*, at 17 (acknowledging Tiller hoped for a downward departure). It appears the informant’s hope for a downward departure will become a reality. On March 10, 2022, the United States attorney filed a motion “to seal a forthcoming document related to sentencing.” *United States v. Tiller*, Case No. 6:16-cr-00707-JMC, ECF No. 1310. The Court granted the motion on the same day. *Id.*, ECF No. 1311. On March 11, 2022, the Government filed a sealed motion, which remains pending at the time of this initial reply brief. *Id.*, ECF No. 1312. One day, Mr. Batchelor and the state judicial system will know the outcome of the sealed motion—*i.e.* whether Dustin Tiller receives an additional downward departure for his assistance in the prosecution of Mr. Batchelor.⁴ R. *.

Regarding how this question arose at trial, the State focuses on the informant’s testimony and ignores the role of Mr. Batchelor’s prosecutor in Mr. Tiller’s federal sentence. Brief of Respondent, at 16-17. The State ignores the fact that Assistant Solicitor Jennifer Wells appeared at the informant’s federal sentencing hearing. The trial court ultimately limited Mr. Batchelor’s cross-examination about the prosecutor’s role in the

⁴ The reward Mr. Tiller receives for his cooperation in this prosecution, once discovered, might form the basis of a new trial motion. *See, e.g., State v. Dean*, 427 S.C. 92, 828 S.E.2d 243 (Ct. App. 2019) (affirming grant of new trial after prosecution misled jurors about the testifying co-defendant’s expectation of reward for cooperation). *See also* Rule 29(b), SCRCrimP.

informant's current federal sentence and the informant's hopes that the prosecutor will appear at his re-sentencing hearing.

Regarding the ultimate legal question, the State relies on Rule 601(a), SCRE, regarding competency of witnesses to testify. Brief of Respondent, at 17-18. Johnathon Batchelor, however, relies on the well-established gatekeeping role of trial courts. Brief of Appellant, at 17-18.

The State next argues the trial courts' gatekeeping role for third party guilt and admissibility of Rule 404(b), SCRE evidence do not involve reliability or credibility determinations. Brief of Respondent, at 19-20. This argument is facially wrong. Regarding third party guilt, the trial judge must consider the reliability of the evidence, the Supreme Court of the United States held:

While the Constitution thus prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote, well-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury.

Holmes v. South Carolina, 547 U.S. 319, 326 (2006); see *id.*, at 331 ("by evaluating the strength of only one party's evidence, no logical conclusion can be reached regarding the strength of contrary evidence offered by the other side to rebut or cast doubt"). A trial court, accordingly, must weigh the evidence before ruling on the admissibility evidence of of third-party guilt.

The State acknowledges that a trial court must exclude Rule 404(b) testimony if the witness's testimony is not "clear and convincing." Brief of Respondent, at 20. "Clear and convincing evidence is more than a mere preponderance, but less than is required for proof

beyond a reasonable doubt; it does not mean clear and unequivocal. *State v. Simmons*, 384 S.C. 145, 159, 682 S.E.2d 19, 26 (Ct. App. 2009) (citing *State v. Fletcher*, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008)). A trial court, accordingly, must weigh the evidence of other bad acts.

The State does not acknowledge trial courts' gatekeeping role in the admissibility of expert testimony that requires a reliability determination. *Compare* Brief of Appellant, at 17-18 (citing *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010), *with* Brief of Respondent, at 16-20.

In addition, to the examples identified in Mr. Batchelor's opening brief, trial courts must determine the reliability of child witnesses in a criminal sexual conduct with a minor case. *See, e.g., State v. Adams*, 430 S.C. 420, 428, 845 S.E.2d 217, 221 (Ct. App. 2020) ("We conclude the reliability concerns Adams raises based on [*State v. Michaels*, 136 N.J. 299, 642 A.2d 1372 (1994)] were satisfied here by the witness competency standard and within the framework of § 17-23-175, which in essence requires a pre-trial taint hearing.").

Trial courts routinely weigh evidence when determining admissibility. Although the admissibility of jailhouse informant testimony might be an issue of first impression in South Carolina, the well-established gatekeeping function of trial courts can oversee the admissibility of jailhouse informant testimony. Here, the trial court judge believed he lacked this discretion.⁵ "A failure to exercise discretion amounts to an abuse of that discretion." *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) (citing *Samples*

⁵ Responding to Question III, the State takes a different position than it argues in Question II: "The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." Brief of Respondent, at 21 (citing *State v. Saltz*, 346 S.C. 114, 551 S.E.2d 240 (2011)). Here, the trial judge believed he did not have this discretion.

v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct.App.1997)). This Court should reverse the trial court, exclude Dustin Tiller’s testimony, and order a new trial.

Question III

Did the trial court err by limiting Johnathan Batchelor’s cross-examination of Dustin Tiller—in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution—by prohibiting Mr. Batchelor from questioning Mr. Tiller about his conversation with his plea counsel after waiving the attorney-client privilege by testifying about those conversations, prohibiting Mr. Batchelor from questioning Mr. Tiller about the Solicitor speaking in favor of Mr. Tiller at his federal court sentencing hearing, and limiting Mr. Batchelor’s questioning of Mr. Tiller regarding the twenty-month reduction in his federal that he already received for his cooperation in Mr. Batchelor’s prosecution?

Johnathon Batchelor alleges the trial court limited his right to confront jailhouse informant Dustin Tiller in three specific ways: (1) prohibiting him from questioning Mr. Tiller about his conversation with his plea counsel after waiving the attorney-client privilege by testifying about those conversations, (2) prohibiting him from questioning Mr. Tiller about the Solicitor speaking in favor of Mr. Tiller at his federal court sentencing hearing, and (3) limiting his questioning of Mr. Tiller regarding the twenty-month reduction in his federal that he already received for his cooperation in Mr. Batchelor’s prosecution. Brief of Appellant, at 18-21. The State mischaracterizes Mr. Tiller’s testimony about his conversations with counsel, ignores the prosecutor’s participation in Mr. Tiller’s federal sentencing hearing, and overstates the consequences of Mr. Batchelor’s proposed cross-examination. Brief of Respondent, at 21-24.

The State argues the prosecutor merely asked Mr. Tiller whether his federal criminal defense lawyer, Jim Bannister, “explained the plea agreement to him.” Brief of Respondent, at 21. The State ignores the cross-examination. During the proffer of Mr. Tiller’s testimony, the prosecutor extensively questioned Mr. Tiller about his review of the

plea agreement with Mr. Bannister. Tr. 170 (“When you signed this agreement with Mr. Bannister, did he go through the entire thing with you?”); Tr. 171 (“And did Mr. Bannister explain [paragraph 3 of the plea agreement] to you?”); Tr. 172 (“[D]id Mr. Bannister explain paragraph 5 to you?”); 174 (“[D]id Mr. Bannister go through paragraph 7 with you?”); and Tr. 178 (“So Mr. Bannister talked to you about all this, [when] you entered this agreement.”). On cross-examination during the proffer, Mr. Tiller testified he and Mr. Banister discussed how providing information about people outside of his federal case might reduce his sentence. Tr. 188-90. Mr. Tiller further testified that he and Mr. Bannister discussed seeking an additional downward departure following his testimony in Mr. Batchelor’s case, although he claimed they never discussed the amount of time that might be taken off the sentence. Mr. Tiller also testified he did not have a “number” in his mind regarding reduction in time. Tr. 192-95. The jurors should have considered the credibility of this testimony. These “voluntary disclosure[s]” by Mr. Tiller “waive[d] the attorney-client privilege not only as to the specific communication disclosed, but also to all communications between” him and Mr. Bannister “on the same subject.” *Floyd v. Floyd*, 365 S.C. 56, 90, 615 S.E.2d 465, 483 (Ct. App. 2005).

The State ignores the role Mr. Batchelor’s prosecutor played and might still play in reducing Mr. Tiller’s federal sentence. Mr. Tiller met with Ms. Wells on two occasions. Mr. Banister attended the first meeting. Tr. 178-79, 188-89. Mr. Tiller also testified about Ms. Wells appearing at his sentencing hearing. Tr. 190; *see also* R. * (Tiller federal plea agreement and sentencing hearing). Mr. Batchelor, the prosecutor, and the trial judge knew that Mr. Tiller’s cooperation in Mr. Batchelor’s prosecution resulted in an additional twenty-month reduction in Mr. Tiller’s federal sentence. The jurors should have known

this information so they would understand Mr. Tiller's participation in Mr. Batchelor's trial might further reduce his federal sentence.

"Included in the Confrontation Clause protection is the right to cross-examine any State's witness as to possible sentences faced when there exists a substantial possibility the witness would give biased testimony in an effort to have the solicitor highlight to a future court how the witness cooperated in the instant case." *State v. Gillian*, 360 S.C. 433, 454, 602 S.E.2d 62, 73 (Ct. App. 2004) (internal quotations omitted) *affirmed as modified on other grounds*, 373 S.C. 601, 646 S.E.2d 872 (2007). As see in Question II above, a few months after Mr. Batchelor's jury trial, the Government filed a motion pertaining to Mr. Tiller's federal sentence. R. *. This Court should reverse the trial court, exclude the testimony of Dustin Tiller, and order a new trial. Alternatively, this Court should allow full cross-examination of Dustin Tiller.

Question IV

Did the trial court err as a matter of law by ordering a uniformed deputy, wearing body armor, and visibly carrying two sets of handcuffs, to escort Johnathan Batchelor to the witness stand, stand next to Mr. Batchelor during his testimony, and escort Mr. Batchelor back to the defense table, without conducting a hearing required by the Fourteenth Amendment to determine whether these unusual and enhanced security measures were necessary under the specific circumstances of this case and specific characteristics of Mr. Batchelor?

Johnathon Batchelor argues the trial judge should have convened a hearing before ordering a uniformed courtroom deputy to stand next to Mr. Batchelor during his testimony. Brief of Appellant, at 21-26. The State reframes this question as, "The trial court did not abuse its discretion in finding that security in the courtroom was not excessive." Brief of Respondent, at 25. By reframing the issue, the State understates the significance

of the trial judge's failure to convene a hearing prior to ordering a uniformed deputy to guard Mr. Batchelor during his testimony.

The State argues, "The trial judge is the best equipped to decide the extent to which security measures should be adopted to prevent disruption of the trial, harm to those in the courtroom, escape of the accused, and prevention of other crimes." Brief of Respondent, at 25 (citing *State v. Tucker*, 320 S.C. 206, 464 S.E.2d 105 (1995)). Mr. Batchelor does not dispute the role of the trial judge in overseeing courtroom security. The State, however, overlooks the limitations due process places on the trial judge's discretion. Under *Deck v. Missouri*, 544 U.S. 622 (2005), the trial judge was obligated to convene a hearing and make findings of fact before instructing the uniformed deputy to shadow Mr. Batchelor during his testimony.⁶ During that hearing, the trial judge was obligated to consider less restrictive security measures. Here, Mr. Batchelor identified "a less restrictive procedure of having a law enforcement officer guard the door [to Chambers] from inside the hallway outside the notice of the jurors." Brief of Appellant, at 22, n. 10.

The State argues Mr. Batchelor "admits this same officer also guarded Tiller during his testimony." Brief of Respondent, at 26, n. 2 (citing Brief of Appellant, at 15, n. 8). The fact that the same officer that guarded Mr. Tiller also guarded Mr. Batchelor enhances rather than mitigates the prejudice. Dustin Tiller is a notorious drug trafficker with ties drug cartels outside of South Carolina. That Mr. Batchelor received the same enhanced

⁶ The State also argues Mr. Batchelor "complained about where the deputy sat while the jury was outside the courtroom." Brief of Respondent, at 27. The State is mistaken. Mr. Batchelor pointed out where the deputy sat with the jurors were outside the courtroom when trial judge and lawyers were in Chambers. The trial judge justified the enhanced security measures because the door next to the witness stand leads to chambers. Mr. Batchelor included this information in his opening brief so this Court would be aware that the deputy was not guarding the door while the trial judge was actually in Chambers.

security treatment Mr. Tiller singled to the jurors that Mr. Batchelor is just as dangerous as Mr. Tiller. The State argues, “[I]t seems unlikely that a jury, with limited knowledge of what ‘normal’ security is present in a courtroom, would generate a belief that security in the courtroom was enhanced beyond what would be expected.” This State is wrong. The State acknowledges that Mr. Batchelor and Mr. Tiller were the only two witnesses that received this enhanced security during Mr. Batchelor’s jury trial. The State underestimates the observance and intellect of the jurors by suggesting the jurors would not notice that Mr. Batchelor was treated differently than other witnesses, except for the federal prisoner.

Finally, the State argues Mr. Batchelor errs by relying on *Deck* rather than cases involving the presence of extra law enforcement in the courtroom. Brief of Respondent, at 26. The State misunderstands Mr. Batchelor’s argument. Mr. Batchelor argues, “Although *Deck* involved shackling, the same due process concerns apply to the use of force in Mr. Batchelor’s case.” Brief of Appellant, at 22, n. 11. *Deck* traced the due process considerations of restraining an accused to “Blackstone’s ancient English rule” allowing shackles “in extreme and exceptional cases, where the safe custody of the prisoner and the peace of the tribunal imperatively demand, the manacles may be retained.” 544 U.S. at 626-27 (internal quotations omitted). The Supreme Court further looked to its precedent leading up to *deck*: *Holbrook v. Flynn*, 475 U.S. 560, 569 (1986) (noting “it is possible that the sight of a security force within the courtroom might under certain conditions create the impression in the minds of the jury that the defendant is dangerous or untrustworthy” and adopting “a case-by-case approach” when extra courtroom security officers are present in the courtroom); *Estelle v. Williams*, 425 U.S. 501, 512 (1976) (“the State cannot, consistently with the Fourteenth Amendment, compel an accused to stand trial before a

jury while dressed in identifiable prison clothes”); *Illinois v. Allen*, 397 U.S. 337, 343 (1970) (“a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom”). The *Deck* line of cases, accordingly, applies to situations other than shackling.

