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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Jasper County

Honorable J. Derham Cole, Circuit Court Judge

DAVID ERIC HUGUE, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000054

APPENDIX

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In the Court of General Sessions for the
State of South Carolina, County of Jasper

Case No.: 2017GS2700151
2017GS2700153

State of South Carolina,
Plaintiff(s),
vs.
David Eric Hugue, Jr.,
Defendant(s).

Transcript of Record

10-28-2019 thru 10-31-2019
Ridgeland, South Carolina

BEFORE:
The Honorable R. Ferrell Cothran, Jr.

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10-28-2019 PROCEEDINGS

THE COURT: All right. Call your case.

MR. WHETSEL: Yes, sir. State calls David Hugue, proceed on two separate indictments, 27GS27151 and 153, chare of murder and a charge of possession of a weapon during the commission of a violent crime.

THE COURT: All right. Ladies and gentlemen, if you will give me your attention, we are about to begin the trial of the State versus David Hugue.

Any members of the jury panel connected by blood or marriage, close personal friend, or social relations with Mr. Hugue? If so, please stand.

(No response.)

THE COURT: I'm going to read out a list of potential witnesses in this case. I need to know the same information, whether you are connected by blood or marriage, close personal friend, social relations with any of these potential witnesses.

Rusty Wells with the Jasper County Emergency Services. Steven Kenyon. Suzann Cromer. Megan Fletcher. Sarah Zapata. Todd Harvey. Dr. Angelina Phillips. Investigator Dylan Hightower. Jennifer Dalmida. Gary Scott. Linda Hugue. Derrick Heyward. Kyle Riley. Sergeant Jared Phillips. Mike Atwood. Kevin Smith, Elvin Wright. Gary Morris, Joe Bailey,

John Croft. Garrett Cooper, Justin Rose. Linda Hugue. Sharese Castro. Lavon Deals. Samuel Johnson. Brenda Walker. Tiffany Evans.

Any members of the jury panel connected by blood or marriage, close personal friends, social relations with any of those potential witnesses? If so, would you please stand.

(No response.)

THE COURT: All right. The attorneys involved in this case, representing the Solicitor's office is Dustin Whetsel, and Defense is Diane Dewitt. Any members of the jury panel connected by blood or marriage, close personal friends, social relations with either one of these lawyers, or has anyone been represented by them? If so, please stand.

(No response.)

THE COURT: This incident allegely occurred -- Mr. Whetsel?

MR. WHETSEL: February 18th of 2017, Your Honor.

THE COURT: Okay. Occurred on or about February the 18th, 2017. Any members of the jury panel formed or expressed an opinion about any of the issues or matters involved in this case or know anything about this case? If so, please stand.

(No response.)

THE COURT: Any members of the jury panel or a member of your immediate family presently a law enforcement employee? If so, please stand.

Anybody work for law enforcement? Yes, ma'am.

THE JUROR: I have a retired cousin who -- Mr. Spencer, who is in the Beaufort County Sheriff's Department, and my daughter-in-law is the 911 phone operator for Jasper County.

THE COURT: Okay. Your daughter-in-law is the 911 operator?

THE JUROR: Yes, sir.

THE COURT: And what is your number, please, ma'am?

THE JUROR: I'm not sure what my number is.

THE CLERK: Number 52.

THE COURT: Would that affect your ability to be fair and impartial?

THE JUROR: No, sir.

THE COURT: Thank you, ma'am.

Yes, sir.

THE JUROR: I missed the very first part.

THE COURT: Are you or any member of your family, immediate family, presently employed with law enforcement in any way, or been formerly employed with law enforcement?

THE JUROR: My father and grandfather were former police officers.

THE COURT: Here?

THE JUROR: Not here.

THE COURT: Would that affect your ability to be fair and impartial?

THE JUROR: No.

THE COURT: What was your number, please, sir?

THE JUROR: Thirty-five, I believe.

THE CLERK: No. 35. Okay. Thank you.

Yes, sir.

THE JUROR: Yes, sir. I know one of the witnesses and my mother is a sheriff -- not a sheriff, but an officer.

THE COURT: Okay. What is your number, please, sir?

THE CLERK: 193.

THE COURT: Okay. And which one of the witnesses do you know?

THE JUROR: Walker.

THE COURT: Walker. The fact that you know a potential witness in this case, would that affect your ability to be fair and impartial?

THE JUROR: No, not really, but I just --

THE COURT: You can listen to the evidence and be

fair, both to the State and this Defendant?

THE JUROR: Yes.

THE COURT: Okay. Thank you, sir.

Okay. Any member of the jury panel employed or close personal friends with anyone in the 14th Circuit Solicitor's Office? If so, please stand.

(No response.)

THE COURT: Any members of the jury panel a member of your immediate family, close personal friend, or ever been represented by Eric Staggs? If so, please stand.

(No response.)

THE COURT: Any member of the jury panel seen or read any news coverage concerning this case? If so, please stand.

(No response.)

THE COURT: Any members of the jury panel or member of your immediate family presently or past member of the Hope Haven of Lowcountry Child Abuse Victim's Association, Citizens Opposed to Domestic Violence, MADD, or any other victim's rights organization? If so, please stand.

(No response.)

THE COURT: Any member of the jury panel or member of your immediate family a member of the NRA? If so,

please stand.

Yes, ma'am.

THE JUROR: My husband is a member of the NRA.

THE COURT: What is your number?

THE JUROR: No. 194.

THE COURT: Would that affect your ability to be fair and impartial?

THE JUROR: No.

THE COURT: Thank you.

Yes.

THE JUROR: My husband is also a member.

THE COURT: What is your number?

THE JUROR: I'm not sure, last name is --

THE CLERK: It's No. 163.

THE COURT: Okay. Would that affect your ability to be fair and impartial?

THE JUROR: No, sir.

THE COURT: Thank you. Does any member of the jury panel watch any T.V. shows or any shows involving law enforcement, the police, CSI -- any of that affect your ability to be fair and impartial to listen to the evidence in this case and judge it fairly?

(No response.)

THE COURT: Okay. Any member of the jury panel know of any reason whatsoever they can't be fair

towards the State of South Carolina and this Defendant? If so, please stand.

(No response.)

THE COURT: Any member aware of any bias or prejudice either towards the State, law enforcement, or this Defendant? If so, please stand.

(No response.)

THE COURT: Any member of the jury panel sat on the grand jury that heard this case? If so, please stand.

(No response.)

THE COURT: Any member of the jury panel who has a religious or moral position that would keep you from judging your fellow man? If so, please stand.

(No response.)

THE COURT: Any member of the jury panel know any reason whatsoever that they can't give the State of South Carolina or this Defendant a fair and impartial trial? If so, please stand.

(No response.)

THE COURT: Any further questions from the State?

MR. WHETSEL: No, sir. Thank you.

THE COURT: From the Defense?

MS. DEWITT: No, Your Honor. Thank you.

THE COURT: All right. Madam Clerk, if you will

give me a jury.

How many alternates do y'all want?

MR. WHETSEL: I would recommend two, Your Honor.

THE COURT: Okay. It's five and ten.

MR. WHETSEL: Yes, sir.

THE COURT: Ladies and gentlemen, your names are being scrambled in this computer, and they will be printed out, and we will call you up here one at a time.

We used to have a blind person who did this, now we have a blind computer that does it. And sometimes the blind person was a lot faster.

Do they come forward or stand up?

THE CLERK: Stand.

THE COURT: Stand up?

THE CLERK: Yes, sir.

THE COURT: Any objection to that from either side?

MR. WHETSEL: Not from the State.

MS. DEWITT: Not from the Defense.

THE COURT: They tell me all y'all have to do is stand up. In my courthouse, you have to come forward and stand up in front, but y'all don't have to do that.

THE CLERK: Juror No. 186, Khaytie Shaw. How says the State?

MR. WHETSEL: Please present this juror.

THE CLERK: How says the Defense?

MS. DEWITT: Please seat the juror.

THE CLERK: Thank you, ma'am. Please come forward, ma'am. Have a seat in the jury box.

Juror No. 12, Janet Bass. How says the State?

MR. WHETSEL: Please present this juror.

THE CLERK: How says the Defense?

MS. DEWITT: Accept the juror.

THE CLERK: Please come forward, ma'am. Have a seat in the jury box.

Juror No. 238, Timothy Williams. How says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Seat the juror, please.

THE CLERK: Come forward, have a seat in the jury box.

Juror No. 35, Jeffrey Cobb, Junior. How says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Excuse the juror, please.

THE CLERK: Thank you, sir. You may have a seat.

Juror NO. 38, Madison Conner. How says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Accept the juror, please.

THE CLERK: Come forward, ma'am. Have a seat in the jury box.

Juror No. 209, Sheila Terry. How says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Excuse the juror, please.

THE COURT: Thank you, ma'am. Have a seat.

Juror No. 193, Karrem Singleton. How says the State?

MR. WHETSEL: Please excuse this juror.

THE CLERK: Thank you, sir. Please have a seat.

Juror No. 180, Leroy Ryans. How says the State?

MR. WHETSEL: Please present this juror.

THE CLERK: How says the Defense?

MS. DEWITT: Seat the juror, please.

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

Juror No. 168, Ellen Rhinehart. How says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Excuse the juror, please.

THE CLERK: Thank you, ma'am. Please have a seat.

Juror No. 14, Bruce Bennett. How --

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Excuse the juror, please.

THE CLERK: Thank you, sir. Have a seat.

Juror No. 17, Peter Berntson. How says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Seat the juror, please.

THE CLERK: Thank you.

Juror No. 163, Clarice Pinder. How says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Excuse the juror, please.

THE CLERK: Excused. Thank you.

Juror No. 240, Kathleen Wilson. How says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Seat the juror, please.

THE CLERK: Come forward, ma'am. Have a seat in the jury box.

Juror No. 42, Trevor Cormack. How says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Seat the juror, please.

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

THE CLERK: Juror No. 39, Gwendolyn Cooler.

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Are you waiting to hear from me?

THE CLERK: Yes, ma'am.

MS. DEWITT: Okay. Seat the juror, please.

THE CLERK: Okay. Thank you.

Juror No. 159, Antonio Paul. How says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Seat the juror, please.

THE COURT: Come forward, sir.

Juror No. 237, Sandy Williams. How says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Seat the juror, please.

THE CLERK: Please come forward, ma'am.

THE CLERK: Juror No. 59, Arnold Elander. How

says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Excuse the juror, please.

THE CLERK: Thank you, sir. Please have a seat.

Juror No. 52, Daphne Duncan. How says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Excuse the juror, please.

THE CLERK: Thank you, sir.

THE CLERK: Juror No. 248, Daniel Yeisley. How says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Seat the juror, please.

Please come forward, sir.

THE CLERK: Juror No. 215, Laura Tyndall.

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: We're on 215, correct?

THE CLERK: 215.

MS. DEWITT: Seat the juror, please.

THE CLERK: Come forward, ma'am.

THE CLERK: Alternate No. 1. Juror No. 220, Kevin Wagner. How says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Excuse the juror, please.

THE CLERK: Thank you, sir. Have a seat.

Juror No. 92, Jaquelle Howard. How says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Seat the juror, please.

THE CLERK: Come forward, sir, Alternate No. 1.

THE CLERK: Alternate two. Juror No. 5, Elizabeth Angeletti.

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Excuse the juror, please.

THE CLERK: Thank you, ma'am. Please have a seat.

Juror No. 63, Carol Fickling. How says the State?

MR. WHETSEL: Please present the juror.

THE CLERK: How says the Defense?

MS. DEWITT: Seat the juror, please.

THE CLERK: Come forward, ma'am. Alternate No. 2.

THE COURT: Any matters of law pertaining to the jury selection?

MR. WHETSEL: No, sir.

THE COURT: From the Defense?

MS. DEWITT: None, Your Honor.

THE COURT: Mr. Solicitor, what do you know me to do with the panel?

MR. WHETSEL: May I ask my admin solicitor. The Judge asked what to tell the panel.

MR. HALL: Madam Clerk will have a number to call for further instructions.

THE COURT: At 6:00 tonight?

MR. HALL: Yes, Your Honor.

THE CLERK: They all have the number, Your Honor.

THE COURT: Ladies and gentlemen, you should have a number on your juror card. I need you to call that number after 6:00 tonight. There will be a recording on there for you to either call back or come back. So if you don't get through the first time, keep calling. You won't get to talk to a real person, it is an answering machine. You can't argue with it, it's just going to tell you when to come back or call back. You have a nice day. Thank you.

MR. HALL: Judge, a juror approached me and asked for a number to call back. So I thought I'd let you know.

THE COURT: Okay. Ladies and gentlemen, we are not going to be able to begin this trial until in the morning. So I got some other matters that I have to

attend to this afternoon.

So what time do you want them back in the morning?

MR. WHETSEL: Your Honor, I would suggest maybe like 10:00, 10:30. We could take those other matters up in the morning and then --

THE COURT: Okay. Which one you think, 10:00 or 10:30?

MR. WHETSEL: What time do you want the panel back? I would suggest 10:00, Your Honor. Or I guess whatever time the Court wants to start. If we could have about an hour or so. Yes, sir.

THE COURT: Okay. You think it's going to take an hour?

MR. WHETSEL: I think it'll be right at that, Your Honor.

THE COURT: Okay. Well, we better do it at 10:30 then.

MR. WHETSEL: Yes, sir.

THE COURT: Because I have a hundred miles to travel.

Anyway, I need you back in the jury room at 10:30 in the morning. They will show you where the jury room is. And when you come back, you will go straight to the jury room.

In the meantime, don't discuss this case. Don't

allow anyone to discuss it with you. Don't do any research, don't Google anybody, don't get on the Internet.

Everything you learn about this case, I need you to learn in this courthouse.

If you have an emergency overnight, you need to call the clerk's office, 911, or somebody and tell them you have an emergency. Because if you don't call and you don't show up, I can't get started until all 14 of you show up.

So if I haven't heard anything from you, I'm going to send the Sheriff looking for you, and I'll bring you in. So be sure you call in.

I had a situation in one other county a year or so ago, where we broke for lunch and one of the jurors didn't come back. And when we -- and I didn't tell them about this first. And so finally, 4:00, the Sheriff found the juror and brought her in. And I said, What happened over lunch? Did you have some terrible emergency or whatever that you didn't come back?

And they said, No, my stories was on. I don't miss my stories for anything.

So stories are not emergencies. So if you watch soap operas, you got to come back. I had to explain to

her, you know -- anyway, she held us up all day and we had to start back the next day.

So that is why I start telling every juror, unless you have an emergency, you have got to be here.

I'll see you at 10:30 in the morning. You have a nice evening.

(The jury exits the courtroom at 12:15 a.m.)

THE COURT: Okay. Anything that we need to do?

MR. WHETSEL: Nothing further at this point, Your Honor.

THE COURT: Okay. I'll see you at 9:30 in the morning.

MS. DEWITT: Thank you, sir.

THE COURT: Okay.

(Court adjourned for the day. Proceedings continue on 10-29-2019.)

* * *

10-29-2019 PROCEEDINGS

THE COURT: Okay. Do you want to call any witnesses?

MR. WHETSEL: If Ms. Dewitt is challenging voluntariness, I would like to call a couple of brief witnesses just to go through some minor questions, Judge.

MS. DEWITT: Yes. Yes, I would like you to.

MR. WHETSEL: Okay. Can we first call Lieutenant Atwood, Mike Atwood?

Thereupon,

MIKE ATWOOD

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Mr. Atwood, sir, would you state your full name and spell it for the record.

A Full name is Michael, M-I-C-H-A-E-L; last name is Atwood, A-T-W-O-O-D.

Q And for whom do you work?

A Jasper County Sheriff's Office.

Q What is your current rank?

A Lieutenant.

Q And you're a lieutenant of what division?

A Investigations, narcotics.

Q Mr. Atwood, I'll just jump right to it. Were you involved in the investigation of this particular case?

A I was.

Q And I just want to talk about the statement that you took from Mr. Hugue. Did you respond out to [redacted] Bellgrove the night of the murder?

A I did.

Q And was that back on February the 18th, 2017?

A It was.

Q And did you make contact with David Hugue?

A Yes, sir.

Q And do you recognize Mr. Hugue in court?

A Yes, sir.

Q Just, would you identify him, just for the record?

A The gentleman right there with the white shirt.

MR. WHETSEL: Just so the record reflects, Your Honor, Mr. Atwood pointed to Mr. Hugue.

BY MR. WHETSEL:

Q Do you recall about what time you responded out to Bellgrove that evening?

A It was shortly after midnight.

Q And this interaction with Mr. Hugue, was it

captured on one of the deputy's body cameras?

A It was.

MR. WHETSEL: May I approach, Your Honor?

THE COURT: Yes, sir.

BY MR. WHETSEL:

Q Mr. Atwood, I'm going to give you what's going to be marked as Court's 1, and just ask you if you recognize this disc.

A I do recognize the disc.

(Whereupon, Court's Exhibit No(s). 1 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q And did you have an opportunity to review that disc prior to trial today?

A I did.

Q And is that a fair and accurate depiction of your interview with Mr. Hugue?

A Yes, sir.

Q With the exception of two brief parts that are muted, just because it kind of has nothing to do with the particular, I guess, interview, if you will, but other than that, is that a fair and accurate depiction?

A It is.

Q During your interview with him, did you make any threats or promises?

A I did not.

Q Did you make any promises of leniency?

A I did not.

Q Did he appear to be under the influence of any drugs or alcohol when you were talking to him?

A He did not.

Q Did he appear to understand the questions that you asked him?

A Yes.

MR. WHETSEL: I want to get that back from you.

BY MR. WHETSEL:

Q Mr. Atwood, when you went out there that evening, did you inform Mr. Hugue that he was not under arrest?

A I did.

Q Did you still provide him Miranda warnings anyway?

A Yes, sir.

Q And how did you provide his Miranda warnings?

A I have a prepared text.

Q And did you read those to him verbatim?

A I did.

Q After you read those Miranda warnings to him, did he indicate if he wished to speak with you or not to speak with you?

A He wished to speak to us.

Q And did he provide a statement to you?

DIRECT EXAMINATION OF MIKE ATWOOD BY MR. WHETSEL

A Yes.

Q And do you recall approximately how long you talked to him?

A . Two or three minutes, at the most.

Q And at the conclusion of that interview, a GSR kit was collected; is that correct?

A That's correct.

Q And then once that was completed, what happened with Mr. Hugue?

A He was free to go. He walked back in his house.

Q So you did not place him under arrest that evening?

A No, sir.

MR. WHETSEL: Your Honor, I would normally play this portion, but I believe that the Court has already reviewed it in chambers.

THE COURT: I have.

MR. WHETSEL: So with that being said, I have no more questions for Lieutenant Atwood.

THE COURT: Okay. Ms. Dewitt.

MS. DEWITT: Just a few questions, Your Honor.

CROSS EXAMINATION

BY MS. DEWITT:

Q Officer Atwood, was Mr. Hugue actually in bed when y'all arrived at the home?

A He was inside the house. I'm not sure if he was in bed or if he was in the bedroom.

Q And this was middle of February, wasn't it? And wasn't it about 30 degrees outside?

A It was February, but it wasn't that cold out. Most of the officers were in short sleeved shirts.

Q Mr. Hugue himself though grabbed a jacket or sweatshirt or something before y'all went outside, didn't he?

A Yes, ma'am.

Q And was Mr. Hugue free at any time to walk away?

A Yes, ma'am, he was.

Q Did you inform him he didn't have to submit to the gun residue test?

A Yes, ma'am. He was advised of his rights.

Q Did you make any inquiry as to whether or not the Defendant had been drinking or done anything earlier that evening that would affect his judgment?

A I don't recall, but he did not seem to be impaired.

MS. DEWITT: All right. That will be all the questions I have for the officer.

MR. WHETSEL: Okay. I have no other questions, Judge.

THE COURT: All right. Thank you.

Either one of y'all want to make any arguments or any statements while we're --

MR. WHETSEL: We could argue for this point, then I could call the other two witnesses briefly for a second, if you would like, Your Honor.

THE COURT: Sure.

MR. WHETSEL: Since Ms. Dewitt is challenging it, that's fine. I'll start first, if that's okay.

Essentially, Judge, just citing to a couple different cases, specifically State V Trapp, which is 420 SC 217, Court of Appeals case, 2017. Cite to a couple other cases, maybe Howard and State V Miller.

It is a preponderance standard that the Court has to determine if a Defendant's statement was voluntary. The Court must, and as you know, Judge, must examine totality of circumstances surrounding the statement, decide the State carries the burden, and through the State was knowingly and intelligently, voluntarily given.

I think based on Lieutenant Atwood's testimony, but also just point viewing of the interaction on the body camera, it's clear the statement that Mr. Hugue made was intelligently, knowingly, and voluntarily made. It was a brief interview, he was not in custody. In his objective view for custody, but even a

subjective view I think it would be clear that he was not in custody. He was free to leave afterward. Lieutenant Atwood said you are not under arrest. That being said, he still Mirandised him.

Mr. Hugue indicated he wished to speak, and he gave a statement as to his whereabouts that night.

I think based on all that, we satisfied the requirement, and we seek its admission in Court.

THE COURT: Any objection, Ms. Dewitt?

MS. DEWITT: Your Honor, of course, the standard is for you to consider totality of the circumstances. It was around midnight that night. It was dark and cold outside. Even though the officer testified Mr. Hugue was not under arrest, I think it's clear he didn't think he could just walk away from the officer at the time, and I would ask for a ruling on this particular question.

THE COURT: Okay. Thank you.

And I find that -- I have also reviewed the video of the body camera that night, and it was clear from the video he was not in custody and informed he was not under arrest. But he was given his Miranda rights anyway. He said he understood those rights.

I understand that you have some concern about it being cold outside. Based on the video, he had on a

sweatshirt or a jacket. The officers did not detain him and sit him outside for hours in cold circumstances.

The -- it was a brief encounter. He knowingly and intelligently waived his rights and gave the officers a statement, and I think it's admissible under the laws of South Carolina and the United States.

MS. DEWITT: Thank you, sir.

MR. WHETSEL: Your Honor, we will call two additional witnesses for the first and second statement.

THE COURT: Okay.

MR. WHETSEL: Sergeant Jared Phillips.

Thereupon,

JARED PHILLIPS

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Sergeant Phillips, will you state and spell your full name for the record?

A First name is Jared, J-A-R-E-D; last name Phillips, P-H-I-L-L-I-P-S.

Q And what's your current rank?

A Detective sergeant.

Q And for whom do you work?

A Jasper County Sheriff's Office.

Q And just for the purposes of this hearing, I'm going to go into the statement that was given to you by Mr. Hugue.

Are you the lead detective on this particular case?

A I am.

Q And during your investigation, did you eventually make an arrest, or was an arrest made of Mr. Hugue?

A An arrest was made.

Q And was Mr. Hugue brought back to your interview room, back on February 23rd, 2017?

A He was.

Q And did you have an opportunity to speak with him?

A Yes.

Q Was that interview recorded in some manner?

A It was audio recorded.

Q Prior to speaking with Mr. Hugue, did you provide him Miranda warnings?

A I did.

(Whereupon, Court's Exhibit No(s). 2 marked for identification and received in evidence.)

MR. WHETSEL: Your Honor, may I approach?

THE COURT: Yes, sir.

MR. WHETSEL: Sergeant Phillips, I'm going to hand you what is going to be marked as Court's 2 and just ask you if you recognize it.

A I do.

Q Is that a fair and accurate copy of the original Miranda form that was utilized in this case?

A It is.

Q And the -- when you provided the warning, was that also captured on the audio?

A It was.

Q And will you just tell the Court how you went over the Miranda warnings with Mr. Hugue?

A When we go in, we usually give the time and date. We explain that we need the particulars, which is the name, his date of birth, Social, address, what city he resides in, what state, a phone number, the age, race, sex, the height and weight. And then we go down to your Miranda, reading through the Miranda portion of it.

Q Did you actually not only let him read it, but did you actually read the rights to him?

A Yes, I did. And then at the bottom is the waiver of the rights.

Q While you were speaking with Mr. Hugue, did he

appear to be under the influence of any alcohol or drugs?

A He did not.

Q Did he appear to understand the questions that you asked him?

A He did.

Q During your interview, whether it was with Miranda or post Miranda, did you make any threats or promises?

A Never.

Q There is a portion, I think it's No. 3, where he writes, "No." Can you explain the circumstance of that? I know it's on the audio, but can you explain what happened there?

A When I read that over, the understanding of him that there was no attorney present in there, and I had to clarify whether or not he wanted an attorney or did not. And during while clarifying, he advised me he did not. He wished to speak to me about --

Q Did he make it clear to you that he wanted to talk to you without a lawyer?

A He did -- oh, talk to me about a lawyer?

Q No, talk to you without a lawyer.

A Yes. Yes, sir, that's correct.

Q Okay. I'll approach and I'll take that back from you.

Did you have an opportunity to review a copy

of that interview prior to Court?