Because the trial court unilaterally implemented security measures that created the appearance that Mr. Batchelor was dangerous and untrustworthy, this Court should reverse the trial court and order a new trial without the enhanced security during Mr. Batchelor’s testimony.

Question V

Did the trial judge err as a matter of law by not limiting the State’s presentation of evidence about Johnathan Batchelor’s extra-material affair with Sydney Allen, when the probative value of this excessive amount of cumulative evidence was substantially outweighed by the danger of unfair prejudice, confused the issues, mislead the jurors and created an unfair risk that the jurors would decide the case based on evidence other than proof of the elements of the crime?

Mr. Batchelor argues the trial judge erred when he failed to exclude—as he had promised—excessive evidence of his extramarital affair with Sydney Allen. Brief of Appellant, at 26-29; *see also* Tr. 30 (10/29/2021). The State argues, “The introduction of inadmissible evidence is harmless when the evidence is merely cumulative to other evidence presented without objection.” Brief of Respondent, at 31 (citing *State v. Kirton*, 381 S.C. 7,37-38,671 S.E.2d 107,122-23 (Ct. App. 2008)). The State misses the point. In his brief, Mr. Batchelor does not argue that evidence of the affair with Ms. Allen was not relevant. Rather, he argues the trial court allowed excessive, cumulative evidence of this affair. “[W]here credibility is the ultimate issue in a case, improper corroboration evidence

that is merely cumulative to the victim’s testimony is not harmless.” *State v. Jennings*, 394 S.C. 473, 479, 716 S.E.2d 91, 94 (2011). The evidence of the affair presented at trial far exceeded what was necessary for a fair presentation of the State’s case. The State never addressed this argument in its brief.

The State also misleads this Court regarding the trial testimony. First, the State contends Mr. Batchelor was mad at his then wife “for confronting him about the affair” with Ms. Allen. Brief of Respondent, at 29. Although Ms. Batchelor provided testimony to this effect, this fact was disputed at trial. Mr. Batchelor did not testify he was mad about being confronted about this affair. Compare Tr. 68-71 (Ms. Batchelor’s testimony) with Tr. 359-61 (Mr. Batchelor testifying about the affairs). Second, the State argues Mr. Batchelor “testified, seemingly bragged, about multiple affairs—meanwhile the prosecution focused on just the one affair with Sydney” Allen. Brief of Respondent, at 31. The record does not demonstrate that Mr. Batchelor was bragging. The State focused on this one affair because that affair suited its purposes at trial. Mr. Batchelor testified about the multiple affairs to provide context to the role his extra material affairs played in his relationship with Ms. Batchelor, both before and during their marriage. Tr. 359-61.

Because the trial court allowed the State to present evidence of the affair that far exceeded what was necessary for a full presentation of its case, this Court should reverse the trial court and order a new trial with limitations on the amount of evidence that can be presented about the extra-marital affair with Ms. Allen.

Question VI

Did the trial judge err as a matter of law by not excluding photographs (State's Exhibits No. 31 and 38) that included the image of confederate flags when the probative value of the confederate flags was substantially outweighed by the danger of unfair prejudice to Johnathan Batchelor?

Mr. Batchelor argues the trial judge should have excluded two photographs that showed images of the confederate flag. Brief of Appellant, at 30-31. The State argues these photographs were "probative to show the steps in law enforcement's investigation of the crime, including execution of the search warrant." Brief of Appellant at 32-34. This Court must reject these arguments.

The State argues, "State's exhibit 31 in particular showed an empty holster and a magazine clip which is highly probative in a case involving a shooting." Brief of Respondent, at 31. The State's brief never explains why the gun holster was probative in the context of this case. There is no magazine clip in this photograph. Rather, there is magazine about cars shown in the photograph. The State, accordingly, misleads this Court. Assuming *arguendo* the relevance of the gun holster and magazine about cars, the trial court should have redacted the confederate flag from the exhibit. Simply cropping off the top photograph just below the confederate flag would have allowed the State to present the same evidence it claims is probative.

The State argues, "State's exhibit 38 shows a shop filled with clutter that happens to include an unfurled flag (stored not displayed), and the photograph was probative to show . . . the execution of the search warrant." Brief of Respondent, at 32. The State's description of the photograph is not accurate. Although the entire confederate flag is not visible, the flag is obviously displayed, not stored. The State fails to acknowledge the confederate flag clock slightly right of center at the top of the photograph. Once again,

simply cropping the photograph would have removed the confederate flags from the exhibit while still showing the “shop filled with clutter.” As seen, the State had other photographs of the shop that did not show the confederate flags. *E.g.* State’s Exhibit 37. That law enforcement did not find any evidence of a crime in the shop (Tr. 138) further undermines the State’s argument about the probative nature of State’s Ex. 38.

The State never addressed Mr. Batchelor’s argument that the trial court could have redacted these photographs. Brief of Appellant, at 31. This Court should reverse the trial court, exclude or redact the photographs, and order a new trial.

Question VII

Did the trial court err—contrary to Sixth Amendment of the United States Constitution, Article I, Section 14 of the South Carolina Constitution, and S.C. Code Ann. § 14-7-1020—by not asking Johnathon Batchelor’s request for voir dire numbers four and six inquiring whether there was anything about evidence of serious bodily injuries or hearing profanity that might cause the jurors not to be fair and impartial, when, as anticipated prior to trial, the jurors heard received evidence about serious bodily injuries and profanity?

Mr. Batchelor argues the trial court erred by not asking two of his requests for voir dire. Brief of Appellant, at 31-34. The State argues the trial judge did not abuse his discretion in excluding these questions. Brief of Respondent, at 35-38. Mr. Batchelor agrees the trial court has discretion in conducting voir dire; however, the trial court’s discretion is limited by the Sixth Amendment of the United States Constitution, Article I, Section 14 of the South Carolina Constitution, and S.C. Code Ann. § 14-7-1020. Because of the trial court failed to ask requests for *voir dire* numbers four and six, there is a real possibility that one or more of the jurors could not remain fair and impartial because of serious injuries and hearing profanity. This Court should reverse the trial court and order a new trial.

Question VIII

Did the trial court err—in violation of the Sixth Amendment to the United States Constitution, Article I, Section 14 of the South Carolina Constitution, and statutory law, by not ordering disclosure of counseling records of Stephanie Batchelor when Johnathan Batchelor moved for disclosure of these records in order to be able to confront and cross-examine Ms. Batchelor?

Mr. Batchelor argues the trial court erred by not ordering disclosure of certain medical and mental health records of Stephanie Batchelor. Brief of Appellant, at 34-36. The State points out, “Neither party knows what re in the records.” Brief of Respondent, at 39. To resolve the question, this this Court should conduct an *in-camera* review of the records as contemplated by *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713, 726 (2017). If this Court concludes the records contain exculpatory evidence, then this Court should reverse the trial court, disclose all the records, and order a new trial.

Question IX

Did the trial court err by imposing a sentence of thirty years imprisonment, which is the maximum sentence allowed for attempted murder, when both the Solicitor and the Court of General Sessions previously agreed that a sentence of eighteen years in the Department of Corrections was sufficient, when the sentence imposed following trial punished Johnathan Batchelor for exercising his rights to seek post-conviction relief and a jury trial?

Mr. Batchelor contends the trial court punished him for exercising his rights to post-conviction relief and a jury trial. Brief of Appellant, at 36-38. The State argues, “The facts of this case clearly warrant the maximum sentence for attempted murder.” Brief of Respondent, at 42. The State is wrong. If correct, then the State never would have agreed that an eighteen-year sentence was appropriate, and the prior judge would not have accepted the guilty plea. An accused does not have a constitutional right to a guilty plea; nor is a trial court required to accept a guilty plea. *See, e.g., Weatherford v. Bursey*, 429 U.S. 545, 561, 97 S. Ct. 837, 846, 51 L. Ed. 2d 30 (1977) (“there is no constitutional right

to plea bargain; the prosecutor need not do so if he prefers to go to trial”); *State v. Kerr*, 330 S.C. 132, 498 S.E.2d 212 (Ct. App. 1998) (trial court was not required to accept alleged plea agreement between defendant and state); *State v. Easler*, 322 S.C. 333, 359, 471 S.E.2d 745, 760 (Ct. App. 1996) (“no constitutional impediment exists in a trial judge's refusal to accept a defendant's guilty plea since the result of his refusal is that the accused is subject to a trial by an impartial jury, which is a constitutional guarantee.” (citing U.S. Const. art. III, § 2; S.C. Const. art. I, § 14)), *affirmed as modified*, *State v. Easler*, 327 S.C. 121, 489 S.E.2d 617 (1997).

The State argues, “In the present case, no corrupt motive was shown.” Brief of Respondent, at 43. The State ignores the prior bond hearings where the prosecutor referenced the vacation of Mr. Batchelor’s guilty plea. R. *. The State also ignores the prior bond orders that reference the vacation of the guilty plea. R. *.

This Court should reverse the trial court and remand this case for a resentencing hearing with instructions for the trial court to impose a sentence not to exceed eighteen years.

CONCLUSION

For the reasons set for in the Brief of Appellant and this Reply Brief, this Court should reverse the trial court and dismiss the charge. Alternatively, this Court should reverse the trial court and order a new trial or new sentencing hearing.

(signature on next page)

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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Attorney for Johnathan Batchelor

April 17, 2023
Greenwood, South Carolina

RECEIVED

Apr 17 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2022-000160

The State, ...Respondent,

v.

Johnathan Olin Batchelor, ...Appellant.

Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel's primary email address listed in the Attorney Information System (AIS), as reflected below, on the date reflected below:

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April 17, 2023
Greenwood, South Carolina

Apr 17 2023

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The State, ...Respondent

v.

Johnathan Olin Batchelor, ...Appellant.

Supplemental
Designation of Matter to be Included in the Record on Appeal

Johnathan Batchelor designates the following additional matters to be included in the record on appeal:

1. Government's Motion to Seal Forthcoming Document in *United States v. Tiller*, Case No. 6:16-cr-00707-JMC, ECF No. 1310; and
2. Docket sheet in *United States v. Tiller*, Case No. 6:16-cr-00707-JMC, as pertains to Dustin Tiller.

Pursuant to Rule 209, SCACR, this Designation contains no matter which is irrelevant to the appeal.

Respectfully Submitted,

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April 17, 2023
Greenwood, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable R. Keith Kelly, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

vs.

JOHNATHAN OLIN BATCHELOR,

Appellant.

Appellate Case No. 2022-000160

**MOTION TO STRIKE APPELLANT'S
SUPPLEMENTAL DESIGNATION OF MATTER
AND INITIAL REPLY BRIEF
FOR FAILURE TO COMPLY WITH
RULE 209(b) AND RULE 210(c), SCACR**

Respondent now moves for this Court to strike Appellant's supplemental designation of matter and initial reply brief because those pleadings present and argue matters outside the record.

I.

Appellant appeals his conviction for attempted murder following trial on November 1-4, 2021. On April 17, 2023, Appellant served Respondent with Appellant's Initial Reply Brief of Appellant and also a Supplemental Designation of Matter. The Supplemental Designation of Matter designates two items: (1) the [Federal] Government's Motion to Seal Forthcoming Document in United States v. Tiller; and (2) the docket sheet in United States v. Tiller. These

documents were not entered into evidence at trial, were not presented to the trial court, and did not even exist at the time of trial (the docket sheet would not have contained items that were filed subsequent to Appellant's trial). Because these designated documents and the references to them in the initial reply brief all are matter not presented to the trial court, they are not proper for inclusion in the record. Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal"); Rule 208 (b)(4), SCACR ("The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal.").

Appellant is not allowed to put facts before this Court that he failed to make available to Judge Kelly at trial. I'On v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("Imposing preservation requirements on the appellant is meant to enable the lower court to rule properly after it has considered all relevant **facts**, law, and arguments" (emphasis added)); See Williamsburg Rural Water & Sewer Co., Inc. v. Williamsburg County Water & Sewer Auth., 367 S.C. 566, 571, 627 S.E.2d 690, 693 (2006) ("Nothing in the appellate court rules permits a party to unilaterally add after-created evidence to the record."). Therefore, Respondent requests this Court to strike Appellant's initial brief and require an amended brief in compliance with Rule 210(c), SCACR; State v. White, 372 S.C. 364, 642 S.E.2d 607 (Ct. App. 2007) (excluding post-trial "Morris" letter not presented to the circuit court).

Since the initial reply brief and the supplemental designation of matter are not in compliance with the Appellate Court Rules, the initial brief and designation of matter should be struck, and Appellant should be required to amend both accordingly.

II.

Additionally, Respondent would respectfully request that the matter be held in abeyance until this Court is prepared to rule on Respondent's motion

III.

WHEREFORE, Respondent prays that this Court strike Appellant's Initial Reply Brief and Supplemental Designation of Matter, and require Appellant to amend the Initial Reply Brief of Appellant accordingly. Respondent further requests for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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BY:


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ATTORNEYS FOR RESPONDENT

April 20, 2023

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2022-000160

THE STATE,

Respondent,

v.

JOHNATHAN OLIN BATCHELOR,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served a copy of the within Brief Of Respondent on E. Charles Grose, Jr., Esquire, counsel of record for the Appellant by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 20th day of April 2023.



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Apr 26 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
R. Kieth Kelly, Circuit Court Judge

Appellate Case No. 2022-000160

The State, ...Respondent

v.

Johnathan Olin Batchelor,.....Appellant.

**Response in Opposition to State’s Motion to Strike Mr. Batchelor’s Supplemental
Designation of Matter to be Included in the Record on Appeal and Initial Reply
Brief for Failure to Comply with Rule 209(b) and Rule 201(c), SCACR**

On April 17, 2023, Johnathan Batchelor filed his Initial Reply Brief of Appellant and Supplemental Designation of Matter to be Included in the Record on Appeal, designating: (a) Government’s Motion to Seal Forthcoming Document in *United States v. Tiller*, Case No. 6:16-cr-00707-JMC, ECF No. 1310 (Ex. A), and (b) Docket sheet in *United States v. Tiller*, Case No. 6:16-cr-00707-JMC, as pertains to Dustin Tiller (Ex. B). On April 20, 2023, the State moved to strike Mr. Batchelor’s Supplemental Designation and Initial Reply Brief (“Motion”). This response follows.

The State argues Mr. Batchelor “is not allowed to put facts before this Court that he failed to make available to Judge Kelly at trial.” Motion, at 2 (citing *I’On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) and *Williamsburg Rural Water & Sewer Co., Inc., v. Williamsburg County Water & Sewer Auth.*, 367 S.C. 556, 637 S.E.2d (2006).

The State correctly notes that these documents did not even exist at the time of Mr. Batchelor's trial. *Id.* The State, however, overlooks this Court's inherent authority to take judicial notice of these documents. *See, e.g., Wise v. Wise*, 394 S.C. 591, 716 S.E.2d 117 (Ct. App. 2011) (the appellate panel could take judicial notice of claimant's prior civil action against employer); *State v. Arnold*, 361 S.C. 386, 390, n. 3, 605 S.E.2d 529, 531, n. 3 (2004) (taking judicial notice of distance between locations); *State v. Hunter*, 82 S.C. 153, 63 S.E. 685 (1909) (a trial court should take judicial notice of the remittitur from the Supreme Court); *S.C. Dep't of Soc. Servs. v. Janice C.*, 383 S.C. 221, 227, 678 S.E.2d 463, 467 (Ct. App. 2009) ("a court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records") (quoting *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984)); *State v. Johnson*, 213 S.C. 241, 49 S.E.2d 6 (1948) (Supreme Court may take judicial notice of general order signed by presiding judge at conclusion of terms of courts of general sessions) *overruled on other grounds by State v. Jackson*, 301 S.C. 49, 389 S.E.2d 654 (1990).

Although "original judicial notice of adjudicative facts at the appellate level should be limited to matters which are indisputable," *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 256, 321 S.E.2d 194, 197 (Ct. App. 1984), judicial notice of these court records is proper in this circumstance. Mr. Batchelor does not ask this Court to take notice of an adjudicative fact. His initial reply brief states:

It appears the informant's hope for a downward departure will become a reality. On March 10, 2022, the United States attorney filed a motion "to seal a forthcoming document related to sentencing." *United States v. Tiller*, Case No. 6:16-cr-00707-JMC, ECF No. 1310. The Court granted the motion on the same day. *Id.*, ECF No. 1311. On March 11, 2022, the Government filed a sealed motion, which remains pending at the time of this initial reply

brief. *Id.*, ECF No. 1312. One day, Mr. Batchelor and the state judicial system will know the outcome of the sealed motion—*i.e.* whether Dustin Tiller receives an additional downward departure for his assistance in the prosecution of Mr. Batchelor.⁴ R. *.

⁴ The reward Mr. Tiller receives for his cooperation in this prosecution, once discovered, might form the basis of a new trial motion. *See, e.g., State v. Dean*, 427 S.C. 92, 828 S.E.2d 243 (Ct. App. 2019) (affirming grant of new trial after prosecution misled jurors about the testifying co-defendant's expectation of reward for cooperation). *See also* Rule 29(b), SCRCrimP.

Thus, at this stage, Mr. Batchelor merely asks this Court to take judicial notice that, after Dustin Tiller's cooperation in Mr. Batchelor's state court trial, the United States Government filed a motion to file a sealed motion related to Mr. Tiller's sentence. Although the filing of the motions is "indisputable," Mr. Batchelor does not ask this Court to take notice of an adjudicative fact. As set forth in footnote 4 of the initial reply brief, at 5, "[t]he reward Mr. Tiller receives for his cooperation in this prosecution, once discovered, might form the basis of a new trial motion." Any adjudication of facts based on these motions would occur in the circuit court. Any new trial motion brought pursuant to Rule 29(b), SCRCrimP "may not be made while the case is on appeal unless the appellate court, upon motion, has suspended the appeal and granted leave to make the motion." Mr. Batchelor is taking steps to learn the contents of the seal motion in Mr. Tiller's federal court case. Ex. C. At some point in the future, it might become necessary for Mr. Batchelor to file a Rule 26(b) motion. *See, e.g. Dean, supra*.

Concealment of these documents from the record would be patently unfair to Mr. Batchelor and this Court. This Court, accordingly should deny the State's motion.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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Attorney for Johnathon Batchelor

April 26, 2023
Greenwood, South Carolina

Exhibit A

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UNITED STATES OF AMERICA

Criminal No. 6:16-CR-707

v.

DUSTIN TILLER

GOVERNMENT’S MOTION TO SEAL FORTHCOMING DOCUMENT

COMES NOW the United States, by and through its undersigned counsel, and hereby moves this Court to seal a forthcoming document related sentencing pursuant to *United States v. Doe*, 962 F.3d 139 (4th Cir. 2020). If authorized by the Court, the Government would file this motion under seal and provide a copy to the Defendant through counsel.

The purpose of the Government’s request is to protect the privacy and safety interests of the individual involved. The United States respectfully submits that the privacy and safety interests of the individual involved outweigh the public’s limited interest in access to materials related to this matter. The United States notes that the Court has the inherent authority to seal these documents. *See Baltimore Sun v. Goetz*, 886 F.2d 60 (4th Cir. 1988); and *In re Application of the United States for an Order Pursuant to 18 U.S.C Section 2703(D)*, 707 F.3d 283 (4th Cir. 2013). The United States further submits that sealing this document is the narrowest means for serving the interests at stake and redactions would not protect the compelling interests of the individual. *See Doe*, 962 F.3d at 152.

It is well-established that the First Amendment right of access of the public “applies to documents filed in connection with plea hearings and sentencing hearings in criminal cases, as well as to the hearings themselves.” *In re Wash. Post Co.*, 807 F.2d 383, 390 (4th Cir. 1986); *see also United States v. Doe*, 962 F.3d 139, 146 (4th Cir. 2020) (stating that the First

Amendment right to access “applies to sentencings and plea hearings, as well as to the documents filed in connection with those proceedings”). However, that right is not absolute, and “[a]ccess may be denied if ‘closure is essential to preserve higher values and is narrowly tailored to serve that interest.’” *In re Wash. Post Co.*, 807 F.2d at 390 (citing *Press-Enterprise Co. v. Superior Ct. (Press-Enterprise I)*, 464 U.S. 501, 510 (1984)).

In considering whether or not to close a proceeding, the court must look to whether the following test is satisfied: (1) closure serves a compelling interest; (2) there is a “substantial probability” that the compelling interest will be harmed absent closure; and (3) there are “no alternatives to closure that would adequately protect the compelling interest.” *Id.* at 392 (citing *Press-Enterprise v. Superior Ct. (Press-Enterprise II)*, 478 U.S. 1, 106 S. Ct. 2735 (1986)). A request to seal a document related to a hearing must also be evaluated under this constitutional test. *Id.* at 392, n.9 (“Because we hold that the First Amendment right of access extends to documents as well as to hearings, requests for the sealing or unsealing of documents must also be evaluated under these constitutional tests.”).

“Courts have recognized that an interest in protecting the physical and psychological well-being of individuals related to the litigation . . . may justify restricting access.” *Doe*, 962 F.3d at 147 (citations omitted). As a general rule, “the need to protect the well-being of a defendant is even more elevated if judicial records suggest that the defendant may have cooperated with law enforcement.” *Id.* (citations omitted). Furthermore, the potential for harm to cooperators affects more than just the cooperator. *See id.* at 148. The Fourth Circuit has recognized that this issue also involves a threat to public safety, as it “interferes with the gathering of evidence, the presentation of witnesses, and the sentencing and incarceration of cooperating defendants . . . posing a substantial threat to the underpinnings of the criminal

justice system as a whole.” *Id.* (citations omitted). Accordingly, the Fourth Circuit has explicitly stated that “protecting cooperators from harm is a compelling interest that can justify sealing.” *Id.* Here, the United States respectfully submits that there is a compelling interest in protecting defendants who may cooperate, or have cooperated, as the case involves the distribution of large amounts narcotics, and individuals involved in such criminal behavior oftentimes will seek to punish those who cooperate with law enforcement.

“Where a compelling interest exists, sealing is nevertheless inappropriate unless the court determines there is a ‘substantial probability’ the interest will be harmed absent sealing.” *Id.* (quoting *In re Wash. Post*, 807 F.2d at 392). “[C]onclusory statements alone cannot establish a substantial probability of harm,” but the court may rely on the record to determine if a defendant faces a heightened risk. *Id.*

The Government, as the moving party, “must [also] show that there are no adequate alternatives to sealing in this case.” *Doe*, 962 F.3d at 152. If the limited request to seal is authorized by the Court, the Government submits that it would only seek to seal documents related to sentencing that were relevant to the defendant’s cooperation or lack thereof. In this instance, redaction would not be a viable alternative to sealing, as it would necessitate the redaction of essentially every line of the document(s).

In conclusion, the Government respectfully submits that the compelling interests in sealing certain documents related to sentencing outweigh the public’s interest in accessing such documents under the First Amendment. Meanwhile, the Government recognizes that a defendant has a right under the Sixth Amendment to cross-examine government witnesses on matters bearing on credibility or potential bias. *Crawford v. Washington*, 541 U.S. 36, 59-61 (2004). This right has been held to extend to cross-examination of cooperating witnesses regarding plea agreements

and any expectations of lesser sentences in exchange for cooperation. *United States v. Turner*, 198 F.3d 425, 430 (4th Cir. 1999), *United States v. Ambers*, 85 F.3d 173, 176-77 (4th Cir. 1996), *Hoover v. Maryland*, 714 F.2d 301, 305-06, (4th Cir. 1983). Acknowledging this requirement, the Government understands its disclosure obligations to codefendants and/or others under applicable law regarding the existence and substance of the documents to be sealed.

The United States has informed defense counsel for the Defendant in this case of its intent to file the instant motion to seal and there is no objection to the motion to seal.

Respectfully submitted,

COREY F. ELLIS
UNITED STATES ATTORNEY

By: s/Brandon B. Hinton

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March 10, 2022
Greenville, South Carolina

Exhibit B

CLOSED,CUSTODY

**U.S. District Court
District of South Carolina (Greenville)
CRIMINAL DOCKET FOR CASE #: 6:16-cr-00707-JMC-1**

Case title: USA v. Tiller et al

Date Filed: 09/14/2016

Magistrate judge case number: 6:16-mj-00106-CRI

Date Terminated: 06/28/2018

Assigned to: Honorable J Michelle Childs

Defendant (1)**Dustin Tiller***TERMINATED: 06/28/2018*represented by **Aimee Jendrzewski Zmroczek**

AJZ Law Firm

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Columbia, SC 29211

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Fax: 803-403-8005

Email: aimee@ajzlawfirm.com

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Fax: 864-233-4247

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andrewmackenzie@barrettmackenzie.com

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Bannister and Wyatt

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts

21:846 CONSPIRACY TO DISTRIBUTE
CONTROLLED SUBSTANCE -
methamphetamine and cocaine; Forfeiture
(1)

Highest Offense Level (Opening)

Felony

Terminated Counts

21:846 CONSPIRACY TO DISTRIBUTE
CONTROLLED SUBSTANCE -
METHAMPHETAMINE AND
COCAINE; FORFEITURE
(1s)

21:846 CONSPIRACY TO DISTRIBUTE
CONTROLLED SUBSTANCES
(FORFEITURE)
(1ss)

Highest Offense Level (Terminated)

Felony

Complaints

21:846 CONSPIRACY TO POSSESS
WITH INTENT TO DISTRIBUTE
METHAMPHETAMINE

Disposition

The defendant is committed to the custody of the Federal Bureau of Prisons for a term of two hundred twenty (220) months. This term shall begin 10/2/14 and run concurrently with the sentence imposed in 8:12-481 and the state sentence the defendant is serving. Supervised release for a term of ten (10) years. \$100.00 special assessment due immediately.