A I did.

(Whereupon, Court's Exhibit No(s). 3 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q I want to hand you what is marked as Court's 3, just for the record. I'm going to ask if you recognize this disc?

A I do.

Q Now, the total interview, it was you and Investigator Wright that interviewed Mr. Hugue; is that correct?

A That is correct.

Q And that total interview was roughly an hour and 13 minutes?

A Yes.

Q Now, what I gave you there, that is a redacted copy; is that fair to say?

A Yes.

Q And just to make sure that we are clear, there were some redactions in reference to Mr. Hugue being in jail; is that correct?

A That is.

Q There were some redactions and reference to just dead space, where either you or Investigator Wright leave

the room; is that fair to say?

A Yes, sir.

Q And there was, I think, six total redactions where there was reference to, for lack of a better word, a hearsay statement, where you would say something along the lines of, you know, people are saying that you did something; is that fair to say?

A Yes, sir.

Q With the exception of those redactions, is that a fair and accurate and true copy of your interview with Mr. Hugue?

A It is.

Q I'll get that back from you.

At any point in time that you were speaking with Mr. Hugue, did he ever invoke any of his Miranda rights?

A No.

Q And that interview was -- it was in the evening time; is that right?

A It was.

Q Do you remember about what time it was?

A I think it was 8:42 p.m.

Q And at the conclusion of that interview, what happened to Mr. Hugue?

A He was placed under arrest.

MR. WHETSEL: Your Honor, normally I would play the portion of Investigator Phillips' interview with Mr. Hugue. I think the Court had an opportunity in chambers already to review it.

If that's okay, then I have no more questions for Sergeant Phillips.

THE COURT: Okay. And I have reviewed it in chambers.

Yes, ma'am.

CROSS EXAMINATION

BY MS. DEWITT:

Q Officer, before you interviewed Mr. Hugue, or Mirandised him, were you able to determine whether or not he had the ability to read and write?

A I do not recall. I do know that while speaking with him, he clearly understood what I was asking of him.

Q Okay.

A And he did fill out the top portion of the information.

Q He was able to fill out the information on the top of the Miranda waiver form; is that what you are testifying to?

A Yes. Yes, ma'am.

Q And at the time that you read his Miranda warnings to Mr. Hugue, he was already under arrest, wasn't he?

A Yeah. He was already placed under arrest and transported to our office.

Q Okay.

A For the active warrants.

Q All right. In fact, he had been arrested at a Burger King or someplace?

A Yes, ma'am.

Q And then transported to the sheriff's office?

A Yes, ma'am.

Q And what was he arrested for then?

A The warrants for the murder.

Q So you had obtained a warrant for Mr. Hugue before you interviewed him?

A Yes. The warrants were already obtained.

Q Did Mr. Hugue indicate at any time during your interview of him whether or not he was ill, in need of food, or --

A No, ma'am. I did ask --

Q -- medications of any kind?

A No, ma'am. I did ask him if he wanted a water or something to drink during the interview, and he declined.

Q And how many other officers were in the room when he was interviewed?

A It was myself and Mr. Hugue, and until the portion where Detective Wright comes back, Detective Wright took

over and I was -- I exited the room.

Q So at the time he made the statement, he wasn't surrounded by law enforcement?

A No, ma'am. No.

MS. DEWITT: That is all the questions I have for the officer, Your Honor.

MR. WHETSEL: I have no additional questions, Your Honor.

THE COURT: Thank you.

MR. WHETSEL: And one final witness, Judge. Investigator Elvin Wright.

Thereupon,

ELVIN WRIGHT

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Investigator Wright, will you say and spell your full name for the record?

A I'm sorry. I didn't hear you.

Q I'm sorry. Will you state and spell your full name for the record?

A Elvin Wright. E-L-V-I-N, W-R-I-G-H-T.

Q And you currently work for what office?

A Fourteenth Circuit Solicitor's Office.

Q Prior to that, you worked for Jasper County Sheriff's Office?

A Yes, sir.

Q And were you involved in at least the interview of Mr. Hugue as it related to this particular case?

A Yes.

Q And will you tell the Court about the circumstances, as far as how you became involved in the actual interview portion of Mr. Hugue?

A I received a phone call that Mr. Hugue requested to speak to me in reference to this case.

Q And so did you respond back to Jasper CID then?

A Yes, I did.

Q Did you go and actually speak with Mr. Hugue?

A Yes, I did.

Q And just so the record is clear, do you see the man that you spoke with in the courtroom today?

A Yes, sir.

MR. WHETSEL: Just let the record reflect that Investigator Wright nodded toward the Defendant.

THE COURT: Okay.

BY MR. WHETSEL:

Q Prior to going and speaking with Mr. Hugue, did you know if he had been provided Miranda warnings?

A Yes, I did.

Q And how did you know that?

A I spoke with Investigator Phillips.

Q And he informed you that he had already provided Miranda warnings?

A Yes.

Q And, in fact, he actually asked to speak to you; is that fair to say?

A Exactly.

Q Your interview with him, your portion, was that captured on an audio recording?

A Yes, it was.

Q Did you have an opportunity to review that prior to court?

A Yes, sir.

Q I'm going to hand you what is marked as Court's 3 just to have you identify it. Do you recognize that disc?

A Yes.

Q And does that contain your portion of the audio interview?

A Yes, it does.

Q And how do you recognize that particular disc?

A My signature, and I re-watched it and I put my signature and the date on it.

Q Thank you.

With the exception of two redactions, is that

a fair and accurate copy of your interview with Mr. Hugue?

A Yes, it is.

Q And those redactions, they are basically -- and you tell me if I'm wrong -- but basically, like, a hearsay statement, so to speak, something along the lines of, you know, people are saying that you did something, something along those lines?

A Yes.

Q With the exception of those two brief portions cut out, this is a fair and accurate copy?

A Yes.

Q While you were speaking with Mr. Hugue, did he appear to be under the influence of any type of drugs or alcohol?

A No, sir.

Q While you were speaking with him, did you make any threats or promises to him?

A No, sir.

Q And did he understand -- did he appear to understand the questions that you asked him?

A Yes.

Q Did he appear to provide rational responses to your questions?

A Yes.

Q And approximately how long did your interview with

him last? Is about a half hour, is that a rough estimate?

A Yeah, somewhere around there, I believe, yes.

MR. WHETSEL: Your Honor, I have no more questions for Mr. Wright.

THE COURT: Okay. Ms. Dewitt.

CROSS EXAMINATION

BY MS. DEWITT:

Q Officer Wright, did you personally know Mr. Hugue or his family members?

A Yes.

Q And who did you know in the family?

A Actually, he's married to -- my wife is -- his grandmother and my wife's mother are sisters.

Q At the time that you talked to Mr. Hugue, was he well aware that you were acting in your capacity as a Jasper County Sheriff's Office employee?

A Yes, ma'am.

Q Did it appear to you that Mr. Hugue understood that whatever he said to you, you certainly would report or it would be recorded as part of the evidence in the case?

A Yes.

Q Did he give you any indication at all that he did not understand his rights?

A No, ma'am.

Q And he never asked for an attorney; is that

correct?

A No, ma'am.

MS. DEWITT: Thank you. That is all the questions I have right now.

MR. WHETSEL: I have no more questions for Investigator Wright.

THE COURT: Thank you. You may step down.

Anything else?

MR. WHETSEL: Just argument, Judge. That will be it.

THE COURT: Do you have any -- anyone that you want to call to the stand, Ms. Dewitt?

MS. DEWITT: No, Your Honor.

THE COURT: Okay. I'll be glad to hear you.

MR. WHETSEL: I'll start, Judge. It's my motion, I'm seeking admissibility.

Your Honor, I believe the Court had an opportunity to review the Court's 3 in chambers. Based on that, and based on the testimony of Sergeant Phillips and Investigator Wright, I think with Sergeant Phillips it's clear that he went through the Miranda waiver. He's certainly in custody, so he has to be Mirandised prior to providing a statement that could be admissible in court.

The Miranda form, and it's clear, Investigator

Phillips went through it with him, not only did he read it, but he actually read it to him. He clarified that he understood each right, he clarified that he waived those rights, and it's clear from the audio, according to Mr. Hugue, he wished to make a statement.

They spoke for about 30 minutes or so. He did not appear to be under the influence of any type alcohol or drugs. It appeared that all of his responses were rational as it related to the questions asked. And at one point, about half hour into the interview, he actually asked for Investigator Wright.

So at that point, the investigators swap out, and Investigator Wright comes in. And, again, about another half hour. No threats or promises. No -- the interview did not last for a very long time. It was about a half hour. And, again, it appeared that Mr. Hugue, even just listening to the audio recording, was making a voluntary, knowingly, and intelligently made statement.

And, again, I think based on this portion, the preponderance standard, I think we've met that and we seek its admission.

THE COURT: Okay.

MS. DEWITT: Your Honor, of course, the Defense asks that you look at the totality of the circumstances

in making your ruling on the admissibility of the statement. And that would be the second statement that we are referring to.

THE COURT: Okay. And I find that the fact that Mr. Hugue was in custody, in custodial interrogation, and his Miranda rights were given to him, the officer gave him a written form and broke down each right individually and explained to him, and he voluntarily gave a statement afterward looking at that and knowing his rights, and he chose to waive those rights and gave a statement. There was nothing in the interview that I saw that in any way he was coerced, threatened in any way. It was truly a voluntary statement and I think it is admissible. Okay.

MS. DEWITT: Thank you, Your Honor.

THE COURT: Okay. Anything else before we bring the jury in?

MR. WHETSEL: Your Honor, there's three matters, I think will just be argument. The first would be one of the witnesses, name's Gary Scott, he was there the evening of the murder. He was aware of a prior difficulty, for lack of a better phrase, between the Defendant and the victim. He knows the circumstances behind it, but what we would seek to admit would just be the fact that he was aware that earlier in the

evening the Defendant and the victim had a prior difficulty is how I would phrase it. And I would find for the Court in a case specifically, State V Bradski, which is 413 SC 97, and it actually cites -- I use that case as a newer case, but it cites back to State V Braxton. And basically, the holding in that case is just prior disputes between the victim and the Defendant may be relevant to establish the accused's motive for committing the crime. And motive may also have a bearing on the identity of the accused.

Again, I don't think we -- the case law will let us get into any details, but just that the fact that there was a prior difficulty earlier that day, and that is what we would ask to admit.

THE COURT: Okay.

MS. DEWITT: Your Honor, it was my understanding that this particular witness didn't actually see an argument. He may have heard the decedent arguing with somebody, but did not see the Defendant. And as the Solicitor -- I just don't know, the Solicitor -- you are talking about the details of what happened that day or what?

MR. WHETSEL: And then maybe this will be easier, Judge. I do plan to call Gary Scott as a fact witness later today. Perhaps we could just take his testimony

in-camera very briefly as to the prior difficulty. And it might give the Court a better understanding of what I'm trying to ask.

THE COURT: Okay. Do you want to do that?

MS. DEWITT: That -- that would satisfy me. Yes, Your Honor.

THE COURT: Okay. All right.

MR. WHETSEL: Let me jump to probably the easiest one, Judge. That same witness, Gary Scott, he has -- he has a little bit of a criminal record, and under -- I want to make sure I cite my correct rule to you.

Under 609, I think there is some convictions that he could be impeached on. Specifically, he has a 2016 shoplifting and a 2017 shoplifting. I think those are fair game.

The question that I had for the Court though was that he had pled guilty back in 2008 to a forgery. It was Ticket J365719. He was given a probationary sentence.

Now, that conviction is outside of the ten years that 609 would typically allow as far as impeachment. However, he was revoked on that probation later and served several months. That would put it within the ten years.

There's really no case law that explains, you

know, any further than what the rule states on its face. My position would be that it would not be an offense that he could be impeached on, and I'm just looking at the plain reading of the rule, Your Honor, which under 609(b) says that evidence of conviction is not admissible for a period if more than ten years has elapsed since the date of conviction or the release of the witness from the confinement imposed for that conviction.

He was released, but then he did go back. Either way, I just wanted to bring it up so that we can get a ruling on that particular conviction for impeachment.

THE COURT: Do you want to address that, Ms. Dewitt?

MS. DEWITT: Your Honor, at the time of this incident in 2017, it was within the ten-year time period, and I would ask that the Court consider that in making its ruling as to whether or not that forgery conviction would be --

THE COURT: And what was the date of the conviction?

MR. WHETSEL: The date was, Your Honor, April 7th, 2008, was when he was convicted of a forgery.

THE COURT: Okay.

MR. WHETSEL: Yes, sir.

THE COURT: And so -- and you -- tell me your position one more time.

MS. DEWITT: Your Honor, at the time of this incident, when this gentleman became a witness, it was within the ten-year time period because this incident occurred in February 2017. It was within the ten-year time period on the original conviction for forgery.

And at this point in time, of course it still applies, even if you go back to the actual date of conviction, as opposed to the date he got revoked and served time.

THE COURT: Well, they told me the conviction -- the State says April 2008. That is not within ten years of today, is it?

MS. DEWITT: It is not within ten years of today. That's correct.

THE COURT: And you think the rule is ten years at the time of incident, ten years at time of testifying?

MR. WHETSEL: Judge, I think it's the testimony. I do have the rule printed out. I could hand that to the Court.

THE COURT: I got it.

MR. WHETSEL: You got it? Okay.

Yes, sir. I didn't see any case law that explains it more than that except for the plain reading of the

rule.

THE COURT: And I think it's from time he testifies, not the time the incident occurs.

But it also says in here that it's ten years from either the conviction or his release.

And the question is the fact that he violated probation.

MR. WHETSEL: And that would be within ten years, because he was revoked, and that would put him within the ten-year time span.

THE COURT: I understand. And it is probably admissible, and it is probably going to be used against him. I don't know why he was revoked on probation, but assuming he didn't, maybe you could have the argument that he was revoked some other time versus doing what he's supposed to do in the conditions of probation. But one of the conditions was that he wasn't supposed to get in any more trouble.

Unless you got some case to the contrary, in an abundance of caution, I think the ten-year rule includes probation revocation.

MR. WHETSEL: Yes, sir, I don't have a case in contrary, so that -- yes, sir.

THE COURT: If he was incarcerated based on that, I think it's probably admissible.

MS. DEWITT: Thank you, sir.

THE COURT: In the whole scheme of things, I'm not sure how important it is anyway.

MR. WHETSEL: Yes, sir. Because it's there, I just wanted to have it clarified.

THE COURT: I understand.

MR. WHETSEL: Judge, I'm sorry, one last thing before we talk about the text messages. The interview that I seek to play from Sergeant Phillips and Investigator Wright, I have two versions. I have just the audio track, and then I have a transcribed version that tracks the audio. I would like to play the transcription as a demonstrative along with the audio, knowing that is not evidence, but the audio is, as an aid to assist the jury and follow what is being said.

So that's what I planned to play, but I wanted to ask that ahead of time.

THE COURT: Okay. You got any objection to that, Ms. Dewitt?

MS. DEWITT: I believe the Solicitor is wanting the jurors to read at the same time that they listen to an audio?

THE COURT: Is that true? Are you planning on having the words on the screen?

MR. WHETSEL: Yes, sir. So the way it's set up

would be that the audio is playing, but then it's just a black background with the transcription going along with the audio. Yes, sir.

THE COURT: Right. So they're not having to read a piece of paper, if they are looking at the screen they're reading the words that he's saying.

You got any objection?

MS. DEWITT: Well, I object. I object to the Solicitor producing any evidence that may be confusing to the jury or distract their attention away from listening to the actual audio tape.

THE COURT: Yeah. The fact that it's being simultaneously on the screen as it is being spoken, that doesn't cause me a problem. I think that aides the jury in understanding.

Now, if you give them a second piece of paper, they are having to read a piece of paper and listen, that may be different. But the fact that it's coming up as it's being spoken, and assuming, based on what I heard, you know, the other issue is whether it's accurate or not. And many times it is an issue whether a written transcript is accurate from being what is said, and in comparing the two, if it's being shown on the screen at the same time that you listen to it, at least what I heard, there wasn't any questions about it

being accurate. Because it was -- you were seeing the words and hearing the sounds at the exact same time, and it wasn't an issue of somebody transcribing it totally separate.

Now, if you know something different than I know that's going to be pointing to it's not accurate, that is a different story. But it appears -- you know, if you are hearing it and seeing it at the same time, I think they can understand it, and I think it assists them.

MS. DEWITT: Thank you, Judge. To my knowledge, it's not inaccurate.

THE COURT: Okay.

MR. WHETSEL: Judge, the last one, I think, and this is probably outside the Jackson Denno, the most substantive motion, that would be some text messages that we are planning to introduce.

Just to give the Court a little bit of background, the night of the murder, during the investigation, Mr. Hugue's name came up as somebody possibly involved. The investigators went out, as you heard Lieutenant Atwood testify, went out to Ms. Linda Hugue, which is his grandmother's residence, is where they spoke with him.

Later that same evening, Sergeant Jared Phillips

called Ms. Hugue back and asked if she had a phone number for which they could have to reach Mr. Hugue.

She gave -- provided them a 305 number. Well, they subsequently got a search warrant for that number, it's from Verizon, and they were unable to obtain several documents related to that number during the time period of the murder.

And the two documents that we're seeking to introduce, one would be the call detail record, and there is a Verizon representative who will testify to basically the authenticity of the business record. And that is just raw data, that's just incoming, outgoing calls from the cell tower.

The one that I think is in question is -- there's also something called a text detail record. And a text detail record is essentially like the call detail record. It shows incoming and outgoing text messages and the time frame for which they were sent and received, but it also has a content.

And it might be easiest, Your Honor, I have the messages I plan to put in already marked as Court's exhibits as well, and I could hand those up if you would like to see them.

THE COURT: Okay. And at what point in the trial do you plan to put them in, first thing?

MR. WHETSEL: No, sir. It would probably be after lunch. Ms. Dalmida is her name, she's a representative from Verizon. She is supposed to be here at lunchtime, so sometime after lunch I call her as a witness.

But there's 20 individual messages. Yet the entire text record is multiple pages long. So what I have done is just basically captured each individual message to make it easier to understand, but I will put them in through her.

And the way that I'd authenticate it would be, one, through the number, but also, two, under -- I'm trying to get to my tab, I apologize.

It is under 901, just the authentication. Basically the rule, South Carolina Rule of Evidence requirement of authentication as a condition precedent is satisfied by evidence sufficient to support a finding that the matter in question is what it proclaims.

And then probably most important is a very recent Court of Appeals decision, State V Green, which is a 2019 SC, I guess, appellate, Lexis 55 is the best cite I have. I have a copy for the Court as well, Your Honor. I can hand that up.

THE COURT: Okay.

MR. WHETSEL: And essentially in this case they

are trying to authenticate Facebook or social media posts. But the Court takes a deep dive into the authentication requirement and basically says that it is relatively low burden.

And there are a few different ways we can authenticate messages. And specifically what they reference in there is through, like, the actual content of the messages. And there are several messages that, based on the content, I think in addition to the number also authenticated. For example, there is one where the person sending it says, "This is D." And D is a common nickname for the Defendant.

There's also messages that are sent around the time frame that his grandmother places him leaving her house and arriving back at her house, and also several messages where he's asking -- after the murder, he's asking several individuals, you know, what have you heard? What have you heard?

And I think all that taken in combination with the number would be enough to satisfy the authentication burden. And, again, I have the messages if the Court wants to see.

THE COURT: Okay. Ms. Dewitt, do you want to address?

MS. DEWITT: I do, Your Honor.

Your Honor, it is my understanding that the phone number actually belonged to what is called a disposable cell phone, or track phone. One not in any particular person's name, but the type that can be bought at maybe a Wal-Mart. I think the text messages themselves are inadmissible because there is no evidence that the messages were -- that my client had that telephone in his possession. The phone itself was never taken into evidence. The messages did not come straight off the telephone that was in his possession. There's no proof that my client typed -- actually typed in the messages, text messages on that phone number.

We don't know who sent him messages or who responded to any messages of my client. There's no evidence, basically no proof that he created those messages. There's no proof of the identity of the individual involved in creating and sending those messages. I believe the evidence is unduly prejudicial, and I think it should be excluded under the Rules of Evidence.

I also believe that the text messages are based on hearsay. There's no proof of reliability or credibility. No indicia of reliability and no proof of who sent them.

THE COURT: Okay.

CROSS EXAMINATION OF ELVIN WRIGHT BY MS. DEWITT

MS. DEWITT: I ask that the text messages themselves be excluded under both the hearsay rule and also under -- because they would be unduly prejudicial to my client. The probative value is outweighed by the prejudicial effect.

THE COURT: Okay. Mr. Whetsel.

MR. WHETSEL: Yes. I'll briefly respond, Judge.

One, I think that the actual data is the business record. The content will be different, but if we can authenticate the sender, then under 801, that would be just a statement admission by a party opponent. So I think it would be non hearsay.

That being said, as far as being unduly prejudicial under 403, I don't think that's -- it would have to be unduly prejudicial. Most evidence would be prejudicial against the Defendant, that is the whole purpose of us putting it in.

I think with these messages, the time they were sent as well as the content, in line with a lot of the other evidence in this case, it's going to give a clearer picture of what the Defendant was doing during that time period. It helps corroborate the grandmother's statement.

Again, everything is open to argument, but as far as the admissibility, I think the standard is

relatively low. It has to be relevant, you know, it has to make some fact at issue or less probable. And then we have to then be able to authenticate it and also overcome the hearsay objection.

I think authentication is going to be based on the number the grandmother provided that then lines up with context, that if -- while reading it would make sense, that the sender was the Defendant.

But also the content of the messages, like, for example, again, one message saying that "This is D," which again, is a common nickname of Mr. Hugue. I think you put all that together with the 901 and Green case, I think it satisfies the authentication.

Again, everything is open to interpretation and argument, but I think it still should be admissible.

THE COURT: Okay. And I'll rule on that when I get enough -- first of all though, we can authenticate it based on what you are telling me. And then if you can't authenticate it, I agree that that audio is -- you know, I think if it looks like a duck, it is a duck.

But then you got the hearsay objection that she made. So if you can authenticate it came from the Defendant. The party opponent issue, we will see. And then the 403, I'll rule on that when I get enough. I

don't know that the prejudicial value outweighs the probative value of the text message. And it really depends on what is in it, and what is said. But I'll view that as well.

Okay. So at this point, I understand y'all's position. If you can get it authenticated, and somehow through the grandmother's testimony, if you can get it back to him, it will satisfy the hearsay rule. We will see.

MR. WHETSEL: Yes, sir. Thank you.

THE COURT: Okay. Anything else?

MR. WHETSEL: That is all I have for pretrial.

THE COURT: All right. We ready for the jury?

MS. DEWITT: Are we going to sequester the witnesses?

THE COURT: We got all the jury here?

THE CLERK: Yes, sir.

MR. WHETSEL: You guys step out. I'll call you.

MS. DEWITT: Your Honor, I just think the sequestered witnesses in the case, after they have finished testifying --

MR. WHETSEL: Your Honor, Investigator Phillips is the lead detective, I don't think he's going to stay anyway, so -- none of my witnesses are here. Investigator Williams, with our office, is only here to

assist me in preparing this case. The factual witnesses aren't in the courtroom.

THE COURT: Okay. So you have no objection to that motion?

MR. WHETSEL: I guess law enforcement, I would want them to stay, if they wanted to, but they are not going to stay, Judge.

THE COURT: Okay. Then I directly grant it, or the Defendant denies it.

MR. WHETSEL: I understand.

THE COURT: And so if I -- if he comes walking --

MR. WHETSEL: I would object to Jared Phillips, being lead investigator.

THE COURT: Okay. And I'll allow him to stay if he's lead investigator.

MR. WHETSEL: The other witnesses, I'm fine with them being sequestered.

THE COURT: Anybody need a break before I bring the jury in?

MR. WHETSEL: Maybe just briefly, Judge. Just to kind of get organized.

THE COURT: All right. We'll take a five-minute break, we'll bring the jury in, swear them in, and get started.

MR. WHETSEL: Thank you.

(Brief recess.)

THE COURT: Anything before I bring the jury in?

MR. WHETSEL: Not from the State, Your Honor. Thank you.

MS. DEWITT: None from Defense, Your Honor.

THE COURT: Okay. If you will bring in the jury.

(The jury enters the courtroom at 11:13 a.m.)

THE CLERK: Good morning again. I need you to stand. Raise your right hand.

(The jury was sworn.)

THE CLERK: Thank you.

THE COURT: Ladies and gentlemen, we are about to begin the trial in the State versus David Hugue. He has been indicted for a crime of murder and possession of a weapon during the commission of a violent crime. And to that indictment, he's entered a plea of not guilty. Therefore, it passes the burden from the State of South Carolina to prove each and every element of those indictments to you beyond a reasonable doubt.