Disposition

Disposition

Interested Party

Calvin Baker*surety bondsman for Annie Marie Stone*represented by **Calvin Baker**

Giggie's Bail Bonding
910 E. North Street
Greenville, SC 29606
PRO SE

Interested Party**Lamal J Thompson***surety bondsman for Carrie Graddick,
Leafus Cheeseboro, and Paul Schaefer*represented by **Lamal J Thompson**

Giggie's Bail Bonding LLC
1905 Laurens Rd
Greenville, SC 29607
PRO SE

Interested Party**Sandra Stowers**

Giggies Bail Bonding
508 Laurens Rd
Greenville, SC 29607
864-271-7386

*Bondsperson as to Defendant Paul Schaefer***Interested Party****Ned L Polk, Sr.***Surety Bondsman as to Defendant Billy Sparks***Interested Party****Ricky Hill***surety bondsman for April Wood*represented by **Ricky Hill**

A Available Bail Bonding LLC
PO Box 393
Greenville, SC 29602
864-232-4567
PRO SE

Plaintiff**USA**represented by **Andrew Burke Moorman**

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ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Date Filed	#	Docket Text
08/17/2016	<u>1</u>	COMPLAINT as to Dustin Tiller (1), Christine Wellwood (2), Paul Schaefer (3), Nathan Rosemond (4). (ncha,) [6:16-mj-00106-CRI] (Entered: 08/17/2016)
08/17/2016	<u>2</u>	Unsealed Affidavit in support of complaint (ncha,) Modified on 8/17/2016 to unseal (ncha,). [6:16-mj-00106-CRI] (Entered: 08/17/2016)
08/17/2016	14	NOTICE OF HEARING as to Dustin Tiller: Initial Appearance set for 8/22/2016 01:00 PM in Greenville #2, Clement F Haynsworth Fed Bldg, 300 E Washington St, Greenville before Magistrate Judge Jacquelyn D Austin. (ncha,) [6:16-mj-00106-CRI] (Entered: 08/17/2016)
08/17/2016	<u>15</u>	Writ of Habeas Corpus ad Prosequendum Issued as to Dustin Tiller for as needed from South Carolina Department of Corrections signed by Magistrate Judge Jacquelyn D Austin on 8/17/2016.(ncha,) [6:16-mj-00106-CRI] (Entered: 08/17/2016)
08/22/2016	19	Arrest of Dustin Tiller. Clerk notified by: USM. (ncha,) [6:16-mj-00106-CRI] (Entered: 08/22/2016)
08/22/2016	20	Minute Entry for proceedings held before Magistrate Judge Jacquelyn D Austin: Initial Appearance as to Dustin Tiller held on 8/22/2016. Defendant present in custody. CJA Attorney Andrew MacKenzie also present and appointed to represent Defendant. Defendant waived reading of charges. Bond is not an issue as Defendant is currently serving a sentence. Defendant's attorney to notify the Court either today or tomorrow if a preliminary hearing is requested. Court Reporter Courtsmart 2. CJA Time 30 minutes. (ncha,) [6:16-mj-00106-CRI] (Entered: 08/22/2016)
08/22/2016	21	TEXT CJA 20 as to Dustin Tiller: Appointment of Attorney Andrew Ross Mackenzie for Dustin Tiller entered by Magistrate Judge Jacquelyn D Austin on 8/22/2016.(ncha,) [6:16-mj-00106-CRI] (Entered: 08/22/2016)
08/22/2016	22	ORAL ORDER OF DETENTION as to Dustin Tiller entered by Magistrate Judge Jacquelyn D Austin on 8/22/2016. Bond is not an issue at this time due to Defendant currently serving a state sentence of incarceration.(ncha,) [6:16-mj-00106-CRI] (Entered: 08/22/2016)
08/23/2016	<u>29</u>	Warrant Returned Executed on 08/22/2016 in case as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond. (bwalters-USMS,) [6:16-mj-00106-CRI] (Entered: 08/23/2016)
08/23/2016	<u>30</u>	CJA 23 Financial Affidavit (Restricted Access) by Christine Wellwood, (mpridmore-USPO,) Modified on 8/24/2016 to edit text (awil,). [6:16-mj-00106-CRI] (Entered: 08/23/2016)
08/23/2016	31	TEXT CJA 7 as to Dustin Tiller - Order Terminating Appointment of Counsel ; Representation by Attorney Andrew Ross Mackenzie terminated. TEXT CJA 20 as to Dustin Tiller: Appointment of Attorney Aimee Jendrzewski Zmroczek for Dustin Tiller entered by Magistrate Judge Jacquelyn D Austin on 8/23/2016.

		(ncha,) [6:16-mj-00106-CRI] (Entered: 08/23/2016)
08/29/2016	39	CJA 23 Financial Affidavit (Restricted Access) by Dustin Tiller (amurray-USPO,) [6:16-mj-00106-CRI] (Entered: 08/29/2016)
08/31/2016	40	NOTICE OF ATTORNEY APPEARANCE: James W Bannister appearing for Dustin Tiller (Bannister, James) [6:16-mj-00106-CRI] (Entered: 08/31/2016)
09/01/2016	41	TEXT CJA 7 as to Dustin Tiller - Order Terminating Appointment of Counsel ; representation by attorney Aimee Jendrzewski Zmroczek terminated. Entered by Magistrate Judge Jacquelyn D Austin on 9/1/16.(awil,) [6:16-mj-00106-CRI] (Entered: 09/01/2016)
09/02/2016	42	NOTICE OF REQUEST FOR PROTECTION from Court Appearance as to Dustin Tiller for 10/06/16-10/21/16 (Bannister, James) [6:16-mj-00106-CRI] (Entered: 09/02/2016)
09/14/2016	44	INDICTMENT (Sealed Grand Jury Ballot attached) as to Dustin Tiller (1) count 1, Paul Schaefer (2) count 1, Christine Wellwood (3) count 1, Jimmy Hallums (4) count 1, Lisa Machilaski (5) count 1, Brad Lay (6) count 1, Leafus Maurice Cheeseboro (7) count 1, Stinson Rashad Ferguson (8) count 1, Ricky Clark (9) count 1, Carrie Graddick (10) count 1, April Wood (11) count 1, Billy Sparks (12) count 1, Stacy Hall (13) count 1, Nytia Simmons (14) count 1, Nathan Rosemond (15) count 1. (Attachments: # 1 GJ Ballot) (awil) Modified on 1/10/2017. Indictment unsealed (awil). (Entered: 09/15/2016)
09/14/2016	45	PENALTY SHEET as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Leafus Maurice Cheeseboro, Stinson Rashad Ferguson, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Nytia Simmons (awil,) (Entered: 09/15/2016)
09/14/2016	86	SEALED ORDER - Order to Seal Indictment. Signed by Magistrate Judge Kevin McDonald on 9/14/2016.(awil,) (Entered: 09/15/2016)
09/16/2016	88	REDACTED INDICTMENT as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond. (awil,) (Entered: 09/16/2016)
09/16/2016	89	NOTICE OF HEARING as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond: Arraignment set for 9/29/2016 10:00 AM in Greenville #3, Clement F Haynsworth Fed Bldg, 300 E Washington St, Greenville before Magistrate Judge Kevin McDonald. (awil,) (Entered: 09/16/2016)
09/19/2016	92	Case Reassigned as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Ricky Clark, Nytia Simmons to Judge Honorable J Michelle Childs. Judge Unassigned - CRI no longer assigned to the case. (cwil,) (Entered: 09/20/2016)
09/28/2016	94	MOTION for Protective Order by USA as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Leafus Maurice Cheeseboro, Stinson Ferguson, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Nytia Simmons. **Document refiled by Clerk's Office to

		select all defendants.(jtho,) (Entered: 09/28/2016)
09/28/2016	<u>95</u>	ORDER granting <u>94</u> Motion for Protective Order as to Dustin Tiller (1), Paul Schaefer (2), Christine Wellwood (3), Jimmy Hallums (4), Lisa Machilaski (5), Brad Lay (6), Leafus Maurice Cheeseboro (7), Stinson Ferguson (8), Ricky Clark (9), Carrie Graddick (10), April Wood (11), Billy Sparks (12), Stacy Hall (13), Nytia Simmons (14), Nathan Rosemond (15). Signed by Honorable J Michelle Childs on 9/28/16.(jtho,) (Entered: 09/28/2016)
09/28/2016	<u>96</u>	MOTION to Disclose materials related to the interception of wire and electronic communicationsby USA as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Leafus Maurice Cheeseboro, Stinson Ferguson, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Nytia Simmons. (jtho,) (Entered: 09/28/2016)
09/28/2016	<u>97</u>	ORDER granting <u>96</u> Motion for Disclosure as to Dustin Tiller (1), Paul Schaefer (2), Christine Wellwood (3), Jimmy Hallums (4), Lisa Machilaski (5), Brad Lay (6), Leafus Maurice Cheeseboro (7), Stinson Ferguson (8), Ricky Clark (9), Carrie Graddick (10), April Wood (11), Billy Sparks (12), Stacy Hall (13), Nytia Simmons (14), Nathan Rosemond (15). Signed by Honorable J Michelle Childs on 9/28/16.(jtho,) (Entered: 09/28/2016)
09/28/2016	<u>98</u>	MOTION for Disclosure of sealed documentsby USA as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Leafus Maurice Cheeseboro, Stinson Ferguson, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Nytia Simmons. (jtho,) (Entered: 09/28/2016)
09/28/2016	<u>99</u>	ORDER granting <u>98</u> Motion for Disclosure of sealed documents as to Dustin Tiller (1), Paul Schaefer (2), Christine Wellwood (3), Jimmy Hallums (4), Lisa Machilaski (5), Brad Lay (6), Leafus Maurice Cheeseboro (7), Stinson Ferguson (8), Ricky Clark (9), Carrie Graddick (10), April Wood (11), Billy Sparks (12), Stacy Hall (13), Nytia Simmons (14), Nathan Rosemond (15). Signed by Honorable J Michelle Childs on 9/28/16.(jtho,) (Entered: 09/28/2016)
09/28/2016	<u>100</u>	MOTION for Disclosure of Grand Jury Materialsby USA as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Leafus Maurice Cheeseboro, Stinson Ferguson, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Nytia Simmons. (jtho,) (Entered: 09/28/2016)
09/28/2016	<u>101</u>	ORDER granting <u>100</u> Motion for Disclosure of Grand Jury Materials as to Dustin Tiller (1), Paul Schaefer (2), Christine Wellwood (3), Jimmy Hallums (4), Lisa Machilaski (5), Brad Lay (6), Leafus Maurice Cheeseboro (7), Stinson Ferguson (8), Ricky Clark (9), Carrie Graddick (10), April Wood (11), Billy Sparks (12), Stacy Hall (13), Nytia Simmons (14), Nathan Rosemond (15). Signed by Honorable J Michelle Childs on 9/28/16.(jtho,) (Entered: 09/28/2016)
09/29/2016	102	Minute Entry for proceedings held before Magistrate Judge Kevin McDonald: Arraignment as to Dustin Tiller (1) Count 1 and Christine Wellwood (3) Count 1 and Paul Schaefer (2) Count 1 and Nathan Rosemond (15) Count 1 held on

		9/29/2016. Defendants present with counsel. Defendants waived reading of charges and penalties. Plea of not guilty entered by the Court. Jim Bannister requests Defendant Tiller remain in Federal Custody. Government concurs. Court Reporter Karen Martin. CJA Time 45 minutes. (awil,) (Entered: 09/29/2016)
09/30/2016	104	NOTICE OF HEARING as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond: Pretrial Conference and Change of Plea Hearing set for 10/26/2016 10:00 AM in Greenville #1, Clement F Haynsworth Fed Bldg, 300 E Washington St, Greenville before Honorable J Michelle Childs. (jtho,) (Entered: 09/30/2016)
10/13/2016	136	REDACTED INDICTMENT as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Leafus Maurice Cheeseboro, Stinson Ferguson, Jimmy Hallums, Ricky Clark, Carrie Graddick, Billy Sparks, Stacy Hall, Nytia Simmons (ncha,) (ncha,). (Entered: 10/13/2016)
10/21/2016	192	MOTION to Continue by Dustin Tiller. No proposed order(Bannister, James) (Entered: 10/21/2016)
10/24/2016	195	ORDER TO CONTINUE - Ends of Justice as to Dustin Tiller, Christine Wellwood, Paul Schaefer, and Nathan Rosemond. These defendants are continued to the December 2016 term of court. Signed by Honorable J Michelle Childs on 10/24/16.(jtho,) (Entered: 10/24/2016)
10/24/2016	196	NOTICE OF CANCELLATION OF HEARING: 10/26/16 pretrial conference and change of plea hearing as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond. (jtho,) (Entered: 10/24/2016)
10/24/2016	204	REDACTED INDICTMENT as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Leafus Maurice Cheeseboro, Stinson Ferguson, Jimmy Hallums, Brad Lay, Ricky Clark, Carrie Graddick, Billy Sparks, Stacy Hall, Nytia Simmons (ncha,) (Entered: 10/24/2016)
10/31/2016	211	NOTICE OF HEARING as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Leafus Maurice Cheeseboro, Stinson Ferguson, Jimmy Hallums, Brad Lay, Ricky Clark, Carrie Graddick, Billy Sparks, Stacy Hall, Nytia Simmons: Pretrial Conference and Change of Plea Hearing set for 11/29/2016 10:45 AM in Greenville #3, Clement F Haynsworth Fed Bldg, 300 E Washington St, Greenville before Honorable J Michelle Childs. (abuc) (Entered: 10/31/2016)
11/15/2016	228	MOTION to Continue by USA as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Leafus Maurice Cheeseboro, Stinson Ferguson, Jimmy Hallums, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Nytia Simmons. No proposed order(Moorman, Andrew) (Entered: 11/15/2016)
11/22/2016	230	TEXT ORDER TO CONTINUE - Ends of Justice as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Leafus Maurice Cheeseboro, Stinson Ferguson, Jimmy Hallums, Brad Lay, Ricky Clark, Carrie Graddick, Billy Sparks, Stacy Hall, Nytia Simmons. This matter is before the court on motion by the Government and five Defendants to continue this case. (ECF Nos.