The indictment is not evidence in this case, it's just the document that gets us here in the courtroom. Your job is to listen to the evidence in this case and determine what the facts are. My job is to rule upon the admissibility of evidence and tell you what the law is. This is not a charge on the law. At the end of

the case, I will charge you on the law that you are going to apply in this case.

But your job is to determine what the facts are. It's very important that you get it right, because if you make a mistake it is very hard to correct that mistake. If I make a mistake, at some other time and some other place it will be reviewed and corrected. So I need each one of you to pay close attention.

You are to make your decision of guilt or innocence in this case based on the evidence you hear. And the evidence will come to you in basically three forms. First of all, from sworn testimony from the witness stand. Witnesses will come before you under oath and testify about things that they may know or they have seen.

The other way you may receive evidence is through documents and photographs and things under our rules is admissible.

And the third way that you may receive evidence is through stipulations of the attorneys. Sometimes there is a fact involved in a case, but not all the time, that the lawyers agree on, they stipulate. We stipulate to this fact. That is something you can take as a fact and not necessarily have to decide. But that is basically how you are going to get evidence in this

case.

I will try to take a break every hour, hour and a half. I try not to stop in the middle of a witness' testimony. But sometimes a witness' testimony is just so long, we have to stop. Having said that, if any time during the testimony of this trial, you personally need a break, I need you to simply raise your hand and we will take a break. Because I need each and every one of you to pay close attention.

If you are uncomfortable for any reason, you can't pay attention. So just raise your hand, we will take a break and come back and continue the trial.

Okay. And this is important, you know, that you pay attention. It's important to the State of South Carolina as well as the Defendant. Both sides want a fair and impartial jury with an open mind that will get the facts right. That is what I need you to do.

Now, throughout this trial, you can't discuss the testimony or anything about this case with anybody else or with each other until I tell you that you can. And I know you may say, well are we going to break after we have heard this witness or that witness? Why can't we at least talk about what we think the case is about or what we think this witness said?

And the reason I don't want you to do that,

because if you did that in the beginning of the case, at the end of the case, you are going to defend that opinion you had at the beginning to your fellow jurors. And I don't want you to share your opinions with each other until you have heard everything, you have heard all the evidence in this case as well as the law that I'm going to charge you on. And then and only then will it be proper for you to discuss it among yourselves.

And when you go home at night, you can't talk about it around the supper table with your family. If your family is anything like my family, they are going to have an opinion as to what you ought to do. They haven't been here, and so you have been here and you have observed the people and you watched them testify. So it's important that you decide this based upon what you hear in this courtroom and not from any outside influence. And when you do that, the system works right, and it is important to both the State and this Defendant that you do a good job, you listen to the evidence, and reach a verdict in this case based on the facts that you hear and the evidence.

Now, in a few minutes the attorneys are going to get up and make opening statements. Those statements are not evidence in this case. They are simply going

to get up there and tell you what they think the case is about, and what they think the evidence is going to show. And then at the end of all the evidence, the attorneys are going to get up and make a closing argument to you. And they are going to argue to you as to what they think the evidence shows or does not show in the case, and then I will charge you on the law and give you this case to decide.

The opening statements and the closing arguments from the attorneys, even the questions of the attorneys are not evidence in this case. The evidence is stuff you will see. It's documents that I rule is admissible, and the testimony that you receive from a witness.

So if you will pay close attention, we'll get started.

Mr. Whetsel.

OPENING STATEMENT BY THE STATE

MR. WHETSEL: May it please the Court, Your Honor.

Good morning, ladies and gentlemen. As the Judge already told you, basically indictments is this is a murder case. That's the evidence you're going to hear over the next day or so.

February 18th of 2017, at [redacted] Westberry Street, which is in Ridgeland, not too far from the courthouse,

at 8:28 that evening, a young man named Kyle Riley calls 911. And you're going to hear from Kyle Riley, you're going to hear that 911 call.

You can hear him say, "My uncle just shot. Get somebody here."

What Kyle will tell you is that earlier that day he was over at his house, which is in walking distance of [redacted] Westberry. He had gone over there to get some food that his girlfriend bought. And with him was David Hugue, that man right over there.

They went over to get that food, and when they came back, the victim in this case, Lamont Heyward, which they called Mont, was inside the house at [redacted] Westberry. And as Kyle will tell you, David walks in and Mont sees him, and Mont says let's go outside.

And as Kyle will tell you, he walks over to the kitchen table with his Zaxby's, and he's about to start eating. They walk outside, and moments later Kyle hears a gunshot. And from his vantage point where he's standing, looking outside, he sees a flash.

So he runs outside, off of the porch, and he sees his Uncle Mont lying in the dirt, and he sees a man who he knows to be David Hugue running away.

Ladies and gentlemen, you may see on TV and the movies that there is all kinds of forensic evidence and

DNA and things like that, and some cases do have that. This is not one of those cases.

This case is one of those cases where witness testimony is going to prove to you what happened that night. You are going to get evidence from the doctor in this case, the pathologist. You are going to hear from a paramedic, and you're going to see some photographs. It's going to be clear in your mind that Mont Heywood was shot to death on February 18th, 2017.

Now, the question is going to be, who pulled that trigger, and that is our burden to prove. But based on this witness' testimony, based on the evidence that you are going to receive over the next day or so, it's going to be clear that it was one person behind that gun, and that was David Hugue.

And when we are done with this case, I'll have an opportunity to come back to you and summarize the evidence that you have heard. And I'm going to go step by step and explain to you what I think the evidence proves and how there is one explanation for how Mont Heywood was shot that night and saw David Hugue shot him.

And I'll come back and ask that you find him guilty. Thank you.

OPENING STATEMENT BY THE DEFENSE

OPENING STATEMENT BY THE DEFENSE

MS. DEWITT: May it please the Court, Your Honor.

THE COURT: Yes, ma'am.

MS. DEWITT: Good morning. Thank y'all for coming.

My name is Diane Dewitt, I represent Mr. David Hugue. He's sitting with me at the table in the white shirt. We appreciate you coming because this is Mr. Hugue's day in court. He's been waiting a long time for this day.

The incident that you are going to hear about and the testimony in this trial occurred in 2017 and that is almost, getting close to three years. So we have been waiting a long time to come here.

My client, Mr. Hugue, is not guilty of this charge. What you will find in the State's testimony and their evidence, I think, is that there is no gun, there is no eye witness, there's no forensic evidence, there's no physical evidence connecting Mr. Hugue to this case.

The Judge is going to tell you that when a person is charged with any offense, whether it is a murder or whether it is a speeding ticket, he has the absolute right to hear the evidence against him and to make the State prove its case.

The State of South Carolina has the burden of

proving each and every element of the offense beyond a reasonable doubt. Our forefathers made certain that in the United States of America, no person can be convicted without sufficient evidence and proof of guilt. And so at the end of this trial, I'll return to you, and I will be asking for you to enter a verdict of not guilty. Thank you.

MR. WHETSEL: Call your first witness, Your Honor?

THE COURT: Yes, sir.

MR. WHETSEL: Your Honor, we would first call Russell Wells.

Thereupon,

RUSSELL WELLS

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Mr. Wells, good morning, sir.

A Good morning.

Q Will you state and spell your name for the record?

A Russell Wells, R-U-S-S-E-L-L.

Q And for whom do you -- I'm sorry.

A I was going to spell the last name, W-E-L-L-S.

Q And for whom do you work?

A Jasper County Emergency Services.

Q What are some of your duties with the Jasper County Emergency Services?

A I oversee the emergency number communication center, emergency management fire and rescue.

Q As part of your job, does your office maintain and record 911 phone calls?

A Yes, sir, they do.

Q Did your office maintain and record a 911 call from this particular case?

A Yes, sir.

Q And did you have an opportunity to review that call prior to trial?

A Yes, sir, I did.

MR. WHETSEL: Your Honor, may I approach the witness?

THE COURT: Yes, sir.

BY MR. WHETSEL:

Q Mr. Wells, I'm going to ask if you recognize this disc.

A Yes, sir, I do. It's got my signature, date and time stamp of when I reviewed it.

Q I'll take that back from you.

Mr. Wells, the 911 calls, are they maintained

in the ordinary course of your office's business records?

A Yes, sir.

Q And is this a complete copy of the 911 call in this case?

A Yes, sir, it is.

MR. WHETSEL: Your Honor, we would seek to admit what is marked as State's 1 into evidence.

THE COURT: What says the Defense?

MS. DEWITT: Without objection, Your Honor.

THE COURT: State's 1 is in, without objection.

(Whereupon, State's Exhibit No(s). 1 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q Mr. Wells, do you know what time this 911 call was made?

A The audio should have the time stamp on it. If I can hear it, I'll confirm it.

Q I tell you what, is there something called CAD?

A CAD call for service report, yes, sir.

Q And what is a CAD generally, just overview?

A It's computer aided dispatch. So as the 911 phone call rings, the telecommunications officer pulls up and creates a call for service. They input data from the 911 system into their computer aided dispatch as they also receive automatic location identifiers, which is ALI, and

automatic number identifier, which is ANI. All of that should populate into your CAD call for service.

Q If I provide you a copy of the CAD, would you be able to tell us the date and time of the 911 call?

A Yes, sir.

Q Mr. Wells, I'm going to ask you to just look at this document, and when you are done I'm going to take it back from you and then I'm going to ask you a couple of questions.

A Okay. All right.

Q Based on that document, would you be able to tell me the date and time that that call was made?

A February the 18th, 2017 at 8:28:19 p.m. is when it was created.

Q Thank you. I'll take that document back from you.

MR. WHETSEL: Your Honor, I'd ask at this time to publish the 911 call to the jury.

THE COURT: Any objection?

MS. DEWITT: Without objection, Your Honor.

THE COURT: Okay.

(Audio CD of 911 call published to the jury.)

BY MR. WHETSEL:

Q Mr. Wells, if there was two audio tracks, is there a reason that call was split in two?

A The server will record files for so many minutes,

and then it will roll into a new file, but it time stamps each call transition.

Q So that was still just one 911 call though?

A Yes, sir.

Q And [redacted] Westberry, what county is that located in?

A Jasper.

MR. WHETSEL: Your Honor, I have no more questions for Mr. Wells.

THE COURT: Okay.

MS. DEWITT: No questions for the witness, Your Honor.

THE COURT: Step down. Thank you.

MR. WHETSEL: Your Honor, we would next call Paramedic Steve Kenyon.

THE COURT: Okay.

MR. WHETSEL: Your Honor, Mr. Wells can be excused; is that correct?

THE COURT: Any objection?

MS. DEWITT: Without objection.

THE COURT: Okay.

MR. WHETSEL: Thank you, Judge.

Thereupon,

STEPHEN KENYON

was called as a witness, having been first duly sworn, was examined and testified as follows:

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

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Paramedic Kenyon, will you state your full name and spell it for the record, please.

A Stephen Kenyon, K-E-N-Y-O-N.

Q And, sir, what do you do for a living?

A Firefighter paramedic with Hilton Head Island, part-time with Jasper County.

Q So you're full-time with Hilton Head, and part-time with Jasper County?

A Yes, sir.

Q How long have you been a paramedic?

A Since 2014, so five years.

Q Will you tell the jury a little bit about the education that you have to undergo in order to become a paramedic?

A For paramedic?

Q Yes, sir.

A The initial classes, roughly between classes and clinical time, a thousand hours -- a little over a thousand hours. You're in class, you do clinicals at the hospitals, you ride with ambulance services. A paramedic has to be able to do certain skills, and then at the end of it you

have to take a national based test for psycho motor -- being able to identify such things and skill based -- knowledge based. It takes about a year.

Q You said it's about a year?

A Yes, sir.

Q In addition to your formal education, do you receive any type of hands-on training?

A Yes, sir. You have to re-certify every two years. It requires the same thing, multiple classes on top of whatever you decide to do on your own.

Q And now as a paramedic, I guess, would you explain to the jury your different classifications of emergency medical providers?

A Okay. There's four types of -- out of three hospital emergency medical providers, you have an EMR, which is an emergency medical responder. Very basic. A lot of firefighters around the country are that. They can put on bandaids for --

Your next class is the emergency medical technician, basic. That takes about 250 hours. That is your first real step for pre-hospital nursing medicine. They do patient assessments, very limited stabilization of patients when they initially get on scene.

Then you have an EMT advanced, which they can perform minimal skill -- advanced skills, starting IVs, but

they can't push medications, and their scope of practice is a little bit more than the basic.

And then the paramedic, the big difference between the advanced and the paramedic is your pharmacology. You spend a lot of time with drugs, and that would be -- and different skill sets. Tracheotomy, where you can cut the throat. Just different skills. Without having it in front of me, I really --

Q No, you're fine.

Prior to transporting a patient to a hospital, what is your scope of care that you can provide to somebody in an emergency situation?

A The initial -- when you -- so when I show up at the scene, you have to do a patient assessment, whether it's medical or trauma call. You have to figure out what is wrong, why did they call 911 or why was 911 called. You start every one trying to figure out.

Once you have an idea of what is going on, you need to stabilize the patient so you can transport them safely.

Q But as a paramedic, like, how far in providing medical care to that particular patient can you personally provide?

A It depends on the situation. I mean, I can -- depending on the call, it should be anything -- it should be

able to get the patient to the hospital, from starting IVs to giving certain drugs for certain situations, to stabilizing broken bones, to cardiology, people having heart attacks, different heart rhythms. You see on TV, where they shock people, similar things like that.

Q As your five years being a paramedic, just ask you about how many cases do you think you have responded to?

A Medical calls?

Q Yes, medical calls, I'm sorry.

A I couldn't put a number on that. I work full-time for Hilton Head, part-time here, which is almost full-time. And then I volunteer at Colleton. So, I mean, you're in the thousands.

Q How many death cases do you think you have responded to? Again, approximate number is fine.

A Hundreds.

MR. WHETSEL: Your Honor, I would offer Paramedic Kenyon as an expert in emergency medicine as a paramedic.

THE COURT: What says the Defense?

MS. DEWITT: No objection, Your Honor.

THE COURT: Okay. So accepted.

MR. WHETSEL: Thank you, Your Honor.

BY MR. WHETSEL:

Q Paramedic Kenyon, I want to ask, did you respond

to a call back on February 18th, 2017?

A The exact date, sir, I'm sure I did, but I don't have a --

Q No, that is okay. I'll tell you what. As a part of providing care to a patient, is a report generated?

A Yes.

Q If I gave you a copy of that report, would that assist you?

A Yes, sir.

Q I'll just ask if you recognize this document.

A Yes, sir.

Q Did you respond out on February 18th, 2017?

A Yes, sir.

Q And what location did you respond to?

A [redacted] Old House Road.

Q Is that [redacted] Westberry?

A Oh, that might be, yes. Let me get there.

Q No, you are fine.

A [redacted] Westberry Street, yes, sir.

Q And the patient you treated, what was the name of the patient that you treated?

A Lamont Heyward.

Q Lamont Heyward. Can you just explain to the jury what you observed when you first arrived there at [redacted] Westberry?

A [redacted] Westberry?

Q Yes, sir.

A I was the second Jasper County apparatus to arrive. The first ambulance, I was the first paramedic on the scene. There was a gentleman laying supine on his back in the dirt driveway.

Q And when you say "supine," what does that mean?

A Laying on your back, face up.

Q Okay. Got you. I'm sorry. So you see the patient lying on the ground.

A Yes, sir.

Q Is that fair? Okay. Now, what happens next?

A So because it was a gunshot, a gunshot wound that we were responding to, we had to wait for the scene to get secure. Once the scene is secure, we approach the patient. The patient was placed on a back board. When you do your patient assessment, any kind of trauma assessment, you always strip the patient naked, because what you're looking for is entrance wounds, exit wounds, any broken bones, any extreme bleeding. Anything that we need to correct right away before we move him into the back of the ambulance.

This patient's clothing was removed, he was placed on a back board, and then was moved to a stretcher, and then up to the back of the ambulance.

Q Was he still alive when you arrived?

A Yes, sir.

Q What medical care did you provide to him?

A We placed him on oxygen to keep his SATS up, his oxygen SATS, the oxygen cells that attach to the red blood cells. We need to keep those high to keep the fusion, make sure people are stable.

We gave him oxygen, we assisted his ventilations, we started IVs to give him normal saline fluid, and then we called for the helicopter because living in Jasper County, we needed a quick transport.

Q So the plan was to try to airlift him somewhere?

A Yes, sir.

Q Was that able to happen?

A No, sir.

Q Well, what happened, why not?

A Upon, according to the report, just prior to the helicopter getting on scene, Mr. Lamont became very unstable, his vital signs started to deteriorate, his condition started to deteriorate. He actually went into cardiac arrest.

Q At that point, the decision was made to do what?

A Start CPR and --

Q Well, was he transported elsewhere then at that point?

A Yes. Upon the flight crew getting inside the

ambulance, he was transported to Coastal Carolina.

Q And at any point in time, did he actually pass away?

A Yes, sir. Three times, according to the report.

Q But you were there though when this occurred though; is that correct?

A Excuse me?

Q You were part of the medical crew treating him; is that correct?

A Yes, sir.

Q So because of his instability, he had to be driven to Coastal; is that --

A Yes, sir. Helicopters do not fly unstable patients. They can't do CPR in the helicopter.

Q At any point in time during this stripping down and observing Mr. Heyward, did you ever see a weapon or any type of gun or anything on him?

A Negative.

Q That would be a "no"; is that correct?

A No.

Q Okay. Understood.

He was ultimately transported to the hospital; is that right?

A Yes, sir.

Q Was he dead though prior to actually making it to

the hospital?

A Yes, sir.

Q I know you can't pronounce death, but based on your experience and your training.

A And -- yes, he was. And then we would start CPR and we would get a heart rhythm back, and then it would leave. And we would start CPR again, and this went on all the way to the hospital.

Q Understood. I'll take that report back from you. Thank you.

MR. WHETSEL: I don't have any more questions for Paramedic Kenyon.

THE COURT: Okay.

MS. DEWITT: No questions for the witness, Your Honor.

THE COURT: You can step down.

THE WITNESS: Thank you, sir.

MR. WHETSEL: Your Honor, the State would next call Sergeant Joe Bailey.

THE COURT: Okay.

MR. WHETSEL: And, Your Honor, may Paramedic Kenyon be excused? I don't need him.

THE COURT: Any objection?

MS. DEWITT: None, Your Honor.

THE COURT: You may be excused.

Thereupon,

JOE BAILEY

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Sergeant Bailey, would you state and spell your name for the record.

A Yes. First name Joe, J-O-E; last name Bailey, B-A-I-L-E-Y.

Q And, sir, what is your current rank?

A Sergeant.

Q And who do you work for?

A Jasper County Sheriff's Office.

Q How long have you been a law enforcement officer?

A Going on now 17 years.

Q Sir, I want to ask you about responding out to [redacted] Westberry back on February 18th, 2017. Do you recall that?

A Yes.

Q And what made you respond out to that particular location on that evening?

A It came out as a shooting call at [redacted] Westberry.

Q You said a "shooting call"?

A Shooting incident, the call came out.

Q Yes, sir. And when you arrive on scene, are you one of the first deputies there?

A No.

Q Well, not the first, but one of the first?

A That's correct, yes.

Q So there was another deputy or two that arrived just before you?

A Yes.

Q Now, when you first arrive, what do you see?

A I observed the victim, Lamont Heyward, he was lying on his back. I was trying to talk with him, he was unresponsive.

Q Now, did you actually personally recognize him?

A Yes.

Q During the course of responding out there, are you equipped with a body-worn camera?

A That's correct, yes.

Q And was that body-worn camera activated while you were on scene?

A Yes.

Q And did you have an opportunity to review that video prior to court today?

A Yes.

MR. WHETSEL: Your Honor, may I approach the

witness?

THE COURT: Yes, sir.

BY MR. WHETSEL:

Q Sergeant Bailey, I'm going to hand you what's been marked as State's 2 and ask you if you have had an opportunity to review that.

A Yes.

Q And what, is that a copy of your body-worn camera from that particular evening?

A Yes, it is.

Q Is it a fair and accurate depiction of what you would have seen on scene?

A Yes.

MR. WHETSEL: Your Honor, I would move State's 2 into evidence.

THE COURT: What says Defense?

MS. DEWITT: Without objection, Your Honor.

THE COURT: All right. It's in without objection.

(Whereupon, State's Exhibit No(s). 2 marked for identification and received in evidence.)

MR. WHETSEL: Your Honor, it's about eight minutes or so. May I publish it at this time?

THE COURT: Yes, sir.

MR. WHETSEL: And I'll retrieve those two back from you.

(Video CD published to the jury.)

BY MR. WHETSEL:

Q Sergeant Bailey, when you arrived out on scene, were you the senior deputy initially on scene?

A Yes, sir.

Q And as being the senior deputy, what action, if any, did you -- like, what did you tell the other deputies to do?

A Look for a potential witness, secure the crime scene with crime scene tape.

Q That is what I was going to ask. Did you have the other deputies on scene go ahead and tape that area off?

A Yes.

Q Now, while you were -- you can see on the video, while you were on scene, you located a potential item of evidence; is that right?

A Yes, sir.

Q And what did you see?

A A spent shell casing.

Q Sergeant Bailey, I'm going to hand you a few photographs and just ask if you recognize them.

Sergeant Bailey, I'm going to hand you what has been marked as State's 3, 4, 5, 6, and 7, and ask if you recognize it. Do you recognize those photographs?

A Yes.

DIRECT EXAMINATION OF JOE BAILEY BY MR. WHETSEL

Q Are -- would they be fair and accurate depictions of both the exterior and the interior of the house that evening?

A Yes.

MR. WHETSEL: Your Honor, we would move State's 3 through 7 into evidence.

THE COURT: What say the Defense?

MS. DEWITT: Without objections, Your Honor.

THE COURT: Okay. They are in without objection.

(Whereupon, State's Exhibit No(s). 3-7 marked for identification and received in evidence.)

MR. WHETSEL: Your Honor, if I may, I'm going to publish them one at a time and just go through testimony that way.

THE COURT: Okay.

BY MR. WHETSEL:

Q Sergeant Bailey, I'm going to get those back from you and I'm going to put them up on the television screen.

First of all, look at State's 3, Sergeant Bailey. Sir, are you able to see that photograph?

A Yes.

Q And that is showing -- is that the exterior of [redacted] Westberry?

A Yes.

Q And obviously this photograph was taken after the

scene has been cleared; is that right?

A Yes.

Q And those little yellow markers, what are those called? The little yellow placards.

A That would be where the incident took place, where the victim would have been at, or any evidence would have been located at.

Q Yes, sir. Got you. So those yellow placards would, I guess, represent potential evidence; is that correct?

A Yes.

Q Now, when you first got on scene, you actually observed a shell casing; is that right?

A Yes.

Q And now State's 4 here, what are we looking at?

A Where the spent shell casing was located at.

Q So that would have been the shell casing you would have initially seen when you first came on scene?

A Yes.

Q And now at some point, did you actually go inside of the residence?

A Yes, I did.

Q And did you take a couple of photographs?

A I don't believe I did.

Q But you saw it; is that correct?

A Yes.

Q I'll just show State's 5, please. And was that the interior of the mobile home?

A Yes.

Q And if we are coming through the front door, so to speak, what area of the mobile home are we looking at?

A That's the -- when you are coming from the front door, that would be to your left side.

Q So if you walk in, this would be on your left-hand side?

A Yes.

Q And then State's 6, is that just another photograph of the kitchen area?

A Yes.

Q And then finally State's 7.

A Yes.

Q And is that just one of the bedrooms inside of the residence?

A Yes.

Q Now, at some point, does other law enforcement officers arrive on scene?

A Yes.

Q Was John Croft one of the investigators, was he one of the law enforcement officers that arrived?

A Yes.

Q So, once the detective or the investigator arrived, what happened on the crime scene?

A They take over the crime scene.

Q So you would have turned that crime scene over to the investigators?

A Detective Croft, yes.

Q When you went inside of the residence, was anybody inside there?

A No.

Q So it was clear, there was no other individuals inside?

A No other individuals inside the house.

Q And then almost last question here. Looking at the report, the shooting call goes out about 8:28 in the evening. Approximately how long after that 911 call goes out are you arriving on scene?

A I would say within five minutes, three to five minutes.

Q So a matter of minutes?

A Yes.

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

THE COURT: Yes, sir.

(Pause.)

BY MR. WHETSEL:

DIRECT EXAMINATION OF JOE BAILEY BY MR. WHETSEL

Q I guess, one final question. What county was [redacted] Westberry in, what county is that located?

A Jasper County.

Q That's Jasper County.

MR. WHETSEL: Sergeant Bailey, I don't have any more questions for you, sir. Ms. Dewitt may though.

CROSS EXAMINATION

BY MS. DEWITT:

Q Sergeant Bailey, by the time you left the scene, how many police officers had arrived?

A By the time we leave the scene?

Q Yes, sir. How many officers were there that night?

A I don't have the exact numbers, it could have been more than eight. Around eight, nine.

Q And were the officers there on that property walking around prior to you securing the crime scene?