		215, 221, 222, 223, 227, 228.) In its motion to continue, the Government states that numerous Defendants consent to a continuance and at least one unspecified Defendant opposes a continuance. The court concludes that, for the reasons offered by the Governmentincluding the voluminous discovery yet to be disseminated, the number of defendants, and the fact that several defendants have yet to arrive in the District of South Carolina for their initial appearancesthere is a need for a continuance because the case is so complex due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by [18 U.S.C. § 3161]. 18 U.S.C. § 3161(h)(7)(B)(ii); see United States v. Brown, 2014 WL 911946, at *1 (E.D. Va. 2014); Wackman v. United States, 2011 WL 5848978, at *1, 4 n. 14 (D. Md. 2011). Further, for the same reasons offered by the Government, under the courts analysis of the § 3161(h)(7)(B) factors, the ends of justice in granting a continuance outweigh the interests of the public and the defendant in a speedy trial. See 18 U.S.C. § 3161(h)(7)(A). Accordingly, the motions to continue (ECF Nos. 215, 221, 222, 223, 227, 228) are GRANTED. It is ORDERED that the case is continued until the February 2017 term of court. It is further ORDERED that the extended time is excludable under the provisions of 18 U.S.C. § 3161(h)(7)(A)-(B). Signed by Honorable J Michelle Childs on 11/22/16.(jtho,) (Entered: 11/22/2016)
11/22/2016	231	NOTICE OF CANCELLATION OF HEARING: 11/29/16 pretrial conference and change of plea hearing as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Leafus Maurice Cheeseboro, Stinson Ferguson, Jimmy Hallums, Brad Lay, Ricky Clark, Carrie Graddick, Billy Sparks, Stacy Hall, Nytia Simmons. (jtho,) (Entered: 11/22/2016)
01/03/2017	252	NOTICE OF HEARING as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Leafus Maurice Cheeseboro, Stinson Ferguson, Jimmy Hallums, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Nytia Simmons: Pretrial Conference and Change of Plea Hearing set for 1/24/2017 10:00 AM in Greenville #3, Clement F Haynsworth Fed Bldg, 300 E Washington St, Greenville before Honorable J Michelle Childs. (jtho,) (Entered: 01/03/2017)
01/23/2017	292	INFORMATION TO ESTABLISH PRIOR CONVICTION as to Dustin Tiller (Moorman, Andrew) (Entered: 01/23/2017)
01/24/2017	296	DELETION OF DOCKET ENTRY NUMBER 288-291. Reason: incorrect event used by filer. Corrected documents: 292-295. (jtho,) (Entered: 01/24/2017)
01/24/2017	297	Minute Entry for proceedings held before Honorable J Michelle Childs: Pretrial Conference as to Dustin Tiller held on 1/24/2017. The defendant is present with attorney James Bannister, requests trial. The USA moves for a continuance to the May 2017 term of court. Court Reporter Debra Bull. (jtho,) (Entered: 01/24/2017)
01/24/2017	300	ORAL ORDER TO CONTINUE - Ends of Justice as to Dustin Tiller, Christine Wellwood, Billy Sparks. These defendants are continued to the May 2017 term

		of court. Signed by Honorable J Michelle Childs on 1/24/17.(jtho,) (Entered: 01/24/2017)
01/24/2017	301	ORAL MOTION to Declare Case Complex by USA.(jtho,) (Entered: 01/24/2017)
01/24/2017	302	ORAL ORDER granting 301 Motion to Declare Case Complex. A scheduling order will be filed. Signed by Honorable J Michelle Childs on 1/24/17.(jtho,) (Entered: 01/24/2017)
01/31/2017	315	NOTICE OF HEARING as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall: Pretrial Conference and Change of Plea Hearing set for 2/22/2017 10:00 AM in Greenville #3, Clement F Haynsworth Fed Bldg, 300 E Washington St, Greenville before Honorable J Michelle Childs. **Please read the entire Notice of Hearing** (jtho,) (Entered: 01/31/2017)
02/07/2017	316	CONSENT MOTION to Continue, MOTION for Scheduling Order by USA as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall. (jtho,) (Entered: 02/07/2017)
02/07/2017	317	ORDER TO CONTINUE - Ends of Justice as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Motions terminated as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall: This case is continued to the June 2017 term of court with deadlines as set out in order. Signed by Honorable J Michelle Childs on 2/7/17.(jtho,) (Entered: 02/07/2017)
02/07/2017	319	NOTICE OF CANCELLATION OF HEARING: 2/22/17 pretrial conference and change of plea hearing as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Nytia Simmons. (jtho,) (Entered: 02/07/2017)
02/07/2017	320	NOTICE OF HEARING as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall: Jury Selection set for 6/1/2017 09:30 AM in Greenville #3, Clement F Haynsworth Fed Bldg, 300 E Washington St, Greenville before Honorable J Michelle Childs. Jury Trial set for 6/12/2017 - 6/23/17 09:30 AM in Greenville #3, Clement F Haynsworth Fed Bldg, 300 E Washington St, Greenville before Honorable J Michelle Childs. (jtho,) (Entered: 02/07/2017)
02/15/2017	323	SEALED SUPERSEDING INDICTMENT (Sealed Grand Jury Ballot attached) as to Dustin Tiller (1) count 1s, Paul Schaefer (2) count 1s, Christine Wellwood (3) count 1s, Jimmy Hallums (4) count 1s, Lisa Machilaski (5) count 1s, Brad Lay (6) count 1s, Ricky Clark (9) count 1s, Carrie Graddick (10) count 1s, April Wood (11) count 1s, Billy Sparks (12) count 1s, Stacy Hall (13) count 1s, Nathan Rosemond (15) count 1s, Annie Marie Stone (16) count 1. (Attachments: # 1 GJ Ballot) (awil,) (Entered: 02/15/2017)

		02/16/2017)
02/15/2017	325	PENALTY SHEET as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Annie Marie Stone (awil,) (Entered: 02/16/2017)
02/17/2017	331	REDACTED INDICTMENT as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall. (awil,) . Modified on 2/17/2017 to attach document (awil,). (Entered: 02/17/2017)
02/17/2017	333	NOTICE OF HEARING as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall: Arraignment set for 2/22/2017 10:00 AM in Greenville #1, Clement F Haynsworth Fed Bldg, 300 E Washington St, Greenville before Magistrate Judge Jacquelyn D Austin. IF COUNSEL FILES A WAIVER, IT MUST BE DONE BY NOON, TUESDAY, FEBRUARY 21.(awil,) (Entered: 02/17/2017)
02/21/2017	342	WAIVER of Personal Appearance at Arraignment and Entry of Plea of Not Guilty by Dustin Tiller (Bannister, James) (Entered: 02/21/2017)
02/21/2017	344	NOTICE as Dustin Tiller, Paul Schaefer, Christine Wellwood, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Nathan Rosemond; The Court accepts the waivers of arraignment filed by Defendants Dustin Tiller, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Lisa Machilaski, Ricky Lynn Clark, and Stacy Hall; each above- noted defendant and his/her attorney are excused from attending the arraignment scheduled for February 22, 2017. All other defendants and counsel should appear as scheduled. (ncha,) (Entered: 02/21/2017)
02/21/2017	345	NOTICE OF CANCELLATION OF ARRAIGNMENT HEARING: 2/22/2017 at 10AM as to Dustin Tiller, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Lisa Machilaski, Ricky Clark, Stacy Hall; WAIVERS FILED. (ncha,) (Entered: 02/21/2017)
02/21/2017	348	NOTICE OF REQUEST FOR PROTECTION from Court Appearance as to Dustin Tiller for 04/10/2017-04/17/2017 & 07/03/2017-07/10/2017 (Bannister, James) (Entered: 02/21/2017)
02/23/2017	359	SEALED MOTION by USA as to Dustin Tiller. (ncha,) (Entered: 02/23/2017)
02/23/2017	360	SEALED ORDER signed by Magistrate Judge Jacquelyn D Austin on 2/23/2017.(ncha,) (Entered: 02/23/2017)
03/14/2017	382	SEALED SECOND SUPERSEDING INDICTMENT (Sealed Grand Jury Ballot attached) as to Dustin Tiller (1) count(s) 1ss, Paul Schaefer (2) count(s) 1ss, Christine Wellwood (3) count(s) 1ss, Jimmy Hallums (4) count(s) 1ss, Lisa Machilaski (5) count(s) 1ss, Brad Lay (6) count(s) 1ss, Ricky Clark (9) count(s) 1ss, Carrie Graddick (10) count(s) 1ss, April Wood (11) count(s) 1ss, Billy Sparks (12) count(s)

		1ss, Stacy Hall (13) count(s) 1ss, Nathan Rosemond (15) count(s) 1ss, Annie Marie Stone (16) count(s) 1s, Britton Moon (17) count(s) 1, Tyrone Platt (18) count(s) 1, Rusty Pearson (19) count(s) 1. (Attachments: # 1 GJ Ballot) (ncha,) (Entered: 03/15/2017)
03/14/2017	383	PENALTY SHEET as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Annie Marie Stone, Britton Moon, Tyrone Platt, Rusty Pearson (ncha,) (Entered: 03/15/2017)
03/14/2017	384	Order to Seal All Documents as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Annie Marie Stone, Britton Moon, Tyrone Platt, Rusty Pearson signed by Magistrate Judge Kevin McDonald on 3/14/2017.(ncha,) (Entered: 03/15/2017)
03/15/2017	394	NOTICE OF HEARING as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Annie Marie Stone, Britton Vaughn Moon: Arraignment set for 3/30/2017 10:00 AM in Greenville #3, Clement F Haynsworth Fed Bldg, 300 E Washington St, Greenville before Magistrate Judge Kevin McDonald. (ncha,) (Entered: 03/15/2017)
03/15/2017	396	REDACTED INDICTMENT as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Annie Marie Stone, Britton Vaughn Moon (ncha,) (ncha,). (Entered: 03/15/2017)
03/15/2017	397	NOTICE OF HEARING as to Dustin Tiller, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Brad Lay, Carrie Graddick, Stacy Hall: Change of Plea Hearing set for 3/23/2017 12:00 PM in Greenville #1, Clement F Haynsworth Fed Bldg, 300 E Washington St, Greenville before Honorable J Michelle Childs. (jtho,) (Entered: 03/15/2017)
03/23/2017	401	PLEA AGREEMENT as to Dustin Tiller. (jtho,) (Entered: 03/23/2017)
03/23/2017	406	NOTICE OF CANCELLATION OF HEARING: 3/30/17 arraignment; 6/1/17 jury selection; 6/12/17 jury trial as to Dustin Tiller, Paul Schaefer, Nathan Rosemond, Jimmy Hallums, Brad Lay, Carrie Graddick, Stacy Hall (jtho,) (Entered: 03/23/2017)
03/23/2017	407	Minute Entry for proceedings held before Honorable J Michelle Childs: Change of Plea Hearing as to Dustin Tiller held on 3/23/2017. Dustin Tiller (1) entered a guilty plea to count 1 of the original indictment. Counts to be Dismissed : 1ss,1s. Court Reporter Debra Bull. (jtho,) (Entered: 03/23/2017)
03/23/2017	408	GUILTY PLEA ENTERED as to Dustin Tiller. (jtho,) (Entered: 03/23/2017)
05/01/2017	512	BILL OF PARTICULARS FOR FORFEITURE OF PROPERTY by USA as to Dustin Tiller, Paul Schaefer, Christine Wellwood, Jimmy Hallums, Lisa Machilaski, Brad Lay, Leafus Maurice Cheeseboro, Stinson Ferguson, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Nytia Simmons, Nathan Rosemond,

		Annie Marie Stone, Britton Vaughn Moon, Rusty Pearson (Sherard, Carrie) (Entered: 05/01/2017)
05/05/2017	518	MOTION to Exclude <i>References to Potential Sentences Cooperating Witnesses Face</i> by USA as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Leafus Maurice Cheeseboro, Stinson Ferguson, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Nytia Simmons, Annie Marie Stone, Rusty Pearson, Britton Vaughn Moon. No proposed order(Moorman, Andrew) (Entered: 05/05/2017)
05/05/2017	519	MOTION for Discovery by USA as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Leafus Maurice Cheeseboro, Stinson Ferguson, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Nytia Simmons, Annie Marie Stone, Rusty Pearson, Britton Vaughn Moon. No proposed order(Moorman, Andrew) (Entered: 05/05/2017)
05/05/2017	520	NOTICE OF INTENT TO USE 404(b) EVIDENCE by USA as to Dustin Tiller, Paul Schaefer, Christine Wellwood, Jimmy Hallums, Lisa Machilaski, Brad Lay, Leafus Maurice Cheeseboro, Stinson Ferguson, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Nytia Simmons, Nathan Rosemond, Annie Marie Stone, Britton Vaughn Moon, Rusty Pearson (Moorman, Andrew) (Entered: 05/05/2017)
05/05/2017	521	MOTION to Exclude by USA as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Leafus Maurice Cheeseboro, Stinson Ferguson, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Nytia Simmons, Annie Marie Stone, Rusty Pearson, Britton Vaughn Moon. No proposed order(Moorman, Andrew) (Entered: 05/05/2017)
05/11/2017	525	BILL OF PARTICULARS FOR FORFEITURE OF PROPERTY by USA as to Dustin Tiller, Paul Schaefer, Christine Wellwood, Jimmy Hallums, Lisa Machilaski, Brad Lay, Leafus Maurice Cheeseboro, Stinson Ferguson, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Nytia Simmons, Nathan Rosemond, Annie Marie Stone, Britton Vaughn Moon, Rusty Pearson (Sherard, Carrie) (Entered: 05/11/2017)
06/13/2017	590	MOTION for Extension of Time by Dustin Tiller. No proposed order(Bannister, James) (Entered: 06/13/2017)
06/13/2017	591	TEXT ORDER granting 590 Motion for Extension of Time to File Objections to Presentence Report as to Dustin Tiller (1). The objections are now due 6/30/17. Signed by Honorable J Michelle Childs on 6/13/17.(jtho,) (Entered: 06/13/2017)
06/15/2017	596	MOTION to Seal Document by USA as to Dustin Tiller, Christine Wellwood, Paul Schaefer, Nathan Rosemond, Leafus Maurice Cheeseboro, Stinson Ferguson, Jimmy Hallums, Lisa Machilaski, Brad Lay, Ricky Clark, Carrie Graddick, April Wood, Billy Sparks, Stacy Hall, Nytia Simmons, Annie Marie Stone, Rusty Pearson, Britton Vaughn Moon. No proposed order(Moorman, Andrew) (Entered: 06/15/2017)
06/15/2017	597	TEXT ORDER granting 596 Motion to Seal Document as to Dustin Tiller (1), Paul Schaefer (2), Christine Wellwood (3), Jimmy Hallums (4), Lisa Machilaski (5), Brad Lay (6), Leafus Maurice Cheeseboro (7), Stinson Ferguson (8), Ricky