A Was the officers -- I didn't -- repeat?

Q Were officers walking around on that property prior to you securing the crime scene?

A Yes.

Q And the area that the decedent was at, was it lit or was it in the dark?

A It was in the dark.

Q And so any lighting we see on the video would be

coming from police cars or headlights?

A I believe so, yes.

Q And approximately how far from the front door of the residence was the decedent located?

A I don't have the exact distance, because he -- he was actually on the side of the residence, going up towards where the door is at the ramp. He was on the side.

Q Okay. But you don't know approximately how far it was from the front door?

A No, I don't know exact.

Q Was there any indication the decedent had been moved since he had been shot?

A No. No indication he was moved.

Q And when you arrived on scene, there was only one person there; is that correct? One person there with the decedent?

A Yes.

Q Okay. And that was the gentleman who was still talking on the telephone?

A No, I don't believe he was still talking on the telephone.

Q I mean, was that Mr. Riley?

A Yes.

Q And at that point, when you came up, you believe he had finished his phone call?

A I believe so.

Q And Mr. Riley told you that he was not present, he had gone to get food?

A I didn't actually interview Mr. Kyle Riley.

Q And I believe it was your testimony you did try to question Mr. Heyward, who had been shot, right?

A Yes.

Q And you received no response from him?

A No response.

MS. DEWITT: Thank you, sir.

That is all the questions that I have for the officer.

MR. WHETSEL: Just very brief redirect.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. WHETSEL:

Q You said a moment ago you had arrived within minutes of the 911 call going out?

A Yes.

Q But you had -- there were some other deputies that were already there on scene?

A Yes.

Q And at least based on your observation, it did not appear that the victim, Mr. Heyward, had been moved. He was still in that same area?

A He was in the same area.

Q I know you don't have an exact distance, but would you say that it would be a matter of feet that Mr. Heyward was lying as in relation to where the front porch was?

A Yes.

Q Meaning that it was relatively close?

A It was very close to the location.

Q Okay. That's what I was trying to get at.

And it was about 8:30 in the evening; is that right?

A I believe around 8:28 p.m.

Q Do you recall if there was a streetlight out there near the yard? Do you have a recollection of that?

A No recollection unless it shows on the body camera.

Q That's okay. And if you don't have a recollection, that is okay.

MR. WHETSEL: Your Honor, I don't have any more questions of Sergeant Bailey.

THE COURT: Okay. You may step down.

MR. WHETSEL: Your Honor, we would next call Detective John Croft.

THE COURT: Okay.

Thereupon,

DIRECT EXAMINATION OF JOHN CROFT BY MR. WHETSEL

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Detective Croft, good morning, sir.

A Good morning.

Q Would you state and spell your name for the record.

A John Croft, C-R-O-F-T.

Q And, sir, where do you currently work?

A Ridgeland Police Department.

Q And what's your job there?

A Criminal investigations.

Q Back in February of 2017, who did you work for?

A Jasper County Sheriff's Office.

Q And were you the initial investigator that responded out to [redacted] Westberry?

A I was the second investigator that responded out, I do believe.

Q Were you part of the team that was called out there to process and collect evidence?

A Yes, sir.

Q And about how long have you been a law enforcement

officer?

A About 12 years.

Q So when you responded out to [redacted] Westberry, can you just tell the jury kind of what you observed when you went out there?

A When I responded to the scene, obviously there were several other Jasper County sheriff's deputies on scene. Of course, when I got there, several pieces of evidence was marked with evidence tape to mark their locations until we got there to process and collect that evidence.

To the left of the front porch of the trailer, there was some medical equipment that was used obviously on the deceased.

Q And as part of being the investigator, were you tasked with collecting some of that physical evidence?

A Yes, sir, I was.

MR. WHETSEL: Judge, may I approach the witness?

THE COURT: Yes, sir.

BY MR. WHETSEL:

Q Detective Croft, I'm going to hand you several photographs. They are marked as State's 8, 9, 10, 13, 14, and 15. And I'm going to ask if you recognize them.

A Yes, sir, I do.

Q Would those be fair and accurate depictions of the

crime scene that you would have seen that night?

A Yes, sir, they are.

MR. WHETSEL: Your Honor, I would ask to move those exhibits into evidence.

THE COURT: What says Defense?

MS. DEWITT: Without objection, Your Honor.

THE COURT: All right. They are in.

The numbers one more time?

MR. WHETSEL: I'm sorry. They are -- if I may get those back. I got them a little bit out of order for a reason. They are 8, 9, 10, 13, 14, 15, and 16.

THE COURT: Okay. They are in without objection.

(Whereupon, State's Exhibit No(s). 8-10, 13-16 marked for identification and received in evidence.)

MR. WHETSEL: Your Honor, may I approach at this point?

THE COURT: Yes, sir.

BY MR. WHETSEL:

Q So Detective Croft, what I'm going to do is I'm going to go through the different photographs with you and just kind of -- to help you explain to the jury what you did that night.

A Yes, sir.

Q So if you will put up State's 8, please.

So when you arrive on scene, we are looking

at which portion of the trailer here, Detective Croft?

A That is the front left of the trailer.

Q And so to the right in that photograph, would that be the approximate area where the porch is?

A Yes, sir.

Q And then if we could look at State's 9, please. And now, we're looking at what appear to be two numbered placards; is that correct?

A Yes, sir.

Q And what are those yellow placards, what are these for?

A They're evidence markers.

Q And they -- they were used to kind of flag around evidence so you know where it's located?

A Yes, sir, they are.

Q So what I wanted to do is -- and before I do this, this evidence that was marked, did you actually collect it?

A Yes, sir, we did.

Q I'm going to start handing you those exhibits and have you identify them. Okay?

A Yes, sir.

Q Detective Croft, to make this a little easier, will you put up State's 10, please?

So we will start with this. State's -- or excuse me, yes, State's 10, which is the exhibit, what is

that showing us?

A That is obviously the evidence marker No. 2, with a cigarette butt.

Q So was the cigarette butt collected as part of this investigation?

A Yes, sir, it was.

Q And is there a reason that this particular cigarette butt was collected?

A The responding officers, when they got to the scene, they notified us of what they found when they got there, and stated that this one was still smoldering when they got on scene. It was fresh evidence, something that would be there within a matter of moments of them arriving.

Q That's what I was going to ask. If you just saw, like, an old cigarette butt on the ground, would you typically collect that?

A No, sir.

Q So I'm going to hand you what has been marked as State's 11 and ask you if you recognize it.

A Yes, sir, I do.

Q And what is State's 11?

A Say again, sir?

Q I'm sorry. What is that exhibit that you are looking at?

A It is the cigarette butt from the front yard that

I collected that night and packaged and sealed.

Q Is it the same one in the photograph?

A Yes, sir, it is.

Q So when you collect a piece of evidence, like this particular piece of evidence, will you tell the jury what you do when you collect a piece of evidence?

A Obviously we mark it first. We step back and take photographs of the surrounding area to get a depiction of where it's at. And once we get the surrounding area photographed off, we try to get in a closer view of it, is what you're seeing now, to show exactly what it is.

Once we do that, basic collection, you're wearing latex gloves, something to keep your DNA from getting on it, or you contaminating that scene whatsoever. You package it. Depending on the evidence itself, this one, of course, was packaged in a paper bag first and seal it. When you seal it, you sign it and date it on the back as well, so you know that nobody else tampered with it.

Q Now, when you collected that piece of evidence, did you bag and seal it like you just explained?

A Yes, sir, I did.

Q And did you tamper or mess with the evidence at any point in time?

A No, sir.

Q And when you collect a piece of evidence, like

No. 11 there, what do you do with it after you get done sealing it?

A Once we get done collecting it, sealing it, we take it to our evidence locker. And it goes into a secure facility in there so that nobody else can mess with it until it's time to send it off to a different facility for analyze.

Q And that particular item, did you later take it up to SLED?

A Yes, sir, I did.

Q And then once that item leaves your custody, what do you do when you take it to SLED?

A Obviously you get the paperwork to fill out to give to them. And in doing so, it's all computerized, thankfully. You transport it up there to them. I use a evidence vault in the back of my car, and I'm the only one with a key to it, so that I can secure it in my vehicle while I transport it back and forth to SLED.

Once I get there, I have to sign it into evidence there, turn it into a locker or technician there, and they take it from that point.

Q Thank you. I'm going to take that back from you.

Now, I want to talk about the shell casing. No. 4, please.

What are we looking at with Exhibit 4?

A Again, the evidence placard and the original piece of crime scene tape that the officers, responding officers, marked it with, and then the shell casing sitting there to the side of it.

Q Would you have collected that item as well?

A Yes, sir.

Q I'm going to hand you what has been marked as State's 12 and ask you if you recognize it.

A Yes, sir, I do.

Q And what is that item?

A It's the evidence bag that contains the shell casing along with the shall casing.

Q Is that the same casing that we are looking at in Exhibit 4?

A Yes, sir, it is.

Q And the procedure you explained earlier about evidence collection, would that apply to this one as well?

A Yes, sir. There's one separate step that we take in that when collecting a shell casing. We try to take a stamp -- excuse me, a picture of the head stamp itself.

Q Outside of that, the collection process, would that be the same?

A Yes, sir, exactly.

Q And when you collected that particular piece of -- item of evidence, what did you do with it?

A Obviously same thing. Packaged it, sealed it, took it to our evidence drop where it was secured in there.

Q And did you actually later take that same item of evidence up to SLED as well?

A Yes, sir.

Q And did you turn it over to their custody?

A Yes, sir.

Q I'm going to take 12 back from you.

Detective Croft, looking at Exhibit 13. What area of the crime scene are we looking at, if you can see that?

A That is the front porch. Basically the whole front side of the front porch, and part of the driveway.

Q And as far as just a reference, are you able to see Placard 2 in that photograph?

A Yes, sir, I am.

Q And that would have been where the cigarette butt was located?

A Yes, sir.

Q Okay. And then back in kind of the rear back there, to the right side of the photograph, is that Placard 3?

A Yes, sir, it is.

Q And as far as the evidence collected, there were three total items; is that correct?

A On the outside of the residence, yes, sir.

Q Would you go to 14, please.

Now, you also collected the item that was at Placard 3; is that correct?

A Yes, sir.

Q And what was that?

A It was a Bud Light bottle.

Q Now, is there a reason that that particular bottle out of all of the bottles collected?

A It was obviously newer than the rest of the trash that was in the yard. It had condensation and a cold fluid in it that we assumed to still be the Bud Light was still inside of it.

Q And kind of same question with the cigarette butt, would you typically just collect like an old beer bottle or beer can if you saw it?

A No.

Q But the reason for this is because it appeared to be a newer bottle?

A Yes.

Q We'll put up 15, please. And now, 15, what direction are we looking at, as far as the crime scene?

A That is the right side of the residence and right side of the trailer. You are still on the front side of it, facing back towards the porch, where our evidence placards,

you can barely see them on the left side of the photograph itself.

Q So that would be looking back in the direction where Mr. Heyward would have been laying?

A Yes, sir.

Q And then 16, please. And then -- almost done here -- this photograph, what are we looking at?

A Again, that is the front of the residence. And it is just off to the left of the front porch, and the items there are the medical items left earlier, the debris that they left from their treatment of the victim.

Q So that is the debris that is in front of that grill?

A Yes, sir.

Q And is that approximately the location Mr. Heyward was lying when he was being tended to?

A Yes, sir, to my understanding.

Q All right. Detective Croft, I want to move a little bit past your actual examination of the crime scene.

Let me ask this first, you actually went into the residence at some point; is that correct?

A Yes, sir, we did.

Q Did you guys see anybody inside when you went inside?

A No, sir.

DIRECT EXAMINATION OF JOHN CROFT BY MR. WHETSEL

Q Another question before I forget. When you arrived on scene, it would have been in the evening time; is that correct?

A Yes, sir.

Q Do you recall there being a streetlight out there though?

A Yes, sir, I do.

Q And the reason I'm asking that is, was it like pitch black dark, or was there some illumination?

A Yeah. It wasn't pitch black dark in that area. With that streetlight, it was pretty well lit.

Q Based on what you recall at the scene?

A Yes, sir.

Q So as far as the time line, the initial call goes out about 8:30 or so in the evening; is that correct?

A Yes, sir.

Q Based on your investigation, do you and the other investigators have a reason to later then go talk to David Hugue that evening?

A Yes, sir.

Q And I'm not going to get into specifics, but just basically the investigation, do you end up talking to Mr. Hugue?

A Yes, sir, we do.

Q And where do you actually go to find him?

A To his residence. I believe it's his grandmother's house as well, Bellgrove.

Q Is that [redacted] Bellgrove?

A Yes, sir.

Q And is it fair to say that you are pretty familiar with the Jasper area?

A Yes, sir.

Q Approximately how far is Grandmother's house at Bellgrove from [redacted] Westberry, if you recall?

A Not very far at all. Maybe a quarter of a mile, maybe a little bit further, give or take. Not far, walking distance.

Q Not far, that is fair enough.

You and several other investigators go out to [redacted] Bellgrove that evening?

A Yes, sir.

Q Do you recall approximately what time it was?

A Not right off the top of my head.

Q If I told you like around midnight, would that sound about right?

A Yes, sir.

Q Were you there when a -- when investigators took a GSR kit from Mr. Hugue?

A Yes, sir.

Q I'm going to hand you an item and ask if you

recognize it.

Detective Croft, I'm going to hand you what is marked as State's 17 and just ask if you recognize that item.

A Yes, sir, I do.

Q And what is that item?

A It is a gunshot residue, referred to as a GSR kit.

Q And before I go into exactly what that is, you can see that the exterior bag is open. However, the interior actual kit itself is it still sealed?

A Yes, sir.

Q And would you have actually collected that particular item?

A Yes, sir.

Q And just explain in general how you collect a -- I guess, first, what is GSR? What does that stand for?

A Gunshot residue.

Q So will you explain to the jury how you collect a GSR kit?

A There are several different vials inside of it, and you -- obviously these vials are labeled left or right. Back of hand, palm. At that point in time, they had just switched over to a two-vial system, so you had left and right hand. Pretty much self-explanatory at that point.

And to collect it, you basically just rub it

across the skin in that area. You are looking in the areas, where the webs of the hand, between the thumb and your forefinger, and then your palm and the back of your hand as well.

Q Thank you. Did you -- were you actually part of, I guess, the collection team for the GSR kit for Mr. Hugue?

A Yes, sir, I was.

Q And do you recognize Mr. Hugue as the man you were taking the kit from?

A Yes, sir, I do.

Q And would you just point him out so that the record --

A At that table.

MR. WHETSEL: Just so the record reflects, Your Honor, Detective Croft pointed towards Mr. Hugue.

BY MR. WHETSEL:

Q When you take that kit, would you just explain how you actually, I guess, take it from the hands? That way I understand.

A Basically you are either patting or swabbing across the skin. That is the only two ways of doing it. I use the pat method. It collects the same, it just doesn't pull everything. You're just -- you're patting on the skin itself.

Q And when you are done with that kit, what did you

do with it?

A Seal it, the same we do all out other evidence. Seal it and mark it and package it. Put in it my vault, transport it back to our office, put it in our secured facility until it's transported to an analyzing agency.

Q And did you actually also transport that item up to SLED?

A Yes, sir, I did.

Q I'm going to come back and take 17 from you.

Now, Detective Croft, did you receive some information about trying to find a woman named Tiffany James that evening?

A Tiffany Jones, yes.

Q Tiffany Jones, excuse me. Did you receive some information about a woman named Tiffany Jones?

A Yes, sir.

Q And was that the same night of the shooting?

A Yes, sir, it was.

Q As one of the investigators, did you do any follow-up in trying to locate this person?

A Yes, sir, I did.

Q And what exactly did you do to try to find this Tiffany Jones?

A We got information that she was supposedly in Beaufort County. We responded to the areas of Beaufort

County. We ran a DMV search for the name, one of the other officers, while I was en route that way.

Coming up with a name, went to that residence. Actually didn't make contact with her, being in contact with family members, and they directed us to where she was. Then we went to that residence and talked with Tiffany Jones.

Q Based on your conversation, I won't get into specifics obviously, but were you able to determine if she had any knowledge about the murder that evening?

A No, sir, she did not.

Q She had no knowledge?

A No, none at all.

Q Was there actually another Tiffany Jones that you tried to locate that night as well?

A I believe so, but I don't think we made contact with anybody else.

Q So is it fair to say that evening, you were unable to find any Tiffany Jones?

A Yes, sir.

Q All right. Detective Croft, pretty close to being done. Did you actually respond out and attend the autopsy of Mr. Heyward?

A Yes, sir, I did.

Q And as part of an investigator going to an

autopsy, what are your duties in general?

A Collecting any evidence that is collected during the autopsy, whether that be clothing, any other evidence that they find in the deceased itself, whether it be projectiles, anything like that. Blood spot, skin scrapings, nail clippings, things of that nature. Hair sample as well.

Q Would you have received evidence from the autopsy, the pathology department in this particular case?

A Yes, sir, I would.

Q Detective Croft, I'm going to hand you what has been marked as State's 18, 19, 20, and 21, and just ask if you recognize these items.

A Yes, sir.

Q And what are those items?

A No. 19 is the blood spot from Mr. Heyward. No. 20 is the left-hand fingernail clippings. No. 21 is the right-hand fingernail clippings. And No. 18 is a projectile from Mr. Heyward.

Q Were those items turned over to your custody?

A Yes, sir, they were.

Q And when you receive items like that, do you follow the same packaging procedure that you testified to earlier?

A Yes, sir, I do.

DIRECT EXAMINATION OF JOHN CROFT BY MR. WHETSEL

Q And did you do that in this case?

A Yes, sir.

Q Now, when you took those items back with you, what did you do with them next?

A Bring them back to the office obviously to go to the same secure area. They're logged in as evidence and packaged into a larger vault and put with the rest of the physical evidence in that case.

Q Now, the blood spot and the projectile, would you have been the person that actually took those up to SLED?

A Yes, sir.

Q The fingernail clippings though, that was a different deputy that took those up?

A Yes, sir, they were.

Q But when you turned them in though, they were packaged and sealed like they were supposed to be?

A Absolutely.

Q I'll take those back from you.

And then finally, Detective Croft, I just want you to ID a couple of items, as far as evidence that you would have taken up to SLED. Did you also take three buccals up to SLED?

A Yes, sir.

Q And I'm sorry, a buccal, what is a buccal swab?

A Buccal swab, it's a DNA swab of the inside of the

mouth.

Q These are, like, a cheek swab of the mouth?

A Yes, sir.

Q And, again, this is just for identification, but State's 24, 25, and 28, do you recognize those items that you would have taken to SLED?

A Yes, sir, I do.

Q I know you didn't take those particular items, but while they were in your custody, did you tamper with them in any way?

A No, sir, I did not.

Q And when you would have taken them up to SLED, how did you do that?

A Same procedure. Everything is removed from our vault, put in my vehicle, locked in my vehicle vault, transported up there, unlocked, taken inside, checked in through the computer and then logged into evidence there, and put into their evidence lock-up or turned over to a technician there.

Q I'm going to get those back from you.

A Yes, sir.

Q I appreciate that.

MR. WHETSEL: Your Honor, beg the Court's indulgence just for a moment.

THE COURT: Okay.

DIRECT EXAMINATION OF JOHN CROFT BY MR. WHETSEL

(Pause.)

BY MR. WHETSEL:

Q Let me ask one more question. Going back to Tiffany Jones, when you were speaking with her, did she give you any indication that she had any idea who David Hugue was?

A No, sir, not at all.

MR. WHETSEL: Your Honor, I don't have any more questions for Detective Croft.

THE COURT: Okay.

CROSS EXAMINATION

BY MS. DEWITT:

Q Officer.

A Yes, ma'am.

Q Did you perform the gun residue test on either Kyle Riley or on Gary Scott? Either Kyle Riley or Gary Scott?

A No, ma'am.

Q Did you perform that test on any other individuals in your investigation?

A No, ma'am.

Q Now, you testified you tracked down a woman named Tiffany Jones.

A Yes, ma'am.

Q And was she -- can you tell me, was she a white

female or a black female?

A I believe she was a black female.

Q And to your knowledge, she did not know anything about the shooting in this case; is that correct?

A Yes, ma'am.

Q Thank you, sir.

MR. WHETSEL: Your Honor, I don't have any more questions for the detective. I'd ask that he be excused, if the Court would like.

THE COURT: Any objection?

MS. DEWITT: No, Your Honor.

THE COURT: Okay. You may step down. Thank you, sir.

MR. WHETSEL: Your Honor, now would be a good time for a brief break, perhaps? A good time? We have been going about an hour and a half or so.

THE COURT: Yeah, we have. Is this a good time to stop for lunch or one?

MR. WHETSEL: Well, I guess we could. I think my next witness will probably be relatively lengthy.

THE COURT: Okay. Then 1:00 we're going to lunch. Because I found out, if we don't go by 1:00 or 1:15, restaurants start closing, and so we will stop for lunch. 2:00, will that give you enough time?

MR. WHETSEL: Yes, sir. That is more than enough

time. We can come back earlier, if you want to, Judge.

THE COURT: Okay. 1:45. That gives everybody enough time to eat, that's an hour and 15 minutes.

All right. Hearing no objection, we will break for lunch. We'll need to be back at a quarter to 2, 1:45. Don't discuss the case or allow anyone to discuss it with you. I'll see you before 2:00.

(The jury exits the courtroom at 12:32 p.m.)

THE COURT: Anything we need to deal with before we break for lunch?

MR. WHETSEL: Not from us, Judge.

MS. DEWITT: Not from the Defense, Your Honor.

THE COURT: Okay. See y'all at a quarter to 2, if not before.

MR. WHETSEL: Yes, sir. Thank you.

(Lunch recess.)

MR. WHETSEL: Your Honor, before we bring the jury in, I was going to ask would this be a good time, that civilian witness that I was going to ask, talked about a prior difficulty, are we going to just take that free testimony and get a ruling on that?

THE COURT: Let me hear that last sentence. Civilian witness, you going to have to talk about what?

MR. WHETSEL: There was a civilian witness, who I wanted to have him talk about a prior difficulty

between the victim and the Defendant. But I thought maybe now would be a good time to flush that out, because he was going to be my second witness I was going to call. If that would be okay.

THE COURT: Okay.

MR. WHETSEL: But we actually need Mr. Hugue.

THE CLERK: They are getting the Defendant.

MR. WHETSEL: Your Honor, do you want me to go ahead and call him forward?

THE COURT: Yes.

MR. WHETSEL: Gary Scott, please.

Thereupon,

GARY SCOTT

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Mr. Scott, if you would, would you state your full name and spell it for the record?

A Gary Edward Scott. G-A-R-Y, E-D-W-A-R-D, S-C-O-T-T.

Q Thank you, Mr. Scott. Now, obviously we are not in front of the jury right now, it's just with the Judge. I

want to ask you just some questions about what you may have witnessed prior to the shooting, as far as any type of issue between Mr. Hugue and Mr. Heyward. Okay?

A Okay.

Q Sir, I'm going to ask, do you remember back to February 18th, 2017?

A Yes.

Q And is that the day that Mr. Heyward was shot?

A Yes.

Q And [redacted] Westberry, whose residence was that at that time?

A Mine.

Q Just speak up just a little bit, sir.

A Mines.

Q That was your residence?

A Yes.

Q And did you know Mr. Lamar Heyward?

A That was my cousin.

Q And what about David Hugue?

A That was -- well, he's supposed to be my cousin also, but he -- he's kin to -- a close friend to the family.

Q He is a close friend of the family?

A Yes.

Q And do you see Mr. Hugue in the courtroom today?

A Yes.

Q Okay. Now, before the shooting on that day, did you witness any type or hear any type of altercation or argument or anything between Mr. Hugue and Mr. Heyward?

A They had two altercations prior. One in the morning, and then another time in the afternoon.

Q And will you tell the Judge the details about what you heard or saw?

A In the morning, something happened Friday, that Friday night, where Mont told D he couldn't come up to my trailer no more, to tell him to stay away.

So D left and he came back that afternoon, and Mont -- they got into a verbal altercation again. So D left and went -- some way, he got in a truck and went to -- I guess they was going to Savannah to the mall. From what I heard, he was going to Savannah.

So D left. I ain't seen him no more until that night. I didn't actually see him, but I heard his voice when he came back that night. Came into the trailer.

Q So prior to whatever happened in the trailer, there was some type of argument between Mr. Hugue and Mr. Heyward?

A Yes. Yes, there was.

Q And did you actually see or hear that?

A I heard it.

Q You heard it?

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A Yes.

MR. WHETSEL: Judge, that is all the questions I have for Mr. Scott for this portion.

THE COURT: Do you have any questions, Ms. Dewitt?

MS. DEWITT: I do have some questions, Your Honor.

CROSS EXAMINATION

BY MS. DEWITT:

Q So is it your testimony that there were -- there were three arguments?

A Yes. The last one was the fatal one.

Q Okay. And where were those arguments?

A In my yard.

Q They were in your yard?

A Yes.

Q When were they?

A Excuse me?

Q When were they?

A When?

Q When?

A Saturday morning and Saturday afternoon.

Q All right. That is two arguments, correct?

A Yeah. The third one, when he came in, I was in my bedroom folding my clothes. I heard D come in the door. Mont told D, "I told you to stay away, but you must think I'm playing. Come outside."

So I'm thinking they going outside to fight, and that's when I heard a gunshot.

Q Okay. You didn't see -- you didn't see a fight, correct?

A I ain't see a fight, I just heard a gunshot.

Q Okay. Did you hear any argument?

A Only thing I heard was Mont tell D to come outside to fight.

Q And you didn't see Mr. Hugue that night, did you?

A Excuse me?

Q You did not see Mr. Hugue that night?

A I ain't see him, I just heard him.

Q And you said there was an exchange of words that morning?

A Twice that day, yes.

Q So was it a total of two times or three times?

A Technically it was three. But altercation, verbal altercation was twice. The last one, that is when I heard Mont told D to come outside that night.

Q But you didn't see what happened outside?

A No, I didn't. I was in my bedroom folding my clothes at the time.

Q And there was no argument in the house?

A No. It was just words was exchanged, was "come outside."

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MS. DEWITT: All right. That is all the questions I have.

THE COURT: Okay.

MR. WHETSEL: And, Judge, that is all I have for him, except for argument.

THE COURT: Okay. You can step down.

MR. WHETSEL: Mr. Scott, we will bring you back in in a little bit, I just wanted to have that with the Judge. So you just go back outside and just hold tight.

THE COURT: Okay.

MR. WHETSEL: And, Your Honor, what I'm seeking to admit is the two prior arguments. Not the details, just the fact that there was a prior dispute between the Defendant and the victim. The third argument, I think he will be able to testify to that, because that led up to everything. But the two priors, just the existence that there was an issue between the Defendant and the victim. And, again, I'm basing that on State V Braski (phonetic) that cite of State V. Braxton, which holds, essentially, that prior disputes between the Defendant and victim may be relevant to establish the Hugue's motive for committing the crime, and the motive may have bearing on the identity of the perpetrator. That is my position, Your Honor.

THE COURT: Yes, ma'am.

MS. DEWITT: Your Honor, my position would be it's not admissible under Rule 404, Section B. Evidence of other crimes or other acts is not admissible to depict the character of a person in order to show action and conformity therewith.

And, of course, the next sentence doesn't generally apply in our case.

MR. WHETSEL: Your Honor, this State V Braxton case, which I have a copy of, they do make a distinction between bad act evidence and prior disputes. And that case cites, it's 343 SC 629, I have a copy if Your Honor would like it.

THE COURT: Okay.

MR. WHETSEL: But it just basically says, in homicide cases, evidence of previous quarrels and ill feelings or hostile acts between parties is admissible to show that animus probably existed between the parties at the time of the homicide, and that case recites State V Williams, and I'll hand that up, Your Honor.

THE COURT: Okay.

MR. WHETSEL: I think that is on the last page, Your Honor, where they are citing those cases.

THE COURT: Thank you.

Okay. Anything else?

MS. DEWITT: No, Your Honor.

THE COURT: It appears that the fact that the case does apply in this, it's my understanding under 404(b), it says it is admissible to show motive identity (reading).

The State's argument to prove motive, the fact that that's the very day of the alleged crime, and there was at least two altercations between the Defendant and the alleged victim. I will allow it.

MS. DEWITT: Your Honor, I would ask that the Solicitor -- or the witness not be permitted to use the word "altercation." I think there was no altercation to indicate there was a physical confrontation between the two people, and that is not what the witness testified to.

THE COURT: Well --

MR. WHETSEL: Well, I was going to refer to it as either like an argument or a dispute, something along those lines.

THE COURT: That is fine. I mean, you can cross-examine him and ask him whether it was an altercation. I think you can clear that point up.

MS. DEWITT: Okay. Thank you, sir.

THE COURT: You can ask him whether he saw any

physical confrontation.

MS. DEWITT: Thank you, sir.

MR. WHETSEL: That was it, Judge. I'm ready for the jury.

THE COURT: All right. Bring the jury, please sir.

(The jury enters the courtroom at 1:58 p.m.)

THE COURT: Okay. You may call your next witness.

MR. WHETSEL: Your Honor, the State would call Kyle Riley.

Thereupon,

KYLE RILEY

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Mr. Riley, good afternoon.

A How you doing?

Q Would you state your full name and spell it for the record?

A My name is Kyle Riley, K-Y-L-E, R-I-L-E-Y.

Q And, Mr. Riley, do people call you something other than Kyle?

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A Yes.

Q What else do they call you?

A They call me KJ.

Q KJ?

A Uh-huh. (Indicating affirmatively.)

Q So you may be referred to as Kyle or KJ; is that fair to say?

A Yes, sir.

Q Kyle, how old are you?

A Twenty.

Q You are 20?

A Yes, sir.

Q And where are you from originally? You don't have to give me an address, but where are you from?

A Old House.

Q Old House?

A Yes, sir.

Q And just speak up just a little bit, because I have a hard time hearing you, and if I can't hear you, I know that the ladies and gentlemen of the jury can't hear you.

Old House, where is that located? Is it in Ridgeland or Jasper County somewhere?

A Yes.

Q Where is it at?

A How you --

Q That's okay. It's okay.

A You want me to explain it like? What you want? Like is -- it's on like -- it's by Cooler store.

Q It's by Cooler's store?

A Yes.

MR. WHETSEL: Judge, may I approach? I feel like the microphone might not be turned on.

THE COURT: You need to talk in that -- is that turned on?

MR. WHETSEL: I don't know if it's turned on or not.

THE CLERK: It is on.

MR. WHETSEL: Mr. Riley, speak into it a little more. Just speak up as loud as you can.

THE WITNESS: What you want me to say?

BY MR. WHETSEL:

Q I just want you to talk loud, please.

A It ain't making no noise.

Q Okay. It's on.

A It's on.

Q All right. Just speak as loud as you can. I know it's hard, but I got to make sure everybody can hear what you say. Okay?

A All right.

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Q You good? You understand?

A Yes.

Q Okay. All right. Mr. Riley, what do you do for a living? What do you do for work?

A I cook.

Q You cook?

A Yes, sir.

Q Okay. Like, what kind of food do you cook? What do you normally do?

A I cook different stuff.

Q Different stuff?

A Yeah.

Q All right. Mr. Riley, I want to get into the reason you are here. Okay?

A All right.

Q Do you remember back on February 18th of 2017?

A Yes, sir.

Q You do remember that day?

A Yes, sir.

Q Do you know where [redacted] Westberry Street is?

A Yes, sir.

Q Who was living at that residence at that time?

A Gary Scott.

Q Gary Scott was living there?

A Yes, sir.

Q Where is your house in relation to Gary Scott's house, at least at that time?

A Down the road.

Q When you say, "down the road," just approximately how far away was it from [redacted] Westberry?

A Like two -- it's not that far.

Q Is it close enough to walk?

A Yes.

Q Do you know Lamar Heyward?

A Yes.

Q Would anybody call Lamar Heyward something other than Lamar?

A They call him Mont.

Q They'd also call him Mont?

A Yes.

Q Do you know David Hugue?

A Yes.

Q How do you know David Hugue?

A Because he was -- he stayed with us for, like, a short period of time.

Q He stayed with you for a short period of time?

A Yeah.

Q As far as Mont Heyward, are you of any relation to him?

A Yeah.

DIRECT EXAMINATION OF KYLE RILEY BY MR. WHETSEL

Q How are you related to Mont Heyward?

A That's my uncle.

Q Uncle in what way, mom or dad's side?

A My mama's side.

Q Now, David Hugue, are you related to him in any way?

A Yes.

Q Do you know how you are related to him?

A No. I believe by my mama's side. But -- it's by my mama's side, you know. They -- we all live in the same area, so --

Q You said you're all from the same area?

A Yes.

Q How long do you think you have known David Hugue?

A A little minute.

Q A good minute?

A Yeah.

Q What does that mean? Just -- I got to make sure everybody understands.

A For, like, a year and some change. Well, I mean, like, prior to the accident or to this day?

Q No, no, yeah. Prior to February 18th, how long had you known David Hugue?

A For a year. Like a year.

Q For like a year or so?

A (Nods in the affirmative.)
Q Do you see David Hugue in the courtroom today?
A Yes.
Q Can you just point him out so we all know who you're talking about?
A (Pointing.)
Q Can you describe something that he's wearing?
A He got on a white shirt.
MR. WHETSEL: Your Honor, just can the record reflect that Mr. Riley pointed to the Defendant, Mr. Hugue.
THE COURT: Okay.
BY MR. WHETSEL:
Q All right. Mr. Riley, I'm going to walk you through your day on February 18th. Okay?
A All right.
Q So that morning, on February 18th, do you recall what day of the week it was?
A No.
Q Would a Saturday sound about right? And if you don't remember, it's okay. But if you know --
A I don't remember.
Q February 18th, what were you doing that morning?
A I was at home.
Q You were home?

A Yeah.

Q Okay. What did you do later on in the day? Just walk us through your day.

A I was home at first, and then later on that day I walked to Gary house because my uncle be in -- well, Gary my uncle, too, but Uncle Mont was there.

Q Let me stop you just a little bit, because I want to make sure that everybody understands. Okay?

So you said you walked over to Gary's house?

A Uh-huh. (Indicating affirmatively.)

Q And who's Gary to you?

A That's my uncle.

Q Gary's your uncle.

A Yeah.

Q So you got to Gary's house, and is that [redacted] Westberry?

A Yes, sir.

Q Okay. So when you get to Gary's house, what do you do at that point?

A He was like -- when I go there, we be playing a game with him. But my Uncle Mont wasn't there when I got there.

Q Mont was not there when you got there?

A No, he wasn't there.

Q Okay. Was anybody else there?

A Yeah.

Q Who else was there?

A It was -- it was me, Gary, and Brent.

Q Okay. Anybody else?

A No. Not at the time, no.

Q And what time of day was that, just roughly? Was that still morning or afternoon?

A No, it was the afternoon. It was the afternoon.

Q It was the afternoon?

A Yeah.

Q At some point, does David Hugue ever arrive?

A Later on that day, yeah.

Q What happens when David Hugue arrives? What, if anything, do you do?

A We were just chilling for a minute. And then I got a call, and my girlfriend and her mama bought me something to eat. So me and David, we walked to my house to go get my food.

Q And is this the same house you told us about earlier?

A Yeah.

Q Okay. So who walked over to that house?

A Me and David Hugue.

Q Okay. What happens -- when you walk to the house, what happens when you get there?

A We was there, they got there, I got my food, and then we walked back to Gary house.

Q What kind of food do you have?

A . Zaxby's.

Q You had Zaxby's?

A Yeah.

Q When you get back to Gary's house, do you remember what time of day it was?

A No.

Q Was it dark yet?

A It was like -- yeah, it was -- it was dark. It was like maybe seven, six. It was somewhere around that time, something like that.

Q But as far as -- was it light or dark outside?

A It was dark.

Q Okay. When you got back to Gary's house, was anybody outside that you saw?

A No.

Q What happens when you get back to Gary's house?

A We walked back to Gary house -- that's when Mont was there. He was on the chair, and then we got in there. Me and D walked in, I walked to the table and D sat on the chair. Mont, like, put on his shoes and he told D to see him outside.

Q Let me -- you know what? Let me just stop you

real quick, Kyle. I got a photograph of the inside of the house. Let me show that to you. Okay?

A All right.

MR. WHETSEL: Your Honor, I'm going to publish State's 5 back to the jury. I think it will aid the testimony.

THE COURT: Okay.

BY MR. WHETSEL:

Q Mr. Riley, do you recognize this photograph?

A Yes.

Q What is that a photograph of?

A The house.

Q What house?

A Gary house.

Q Okay. All right. So walk us through this. So you get back to [redacted] Westberry and you do what?

A We walked in the house. So you see the chair -- you see the chair --

MR. WHETSEL: Actually, Your Honor, can I have him step down? Will that be okay?

THE COURT: Sure. You have to keep your voice up now. The jury has to hear, and this lady has got to take down what you are saying. So if you go down there, talk loud.

THE WITNESS: All right.

MS. DEWITT: We can't hear him, either.

MR. WHETSEL: Yeah. Kyle, just do me a favor. Just stand right here to the left of the photograph. I want you to speak real loud. Ms. Dewitt is in the back, so she can see.

BY MR. WHETSEL:

Q All right. So this angle of the photograph, as you walk in the front door, is this to the left or the right of the mobile home?

A To the left.

Q That is the left side? Is that what you said? I'm sorry.

A Yes, sir.

Q Okay. So when you walked inside, what -- what do you see?

A So it's a chair, you can't see it in this picture, but it's a chair. It's another chair on that side where the room was at. Mont was right here, D sat right there. I walked to the table, that's my Zaxby's spoon right there.

And then Mont was putting on his shoes and told D to see him outside. The door open, you can't see it, but it's on this side. They went out the door, and I was standing right here, and I heard the gunshot, and I saw the flash, and then I went outside.

My uncle was on the ground, and I came back

in the house and I called -- well, I asked Brent to see his phone, because he was on the phone at the time. He couldn't find his phone, so I used my uncle phone, because I knew his password.

Q When you say "your uncle", who are you talking about? Let's make sure we're clear.

A My Uncle Mont.

Q You said you called 911?

A Yes.

Q Let me just back up a little bit, just to make sure the record is clear.

You said when you walked in, Brent was sitting where?

A You can't see it, but it's another chair along this wall. It was another wall here, and you can't see the chair.

Q And that's to the right of the photograph we're looking at; is that fair to say?

A Yeah.

Q Now, where is Mont sitting?

A On this chair right here.

Q And is sort of the brown ottoman that's to the right-hand side of the photograph?

A Yeah.

Q And your food is located where?

A On the table.

Q And then there's a -- is that a window in front of the table there?

A Yes, sir. .

Q What, if you are looking outside that window, what area are you -- what area of the yard are you looking at?

A Like, it's towards the gate. Just like towards the entry and the exit.

Q Is that wooden front porch on that side?

A No, it's by this window right here.

Q And that is -- we are looking at on the left-hand side of that photograph, that window there?

A Yes. The porch is right here. You can see the porch out this window.

Q When you said you saw -- you saw David and Mont walk outside?

A Yes, sir.

Q Does -- do people refer to David as anything else besides David?

A D.

Q They also call him D?

A Yes, sir.

Q So D and Mont walk outside?

A Yes, sir.

Q Was there anybody else outside that you knew of

being out there?

A No.

Q How long had they walked outside approximately before you hear a gunshot?

A Like two, three minutes. As soon as we got there, they went out -- as soon as we got there, they went outside, and I was standing right here.

Q And when you say standing "right here," where are your pointing at?

A I was standing at the table with my food there.

Q Now, when this -- when this gunshot rings out, what do you do next?

A I went outside, and I saw my uncle on the ground.

Q Did you see anything else?

A Yeah, I saw D running away.

Q Now, how did you see D running away?

A He ran out the gate.

Q Okay. Was it dark that evening?

A It was dark outside, but like where his -- like, on the outside of this is a gate. But there is a light pole right there, so you can see in the yard.

Q Did you have any trouble seeing that evening?

A No. I got 20/20 vision.

Q You know what, Kyle, you go ahead and have a seat up there.

Kyle, you had said -- so when you walk outside, your uncle is laying on the ground; is that right?

A Yes, sir.

Q And where is D at that point?

A He's running out the gate.

Q Now, you mentioned somebody named Brent. Where is Brent?

A He was still sitting on the chair.

Q He was inside the house with you?

A Uh-huh. (Indicating affirmatively.)

Q Now, we heard about somebody else named Marquee. Who is Marquee? Was he there that evening?

A Yeah.

Q Where was Marquee at this time?

A He was sleep.

Q Do you know where at he was sleeping? Like, I mean, was he inside of --

A Yeah, he was inside the house asleep.

Q Okay. Now, when you go outside, where is Gary Scott once you go outside?

A He was in his room.

Q Does Gary at some point come outside as well?

A Yes, sir.

Q What does Gary do? Does Gary stay there once he comes outside?

A Oh, he stayed until the police showed, he -- because he gave me his address and all that while I was on the phone with them.

Q So when you are on the 911 call and you're saying -- you're asking a Gary questions, who are you talking to?

A Gary Scott.

Q Gary Scott?

A Yes, sir.

Q But Gary left before the police got there?

A Yeah.

Q When the police showed up initially, was anybody else on the scene besides you and Mont?

A Yes. It was my uncle.

Q Who else?

A It was my Uncle Derrick.

Q Derrick was there, too?

A Uh-huh. (Indicating affirmatively.)

Q Is that Derrick Heyward?

A Yes, sir.

Q So does Derrick come to the house before or after the shooting?

A It was after. He heard the gunshot, and, like, well, y'all can't see it in that picture, but like, they live -- he live, like, on the side of the room. So the path that you can get to from where my Uncle Derrick was living

at and my Uncle Gary house was at, he came over there and he was asking what happened.

Q So your Uncle Derrick shows up after the shooting?

A Yeah.

Q So then on scene you have yourself, Mont, and Derrick?

A Yes. Before the police came, Gary was out there, too, for a little while. Then when the police came, he went to Uncle Derrick house.

Q Was anybody else outside?

A No.

Q Let me back up a little bit, because I cut you off.

Prior to Mont and D walking outside, was there any exchange of words between them?

A No, just, see me outside.

Q Well, that's what I'm asking. Who said that?

A Oh, my Uncle Mont said that.

Q He said that to who?

A D.

Q And then what happens next?

A The gunshot went off.

Q That is what I mean. Like, where -- do they go anywhere after he says, see me outside?

A They went outside.

Q Okay. Let me ask you this. On that day, did you ever see a firearm on Mont, a gun on Mont?

A No, sir.

Q What about D, did you ever see a gun on him that day?

A Yes.

Q What kind of gun was it?

A It was a KelTec .9.

Q When you say "nine," what does that mean?

A That is the caliber of the gun.

Q That is the caliber of the gun?

A Yes, sir.

Q Can you describe what it looked like?

A It's a little -- it was a -- it was a -- it's a -- it's a little black KelTec.

Q Little black KelTec?

A Yeah.

Q Is it -- is it, like, a revolver type gun or, like, a semiautomatic?

A No. No, it was a semi. It was a semiautomatic.

Q A semiautomatic?

A Yes, sir.

Q And did you see that on D that day?

A Yes, sir.

Q Why did you use Mont's phone to call 911?

A Because at the time mine was off. So I used his phone, because his phone was on.

Q Let me ask you this. On the 911 call, the dispatcher at some point asks if you saw who shot your uncle. You don't really answer her. Why is that?

A Because I was trying to get help for my uncle at the time.

Q Were you worried in that -- in that moment, were you worried about who actually shot him?

A No. I was just trying to get help for my uncle. That was it.

Q Had you ever seen D with a woman named Tiffany James or Tiffany Jones?

A No, sir.

Q Had you ever seen him with a woman that would be a tall white female?

A No, sir.

MR. WHETSEL: Your Honor, I ask for the Court's indulgence for a moment.

THE COURT: Yes, sir.

(Pause.)

MR. WHETSEL: Kyle, I don't have more questions for you. Ms. Dewitt though may, so just answer her questions.

THE WITNESS: Yes, sir.

CROSS EXAMINATION

BY MS. DEWITT:

Q Now, you did tell the 911 operator it was just you and the man who had been shot that were present there; is that right?

A I don't remember.

Q Well, if that's what you said on the 911 call, then you think the 911 call would be correct?

A I did -- I did call 911, yes.

Q Okay. You also told the operator that you did not know who shot your uncle; do you recall saying that?

A I may have, I may have not. I just was trying to get help for my uncle at the time. I really didn't want to answer no questions.

Q Well, isn't it true you told the 911 operator that no one else was present but you and your uncle?

A I don't recall I had said that.

Q Do you recall telling the police officers that day that no one else was present but you and your uncle at the time of the shooting?

A You asking me a question?

Q Yes. Did you tell the police that nobody else was present at the house?

A I said I don't recall. You asked that question, like, two times.

Q I can't hear you, sir.

A I said I don't recall.

Q Now, you testified today that other people were in the residence. That would be Brent. What is Brent's last name?

A Walker.

Q And what was he doing there?

A We all be there.

Q Okay. When you say "we all" were there, who are you referring to?

A Me, D, Brent, Mont, Gary. We all be there.

Q Okay. Did you -- do you recall that you told the police nobody else was at the house but you and your uncle?

A I don't recall.

Q And you testified that Mr. Scott was actually present, but he left before the police came?

A Yes, ma'am.

Q Are you aware he told the police that he was in Columbia?

A No. No, ma'am.

Q You didn't give the police any written statement, did you, when you were interviewed by the officer?

A How do you mean by interviewed by the officers?

Q When the police asked you what happened, or what you know, did you write it down? Did you write it down for

the police?

A No, ma'am.

Q At any time when the police came, did they ask you to hold out your hands and submit to what is called a gun residue test?

A No, ma'am.

Q To your knowledge, did you see them do that test on anyone else?

A No, ma'am, not to my knowledge. Because they were -- after they got done asking me what happened and I told them what happened, I left. So I'm not sure if they did it to anyone on the scene. I wasn't there.

Q Okay. But what you said that night was you didn't know what happened; isn't that correct?

A I'm not sure.

Q Well, isn't it a fact that the night of the shooting, you told the police you did not know who shot him or what had happened?

A Hold on. You asking me did I tell that to the operator, or did I tell that to the officers that were there? Which one are you referring to?

Q First, did you tell it to the 911 operator?

A I already answered that, but I'll answer your question again. I said that I was not worried about that at the time, I was trying to get help for my uncle.

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CROSS EXAMINATION OF KYLE RILEY BY MS. DEWITT

Q All right. Second, when the police talked to you that night on the scene, did you also tell them you didn't know anything?

A I don't recall.

Q Now, were you brought to the police station at a later time and questioned?

A Yes, ma'am.

Q Okay. And at that time, did you make a third statement?

A How do you mean by the "third statement"?

Q Well, if you count EMS or 911 as the first, first time you talked to anybody in authority, then you talked to at least one officer on the scene that night, right?

A Yes.

Q It was one policeman, or were you interviewed more than once?

A It was more than once, if you put it that way.

Q Okay. And so after that evening, did you talk to police officers at the police station?

A Yes, ma'am.

Q Now, initially you didn't tell the police what -- you didn't tell the police anything, did you?

A No. I was just trying to get help for my uncle.

Q Were you promised any assistance with criminal charges in exchange for talking to them?

A No, ma'am.

Q Let me ask you this. Wouldn't you think that whatever you said to the police back on three years ago was probably more accurate than what you are testifying to today?

A How you mean by that?

Q Do you think your memory is better today than it was three years ago?

A I can't answer that. I'm not, like, a psychiatrist or nothing.

Q Mr. Riley, you didn't actually see then what happened outside that house, did you?

A No, ma'am.

Q And you said you were inside the home eating?

A Yes, ma'am.

Q Were you watching television or anything else at the same time?

A No, ma'am.

Q Is there a clock in your kitchen where you were eating?

A You asked was it a clock?

Q Well, how would you know how much time had passed if you weren't watching television or looking at a clock?

A I don't know. You say how would I know how much time has passed?

Q Uh-huh. (Indicating affirmatively.)

A I mean, it wouldn't take that long for you to walk outside. I might not be accurate on the exact time, but it wouldn't take you that long to walk outside though. That's, like, if you walk out the courtroom, we can give an estimate, but we might not be right.

Q And your testimony is you were simply eating, you weren't watching T.V., you weren't talking on the phone, you weren't doing anything else; is that right?

A I didn't have a phone. My phone was off.

Q Now, who else did you say was in the living room with you?

A It was me, my uncle, D, and Brent Walker.

Q And, in fact, the television was on when the 911 call was made; do you recall that? Do you recall the operator asking you what that noise was?

A Yes, I do.

Q You do?

A Yes.

Q And you responded the television was on?

A Yes, but I wasn't watching TV. I'm facing -- if you look at the picture, the TV is on the side that you can't see, and my food is facing that way, the whole opposite direction.

Q Now, when the police officer arrived, where was

CROSS EXAMINATION OF KYLE RILEY BY MS. DEWITT

Mr. Walker?

A He was gone at the time.

Q Well, when did he leave?

A When the -- after it happened.

Q Why did he leave before the police came?

A I can't answer that. I'm not Brent Walker.

Q Mr. Scott also left before the police arrived; is that true?

A Yes, ma'am.

Q And your testimony is you are actually the nephew of the decedent, correct?

A Yes, ma'am.

Q And -- but that was not his residence that y'all were at. It belonged to somebody else, Mr. Scott?

A All right. Will you say that -- all right. That is not -- that's not true. That is not truly accurate, because you can live with -- you can stay with somebody and your name don't have to be on their residence.