		Clark (9), Carrie Graddick (10), April Wood (11), Billy Sparks (12), Stacy Hall (13), Nytia Simmons (14), Nathan Rosemond (15), Annie Marie Stone (16), Britton Vaughn Moon (17), Rusty Pearson (19). Signed by Honorable J Michelle Childs on 6/15/17.(jtho,) (Entered: 06/15/2017)
09/01/2017	693	NOTICE OF REQUEST FOR PROTECTION from Court Appearance as to Dustin Tiller for 10/06/17; 10/16/17-10/20/17; 11/16/17-11/22/17 (Bannister, James) (Entered: 09/01/2017)
03/07/2018	863	NOTICE OF HEARING as to Dustin Tiller and Paul Schaefer: Sentencing set for 4/25/2018 01:15 PM in Greenville #3, Clement F Haynsworth Fed Bldg, 300 E Washington St, Greenville before Honorable J Michelle Childs. (jtho,) (Entered: 03/07/2018)
03/19/2018	878	NOTICE OF REQUEST FOR PROTECTION from Court Appearance as to Dustin Tiller for 04/16/18-05/18/18 (Bannister, James) (Entered: 03/19/2018)
03/26/2018	883	NOTICE OF CANCELLATION OF HEARING: 4/25/18 sentencing as to Dustin Tiller and Britton Vaughn Moon. (jtho,) (Entered: 03/26/2018)
05/07/2018	913	NOTICE OF HEARING as to Dustin Tiller: Sentencing set for 6/26/2018 01:30 PM in Greenville #3, Clement F Haynsworth Fed Bldg, 300 E Washington St, Greenville before Honorable J Michelle Childs. (jtho,) (Entered: 05/07/2018)
06/12/2018	929	NOTICE OF REQUEST FOR PROTECTION from Court Appearance as to Dustin Tiller for 06/27/18-06/29/18 and 07/23/18-07/27/18 (Bannister, James) (Entered: 06/12/2018)
06/15/2018	932	MOTION to Seal by Dustin Tiller. No proposed order(Bannister, James) (Entered: 06/15/2018)
06/18/2018	933	TEXT ORDER granting 932 Motion to Seal documents related to 6/26/18 sentencing as to Dustin Tiller (1). Signed by Honorable J Michelle Childs on 6/18/18.(jtho,) (Entered: 06/18/2018)
06/18/2018	934	SEALED MOTION by Dustin Tiller. (jtho,) (Entered: 06/18/2018)
06/21/2018	937	SEALED MOTIONby USA as to Dustin Tiller. No proposed order(Moorman, Andrew) (Entered: 06/21/2018)
06/22/2018	938	MOTION to Seal by Dustin Tiller. No proposed order(Bannister, James) (Entered: 06/22/2018)
06/22/2018	939	TEXT ORDER granting 938 Motion to Seal as to Dustin Tiller (1). Signed by Honorable J Michelle Childs on 6/22/18.(jtho,) (Entered: 06/22/2018)
06/22/2018	940	Sealed Document (Bannister, James) (Entered: 06/22/2018)
06/26/2018	941	Minute Entry for proceedings held before Honorable J Michelle Childs: Sentencing held on 6/26/2018 as to Dustin Tiller. The defendant is present in custody with attorney James Bannister. Court Reporter Karen Martin. (jtho,) (Entered: 06/26/2018)

06/28/2018	942	ORAL ORDER denying 934 Sealed Motion as to Dustin Tiller (1) and granting 937 Sealed Motion as to Dustin Tiller (1). Signed by Honorable J Michelle Childs on 6/26/18.(jtho,) (Entered: 06/28/2018)
06/28/2018	943	JUDGMENT as to Dustin Tiller (1), Count 1: The defendant is committed to the custody of the Federal Bureau of Prisons for a term of two hundred twenty (220) months. This term shall begin 10/2/14 and run concurrently with the sentence imposed in 8:12-481 and the state sentence the defendant is serving. Supervised release for a term of ten (10) years. \$100.00 special assessment due immediately. Signed by Honorable J Michelle Childs on 6/28/18.(jtho,) (Entered: 06/28/2018)
07/17/2019	1114	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Sentencing Proceedings as to Dustin Tiller held on 6/26/18, before Judge J. Michelle Childs. Court Reporter/Transcriber Karen E. Martin, Telephone number/E-mail Karen_E_Martin@scd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Parties have 7 calendar days from the filing of the transcript to file with the court a Notice of Intent to Request Redaction. Redaction Request due 8/7/2019. Redacted Transcript Deadline set for 8/19/2019. Release of Transcript Restriction set for 10/15/2019. (kmartin,) (Entered: 07/17/2019)
03/02/2020	1154	NOTICE by USA that Andrew B. Moorman is no longer employed with USAO. (jtho,) (Entered: 03/02/2020)
03/10/2022	1310	MOTION to Seal Document by USA as to Dustin Tiller. No proposed order(Hinton, Brandon) (Entered: 03/10/2022)
03/10/2022	1311	TEXT ORDER granting 1310 Motion to Seal Document as to Dustin Tiller (1). Signed by Honorable J Michelle Childs on 3/10/22.(jtho,) (Entered: 03/10/2022)
03/11/2022	1312	SEALED MOTIONby USA as to Dustin Tiller. No proposed order(Hinton, Brandon) (Entered: 03/11/2022)

PACER Service Center			
Transaction Receipt			
04/07/2023 09:57:48			
PACER Login:	charlesgrose	Client Code:	
Description:	Docket Report	Search Criteria:	6:16-cr-00707-JMC
Billable Pages:	12	Cost:	1.20

Exhibit C

The Grose Law Firm, LLC

404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.

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E-mail: charles@groselawfirm.com

Web: GroseLawFirm.com

April 26, 2023

Brandon B. Hinton, Esquire
Assistant United States Attorney
55 Beattie Place, Suite 700
Greenville, South Carolina 29601

James W Bannister, Esquire
Bannister, Wyatt & Stalvey, LLC
PO Box 10007
24 Cleveland Street, Suite 100
Greenville, SC 29603

Re: *United States v. Tiller*, Case No. 6:16-cr-00707-JMC

Dear Mr. Hinton and Mr. Bannister:

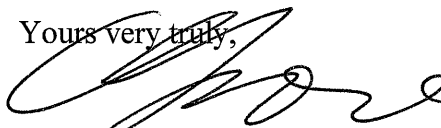
As I am sure you are aware, I represented Johnathan Batchelor in a jury trial on a charge of attempted murder in Spartanburg County. Case No. 2016-GS-42-01345. I continue to represent him on appeal. Appellate Case No. 2022-000160. As you know, Mr. Tiller testified for the prosecution during Mr. Batchelor's jury trial. While preparing Mr. Batchelor's initial reply brief of appellant, I learned about the Government's motion to seal a forthcoming document related to Mr. Tiller's sentencing (ECF No. 1310), the order granting this motion (ECF No. 1311), and Government's subsequent sealed motion, which is still pending (ECF No. 1312).

Because I believe ECF No. 1310 and 1312 might be relevant to Mr. Batchelor's case, I request that those documents (and any subsequent related filings) be released to Mr. Batchelor. Of course, we would agree to a protective order prohibiting disclosure of those documents, except as might be necessary in Mr. Batchelor's criminal case and appeal, with the understanding those documents would be filed under seal in any state court proceeding.

Thank you for your attention to this matter. Please let me know if you have any questions or require additional information.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

RECEIVED

Apr 26 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
R. Kieth Kelly, Circuit Court Judge

Appellate Case No. 2022-000160

The State, ...Respondent

v.

Johnathan Olin Batchelor, ...Appellant.

Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel's primary email address listed in the Attorney Information System (AIS), as reflected below, on the date reflected below:

David A. Spencer, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
dspencer@scag.gov

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

April 26, 2023
Greenwood, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable R. Keith Kelly, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

vs.

JOHNATHAN OLIN BATCHELOR,

Appellant.

Appellate Case No. 2022-000160

**REPLY TO RETURN TO
MOTION TO STRIKE APPELLANT'S
SUPPLEMENTAL DESIGNATION OF MATTER
AND INITIAL REPLY BRIEF
FOR FAILURE TO COMPLY WITH
RULE 209(b) AND RULE 210(c), SCACR**

Respondent moved on April 20, 2023 for this Court to strike Appellant's supplemental designation of matter and initial reply brief because those pleadings present and argue matters outside the record. Appellant served its return to Respondent's motion on April 26, 2023. Respondent now makes its reply to Appellant's return.

I.

In his return, Appellant agrees the challenged documents were not before the trial court, but argues nonetheless these documents fall within this Court's inherent authority to take judicial notice. The first case Appellant relies on Wise v. Wise, 394 S.C. 591, 600-01, 716 S.E.2d 117,

122 (Ct. App. 2011) which notes an appellate court's ability to take judicial notice, but also warns that appellate courts are reluctant to notice judicial facts even when they are reliable, explaining that taking judicial notice may deprive the opposing party the opportunity to contest the matters noticed and that it may "violate the general principle that appellate review should be limited to the record." Id. Further, appellate courts limited by the cold record are not as sensitive to the appropriateness of judicial notice as a trial court. Therefore, appellate courts should limit notice of adjudicative facts to matters that are indisputable. Id.

Appellant attempts to argue around this limitation by claiming he is not seeking judicial notice of an adjudicative fact. Instead, Appellant contends, "[A]t this stage, Mr. Batchelor merely asks this Court to take judicial notice that after Dustin Tiller's cooperation in Mr. Batchelor's state court trial, the United States Government filed a motion to file a sealed motion related to Mr. Tiller's sentence." Ret to Mot to Strike, p. 3. First, as established at trial, Tiller provided assistance to the federal and state government in several cases. The federal government's motion does not indicate if its motion is related to Tiller's assistance in Appellant's case. Second, Tiller was clear at the time of trial that he was hoping for a downward departure and admitted he received a downward departure in the past for other cases. A downward departure for Tiller's sentence is not unexpected. Most importantly, Appellant admits that this information is not relevant to determination of the issues in the instant appeal, Appellant just wants this Court to know he is seeking information that, according to Appellant, someday might support a post-trial motion for after-discovered evidence. In other words, Appellant merely designated these items to be able to cast dispersions and produce innuendo on federal and state officials without actually having evidence. In the end, the information is not relevant to the issue at hand, determining if there was

trial court error. “A party shall not include any matter in his Designation which is not relevant to the appeal.” Rule 209(c), SCACR; See Williamsburg Rural Water & Sewer Co., Inc. v. Williamsburg County Water & Sewer Auth., 367 S.C. 566, 571, 627 S.E.2d 690, 693 (2006) (“Nothing in the appellate court rules permits a party to unilaterally add after-created evidence to the record.”). Therefore, Respondent requests this Court to strike Appellant’s initial brief and require an amended brief in compliance with Rule 210(c), SCACR; State v. White, 372 S.C. 364, 642 S.E.2d 607 (Ct. App. 2007) (excluding post-trial “Morris” letter not presented to the circuit court).

Since the initial reply brief and the supplemental designation of matter are not in compliance with the Appellate Court Rules, the initial brief and designation of matter should be struck, and Appellant should be required to amend both accordingly.

II.

WHEREFORE, Respondent prays that this Court strike Appellant’s Initial Reply Brief and Supplemental Designation of Matter, and require Appellant to amend the Initial Reply Brief of Appellant accordingly. Respondent further requests for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

May 2, 2023

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2022-000160

THE STATE,

Respondent,

v.

JOHNATHAN OLIN BATCHELOR,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served a copy of the within Reply to Return to Motion to Strike Appellant's Supplemental Designation of Matter and Initial Reply Brief for Failure to Comply with Rule 209(b) and Rule 210(c) SCACR on E. Charles Grose, Jr., Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 2nd day of May 2023.


Anne A. Mueller
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The South Carolina Court of Appeals

The State, Respondent,

v.

Johnathan Olin Batchelor, Appellant.

Appellate Case No. 2022-000160

ORDER

The State moves to strike Appellant's amended designation of matter and initial reply brief, both filed April 17, 2023.

After careful consideration, the motion to strike is granted. *See* Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal."). The items are stricken and Appellant shall file a second amended designation of matter and amended initial reply brief, with no references to the stricken matters.



FOR THE COURT

Columbia, South Carolina

cc:

E. Charles Grose, Jr., Esquire
Alan McCrory Wilson, Esquire
David A. Spencer, Esquire
Barry Joe Barnette, Esquire

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2022-000160

The State, ...Respondent,

v.

Johnathan Olin Batchelor,.....Appellant.

FINAL BRIEF OF APPELLANT

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QUESTIONS PRESENTED

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STATEMENT OF CASE

For an incident occurring on January 7, 2016, the State charged Johnathan Batchelor with attempted murder of his wife Stephanie Nicole Batchelor. On January 5, 2018, Mr. Batchelor pled guilty, pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), before the Honorable J. Derham Cole. Jennifer E. Wells represented the State. Travis A. Moore represented Mr. Batchelor. Judge Cole sentenced Mr. Batchelor to thirty years

imprisonment, suspended on the service of eighteen years, followed by probation for five years. R. 144-70.

On December 13, 2018, Mr. Batchelor filed an application for post-conviction relief (“PCR”) alleging his trial “counsel was ineffective on an array of issues in the case,” including failing “to fully investigate,” failing to “challenge or limit any of the [State’s] alleged evidence, failing to “build any type of defense,” and recommending Mr. Batchelor accept an illegal sentence. R. 3-21. On March 29, 2019, the State filed its return and consent to post-conviction relief. R. 22-29. On April 18, 2019, the Honorable Grace Gilchrist Knie granted Mr. Batchelor “post-conviction relief on the grounds that the sentenced [sic] imposed is illegal under S.C. Code Ann § 16-3-29 and *State v. Johnson*, 343 S.C. 693, 541 S.E.2d 855 (2001). R. 1-2.

After the grant of post-conviction relief, Mr. Batchelor proceeded to trial before the Honorable Keith R. Kelley and a jury. Ms. Wells represented State, and undersigned counsel represented Mr. Batchelor. Jury selection occurred on October 25, 2021 (R. 194-222), the trial judge heard pre-trial motions on October 29, 2021 (R. 224-98), and the trial lasted from November 1 to 4, 2021 (R. 299-783). The jurors convicted Mr. Batchelor of attempted murder (R. 772), and Judge Kelley imposed a sentence of imprisonment for thirty years. R. 780.