Q Thank you.

A So is you asking was he staying there, or is you asking is that his house?

Q Well, I was asking whose house it was.

A It's Gary Scott house.

Q Was Mr. Heyward staying there?

A Yes, ma'am.

CROSS EXAMINATION OF KYLE RILEY BY MS. DEWITT

Q What about -- what about Brent, was he staying there?

A No, ma'am.

Q Have you seen Brent Walker since that day?

A Yes, ma'am.

MS. DEWITT: That is all the questions I have for this witness, Your Honor.

THE COURT: Okay.

MR. WHETSEL: Brief redirect, Judge.

THE COURT: You may.

REDIRECT EXAMINATION

BY MR. WHETSEL:

Q Kyle, I'm going to show you State's 16. Do you recognize that photograph?

A Yes, sir. It's the outside of the house.

Q That is the outside of the house?

A Yes, sir.

Q And in that photograph, is the window from which you were looking out shown?

A Yes, sir.

Q And where is that window?

A It is by the -- it's closer to the grill.

Q Is the window closer to the grill?

A Yes, sir.

Q That is the window you were looking out of from

the kitchen table?

A I believe so, yes.

Q If I show you --

A I might have to see another picture though, because it's another --

Q That is fine. All right. So you recognize that photograph, correct?

A Yes.

Q All right. So the window that you are looking out of --

A Is the green -- the one with the green and white curtain over it.

Q The green and white curtain?

A Yes.

Q So the porch would be near what window?

A The window that is above the couch, by the clock.

Q All right. So on Exhibit 5, the window that is above the couch would be the one that is closest to the porch?

A Yes.

Q So if we go back to 16, which window would you be looking out of?

A There's only one window.

Q I'm sorry?

A There's only one window.

REDIRECT EXAMINATION OF KYLE RILEY BY MR. WHETSEL

Q So which window are you looking out of?

A The one that's closest by the table.

Q Okay. Yeah, but I'm saying on the exterior, the way we can see on the exterior of the house, as it shows in this photo, which window are you in front of?

A Best to my knowledge, that might be the window. That should be the window.

Q Which -- I'm sorry. What is it near -- let me clarify.

A Oh, the grill.

Q The window near the grill?

A Yes.

Q Okay. Got you. That was a poor question on my part.

Mr. Riley, before you heard the gunshots, who walked outside the residence?

A D and Lamont Heyward.

Q D and who?

A And Mont.

Q And Mont?

A Yes, sir.

Q After they walked out, how much time passed before you heard that gunshot?

A Not that long.

Q And do you see the man that walked out with your

uncle in the courtroom?

A Yes, sir.

Q Who is it?

A It's D.

Q Can you point to him?

A (Pointing.)

Q How certain are you?

A I am a hundred percent certain.

Q A hundred percent?

A Yes, sir.

MR. WHETSEL: Your Honor, I don't have any more questions. Thank you.

THE COURT: Ms. Dewitt?

MS. DEWITT: I only have one question, Your Honor.

RE-CROSS EXAMINATION

BY MS. DEWITT:

Q Sir, you didn't -- you weren't looking out the window that night, were you?

A No, ma'am.

Q All right. Thank you. That is all the questions I have.

THE COURT: You may step down.

MR. WHETSEL: Ready for the next one, Judge?

THE COURT: Yes.

MR. WHETSEL: Gary Scott.

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DIRECT EXAMINATION OF GARY SCOTT BY MS. WHETSEL

Thereupon,

GARY SCOTT

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Mr. Scott, would you state your full name and spell it for the record.

A Gary Edward Scott, G-A-R-Y, E-D-W-A-R-D, S-C-O-T-T.

Q Mr. Scott, I'm going to ask you, do you remember back on February 18th of 2017?

A Yes, I do.

Q At that period of time, where were you living?

A At [redacted] Westberry Street, Ridgeland.

Q That is in Ridgeland?

A Yes.

Q Was anybody else living with you at that period of time?

A Yeah, I had roommates. I had Marquee staying with me and his girlfriend, Lex, and Mont.

Q And Mont?

A Yes.

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DIRECT EXAMINATION OF GARY SCOTT BY MS. WHETSEL

Q Now, sir, who is Mont?
A Mont is my cousin.
Q And do you know Mont's full name, like his first and last name?
A Lamont Heyward.
Q Lamont Heyward?
A Yes.
Q Also Lamar Heyward?
A Yeah.
Q People call him that as well?
A Yeah.
Q Do you know a man named David Hugue?
A Yes, I do.
Q How do you know David Hugue?
A Kin to my family.
Q He's kin to your family?
A Yes.
Q And do you see Mr. Hugue in the courtroom today?
A Yes, I do.
Q Will you just point to him so that it's clear?
A Sitting over there (pointing).
Q Did Mr. Hugue go by any nicknames besides David?
A Call him D.
Q People call him D?
A Yes.

Q So, Mr. Scott, to make sure we are clear here, I want to show you Exhibit 16 and ask if you recognize this photograph.

A That is the front of my trailer.

Q I'm sorry, sir?

A That is the front of my trailer.

Q That's the front of your trailer?

A Yes.

Q Was that where you were living back on February 18th, 2017?

A Yes.

Q All right. Mr. Scott, I want to get into what you saw and heard that day. Okay?

A Okay.

Q Before I get there though, I just want to get this out of the way. You have had a couple of your own convictions in the past; is that correct?

A Yes, I have.

Q And I just want to make sure this is right. I'm showing a forgery conviction from about 2008; is that right?

A Yes.

Q And I'm showing two shoplifting convictions, one in 2015 and one in 2016?

A Yes.

Q All right. Mr. Scott, now that we got that out of

the way, I want to ask on February 18, 2017, what were you doing that day?

A I was over at my cousin house next door.

Q And who -- what cousin is that?

A My cousin Crabman. He stay next door to me.

Q Your said, "Crabman"?

A Yes.

Q Now, [redacted] Westberry, approximately how far is your cousin's house from here?

A Right on the opposite side, just like walking through a crack through the fence. Short distance.

Q Within walking distance?

A Yes, no more than 25 feet.

Q And you said that would have been to the right of your mobile home?

A Yes.

Q How long were you there at your cousin's house?

A I practically be back and forth all day.

Q You said you were back and forth all day?

A Back and forth all day, yes.

Q Was anybody over at your house during the day?

A During the day, well, early that morning, me and Mont was in the house, before I left out. Because I went next door to get a can of -- get a can of corn beef hash for we was going to make breakfast that morning. And D came up,

and Mont told D --

Q I will stop you there. We will get to that in just a minute. Okay?

A Okay.

MS. DEWITT: Excuse me, Your Honor, we cannot hear the witness over here. If he can speak a little louder.

BY MR. WHETSEL:

Q Yeah, Mr. Scott, just project as loud as you can, sir, so everybody can hear you.

A Okay.

Q So without getting to what was said, you said Mont was over at the house earlier?

A Mont was at the house, yes.

Q And then you said D showed up?

A Yes.

Q Does D stay, or does D leave?

A D leaves.

Q And what does Mont do?

A Mont went back in the house. He stayed in the house. He ain't leave till later on that afternoon.

Q He didn't leave until that afternoon?

A Yes.

Q Now, I want to ask you about that evening.

A Okay.

DIRECT EXAMINATION OF GARY SCOTT BY MS. WHETSEL

Q Once it got dark outside, where were you?
A I was next door, at my cousin Crabman house.
Q You were still over at your cousin's house?
A Yes, I was.
Q At some point, do you come back to [redacted] Westberry?
A Yes.
Q Who, if anybody, was at your house then?
A Marquee and Brent was in the house, they was playing video games.
Q Now, let me make sure I hear well. You said Marquee and Brent?
A And Brent, yes. Brent Walker.
Q Okay. And they're doing what inside?
A Playing video.
Q Playing video?
A Play Station, yes.
Q Was anybody else there?
A No. KJ came later.
Q And real quick, KJ is who?
A My nephew.
Q That's Kyle Riley?
A Yes.
Q Okay. So you said KJ comes later?
A Right.
Q Anybody else over there at that time?

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A No.
Q What do you do?
A What did I do?
Q Yeah, what do you do later that evening?
A I come in from the house, from next door rather, I go in my room and start folding my clothes that I left out -- took out the dryer and left on my bed earlier that day.
Q You started folding some clothes?
A Yes.
Q All right. I'm going to show you a photograph, Mr. Scott.
A Uh-huh. (Indicating affirmatively.)
Q Do you recognize that?
A That is my bedroom.
Q That's your bedroom?
A Yes, it is.
Q Is there anything on the bed there?
A That was the clothes I was folding.
Q So you were in your room folding clothes?
A Yes.
Q What, if anything, happens next?
A What happens next, I heard D come in the house and --
Q And let me stop you there. You said you heard D come in the house. How do you know that?

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DIRECT EXAMINATION OF GARY SCOTT BY MS. WHETSEL

A Because I recognized his voice. And then Mont said, "You thought I was playing. I told you to stay away. Come outside."

Q All right. What happens next?

A And when I heard the door close again, no sooner than I hear the door close, I hear a gunshot.

Q Now, did you see anything?

A I ain't see nothing; I just heard it, gunshot.

Q What do you do next?

A I come out. Mont is on the ground, KJ is on the phone, trying to get the -- talking to 911, trying to call the ambulance.

Q And where is D?

A D gone.

Q He is not there anymore?

A He's not there anymore.

Q What about Brent; where is Brent?

A Brent and Marquee, they ran off.

Q Prior to the shot, though, where are they?

A They was in Marquee's bedroom, in the back of the trailer.

Q And when you come outside, where is Brent and Marquee?

A Brent and Marquee, they passed me by when I was stopping to look at Mont. They passed by me, they just ran

off into the woods.

Q And you said that KJ was on the phone with 911?

A Yes.

Q What did you do, did you stay?

A No. I had a warrant at the time. So what I did, I went back next door to my cousin house and watch everything through the woods, like a branch or so to say.

Q Which cousin was that?

A Crabman, the yard I had been at all day.

Q And do you recall what type of warrant was it for?

A Municipal warrant.

Q Municipal warrant?

A Yes.

Q Why -- I mean, Mont just got shot. Why didn't you stay around?

A I panicked, and I knew I had a warrant and I wasn't ready to turn myself in yet.

MS. DEWITT: Your Honor, I would ask that the witness still speak a little bit louder so we can hear him over here.

THE COURT: Okay. Do that, please, sir.

BY MR. WHETSEL:

Q Mr. Scott, just talk as loud as you can.

A Okay.

Q Mr. Scott, I want to ask you another question. I

don't want details, but prior to that day, were you aware of any type of dispute between D and Mont?

A Yes, I was.

Q And was that something that you saw or heard yourself?

A I seen it and heard it.

Q To your knowledge, did Mont have any type of gun or firearm on him that day?

A No, Mont didn't have no gun on him.

Q To your knowledge, do you know if D had a gun on him or not that day?

A Yes, I know D had a gun.

Q And how do you know that?

A Because D always carried guns.

Q Can you describe what -- like -- are you able to describe the type of gun you had saw that day, earlier that day?

A A black -- a black automatic.

Q A black automatic?

A I don't know what size of the caliber, but it was black.

Q A day or so after the shooting, the police talked to you. Do you remember that?

A Yes.

Q Initially you tell the police what?

A I wasn't there, at first.

Q What do you tell them?

A I told them I wasn't there. I came back and all that had happened in my yard, but I wasn't there.

Q Is that true?

A No, that was a lie.

Q Now, why did you lie to the police at first?

A Because I was afraid of getting locked up.

Q What is really true, Mr. Scott?

A What is true was that the fact that Mont and D had an altercation that Friday night.

Q I don't want to get into details, but what I mean is --

A What is really true?

Q Were you in Columbia at the time of the shooting?

A No, I wasn't.

Q Did you hear a gunshot that night?

A Yes, I did.

Q And you said that you had panicked because of the municipal warrant?

A Yes.

Q The man whose voice you heard before going outside, is he in the courtroom today?

A Yes.

Q And who is that person?

A D.

Q Mr. Scott, I'm almost done, sir.

Prior to Mont being shot, how long had you known D?

A I know D basically all my life. Well, he was -- he just came home recently, so --

Q I won't get into that, but I mean, you've known him for some period of time?

A Oh, yes. Yes, sir, a good while.

Q Did you ever know him to hang out with a woman named Tiffany James or Tiffany Jones?

A I never known that.

Q Did you ever know him to hang out with a woman that would be described as a tall white female?

A No. I never seen him with a female. Every time I see him, he was by himself.

MR. WHETSEL: Your Honor, I don't have any more questions for Mr. Scott.

Mr. Scott, Ms. Dewitt will have questions for you, just answer her questions, sir.

THE WITNESS: Okay.

CROSS EXAMINATION

BY MS. DEWITT:

Q Now, Mr. Scott, who else at that residence carries a gun?

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CROSS EXAMINATION OF GARY SCOTT BY MS. DEWITT

A Who else at that residence carry a gun?
Q Who else that resides at that house?
A Basically everybody that was in my house at the time carry a guns or play with guns.
Q Everybody who lived there had a gun; is that right?
A Yes, except Mont. Mont didn't have no gun at the time.
Q And then you told the police initially you weren't even there, that you were in Columbia that night, correct?
A Yes, I did.
Q Okay. And next time you talked to them was at some point at the police department; do you remember that?
A Yeah, I remember that.
Q Okay. And you initially told them you didn't know anything?
A Yes.
Q So the second time you talked to them, you first told them you didn't know anything. And do you recall that you changed your story when the officer offered to help you take care of your outstanding warrant?
A No, he did not offer to help me. But he told me, he said, look, he knew I was there because the 911 tape put me there. So I decided to come clean and tell him what really happened.

Q But he did offer to take care of your warrant, didn't he?

A No, he did not.

Q What happened to that outstanding warrant?

A I paid for it. I served time for that.

Q Did you turn yourself in when the police wanted to talk to you as a witness?

A No, I did not turn myself in. I paid the ticket off.

Q How did you find out the police wanted to talk to you about this case?

A I believe it was Deputy Sheriff Bailey came and picked me up that Sunday -- that Sunday afternoon. I believe so, if my memory serves me correct.

Q He picked you up and he made you go to the police station; is that right?

A He took me to the police station, yes.

Q And when you were there, he also had you give what is called a DNA sample?

A Yes.

Q Are you familiar with that?

A A swab, yes.

Q All right. Did anybody complete a test on you to see if you had gun residue on your hands?

A No, they did not.

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CROSS EXAMINATION OF GARY SCOTT BY MS. DEWITT

Q Are you aware of anybody else having received that test?

A No, ma'am.

Q . Now, okay, you didn't see what happened outside?

A No, I did not.

Q And based on your testimony, it sounds like, you were not there a lot of the day; is that true?

A I was back and forth.

Q Were you promised anything from law enforcement --

A No, I wasn't.

Q -- to get you to come to court today?

A No.

Q All right. By your own account then, you changed your story to the officers at least twice, correct?

A No. Actually, once. I lied the first time and I changed it.

Q The first time you told them that you were in Columbia?

A Excuse me?

Q The first time, you told them you were in Columbia, right?

A Right. And then I told him the truth after the fact that he informed me that I couldn't have been in Columbia because he heard my name mentioned on the 911 emergency call. So that's when I told him the truth.

Q Okay. Well -- but the second time, which was at the police department when they talked to you, you first told them again you didn't know anything.

A Both times at the --

Q Isn't that true?

A Both times was at the police department.

Q Okay. But then the second time you started out saying you didn't know anything?

A The second time -- the second time, I told them the truth. The first time, I lied. The second time, I told them the truth of what happened, what I heard.

Q After initially lying to them?

A Yes.

Q So why should we believe you today, sir?

A Why should you believe me today? Because that is what happened.

Q Thank you.

MS. DEWITT: That is all the questions I have.

MR. WHETSEL: Brief redirect, Judge?

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. WHETSEL:

Q Mr. Scott, based on your knowledge, who had a prior issue with Mont that day?

A Who had a prior issue?

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REDIRECT EXAMINATION OF GARY SCOTT BY MR. WHETSEL

Q Yes, who had a prior issue?

A D.

Q And did you hear -- whose voice did you hear go outside with Mont?

A D and Mont.

Q And where were Brent and Marquee at the time that D and Mont went outside?

A They was in the back, back part of the trailer, in Marquee bedroom that he was renting from me.

Q When you come outside, do you see D?

A I don't see D at all.

Q When I say "outside", I mean, after the shooting.

A Right. I don't see him at all.

MR. WHETSEL: Judge, I don't have any more questions.

THE COURT: All right. You may step down, sir.

THE WITNESS: I'm done?

THE COURT: You may step down. Yes, sir.

MR. WHETSEL: Your Honor, keep going?

THE COURT: Any of y'all need a break? Anybody want a break?

Any of y'all need a break?

MR. WHETSEL: I'm good right now.

THE COURT: Okay.

MR. WHETSEL: Your Honor, may Mr. Scott be excused

from the subpoena?

THE COURT: Any objection?

MS. DEWITT: No, Your Honor.

THE COURT: Okay. You can keep going then, until any of you need a break.

MR. WHETSEL: The State calls Derrick Heyward.

Thereupon,

DERRICK HEYWARD

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

Sir, please speak loud, sir, so everybody can hear what you have to say.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Sir, just speak as loud as you can into the mic. I got to make sure that I can hear it so that everybody on the end can hear it, too.

A Okay.

Q Sir, will you state your full name.

A Derrick Devette Heyward.

Q And will you spell your first and last name.

A D-E-R-R-I-C-K, D-E-V-E-T-T-E, H-E-Y-W-A-R-D.

Q Thank you. I just wanted to make sure we had it

right for the record.

A All right.

Q Mr. Heyward, do you live anywhere near [redacted] Westberry?

A Yes, sir.

Q Approximately how far away from [redacted] Westberry?

A From where it happened or what?

Q Right, from -- yeah. From [redacted] Westberry, that mobile home, approximately how far do you live away?

A Approximately from here to that back door there.

Q From here to that back door?

A Yeah.

Q What if I said 30 yards, would that sound about right?

A Yeah.

Q Just to try to make sure that the record reflects it.

A Yeah.

Q Now, Mr. Heyward, I want to know if you know somebody named Lamont Heyward?

A That is my nephew.

Q That's your nephew.

A Yes, sir.

Q Do you know a man named Gary Scott?

A Yes.

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DIRECT EXAMINATION OF DERRICK HEYWARD BY MR. WHETSEL

Q How do you know Gary Scott?
A First cousin.
Q I'm sorry, sir?
A First cousin.
Q First cousin.
A Yes.
Q Do you know a young man named Kyle Riley, or KJ Riley?
A That is my nephew.
Q That's your nephew.
A Yes, sir.
Q Do you know a man named David Hugue?
A Yes, sir.
Q How do you know Mr. Hugue?
A Family friends.
Q Family or friends?
A Family and friends.
Q Yes, sir. Do you see Mr. David Hugue in the courtroom today?
A Yes, sir.
Q Would you point to him, just so we all have --
A He's right there (pointing).

MR. WHETSEL: Just so the record reflects, Your Honor, that he pointed towards the Defendant.

THE COURT: Okay.

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DIRECT EXAMINATION OF DERRICK HEYWARD BY MR. WHETSEL

BY MR. WHETSEL:

Q Mr. Heyward, I'm going to ask if you remember some details about February 18, 2017. Do you remember that day, sir?

A Yes, sir.

Q Now, Mr. David Hugue, does he go by anything other than David?

A D.

Q People call him D?

A Yes, sir.

Q Prior to, and let me ask this, that night on February 18, 2017, did you hear anything?

A One gunshot.

Q You heard a gunshot?

A Yes, sir.

Q When you heard that gunshot, what did do you?

A I was sitting down watching TV, and then Gary came over and said Lamont just got shot.

Q So that is how you found out about it?

A Yes, sir.

Q Okay. Prior to the shooting, had you seen D, or David Hugue, over in that area at all that day?

A Yes, sir.

Q Where did you see him specifically that day only?

A Same spot.

Q What do you mean by "same spot"?

A Next door, the same trailer next door to my trailer, to the trailer I'm staying.

Q You talking about Gary's trailer?

A Yeah, Gary trailer.

Q That particular day, that day only, were you aware if the Defendant, Mr. Hugue, was -- had a gun on him that day?

A He surely did.

Q How do you personally know that?

A I seen it.

Q Can you describe what it looked like?

A A little black handgun about like a little .380 or something like that.

Q Would it have been a revolver or a semiautomatic?

A Semiautomatic.

Q Were you aware, at least personally, had you ever known Mr. Hugue to be associated with a woman named Tiffany James or Tiffany Jones?

A No.

Q Had you ever seen him with a woman that could be described as a tall white female?

A No.

Q Mr. Heyward, I don't have any more questions for you. Ms. Dewitt probably will. Just answer her questions.

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CROSS EXAMINATION

BY MS. DEWITT:

Q Mr. Heyward, I'm just curious. Do you own a gun?

A Ma'am?

Q Do you own a gun yourself?

A No, ma'am.

Q Not one in your whole house?

A No, ma'am.

Q How about your wife?

MR. WHETSEL: Objection.

A Not married.

BY MS. DEWITT:

Q Is it unusual for people in your neighborhood to have guns?

A Is it what?

Q Let me reword it.

Is it common for people in your neighborhood to have -- to own guns?

A Oh, yeah. Everybody tote a gun in the neighborhood, some people. But not me.

Q Now, when Mr. -- you said it was Gary Scott who came over to your house?

A Yes.

Q And all he said was Lamont has been shot?

A Yes.

CROSS EXAMINATION OF DERRICK HEYWARD BY MS. DEWITT

Q He didn't tell you who shot him?

A He didn't tell nobody who shot him. Everybody knew who shot him.

Q Well, what did -- you didn't know anything when he came over, did you?

A Well, they was all -- all of them was over there at the same time, and he was the only one that called Lamont out.

Q Did you see what happened that night?

A No, I was not over there to see what happened, Miss.

Q You were not present?

A No.

Q In fact, the only thing you know is you heard a gunshot?

A Yeah, I heard a gunshot.

MS. DEWITT: Thank you. That is all the questions I have for you.

MR. WHETSEL: I don't have any redirect, Judge.

THE COURT: You may step down. Thank you, sir.

MR. WHETSEL: Your Honor, may he be excused from subpoena?

THE COURT: Any objection?

MS. DEWITT: None, Your Honor.

MR. WHETSEL: And, Your Honor, I failed to ask

earlier, Kyle Riley, who came in testified, I'd ask if he can be released as well.

THE COURT: Any objection?

MS. DEWITT: No, Your Honor.

MR. WHETSEL: Thank you.

You want us to keep going?

THE COURT: Yes, sir.

MR. WHETSEL: We'll next call Lieutenant Mike Atwood.

Thereupon,

MICHAEL ATWOOD

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Lieutenant Atwood, would you state and spell your name for the record.

A My name is Michael Atwood. First name, M-I-C-H-A-E-L; last name, A-T-W-O-O-D.

Q And what do you do for a living?

A I am a lieutenant with the Jasper County Sheriff's Office.

Q And you are a lieutenant with what division?

A Criminal investigations, investigations and narcotics.

Q How long have you been a law enforcement officer?

A Since 1999, so 20 years.

Q Lieutenant Atwood, were you involved in the investigation of this particular homicide?

A I was.

Q And as a lieutenant, would you be -- is it fair to say you were in charge of it?

A Yes.

Q I want to ask about that particular day. How do you -- how are you initially informed about a shooting at [redacted] Westberry?

A I'm called by dispatch.

Q And based on dispatch relaying this to you, what do you do?

A I respond to the scene.

Q And when you first get on scene what, if anything, are you doing?

A When I first get on scene, my initial job is to assess to see what resources we are going to need, how many investigators I'm going to need, if we are going to need SLED, or if we're going to need any outside agencies or what we are going to need to process that scene and handle that call.

Q When you arrive on scene, is Sergeant Bailey already there?

A Yes, he is.

Q And did you assign an investigator to actually be the lead detective on this case?

A I did.

Q And let me ask before I forget to ask, in what county did this shooting occur?

A Jasper.

Q Now, there was some physical evidence found outside, potential physical evidence; is that fair to say?

A Correct.

Q And did you assign an investigator to basically handle that evidence and collect it?

A I did.

Q And do you recall who that was?

A That, at the time, would have been Detective Croft.

Q Now, as detectives are processing the scene, what are you doing at that point?

A I went to the landing zone. The patient was initially going to be flown from a nearby fire station to Savannah Memorial. I followed the ambulance and went to the landing zone to meet with them, and they were unable, due to his medication condition, were unable to fly him, so I

stayed with the medic unit and went to the hospital in Hardeeville.

Q Was the shooting victim ever, I guess, conscious, as far as being able to make any type of statement to the police?

A Not during the time I was encountered with him.

Q So after they are unable to airlift him out, you said they drive him to another nearby hospital?