On November 13, 2021, Mr. Batchelor moved for a new trial and, in the alternative, for the trial judge to reconsider the sentence. R. 127-42. The trial judge convened hearings on December 8, 2021 (R. 865-84) and February 3, 2022 (R. 885-91) The trial judge denied the post-trial motions on February 3, 2022 but did not issue a written order. R. 886-89. This appeal follows.

STATEMENT OF FACTS

Johnathan and Stephanie met in 2010 and married on September 21, 2012. In January 2016, Johnathan Batchelor was a mechanic at Spartanburg Dodge. He worked from 8:00 a.m. to 5:00 p.m. His wife, Stephanie Nicole Batchelor,¹ worked at Kay Jewelers in the Westgate Mall as a floor salesperson. She worked from 4:00 or 5:00 p.m. to 9:00 or 9:30 p.m. She normally followed a co-worker to the bank to make the bank deposit before returning home around 9:30 or 9:45 p.m. They lived in a house they purchased together with their two sons, ages one and three. They used various strategies for daycare for their children. Johnathon fed the children around 6:00 or 7:00 p.m. and put them to bed around 8:30 p.m. After putting the children to bed, Johnathon would watch TV or “play on the play station.” After Stephanie got home, it was not unusual for Johnathan to go to the 7-11 convenience store to get a snack or rent a movie from the Redbox. They usually went to bed around 11:30 p.m. or midnight. R. 364-65, 387-89, 656-61.

On January 7, 2016, Johnathan woke up at 7:00 a.m., got to work at 8:00 a.m., and left work at 4:30 p.m. Johnathan went straight home because Stephanie was keeping their two sons and his sister’s son. Stephanie had to be at work at 5:00 p.m. Johnathan’s sister picked up her son at 5:30 p.m. Johnathan put his sons to bed at 8:30 p.m. At 9:23 p.m., Stephanie called Johnathan, and they talked for thirteen minutes while Stephanie drove home. When Stephanie was about to pull into the driveway, Johnathan started taking a shower. Johnathan normally takes a thirty-to-forty-five-minute shower, using hot water,

¹ Johnathan and Stephanie met in 2010 and married on September 21, 2021. R. 364, 658.

because he has a bad back and a bad knee from years of “manual labor and improper lifting.” “The hot water helps soothe the pain.” R. 661-64.

When Johnathan got out of the shower, he did not see Stephanie in the house. He went to the back door, where the kitchen is located, and did not see Stephanie’s car in the garage. Johnathan opened the door and saw blood on the ramp leading to the door. Johnathan heard Stephanie calling his name. Johnathan ran to her and called 911. Johnathan stayed on the phone for ten or eleven minutes. It took a long time for the police and EMS to arrive. After EMS arrived, Johnathan called Stephanie’s aunt to watch the children and went back into the house to get the keys to his truck to go to the hospital. Law enforcement interviewed Johnathan before he went to the hospital. R. 355, 664-66, 676-78. Defense Exhibit 1.²

Spartanburg County Deputy Kristin Malpass was the first law enforcement officer to arrive at the Batchelors’ home. She arrived within ten minutes of the 911 call. Johnathan, who appeared to be in shock, “flagged” her down and “took” her to Stephanie, who was “lying face down in the grass in the side yard,” wrapped up in a blanket. Stephanie “appeared to be very tired, very distraught, and at some points annoyed.” Stephanie identified herself, provided her date of birth, engaged in “a little bit of conversation,” and reported she felt like she was shot. Stephanie repeatedly told Deputy Malpass she did not know what happened to her.³ After EMS took Stephanie to the hospital, Deputy Malpass

² Defense Exhibit 1 is a USB drive containing the audiotape of the 911 call and a portion of the videotape from Deputy Malpass’ body worn camera. The State objected to Mr. Batchelor presenting this evidence, but the trial judge overruled the objections. R. 666-75.

³ Stephanie acknowledged she did not identify anyone as the person who shot her. R. 378.

walked through the Batchelors' home, checked on the children, and observed the tub in the master bathroom was wet. R. 334-58; State's Exhibits 1 to 15, R. 800-11.

Spartanburg County Sheriff Office Investigator William Gary interviewed Stephanie at the hospital before she went into surgery. Stephanie was not able to tell the investigator anything about what had happened to her. R. 400-03. Investigator Gary interviewed Johnathan for thirty minutes on January 8, 2016. Johnathan gave consent for law enforcement to examine Stephanie's cellphone and informed Investigator Gary that examining the phone would show that he and Stephanie had been "arguing about her engagement ring being lost." According to Investigator Gary, during this conversation, Johnathan became a suspect. R. 422-25.

Stephanie was in a medically induced coma for a week.⁴ She woke up confused and "couldn't really talk" because of a tracheotomy. R. 379-81.

At trial, Stephanie testified differently from what she told Deputy Malpass. After getting off work at Kay Jewelers and assisting with the bank deposit, Stephanie talked to Johnathan while she drove home. She pulled into the driveway, waited for the garage door to open, and pulled into the garage. She unbuckled the seatbelt, sat for a minute listening to the radio, and reached for her pocketbook and cellphone. Stephanie claimed Johnathan "flung open" the car door and "pulled" her out of the car. She walked up the ramp that leads to the door. She claimed Johnathan hit her "over and over" with a long orange baseball bat. She claimed Johnathan dragged her "face up" by her feet "out of the garage to the side of the house." She claimed Johnathan disappeared, "reappeared at her feet," and

⁴ Dr. Brian Thurston testified about Stephanie Batchelor's injuries and treatment. R. 616-32.

shot her. Her memory is “kind of fuzzy,” but Stephanie recalls hearing Johnathan direct the first responders to their house and Deputy Malpass talking to her. R. 369-70, 374-81.

On cross-examination, Stephanie acknowledged talking to law enforcement several times. Stephanie recalled talking to Deputy Malpass, understanding her questions, and telling the first responder that she did not know what happened to her. Stephanie claimed not to recall the conversation with law enforcement on January 18, 2016, when she told law enforcement that Johnathan was not the person who attacked her, even though law enforcement believed Johnathan was the assailant.⁵ It wasn’t until January 25, 2016, that Stephanie finally claimed Johnathan attacked her. R. 389-93, 397.

The Spartanburg County Sheriff’s office processed the crime scene for evidence. They took photographs and collected evidence. Law enforcement located Stephanie’s car on the side of the road, near a bridge over the Tyger River, 1.5 miles from the Batchelors’ home. Travis Woods, a first responder with the fire department, arrived at the location of the car. The car was still running, and Mr. Woods turned off the ignition. According to Investigator Gary, it takes three minutes to drive from the house to the location of the car and driving from the house to the location of the car and walking back to the house takes twenty-five minutes, fifteen seconds. Law enforcement deployed a canine tracking team but was unable to track the perpetrator. The dive team searched the river but did not find any evidence. Law enforcement took the car to an impound lot for evidence processing. R. 404-22, 437-38, 443-46, 504-27.

⁵ Stephanie did acknowledge making inconsistent statements about whether she parked inside the garage or outside the garage on the driveway. R. 391.

During the investigation, law enforcement collected DNA samples from the steering wheel of Stephanie's car and gunshot residue swabs from Johnathan and Stephanie. Law enforcement collected two projectiles—one at the Batchelor residence and one from the pathology department at Spartanburg Regional Hospital. None of the forensic evidence pointed to Johnathan Batchelor. There was not any gunshot residue on Johnathan's hands. The DNA on the steering wheel of the Stephanie's car belonged to Stephanie and an unknown male. Both Johnathan Batchelor and Travis Woods, who turned off the ignition, were excluded as donors of this DNA evidence. R. 404-22, 446-49, 457-60.

Law enforcement also collected two projectiles. One projectile was found at the Batchelor residence "between the driveway and the garage," which was described as a .38 caliber projectile. The other projectile was recovered from Ms. Batchelor at Spartanburg Regional Hospital, which was described as a 9mm projectile. Greenville County analyzed the two projectiles. The Firearms/Tool Mark Report did not definitively identify the caliber of the bullet. Rather, the report identified each projectile as "a caliber 38/9mm fired bullet specimen." The report concluded two projectiles "bear similar but insufficient microscopic marks to permit a positive identification to each other." R. 137-38, 233-41, 415-20, 448-49, 458, 650-52.

Without any forensic evidence, the prosecution relied on an extra-material affair between Johnathan Batchelor and Sydney Allen as evidence of motive. This evidence will be discussed in Section V below. The State also relied on the jailhouse informant testimony of a convicted drug trafficker. This evidence will be discussed in detail in Sections II and III below.

STANDARD OF REVIEW

“In criminal cases, this Court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown.” *State v. Blackwell*, 420 S.C. 127, 136, 801 S.E.2d 713, 718 (2017) (internal citations and quotations omitted). “An abuse of discretion occurs when the court’s decision is unsupported by the evidence or controlled by an error of law.” *Id.*

Before a federal constitutional error can be held harmless the reviewing court must be able to declare a belief that it was harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18 (1967). “Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial.” *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (internal quotations omitted) (quoting *State v. Key*, 256 S.C. 90, 93, 180 S.E.2d 888, 890 (1971)). This Court does “not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict.” *State v. Reyes*, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020) (citing *State v. Tapp*, 398 S.C. 376, 389-90, 728 S.E.2d 468, 475 (2012)). In cases like this one, when “credibility” is the “most critical determination” for jurors to make in the case, the error is not harmless. *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 95 (2011).

ARGUMENTS

Question I

Did the trial judge err as a matter of law by denying Johnathan Batchelor’s motion to dismiss when the law enforcement destroyed the physical evidence in the case without providing Mr. Batchelor with his due process opportunity to independently examine two projectiles to establish that two weapons were used in the assault on his wife, thereby contradicting the State’s theory of the case and establishing his actual innocence?

On June 17, 2021, Mr. Batchelor moved the trial court “for an order dismissing this case based on law enforcement’s destruction of all of the physical evidence in this case,” identifying the appropriate standard:

To establish a due process violation,^[6] a defendant must demonstrate (1) that the State destroyed the evidence in bad faith, or (2) that the evidence possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means.

R. * (quoting *State v. Cheeseboro*, 346 S.C. 526, 538-39, 552 S.E.2d 300, 307 (2001)). In his pre-trial brief, Mr. Batchelor additionally called the trial court’s attention to *Arizona v. Youngblood*, 488 U.S. 51 (1988). R. 32.

On October 29, 2021, the trial court convened a hearing on the motion. After Mr. Batchelor’s *Alford* plea, there was “communication within the sheriff’s office about whether or not the evidence needed to be retained,” and “the decision was made to destroy the evidence” before the one-year statute of limitations for Mr. Batchelor to file an application for post-conviction relief.⁷ Mr. Batchelor called the trial court’s attention to

⁶ U.S. Const. Am. XIV; S.C. Const. Art. I, § 3.

⁷ “An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.” S.C. Code Ann. § 17-27-45(A).

S.C. Code Ann. § 17-28-320 which requires “[a] custodian of evidence must preserve all physical evidence and biological material related to the conviction or adjudication of a person for” certain offenses. Although the statute does not

specifically list attempted murder, it does list murder and several other crimes. And construing that in favor of Mr. Batchelor and against the state that evidence should have been preserved under that statute as well.

Mr. Batchelor argued he “is prejudiced” for two reasons. First, two projectiles collected for evidence were “destroyed” and he “will not be able to have those examined by an expert.” He noted that the discovery contains “speculation” and “opinions” about the evidence that he could not refute without “actually being able to examine the fragments or the projectiles.” Second, Mr. Batchelor noted his PCR application “raise[d] a number of grounds of ineffective assistance of counsel that are unadjudicated” and the “prejudice flowing from the prior representation put him in a particularly [] tough situation as far as being able to confront the evidence.” R. 226-28.

The State acknowledged “the evidence was destroyed” but argued the evidence was destroyed pursuant to an evidence retention policy and not in bad faith. The State also argued the evidence did not contain exculpatory value that could not be obtained by other means, such as through the reports generated from examination of the evidence. The State argued, “We don’t have things that are unknown.” R. 228-33.

In response, Mr. Batchelor argued any “evidence retention policy” that does not respect the “well-known statutes of limitations” for filing a PCR application and a federal petition for writ of habeas corpus “is a bad faith policy.” Trial counsel reminded the trial judge that Mr. Batchelor wants to examine the “two projectiles, one which was found in the driveway and one which was removed from Stephanie Batchelor at the hospital. Law

enforcement described the projectiles as “different” types of ammunition. One projectile was found at the Batchelor residence “between the driveway and the garage,” which was described as a .38 caliber projectile. The other projectile was recovered from Ms. Batchelor at Spartanburg Regional Hospital, which was described as a 9mm projectile. Greenville County analyzed the two projectiles. The Firearms/Tool Mark Report did not definitively identify the caliber of the bullet. Rather, the report identified each projectile as “a caliber 38/9mm fired bullet specimen.” The report concluded two projectiles “bear similar but insufficient microscopic marks to permit a positive identification to each other.” R. 233-41, 415-20, 448-49, 458, 650-52. Mr. Batchelor argued the exculpatory nature of this evidence is “readily apparent” because “actually having these bullets examined” could establish his innocence” or “a reasonable doubt,” and he cannot get that evidence “from any other source other than actually having these bullets examined.” The trial judge examined the ballistics report and took the motion under advisement. R. 137-38, 233-41.

On November 1, 2021, the trial judge denied the motion, finding the evidence was not destroyed in bad faith, the evidence did not possess “an exculpatory value apparent before the evidence was destroyed,” and Mr. Batchelor “can obtain other evidence of comparable value by other means.” R. 233-34.

The trial judge erred as a matter of law by not dismissing the case pursuant to *Youngblood* and *Cheeseboro*. As seen, the law enforcement investigation identified two different calibers of projectiles—a .38 caliber projectile and a 9mm projectile—that cannot be matched to the same gun. The Firearms/Tool Mark Report conflated these two different calibers in the description of the projectiles tested, which gives the reader of the report the false impression that the projectiles are identical calibers. The only way for Mr. Batchelor

to resolve this discrepancy would be for him to have an expert conduct an independent examination of the projectiles, but law enforcement destroyed this evidence. This Court, accordingly, should reverse the trial court and dismiss the charge.

Question II

Did the trial court err by failing to exclude the testimony of Dustin Tiller, a jailhouse informant, serving a federal court sentence for conspiracy to traffic methamphetamine, when the trial judge operated under the mistaken impression that the court lacked the authority to evaluate the reliability of the informant's testimony?

Prior to trial, Johnathan Batchelor moved the trial court “to convene a hearing regarding the reliability and admissibility of [Dustin] Tiller’s testimony and to issue an order excluding this testimony.” R. 33-35. Mr. Tiller’s federal court plea agreement (R. 48-62) and sentencing transcript (R. 66-124) were attached to the motion.

On March 17, 2017, Mr. Tiller entered into a plea agreement with the United States Attorney to plead guilty to one count of conspiring “to Possess with the Intent to Distribute 500 grams or more of” methamphetamine. R. 48-49. Based on the offense and his criminal history, Mr. Tiller faced “a mandatory term of life imprisonment, no probation, no parole, a fine of \$20,000,000, plus a special assessment of \$100.” R. 49. Mr. Tiller entered his guilty plea on March 23, 2017 (R. 64), and his sentencing hearing was delayed fifteen months until June 26, 2021 (R. 66).

Based on Mr. Tiller’s cooperation, the government moved for a downward departure and planned to recommend a sentence of 240 months. R. 80. But, as Mr. Tiller’s attorney candidly stated, “[T]ime creates new situations and puts new stuff into play. And that’s exactly what happened here.” R. 91. “[B]ecasue of the information that he provided related to Ms. Well’s state [court] case” involving Mr. Batchelor, the United States Attorney “thought it was important to go a bit lower” and recommended the United States

District Court sentence Mr. Tiller to 220 months. R. 34. Indeed, Ms. Wells appeared in the District Court and spoke on Mr. Tiller's behalf. R. 70-74. Based on his participation in an investigation involving drug trafficking and corruption in the South Carolina Department of Corrections, Mr. Tiller hopes the government will bring a motion under Rule 35 of the Federal Rules of Criminal procedure to further reduced his sentence. R. 97, 99, 114, 121, 125.

The prosecutor proffered Dustin Tiller's testimony outside the presence of Johnathan Batchelor's jurors. Mr. Tiller was brought into the courtroom in full shackles, because he was serving a sentence in the federal penitentiary in Yazoo, Mississippi for conspiracy to traffic methamphetamine. Prior to his current conviction and sentence, Mr. Tiller had a state court conviction for trafficking drugs and another federal court conviction for trafficking drugs. Mr. Tiller acknowledged facing a mandatory sentence of life imprisonment, but he entered into a plea agreement with the United States Attorney for a reduced sentence. R. 463-77, 484-94; Court's Exhibit 4; State's Exhibit 64.

Prior to sentencing in federal court, Mr. Tiller was housed in the Spartanburg County Detention Center, in the same dorm as Johnathan Batchelor. They attended the same Bible study. Mr. Tiller was aware of where Johnathan Batchelor kept his legal materials. Mr. Tiller claimed Johnathan told him about meeting a redheaded girl at work, arguing with his wife, and his wife gaining weight after having a baby. Regarding the incident in this case, Mr. Tiller claimed Johnathan admitted he "went outside and hid," shot his wife "when she came into the garage," and thought she was dead. Mr. Tiller claimed that, when Johnathan returned from hiding the gun, his wife had "crawled" to the white Explorer. Mr. Tiller further claimed Johnathan "yanked" his wife out of the car, made it

look “like it was a robbery,” and took the Explorer to the bridge to make it look like a “carjacking.” R. 477-84, 607.

After Mr. Tiller came forward with the claim that Johnathan admitted to him that he tried to kill his wife, the United States Attorney reduced the government’s recommended sentence from 240 months to 220 months. Jennifer Wells, the Solicitor who prosecuted Mr. Batchelor, spoke at Mr. Tiller’s federal court sentencing hearing. Mr. Tiller hopes for an additional downward departure in the future. R. 484-94.

The trial court heard arguments on Mr. Batchelor’s motion to exclude Dustin Tiller’s testimony. In denying the motion, the trial judge declined to “weigh the evidence” and consider the reliability or credibility of any witness or any evidence,” ultimately ruling “if there is any evidence at all, it goes to the jury and that’s where it’s going.” Mr. Batchelor expressly “disagree[ed] with the Court not weighing the evidence as far as admissibility,” noting that the trial judge had already done so when considering the State’s motion to limit evidence of third-party guilt. R. 495-503.

Over objection, Dustin Tiller testified in front of the jurors in full shackles.⁸ He repeated his testimony about his criminal history, most recent federal court conviction and sentence for conspiracy to traffic methamphetamine, and plea agreement, sentencing downward departure from mandatory life imprisonment, and the statements he claimed Johnathan Batchelor made to him at the Spartanburg County Detention Center. He also acknowledged knowing where Mr. Batchelor kept his legal materials. R. 565-87, 605-09; State’s Exhibit 64, R. 449-63.

⁸ A uniformed officer guarded Mr. Tiller during his testimony in front of the jurors. Later in the trial, this same uniformed officer guarded Johnathan Batchelor during his testimony before the jurors.

The trial judge limited Mr. Batchelor's cross-examination. The trial court prohibited Mr. Batchelor from asking Mr. Tiller questions about his conversation with his attorney, regarding the federal court sentence, based on the attorney-client privilege. Mr. Batchelor pointed out that Mr. Tiller already waived his attorney-client privilege by already testifying about those conversations. The trial judge also prohibited Mr. Batchelor from questioning Mr. Tiller about Ms. Wells appearing at his federal court sentencing hearing and his hopes Ms. Wells would assist him with an additional downward departure on his federal sentence. The trial judge allowed Mr. Batchelor to question Mr. Tiller about the United States Attorney reducing the government's sentencing recommendation by twenty months, but the trial court prohibited Mr. Batchelor from asking Mr. Tiller about how that twenty-month reduction was linked to his prior cooperation in Mr. Batchelor's prosecution. R. 587-614.

A wealth of research documents due process concerns surrounding jailhouse informant testimony that results in wrongful convictions. *See, e.g.*, Brandon L. Garrett, *Judging Innocence*, 108 Colum. L. Rev. 55 (2008); Alexandra Natapoff, *Beyond Unreliable: How Snitches Contribute to Wrongful Convictions*, 37 Golden Gate U. L. Rev. 107, 112 (2006); Alexandra Natapoff, *Snitching: The Institutional and Communal Consequences*, 73 U. Cin. L. Rev. 645 (2004); Ian Weinstein, *Regulating the Market for Snitches*, 47 Buff. L. Rev. 563, 577 (1999). The innocence project recommends:

At minimum, before allowing for the admissibility of jailhouse informant testimony at trial, the court should make a finding relating to reliability and consider the following factors:

- Complete criminal history of the jailhouse informant.
- Any deal, promise, inducement or benefit that the offering party has or will make in the future to the jailhouse informant.

- Time, place and substance of the accused's statements allegedly heard by the jailhouse informant, time and place of their disclosure to law enforcement, and the names of all people who were present when the statements were made.
- Whether at any time the jailhouse informant recanted his or her statements and details of the recantation.
- Other cases in which the jailhouse informant provided testimony or information on other inmates and any benefits provided in those cases.
- Other information relevant to credibility.

R. 125-26.

The trial judge operated under the misconception that the court lacked the authority to weigh Mr. Tiller's testimony, consider the credibility of that testimony, and exclude the testimony from the trial. Although convening an *in camera* hearing regarding Mr. Tiller's testimony, the trial court declined to exercise its discretion to consider the admissibility of the testimony by stating trial courts do not weigh evidence and when there is a scintilla of evidence this Court allows jurors to consider it. *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) ("A failure to exercise discretion amounts to an abuse of that discretion."). In doing so this Court conflated the directed verdict standard with the standard for admissibility. *See, e.g., State v. Cherry*, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.").

The trial court also overlooked its gatekeeping function, which requires it to consider the reliability of the evidence. *See, e.g., State v. Cope*, 405 S.C. 317, 341, 748 S.E.2d 194, 206 (2013) ("[E]vidence of third-party guilt that only tends to raise a

conjectural inference that the third party, rather than the defendant, committed the crime should be excluded.”); *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010) (“[T]he trial court must evaluate the substance of the [expert] testimony and determine whether it is reliable.”); *State v. Tutton*, 354 S.C. 319, 325, 580 S.E.2d 186, 189 (Ct. App. 2003) (“To be admissible, a prior bad act must first be established by clear and convincing evidence.”).

This Court, accordingly, should reverse the trial court, suppress the testimony of Dustin Tiller, and order a new trial.

Question III

Did the trial court err by limiting Johnathan Batchelor’s cross-examination of Dustin Tiller—in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution—by prohibiting Mr. Batchelor from questioning Mr. Tiller about his conversation with his plea counsel after waiving the attorney-client privilege by testifying about those conversations, prohibiting Mr. Batchelor from questioning Mr. Tiller about the Solicitor speaking in favor of Mr. Tiller at his federal court sentencing hearing, and limiting Mr. Batchelor’s questioning of Mr. Tiller regarding the twenty-month reduction in his federal that he already received for his cooperation in Mr. Batchelor’s prosecution?

As seen in Section II above, the trial judge limited Johnathan Batchelor’s cross-examination of Dustin Tiller. The trial court prohibited Mr. Batchelor from asking Mr. Tiller questions about his conversation with his attorney, regarding the federal court sentence, based on the attorney-client privilege, even after Mr. Batchelor pointed out that Mr. Tiller already waived his attorney-client privilege by already testifying about those conversations. E.g. *Floyd v. Floyd*, 365 S.C. 56, 90, 615 S.E.2d 465, 483 (Ct. App. 2005) (“Any voluntary disclosure by a client to a third party waives the attorney-client privilege not only as to the specific communication disclosed, but also to all communications between the same attorney and the same client on the same subject.”)

The trial judge also prohibited Mr. Batchelor from questioning Mr. Tiller about Ms. Wells appearing at his federal court sentencing hearing and his hopes Ms. Wells would assist him with an additional downward departure on his federal sentence. The trial judge allowed Mr. Batchelor to question Mr. Tiller about the United States Attorney reducing the government's sentencing recommendation by twenty months but prohibited him from asking Mr. Tiller about how that twenty-month reduction was linked to his prior cooperation in Mr. Batchelor's prosecution. R. 587-614.

The trial court denied Mr. Batchelor his fundamental Sixth Amendment right to confront and cross-examine Dustin Tiller. *See also* S.C. Const. Art. I, § 14; S.C. Code Ann. § 17-23-60. Although allowing cross-examination about the plea agreement with the United States Attorney, the trial court prevented Mr. Batchelor from cross-examining Mr. Tiller about how his cooperation in this case influenced the downward departure from a mandatory life without parole sentence.⁹ Specifically, Mr. Batchelor wanted to question Mr. Tiller about the United States Attorney reducing the government's recommendation from 240 months to 220 months because of his cooperation in this case. Mr. Batchelor also wanted to question Mr. Tiller about Ms. Wells speaking on his behalf in Federal Court during his sentencing hearing. These limitations allowed the Solicitor to suggest to the jurors that Mr. Tiller did not gain anything from his cooperation in Mr. Batchelor's case and argue only the District Court Judge could further reduce Mr. Tiller's sentence. R. 749-50. While it is technically true that only the District Court Judge can reduce Mr. Tiller's sentence, this argument is misleading to the jurors because resentencing cannot occur

⁹ Mr. Batchelor's proffer includes his cross-examination of Mr. Tiller during the *in camera* hearing and the transcript of Mr. Tiller's sentencing hearing attached as Exhibit D to his Tre-Trial Brief. R. 65-124, 601-02.

without a motion from the United States Attorney and the District Court Judge is required to consider all of the information presented in a sentencing hearing, which previously included Ms. Wells presentation and might include her presentation in the future. Mr. Batchelor could have cured this misleading argument through cross-examination. *See, e.g., State v. Blurton*, 342 S.C. 500, 512, 537 S.E.2d 291, 298 (Ct. App. 2000) (“The prosecutor accused Blurton of a recent fabrication, an accusation which could not have been seriously made if the trial court had properly admitted the taped telephone conversations between Blurton and Mayfield.”) *reversed on other grounds by State v. Blurton*, 352 S.C. 203, 573 S.E.2d 802 (2002).

The Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution guarantee the right of an accused to confront and cross-examine the witnesses who testify against him. “Included in the Confrontation Clause protection is the right to cross-examine any State’s witness as to possible sentences faced when there exists a substantial possibility the witness would give biased testimony in an effort to have the solicitor highlight to a future court how the witness cooperated in the instant case.” *State v. Gillian*, 360 S.C. 433, 454, 602 S.E.2d 62, 73 (Ct. App. 2004) (internal quotations omitted) *affirmed as modified on other grounds*, 373 S.C. 601, 646 S.E.2d 872 (2007). *See also State v. Sims*, 348 S.C. 16, 25, 558 S.E.2d 518, 523 (2002) (“Because of the number of charges pending against [the witness] and the severity of the potential sentences, we find the evidence was probative on the issue of bias and should have been admitted.”); *State v. Mizzell*, 349 S.C. 326, 334, 563 S.E.2d 315, 319 (2002) (“We believe the defendant’s Sixth Amendment right to effective cross-examination in this case outweighs the right of the State to shield the jury from knowledge of the possible