A Correct.

Q What were you doing at this point?

A I follow them to the hospital.

Q What did you do when you get to the hospital?

A When I got to the hospital, I went into the room where he was being treated, and just kind of stood out of the way until the doctors could do what they could do to see what his condition was.

Q And ultimately what was his condition?

A He was pronounced dead in Hardeeville.

Q I guess I didn't ask this either, February 18th, do you remember what day that was? Was that Saturday?

A Saturday. I believe it was Saturday.

Q Was it Saturday, if you recall correctly?

A Yes.

Q Now, at some point during the investigation that night -- I don't want to get into details, but did David

Hugue's name come to your attention?

A It did.

Q And once David Hugue's name came to your attention, what action did you do next?

A When we finished at the scene, we went nearby to where he was living to make contact with him and talk to him about the situation.

MR. WHETSEL: Your Honor, may I approach the witness?

THE COURT: Yes, sir.

BY MR. WHETSEL:

Q Lieutenant Atwood, I'm going to show you what has been marked as State's 22 and ask if you recognize it.

A I do.

Q And is that a fair and accurate depiction of the area of Jasper County where [redacted] Westberry and [redacted] Bellgrove are located?

A Yes, sir.

MR. WHETSEL: Your Honor, we'd move 22 into evidence.

THE COURT: What says the Defense?

MS. DEWITT: Without objection, Your Honor.

THE COURT: All right. It is in without objection.

(Whereupon, State's Exhibit No(s). 22 marked for

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identification and received in evidence.)

BY MR. WHETSEL:

Q Lieutenant Atwood, this is not the best way to do this, but I'm going to hold this map up. Actually, I'm going to come over here. It might be easier. Just so the jury can see, and it's hard for you to see there -- or point to, on this map, where is [redacted] Westberry?

A [redacted] Westberry is right here.

Q And then [redacted] Bellgrove, where is that located?

A Bottom left.

Q And just approximate distance, how far is [redacted] Westberry from [redacted] Bellgrove?

A Approximately a half a mile.

Q And then just for a frame of reference, it shows Cooler's grocery. Is that located on here, too?

A Yes, right here.

Q Okay. Thank you.

So about what time of night on the 18th do you respond out to [redacted] Bellgrove?

A It was shortly after midnight.

Q And did you go by yourself or did other investigators go?

A No, there were several of us that went.

Q And whose residence was it actually?

A That was the Defendant's grandmother's house.

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DIRECT EXAMINATION OF MICHAEL ATWOOD BY MR. WHETSEL

Q Was that Ms. Linda Hugue?

A Yes, sir.

Q Did you at some point make contact with David Hugue that evening?

A I did.

Q And your interaction with him, was that captured on any type of recording device?

A Yes, one of the lieutenant's body cams.

Q Did you have an opportunity to review that video prior to court today?

A I did.

MR. WHETSEL: Your Honor, I'm going to approach the witness, if that's okay.

THE COURT: Okay.

BY MR. WHETSEL:

Q Lieutenant Atwood, I'm going to hand you what is marked as State's 23 and ask you if you recognize a disc.

A I do.

Q And did you review that prior to trial today?

A Yes, sir.

Q And is that a fair and accurate depiction of the events on scene when you and your deputies responded out to [redacted] Bellgrove that evening?

A Yes, sir.

MR. WHETSEL: Your Honor, I would ask to admit

State's 23 into evidence.

THE COURT: Okay. What says the Defense?

MS. DEWITT: I believe any objection is noted in the record already.

THE COURT: Okay. It is in evidence.

(Whereupon, State's Exhibit No(s). 23 marked for identification and received in evidence.)

MR. WHETSEL: I'm going to ask a couple more questions, then I'll ask to publish, Judge.

THE COURT: Okay.

BY MR. WHETSEL:

Q Lieutenant Atwood, when you made contact with David Hugue that night, did you try to interview him?

A Yes.

Q Prior to interviewing him, what did you do, if anything?

A I read him his Miranda rights.

Q And how did you provide those Miranda rights to him?

A I have a prepared text, so business card with it on.

Q After providing those warnings to him, did he agree or not agree to speak with you?

A He agreed to.

Q And did he provide any type of statement to you?

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A Yes.

MR. WHETSEL: Your Honor, I'd ask now to go ahead and publish 23.

THE COURT: Okay. It's Exhibit 3.

MR. WHETSEL: Twenty-three, Judge. Two, three.

THE COURT: Oh, I'm sorry. Okay.

(Video played.)

BY MR. WHETSEL:

Q Lieutenant Atwood, you said, you can hear on video, too, you guys got out there a little bit after midnight?

A Yes, sir.

Q The body cam is showing a time of, like, 5:30 in the morning. Does that just mean the time of the body cam is just not accurate?

A Yeah.

Q I just want to make sure we were clear, you were out there a little bit after midnight?

A Yes, sir.

Q All right. I just want to talk a little bit about what Mr. Hugue told you that evening. You had asked him if he knew a Lamont Heyward; is that correct?

A Correct.

Q And what was his response?

A That he did not.

Q You had asked if he had ever been over to [redacted] Westberry Street; is that correct?

A That's correct.

Q What was his response?

A That he has not.

Q Did he tell you -- some of the video is hard to hear. Did he tell you where he was prior that day?

A He said he was in Beaufort from about 5:00 till about 11:00 or 11:30.

Q We're talking about in the morning or in the afternoon?

A In the evening.

Q In the evening.

A Yes, sir.

Q Did he give you a name of a person that he was with?

A Tiffany Jones.

Q This Tiffany Jones, did he provide any other information to you that night?

A Other than she lived in Port Royal, and he provided three different cell phone numbers.

Q Did you have your investigators work on trying to track that person down that evening?

A We did.

Q Based on your investigation, were you ever able to

find a Tiffany Jones who matched -- who he was talking about that night?

A No, sir. No, sir.

Q All right. Let me ask you just a couple more things. After the -- February 18th was the day of the shooting, correct?

A Correct.

Q You end up interviewing both Gary Scott and Kyle Riley; is that correct?

A Correct.

Q As part of the investigation, did you have buccals taken from them?

A We did.

Q And what is a buccal swab, just so the jury knows?

A It is a mouth swab, it's compared to DNA found on the scene. It is Q-tip just swabbed in the inside of their mouth.

Q Okay. I want to hand you a couple exhibits, first to see if you can ID them.

Lieutenant Atwood, I'm going to hand you what is marked as State's 24 and 25 and just ask if you can identify them.

A Yes, sir.

Q And what are those items?

A These are the swabs from Gary Scott and Kyle

Riley.

Q And once those swabs are taken, what happens to them as far as evidence packaging?

A They are sealed, they're allowed to dry, and they're sealed and then they're sent to SLED to compare with any other evidence that we find on scene.

Q When those were in your custody, did you tamper with them in any way?

A No, sir.

Q Were those items actually submitted to your evidence?

A Yes.

Q I'll get that back from you.

Lieutenant Atwood, throughout the investigation, not only that night, but through the remainder of the investigation, were you or your detectives ever able to locate this Tiffany James or Tiffany Jones person?

A No, sir.

Q Lieutenant, I have no further questions for you, sir. Ms. Dewitt probably will. Just answer her questions.

A Yes, sir.

CROSS EXAMINATION

BY MS. DEWITT:

Q Now, Officer, did you perform a gun residue test

on either Mr. Riley or Mr. Scott?

A No, ma'am.

Q And did you -- but you did do the swab, basically to test for DNA evidence, correct?

A Yes, ma'am.

Q Are you aware that Mr. Hugue, my client, gun residue test came back negative?

A Yes, ma'am.

Q Which would indicate he had not fired a gun that night; is that correct?

A I'm sorry. What was that?

Q Ordinarily negative gun residue test indicates he did not fire a gun?

MR. WHETSEL: Your Honor, I would object to that. That is speculation from the lieutenant. I think there is somebody that's more qualified that would answer that question.

THE COURT: Okay.

MS. DEWITT: I withdraw the question.

THE COURT: Okay.

BY MS. DEWITT:

Q Lieutenant, are you the person who interviewed at the police department the two witnesses, Mr. Riley and Mr. Walker?

A Yes, ma'am, I'm one of them.

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CROSS EXAMINATION OF MICHAEL ATWOOD BY MS. DEWITT

Q And are you aware that -- was there some discussion during the interview, I think it was Mr. Walker, concerning some outstanding warrants he had?

A I never interviewed a Mr. Walker.

Q All right. You interviewed Mr. Riley?

A Mr. Riley and Mr. Scott.

Q Okay. Mr. Scott had some outstanding warrants; were you aware of that?

A Yes, ma'am. He had some traffic citations from the Ridgeland Police Department.

Q Did you have a discussion with him about the fact that you could help him with those outstanding citations?

A No. I had a discussion with him, but not to the fact that I could help him with those citations.

Q When you initially interviewed him, or when the interview started out, he did, in fact, deny knowing anything, didn't he?

A Yes, he did.

Q And at some point he changed his story, correct?

A Yes, ma'am.

Q Was that before or after his outstanding charges came up?

A That was after. The charges came up prior to the interview.

Q Okay. Were you aware that he had been at the

house and at the scene at the time of the shooting before -- before he came in that day?

A Yes, ma'am.

Q Well, he had denied being there. So how could you have known he was present before he changed his story?

A You can hear his voice on the 911 tape.

Q All right. Thank you.

Okay. Did you also participate in interviewing the decedent's nephew, the one that made the 911 call?

A Mr. Riley, yes, ma'am.

Q And Mr. Riley also initially told you at the police department that he didn't know anything?

A Initially, yes, ma'am.

Q And at some point during your interrogation of him, he was Mirandised prior to you talking to him, wasn't he?

A Yes, ma'am.

Q Okay. So he and the other gentleman, they were both suspects, correct?

A No, ma'am.

Q Well, you Mirandised him?

A I Mirandize everybody that I talk to in an interview room.

Q And you also got warrants to obtain the DNA

samples, correct?

A Yes, ma'am.

Q Now, did you in fact -- did you, in fact, tell the young man that called 911 during your interview process that it was against the law for him to have possession of the decedent's telephone?

A I explained to him taking evidence from a crime scene is against the law.

Q Okay. And that evidence you are referring to was the fact he was in possession of the decedent's cell phone, correct?

A Yes. Yes, ma'am.

Q And at some point in time, you made him aware that that, in fact, was a crime. And did he turn over the telephone to you?

A Yes, ma'am, we later received the telephone.

Q Okay. And you say "later," because when he came to the police department, he did not have it in his possession?

A I don't recall exactly when we obtained possession of the cell phone. I don't think it was during the interview, but I don't know exactly when.

Q Now, of all the individuals -- as it turns out, there were several people at the home that evening, at the decedent's home. Is it fair to say that of all the

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individuals that were present to interview, they have all given inconsistent statements?

A I'm not sure I understand the question.

Q How many individuals were at that home that night?

A We interviewed two. I believe there may have been a third one in there that would not talk to law enforcement.

Q Okay. Are you referring to a man named Brent Walker?

A Yes, ma'am.

Q Okay. And did the police locate him?

A Yes, ma'am.

Q Did he talk to the police?

A No, ma'am.

Q Was a gun residue kit done on him?

A No, ma'am.

Q Was any kind of DNA sample taken from him?

A No, ma'am.

Q Was he ever actually brought into the police department to question?

A No, ma'am. He would not speak to us.

Q Is it fair to say that of the individuals who were present at the residence when the shooting occurred, that they either did not cooperate with you or they made several inconsistent statements?

A It is fair to say they did not initially

cooperate.

Q Well, and it is also fair to say that the first things they told the police turned out not to be true, correct?

A Correct.

Q Are you aware that there -- that none of the DNA matched -- that was collected that night matched up to Mr. Hugue?

A I'm not sure. What was that again? Explain the question.

Q There was no DNA evidence that matched up to my client, was there?

A Not that I can recall, no, ma'am.

MS. DEWITT: That is all of the questions I have for the officer.

MR. WHETSEL: Brief redirect, Your Honor.

REDIRECT EXAMINATION

BY MR. WHETSEL:

Q Lieutenant Atwood, Ms. Dewitt asked you about Brent Walker a moment ago; do you recall that?

A Yes, sir.

Q During your investigation, did you ever receive any evidence to make him a suspect in your investigation?

A No, sir.

Q She also asked about GSR kits for Gary Scott and

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REDIRECT EXAMINATION OF MICHAEL ATWOOD BY MR. WHETSEL

Kyle Riley. Is there a reason you wouldn't have taken GSR kits from both of them?

A We do GSR within a six-hour window from the time a shooting, or any shooting happens, to the time we contact the person. Any time outside of that window, it's just not feasible to do the test, because they've probably washed their hands, or it could wear off, or there is a multitude of reasons why GSR wouldn't be present at that time.

Q So if it's outside the six-hour time window, law enforcement is not going to collect a GSR kit?

A No, sir.

Q And then Gary Scott was interviewed at the police station. Was he interviewed that night or some time later?

A The next day. Later the next day, well outside the six-hour window.

Q What about Kyle Riley?

A The following day, which would have been Monday.

Q Ms. Dewitt had asked about some of the witnesses. Based on your experience as an investigator, do you ever run into witnesses that are reluctant to cooperate with you?

A Every single day.

Q And then finally she had brought up the point that a GSR kit for Mr. Hugue came back negative. You are aware of that as investigator, correct?

A Yes, sir.

REDIRECT EXAMINATION OF MICHAEL ATWOOD BY MR. WHETSEL

Q You had the opportunity to watch the taking of the GSR again on the body cam; is that correct?

A Yes, sir.

Q Is there anything with Mr. Hugue's hands that you noticed prior to that kit being taken after re-watching that video?

A Movement with -- inside his pockets and his jacket.

Q You could see some movement with his hands inside his pockets?

A Yes, sir.

Q And that kit was taken -- do you recall approximately how long after the shooting?

A Four to four and a half hours, approximately.

Q Four to four and a half hours.

A (Nods in the affirmative.)

MR. WHETSEL: Your Honor, I don't have any more questions for Lieutenant Atwood.

THE COURT: Okay. You may step down.

THE WITNESS: Thank you.

MR. WHETSEL: Your Honor, could we take maybe just a brief break before we go to the next witnesses?

THE COURT: Sure.

Ladies and gentlemen, we will take a ten-minute break. Don't discuss the case yet.

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REDIRECT EXAMINATION OF MICHAEL ATWOOD BY MR. WHETSEL

MR. WHETSEL: And, Your Honor, I failed to say, Lieutenant Atwood, is he free to go?

THE COURT: Yes, sir. What does the Defense say?

MS. DEWITT: Without objection.

(The jury exits the courtroom at 3:35 p.m. p.m.)

THE COURT: Okay. From a scheduling standpoint, how many more witnesses you plan to call this afternoon?

MR. WHETSEL: The next witness, I think, will be relatively brief, and then we are going to get into Sergeant Phillips, and that is with the statement. So, I could go as far as I could with him perhaps. I don't know if I'll get the whole statement done or not, but -- yes, sir.

THE COURT: All right. Thank you.

(Brief recess.)

THE COURT: All right. Ready for the jury.

THE CLERK: We have to bring in the Defendant.

THE COURT: Oh, I'm sorry.

(The jury enters the courtroom at 3:55 p.m.)

THE COURT: All right. Call your next witness.

MR. WHETSEL: Your Honor, the State would call Ms. Linda Hugue.

Thereupon,

LINDA HUGUE

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Ms. Hugue, would you state your full name for the record, ma'am?

A Linda Fay Hugue.

Q And, ma'am, would you spell your last name for the record?

A H-U-G-U-E.

Q Thank you, ma'am.

Do you currently live at [redacted] Bellgrove in Ridgeland?

A Yes.

Q And back in February of 2017, were you also living at the same residence?

A Yes.

Q And, ma'am, David Hugue, is he related to you in some way?

A He is my grandson.

Q Now, ma'am, I want to ask if you remember back to February 18th of 2017, the day that Lamont Heyward was shot and killed; do you remember that day?

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REDIRECT EXAMINATION OF MICHAEL ATWOOD BY MR. WHETSEL

A Yes.

Q Do you remember the police talking to you that evening?

A That night?

Q Yes, ma'am. Do you remember a police officer calling you on the phone and talking with you?

A Yeah, late that night.

Q Yes, ma'am. Late that night?

A Uh-huh. (Indicating affirmatively.)

Q Do you recall if that police officer asked you for a phone number for David?

A Yes.

Q And did you provide that phone number to the officer?

A Yes.

Q And you may not, but do you have any recollection of what that number was that David had at that point in time?

A No.

Q But whatever number you would have given the officer, was that the number that you knew David would have had?

A Yes.

Q And then, ma'am, do you remember the police coming back out to your house a couple of weeks later?

A Yes.

Q And they asked you if you would provide a statement to them, like an actual written statement; do you remember that?

A Yes.

Q Then they asked you about David's -- kind of his whereabouts on the 18th; do you remember that?

A Yes.

Q And do you recall where David was during the day on February 18th?

A He was home most of the day.

Q Yes, ma'am. Did he leave --

A But now when he left, I don't -- I can't say where he was.

Q No, I'm not asking where.

A Okay.

Q But do you know on February 18th, about what time that day he would have left your house?

A No.

Q If I showed you a copy of your statement, would that refresh your memory?

A Yes.

Q Ms. Hugue, I'm going to hand you the document. I guess that I can go ahead and make that a Court's exhibit.

Ms. Hugue, I am going to make this Court's 4

just so that I can reference it.

(Whereupon, Court's Exhibit No(s). 4 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q Ma'am, do you recognize that document?

A Yes.

Q Would that be a copy of the statement you would have given police?

A Yeah.

Q Ma'am, I am going to ask you a couple of questions about time. But before I ask you that, does that statement refresh your memory as to what you told the police?

A Yes.

Q Ma'am, I'm going to take that back, if that's okay. Thank you.

Ma'am, after reviewing your statement, do you recall about what time that day David would have left your house?

A No, I can't remember it right now but ...

Q Would it be fair to say what you wrote in your statement would have been accurate?

A Yeah. Yeah, because I remembered then.

Q Yes, ma'am. If I showed you that statement again, would that help you?

A Yes.

Q Okay. I'm going to hand you back Court's 4, Ms. Hugue. Ma'am, based on, at least to the best of your memory, do you know what time David would have left your house on February 18th?

A Okay. I said about 5:00.

Q Would that be in the afternoon or the morning?

A Afternoon.

Q And do you recall about what time he would have come back to your house?

A Between 8:30 and 9:00.

Q Is that in the evening or in the morning?

A Same day.

Q Same day, in the evening time?

A Uh-huh. Uh-huh. (Indicating affirmatively.)

MR. WHETSEL: Beg the Court's indulgence.

THE COURT: Yes, sir.

(Pause.)

BY MR. WHETSEL:

Q Ma'am, I'm going to take that statement back from you, if that's okay. Thank you.

Ms. Hugue, I'm almost done. You said you recall speaking to the officer on the phone that same evening?

A Yes. Yes.

Q I'm going to ask if you remember this number.

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REDIRECT EXAMINATION OF MICHAEL ATWOOD BY MR. WHETSEL

Okay? The number would have been [redacted]-9514. Do you remember if that was the number you would have given the officer on the phone as to being David's cell phone number?

A No, I don't remember the number. But I gave them the number that I usually use to call him.

Q Okay. That is fine.

MR. WHETSEL: Your Honor, I don't have any more questions for Ms. Hugue.

THE COURT: Okay. Ms. Dewitt, do you have any questions?

MS. DEWITT: I just have one question, Your Honor.

THE COURT: Okay.

CROSS EXAMINATION

BY MS. DEWITT:

Q Good afternoon, Ms. Hugue. Did you make this written statement for the police officer in February?

A Yes.

Q When the shooting happened?

A Not that day.

Q Okay. And, in fact, the statement you wrote, it is dated March 13th, 2017, or about a month later. Does that sound like when you wrote this?

A Yes.

Q And why did you write the statement in March?

A Because that is when he asked me.

Q Okay. Nobody asked you to write a statement until then?

A No.

Q All right. Thank you. Thank you, ma'am.

MR. WHETSEL: Your Honor, I don't have any more questions for Ms. Hugue.

May she be excused from her subpoena?

THE COURT: Any objection?

MS. DEWITT: No, Your Honor.

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

MR. WHETSEL: Your Honor, my next witness is relatively lengthy. I would ask that now might be a good time to break for the evening.

THE COURT: Okay. Ladies and gentlemen of the jury, this next witness will take us past 5:00, so we are going to stop this evening. Ask you to be back at 9:30 in the morning. My instructions I gave you yesterday are the same. Don't talk about this case yet. Don't allow anyone to talk about it in front of you. Don't do any research.

I'll see y'all back at 9:30 in the morning. 9:30 suit everybody?

MR. WHETSEL: Yes, sir.

MS. DEWITT: Yes.

THE COURT: Okay. If you have any emergency,

please call us. Thank you.

(Jury exits the courtroom at 4:05 p.m.)

THE COURT: Anything else that we need to deal with?

MR. WHETSEL: Not from the State, Your Honor.

MS. DEWITT: Nothing from the Defense, Your Honor.

THE COURT: Thank y'all. I'll see you in the morning.

MR. WHETSEL: Thank you, sir.

(Court adjourned for the day. Proceedings to continue on 10-30-2019.)

* * *

10-30-2019 PROCEEDINGS

THE COURT: All right. Anything that we need to do before I bring the jury in?

MR. WHETSEL: Just a question, I guess, Judge. My next two witnesses are the investigators with the statement. My plan was to put up Investigator Wright initially, just for the purpose of authenticating the disc, and have him come back down.

I would ask, since he's already ruled in the admissibility, we can stipulate to the authentication and I would skip him. But if not, then I'll put him up for that purpose.

THE COURT: Okay. What's your position on that, Ms. Dewitt?

MS. DEWITT: I prefer that he put him up so that the jury would know how it got in.

MR. WHETSEL: And I'm fine with that, Judge.

THE COURT: Okay. All right. You ready for the jury?

MR. WHETSEL: Yes, sir.

THE COURT: Bring me the jury, please, sir.

(The jury enters the courtroom.)

THE COURT: Okay. Mr. Solicitor.

MR. WHETSEL: Thank you, Your Honor. The State would call Elvin Wright.

THE COURT: All right, sir.

Thereupon,

ELVIN WRIGHT

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Investigator Wright, would you state and spell your name for the record.

A Elvin Wright. E-L-V-I-N, W-R-I-G-H-T.

Q All right. Investigator Wright, who do you currently work for?

A Fourteenth Circuit Solicitor's office.

Q How long have you been with this office?

A Ten months.

Q Prior to that, where did you work?

A Jasper County Sheriff's Office.

Q And when you were with the Jasper County Sheriff's Office, what was your role there?

A When I left there I was a civil process officer. Prior to that I was a criminal investigator.

Q Back in February 2017, were you a criminal investigator?

A Yes, I was.

Q And were you one of the investigators that spoke with Mr. Hugue after the murder?

A Yes.

Q Will you just tell the jury about how you became involved in the interview of Mr. Hugue?

A On that particular night, Mr. Hugue requested to speak to me.

Q And did you go in and talk with him?

A Yes.

Q Your portion of the interview, was it recorded in any way?

A Yes, it was.

Q And prior to talking to him, were you made aware of this and advise him of his Miranda warnings?

A Yes, sir.

Q And how did you become aware of that?

A I was briefed by the investigator that was in charge, which was Detective Phillips.

Q After learning that information, did you actually go in and speak with Mr. Hugue?

A Yes, sir, I did.

Q When you were speaking with him, did he appear to be under the influence of any type of drugs or alcohol?

A No, sir.

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Q Did he appear to understand the questions that you asked him?

A Yes, sir.

Q When you were speaking with him, did you make any type of threats or promises to him?

A No, sir.

Q Investigator Wright, I'm going to hand you a disc and ask you if you recognize it.

A Okay.

Q I'm going to hand you what has been marked as State's 27. Do you recognize that disc, sir?

A Yes, I do.

Q And did you have an opportunity to review that disc prior to trial today?

A Yes, sir.

Q All right. Does that contain at least your portion of the interview with Mr. Hugue?

A Yes, it does.

Q And does that contain, I guess, the audio -- the audio portion of your interview with him?

A Yes, it does.

MR. WHETSEL: For the purpose of this, Your Honor, I would, I guess, just basically put on record that he has identified this disc, Exhibit 27.

THE COURT: Okay.

MR. WHETSEL: And I'll retrieve that back from you.

Your Honor, that is all the questions I have for Investigator Wright at this point.

THE COURT: Okay. Any questions?

MS. DEWITT: If the officer is being recalled, no, none at this time.

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

MR. WHETSEL: Your Honor, we would next call Sergeant Jared Phillips.

THE COURT: Okay.

Thereupon,

JARED PHILLIPS

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Sergeant Phillips, will you state and spell your name for the record?

A Jared, J-A-R-E-D, Phillips, P-H-I-L-L-I-P-S.

Q And, sir, for what agency do you work?

A The Jasper County Sheriff's Office.

Q And what is your current rank?

A Detective sergeant.

Q And as a detective sergeant, what is your primary duties?

A As supervisor over the investigation unit in assistance to the lieutenant.

Q And you are involved, I guess, in investigations?

A I am.

Q Were you involved in the investigation of this case?

A I was.

Q And what was your role as investigator in this case?

A The lead investigator.

Q As the lead investigator, what would you primarily do in a case like this?

A Basically organizing the information that is coming in to the investigation. Tasks were getting search warrants, arrest warrants, taking voluntary statements, reviewing the evidence, collecting it.

Q I want to ask if you recall this particular investigation, specifically February 18th, 2017. Do you recall that?

A I do.

Q How do you first learn about this investigation?

A I was in Beaufort at the movies with my family when I received the initial phone call from Lieutenant

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DIRECT EXAMINATION OF JARED PHILLIPS BY MR. WHETSEL

Atwood. He advised that there was a shooting at [redacted] Westberry, that there was a victim on scene with serious injury, and was planning on being flown out.

Q And [redacted] Westberry, what county is that located?

A Jasper County.

Q So once you learned that information, what do you do next?

A At that point I had to take my family back to our residence. While en route, that's when I received the second phone call from Lieutenant Atwood saying that the victim did not make it.

Q When you say, "did not make it," what do you mean?

A They pronounced him dead.

Q So once you learned that information, what do you do at this point?

A At that point, I'm having to get ready, come back in to [redacted] Westberry to meet with other officers. At that time I was advised that the search warrant was being obtained for the residence.

Q So you learned that information, and then what actions are you taking at that point?

A At that point I'm making phone calls with other investigators on scene, trying to obtain what information they had already. I finally make it to the scene, meet with the officers, they provide me information that they had

already received in reference to Kyle Riley, Gary Scott, and David Hugue as being a person of interest.

I leave the scene at that point, go back to the office and start pulling criminal histories, any information I can obtain on all three parties.

Q Is it fair to say, at this point, you are just trying to gather as much information as you can?

A I am.

Q During the course of that evening, did you ever learn information from detectives about a person named Tiffany -- I believe it's Jones?

A Jones, yes.

Q Did you learn any information about this person?

A At that point I started running through DMV trying to located this Tiffany Jones. We were able to locate a Tiffany Jones that was in Beaufort County.

Q Okay. And once you made -- or once you identified a Tiffany Jones in Beaufort County, what action, if any, did you either do or direct?

A At that point we also received a phone number for this Tiffany. I attempted to make phone calls with that phone number provided. The phone number was disconnected, or nobody answered at that time.

At that point I made contact with Detective Croft, who I advised to go to the location, make contact

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with this Tiffany, to meet with her and obtain any information that they could.

Q Based on your investigation that night, did investigators ever make contact with Tiffany Jones?

A They made contact with a Tiffany Jones. She did not have any information about David Hugue, did not know him. And she was nowhere near the Ridgeland area at the time.

Q So after directing detectives to try to locate this Tiffany Jones, what actions, if any, were you taking next?

A At that point, due to the fact that we could not locate a Tiffany Jones that was provided, being that confirmed through the statements of Detective Croft and the Tiffany Jones he made contact with, I contacted Ms. Linda Hugue to re-make contact with David Hugue in reference to the information. She advised me that he was no longer there and that he had left with a Tiffany.

Q While you were speaking with her, did you obtain a phone number from Ms. Hugue that you would use to attempt to make contact with David Hugue?

A I did.

Q What was that phone number, if you recall?

A It was [redacted]-9514.

Q So [redacted]-9514, that was the number that

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Ms. Linda Hugue provided to you?

A She did.

Q And it was your understanding that number belonged to who?

A David Hugue.

Q Before -- before moving on from Ms. Hugue, at some point later in the investigation, did you go back and obtain a written statement from her?

A I did.

Q And that was a couple of weeks later; is that correct?

A It was.

Q And is there a reason that it was not that night that you -- is there a reason you did not obtain a written statement from her that evening?

A That was the initial phone call when Ms. Hugue was between 2:00 and 3:00 a.m., the second phone call to her, when she advised me of the time when he came to the residence and left the residence.

It was a follow-up at that point, that was at 4:00 a.m., and I did not want to make contact with her. Throughout the investigation we were going through what we needed to complete, and I needed to go re-make contact with her and obtain that statement from her.

Q So later on, she did provide that written

statement to you?

A Yes.

Q Before, I guess, keep moving on here, the night of the shooting, do you recall what day of the week that was?

A That was a Saturday.

Q It was a Saturday?

A It was.

Q When you received that number from Ms. Hugue, the 305 number, did you take any action in regard to that particular phone number?

A I attempted to call it that night to make contact with Mr. Hugue. No one picked up. At that point I did send a preservation to Verizon.

Q And when you say "a preservation," just tell --

A It preserves the information and data phone call records throughout that -- the days we request.

Q In addition to the preservation, did you ever follow up with Verizon with any other legal documents?

A Search warrant was obtained.

Q And did Verizon respond back to the search warrant for that number?

A Yes, they did. They provided data.

Q You said they provided data for that number?

A Yes. Yes.

Q When you received that data from the number, did

you provide that data to anybody else?

A I did. Dylan Hightower with the Solicitor's office.

Q You provided that data to him?

A Yes.

Q During the course of your investigation, did you ever attempt to retrieve any information from Facebook?

A I did.

Q Did they provide any type of -- I guess -- how would you have -- how would you have requested information from Facebook?

A You have to send a preservation. It is an email system, how they do it. You send a preservation, it logs a case number through Facebook and your case number. What they do is you set the date and times for the preservation, then you have to do a follow-up documentation with a search warrant.

When you send the search warrant to them, they give you the time and date you have requested of the data from your Facebook log.

Q And would that be accounts that you believe, at least, to be associated with Mr. Hugue?

A Yes.

Q Did they provide anything in response to your search warrants?

A They did. Paperwork came.
Q I'm sorry. I won't get you to give us those actual details, but did they provide anything to you?
A They did.
Q Did you have a chance to at least review that information?
A I did.
Q Was there anything in there that was relevant to this particular investigation?
A No, sir.
Q During the course of your investigation, is it fair to say that you had learned Mr. Heyward had been shot and killed by firearm?
A Yes.
Q Did you or any of your investigators ever locate a firearm?
A No, sir, we did not.
Q All right. Detective Phillips, a few days after the murder did you ever make contact with Mr. Hugue?
A I did.
Q Did you have -- did you have a chance to speak with him?
A I did.
Q And in what location did you speak with him?
A That was the CID sheriff -- part of the Sheriff's

office, a separate annex where we have our interview rooms.

Q In that interview, would you have recorded it in any way?

A Yes, sir.

Q Prior to interviewing somebody that is suspected of an offense, is there any action that you take prior to asking them to make a statement?

A You do. We have a Miranda form we go through with them, explaining the process and their rights.

MR. WHETSEL: Your Honor, may I approach the witness?

THE COURT: Yes, sir.

BY MR. WHETSEL:

Q Detective Phillips, I want to hand you what has been marked as State's 26 and ask if you recognize this document.

A I do.

Q And is that a fair and accurate copy of the original Miranda warnings that you would have provided to Mr. Hugue?

A It is.

Q And I guess, just to make sure that we are all clear, the man that you spoke to that day, do you see him in the courtroom?

A I do.

Q Would you identify him?

A He is sitting right there in the green button-up shirt.

MR. WHETSEL: Just so the record reflects that Sergeant Phillips identified Mr. Hugue.

THE COURT: Okay.

MR. WHETSEL: Your Honor, we would ask to move to admit State's 26 into evidence.

THE COURT: What says the Defense?

MS. DEWITT: I believe my objection is noted already, Your Honor.

THE COURT: Okay. It's in over defense objection.

(Whereupon, State's Exhibit No(s). 26 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q Sergeant Phillips, would you utilize State's 26 there, would you explain to the jury how you would have provided Miranda warnings in this particular case?

A In the first portion of the form itself is basically your identifying information is. It will be the name, the date of birth, the Social, his address of where he resided, a phone number or contact number for him, his age, his race, his sex, his height, and his weight.

Then we proceed down to the highlighted section, which is the Miranda warnings. And then at the

final portion is the waiver of the rights prior to speaking. If he agrees to speak with us, he'd sign.

Q When you are providing warnings like that to somebody, do you have them read the form, or do you also read it to them?

A I have them holding it, reading it, filling out the information, and I read the same identical form to them.

Q Based on your interaction with Mr. Hugue that -- that evening, do you believe at least that he understood the rights as you gave them to him?

A Yes, sir.

Q After receiving those warnings, did he agree to make a statement or not agree to make a statement?

A He agreed.

Q He agreed to make a statement?

A Yes, sir.

Q And that statement, again, was that recorded in some way?

A It was audio recorded.

Q Sergeant Phillips, I'm going to hand you what has been marked as State's 27. I'll take 26 back from you. I'm going to ask you if you recognize that disc.

A I do.

Q Did you have an opportunity to review that disc prior to trial?

A I have.

Q And does that disc contain your audio portion of the interview of Mr. Hugue that you conducted?

A It does.

MR. WHETSEL: Your Honor, at this point we would ask to admit State's 27 into evidence.

THE COURT: Okay. It is in over objection.

MR. WHETSEL: Thank you, Your Honor.

I'll approach to take that back from you.

(Whereupon, State's Exhibit No(s). 27 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q Sergeant Phillips, do you recall what time of the day that you spoke with Mr. Hugue?

A I believe it was around 8:42 or 43 that night.

Q And is it fair to say that the interview with Mr. Hugue was roughly an hour or so long?

A It was.

MR. WHETSEL: Your Honor, I would ask to go ahead and publish Sergeant Phillips' portion of the interview at this time.

THE COURT: Okay.

(State's Exhibit 27 published to the jury.)

BY MR. WHETSEL:

Q Investigator Phillips, that would have been your

portion of the interview?

A Yes, sir.

Q And then, what next after that? What detective comes in to talk to Mr. Hugue?

A Detective Wright.

Q Let me ask a couple of things. Is there a reason that there's no video recording portion of it?

A When this video was actually recorded, our recording system, the actual visual part, was disabled and inactive. We had to actually replace the entire system.

Q Typically, though, there would better a video portion?

A Yes, sir, there would be.

Q A couple times today, too, that you reference the 19th as being the day --

A That was incorrect on my part.

Q Based on the content of the questioning, though, was it pretty apparent you were talking about the day of the murder?

A Yes, sir.

Q Because the murder was the evening on the 18th?

A It was on the 18th, yes, sir.

Q I want to just go through that interview a little bit with you. You had asked him about [redacted] Westberry?

A Yes.

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Q Did Mr. Hugue know anything about [redacted] Westberry, according to him?

A He denied any knowledge of it.

Q What about Lamar -- that you also -- Lamont Heyward, same individual; is that correct?

A Yes, sir.

Q Did Mr. Hugue say that he did or did not know Mr. Heyward?

A He advised that he did not.

Q A big portion of your interview is about this person named Tiffany; is that correct?

A That is correct.

Q What type of information did Mr. Hugue provide, as far as descriptors for -- for this Tiffany?

A That her name was Tiffany James, that she was a 31-year-old white female, between 5'11" and 5'12", 120 pounds.

Q Did he give a race?

A A white female.

Q Did he give an area where she may live?

A Port Royal area of Beaufort.

Q He also provided information about a vehicle; is that correct?

A Yes, sir.

Q And what type of vehicle did he describe that

she --

A It was a yellow Nissan.

Q Let me ask you this: Do you have access to DMV records or any type of databases?

A We do.

Q Did you run that information against any police tools that you have?

A We did. I ran it through the state, and we were unable to locate a yellow Nissan Altima in this area of Beaufort or surrounding counties.

Q What about this -- what about Tiffany James, though, that particular name?

A I -- I did as well.

Q Were you able to find anybody that matched the description he provided to you?

A No, sir, I wasn't able to, even with the other spelling.

Q And the other spelling, is that with the additional T in there?

A Yes, sir.

Q He had given a very particular, I guess, name for her mama. Shalana at Port Royal; is that right?

A Yes, sir.

Q Were you able to ever find anybody named Shalana at Port Royal?

A No, sir.

Q What about -- he gave you several phone numbers, too, that could be hers; is that correct?

A He did.

Q Were ever able to make contact with anybody at those several phone numbers?

A No, sir.

Q You mentioned about on, I guess, near where her parents lived was near Port Royal Plantation; is that correct?

A Yes, sir.

Q And he also said it was Beaufort; is that correct?

A No, sir.

Q Is there a Port Royal Plantation in Beaufort?

A No, sir. And the county is on Hilton Head side.

Q I'm sorry, it's just located where?

A Hilton Head.

Q On Hilton Head?

A Yes, sir.

Q To your knowledge, during your investigation, he said that he ate at Checkers that day. Are you aware of a Checkers being in Beaufort?

A No, sir. It was no longer in existence during this incident.

Q During the course of your entire investigation,

were you ever able to make contact with a Tiffany James or a Tiffany Jones?

A No, sir.

MR. WHETSEL: Sergeant Phillips, I have no more questions for you, sir. Ms. Dewitt, I'm sure, will. Just answer her questions.

CROSS EXAMINATION

BY MS. DEWITT:

Q Now, you were the supervising officer on the case?

A Not at that time. I was the lead detective. I wasn't detective sergeant at the time.

Q Well, as the lead detective, you said it was your job to put evidence together or oversee the case?

A Yes, sir.

Q And as such, you are the person who gave orders for certain things, correct?

A To a point.

Q Told other officers what to do?

A To a point. Lieutenant Atwood was my supervisor at the time.

Q Now, in this -- in this incident, the 911 call came in from the younger gentleman.

A Kyle Riley.

Q Is that correct?

A Uh-huh. (Indicating affirmatively.)

Q Is that how this all started with y'all?
A The 911 call, yes, ma'am.
Q It started with the 911 call. That was Kyle Riley, correct?
A Kyle Riley, yes, ma'am.
Q And you are aware that Kyle Riley, when he called in the 911 call, he said he did not know who did it?
A Yes, ma'am.
Q And at the scene he also didn't make any statements, didn't know who did it; are you aware of that?
A Yes, ma'am.
Q Okay. Now, Mr. Riley indicated that only he and the decedent were present at that house; is that correct?
Do you recall that he initially told 911 that no one was there but him and the decedent?
A I don't fully recall, but I do know that he was speaking with another individual on the 911 call that was identified as Gary Scott.
Q And you did go to the scene that night, didn't you?
A Yes. It was sometime after the initial call.
Q Now, there was -- no guns were recovered at the mobile home or at the scene?
A No, ma'am.
Q Okay. To your knowledge, was a gunshot residue

kit administered to the decedent?

A No, ma'am. You talking about the -- Mr. Heyward?

Q Mr. Heyward, the man who died in this case.

A No, ma'am. He was already being transported to the hospital, and I wasn't there on that location. He was already gone prior to my arrival.

Q So there was no test to see if he had fired a gun?

A No, ma'am.

Q And no test -- no gun residue test was done on Kyle Riley either, was it?

A No, ma'am.

Q And at some point in time you found out that Gary Scott wasn't in Columbia at all like he said, he had been there that night?

A That's correct.

Q You didn't order or have -- run a gunshot residue kit on him either, did you?

A No. By the time they actually made contact with him it was already out of the six-hour window.

Q And yet you made contact with Gary Scott, when? The next morning?

A I didn't make contact with him. That was Lieutenant Atwood and I believe Detective Morris.

Q Lieutenant Atwood. Lieutenant Atwood is the one who interviewed him and also the other witness?

CROSS EXAMINATION OF JARED PHILLIPS BY MS. DEWITT

A That is correct.

Q And now while you had Mr. Hugue in your office, was a DNA swab taken on him?

A No. No, ma'am, that wasn't until later on.

Q But later on while he was in custody?

A Yes. A search warrant was attained for his DNA.

Q And are you aware that there was no DNA of Mr. Hugue found on any of it?

A That is correct.

Q And you are also aware, aren't you, that the gunshot residue kit then was negative for Mr. Hugue?

A That is correct.

Q Was the residence of the decedent, Mr. Heyward, searched that night?

A At [redacted] Westberry, it was.

Q Okay. And isn't it true that you located in the residence cartridges?

A Yes.

Q Okay. And what type of cartridges were they?

A I do not recall without looking at the list.

Q You also found some marijuana in the house, correct?

A We did.

Q And in the process of your search, did you find any weapons in the house?

A No, ma'am.

Q Are you aware that Gary Scott testified that everyone in the house had a gun?

A Yes, ma'am.

Q Now, in addition to Gary Scott and Kyle Riley actually being present in the mobile home at the time of the shooting, there were at least two other individuals, weren't there?

A That is correct.

Q And one of those people was Brent Walker?

A That is correct.

Q Now, Mr. Walker is a witness who refused to cooperate; is that correct?

A That is correct.

Q And at what point in time were you or your investigators able to locate him?

A We have reached out to him before in the past, and I have reached out to him in the past few months to speak with him, and he is not willing to cooperate with the investigation.

Q Did you try to locate him within a day or two of the incident?

A I do not know what the other investigators were doing. We sat different tasks for each individual, so I cannot recall that.

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Q At any point did you try to obtain a search warrant for his DNA?

A No.

Q Are you aware that DNA was, in fact -- DNA of some person was, in fact, found underneath the fingernails of the decedent?

A I don't recall that.

Q So in this particular case, you got -- you have no gun, the gun residue kit on my client was negative. The -- as far as you know, there's no DNA match to anything, not to the cigarette that was located or to the substance --

A That is correct.

Q -- in the beer bottle, correct?

A Correct.

Q There's no fingerprints that belong to Mr. Hugue that were located either, or found in this case?

A That's correct.

Q Now, my client's grandmother, she does -- she did verify that Mr. Hugue knows a woman named Tiffany, didn't she?

A She did.

Q And did she also tell you that the Tiffany is a white female?

A Yes, she did.

Q Isn't it true that the woman your officer talked

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to in the town of Port Royal was a black female?

A It was.

Q Okay. So the lady at Port Royal was just not the right Tiffany, correct?

A That is correct.

Q And that's why she didn't know Mr. Hugue?

A That is correct, but she still had to be ruled out at the time.

Q To your knowledge, does my client have a vehicle?

A Not to my knowledge.

Q Now, it is not uncommon for individuals to drive cars that are not titled in their names, is it?

A That is correct.

Q And Mr. Hugue himself did not have a last name for this Tiffany's mother or her stepfather, correct?

A That is correct.

Q So based on the evidence that you gathered, there is, in fact, a Tiffany who knows Mr. Hugue; is that right?

A On his statement and what he's advising, he is advising that he knew a Tiffany. I cannot locate that Tiffany.

Q Right. Correct. But she does exist based on what the grandmother told you?

A Yes.

Q Do you recall when you interviewed Mr. Hugue?

A Mr. Hugue?
Q Yes.
A February 23rd.
Q So that was a few days after the incident?
A It was.
Q And, in fact, he was located at the Burger King right here, wasn't he?
A That is correct.
Q Right in Ridgeland. He -- so he hadn't gone anywhere, he was here locally?
A That is correct.
Q And, I mean, he wasn't under arrest between the time of the incident and the time you brought him into the police station, right?
A No.
Q Now, you asked Mr. Hugue a lot of questions. But the truth is, it doesn't matter what he had for breakfast or lunch or supper that night, does it?
A No.
Q And he, in fact, told you the one reason he -- this woman had taken him to Beaufort was to try to go to the Social Security office, but he said it was closed, didn't he?
A He did.
Q And that would make sense, because it was

Saturday?

A That's correct.

Q Now, Officer, do you -- do you sometimes get confused on dates?

A I did on that one due to the long hours we were actually working that investigation. My time from when I started rolled over all the way to the following morning and to the middle of the next day.

Q And really, in the middle of the night when people haven't had any sleep, or when they have been up a long time, it's not unusual for people to get mixed up sometimes, is it?

A That's correct.

Q Now, the phone number you got from Ms. Hugue, the grandmother, that is the number she gave you at, what, 3 o'clock in the morning when you called her?

A Around, between 2:00 and 3:00 a.m., yes.

Q And do you recall that, her saying that was the number for her to reach her grandson on?

A That is the number she knew he had, and to call him in reference to whatever information I needed to ask him.

Q That is the number she could reach him on?

A That's correct.

Q Now, as part of your training, do you take a class

or do they teach you how to interrogate people?

A There's different methods.

Q Well, is one of those methods, does that involve asking the same questions over and over and over to see if you get a different response?

A There's different techniques, yes, there is, in reference to that. But also to try to make sure you get the correct information the first time.

Q Is lying to a suspect about the evidence the police has, is that a technique?

A It is.

Q And what is the name of that technique?

A You have re-technique and different things.

Q So it is not uncommon, is what you are telling me, for officers to tell people there are witnesses who say they committed a crime, when, in fact, there are no witnesses?

A That is correct. It is to elicit a response from the subject to see if he's being honest and truthful with the information he's provided.

Q So -- so what other technique or tricks do they teach you in school?

A I do not recall. There's so many.

Q How long is the training for that?

A I don't even recall that. It's been many years since I have even been.

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CROSS EXAMINATION OF JARED PHILLIPS BY MS. DEWITT

Q All of those techniques are things that are taught at the police academy?

A No. No, ma'am.

Q No?

A No, ma'am.

Q Are they taught at subsequent classes?

A They are.

Q Are some of them taught by -- through mentoring new officers?

A Do what?

Q Does a new officer learn by watching other officers use a technique?

A No. No, ma'am.

Q No?

A Huh-uh. (Indicating negatively.)

Q Okay.

MS. DEWITT: All right. Thank you, sir.

That is all the question that I have of this detective.

MR. WHETSEL: Your Honor, I have a little bit of redirect, please.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. WHETSEL:

Q Sergeant Phillips, I just want to touch on a few

REDIRECT EXAMINATION OF JARED PHILLIPS BY MR. WHETSEL

points. First, about Brent Walker. Are you familiar with that name, at least?

A I am.

Q How long have you been a detective?

A Been a detective?

Q Yes, sir. Just approximately.

A Approximately six, seven -- six to seven years.

Q How many cases approximately do you think you have investigated in your career?

A Hundreds.

Q Based on your experience, though, is it common or uncommon for witnesses to be reluctant to cooperate?

A That is correct.

Q I said it's common or uncommon?

A It is very common.

Q It is common?

A Yes, sir.

Q Based on your investigation, as far as forcing somebody to talk to you, did you ever receive any information that made Brent Walker a suspect in this case?

A No, we never did.

Q You said you have investigated hundreds of cases in your career?

A I have.

Q In all of your cases, do you always have DNA or

other forensic evidence to assist?

A No, sir, we do not.

Q So is it fair to say that is not always present in your cases?

A That is correct.

Q Defense counsel asked about interrogation techniques. Do you remember those questions?

A I do.

Q During your interview with Mr. Hugue, did you ever tell him what to tell you?

A No.

Q In other words, did you ever force him to give you a particular answer?

A No. We never do that.

Q Defense counsel asked or made a statement or a question about it not being, I guess, important what somebody may have had for breakfast, lunch, or dinner on a particular day; do you remember that?

A I do.

Q Would it be important, though, if they told you they were in a particular area at the time of a homicide?

A That would be.

Q And if you had that information, would you work to try to verify or not, either try to confirm or not confirm that information?

A That is correct.

Q She asked you about the Social Security office. Do you remember those questions?

A I do.

Q At some point in the interview, he does say it was closed. However, does he also then say something along the lines of that he actually applied for a card that day?

A He did.

Q As far as Tiffany, on the night of the homicide, to your knowledge, were deputies and investigators working to locate this person?

A We were.

Q And staying on Tiffany, defense counsel made, I guess, the statement that based on the grandmother she must exist. Do you remember that question?

A I do.

Q Based on all the information provided to you, very particular details, were you ever able to locate this person?

A We were not.

Q Defense counsel also asked you questions about owning a vehicle for Mr. Hugue; do you remember that?

A I do.

Q Are you familiar with the distance between grandmother's house at Bellgrove and the scene of the

murder?

A Yes.

Q Do you know approximately how far they are from each other?

A Half a mile, if that.

Q Is it fair to say it's within walking or running distance?

A Yes.

MR. WHETSEL: Beg the Court's indulgence for a moment, Your Honor.

(Pause.)

BY MR. WHETSEL:

Q Detective Phillips, defense counsel asked you about cartridges or other bullets being found at [redacted] Westberry; do you recall that?

A I do.

Q At least on the stand, you don't recall what caliber they were; is that correct?

A No.

Q If I handed you a copy of the report, would that help you refresh your memory?

A That would be.

Q Just let me know when you have had a chance to review it.

Do you see it listed there?

A Yes.

Q I'll take it back from you, if that's okay.

And what caliber bullets were recovered from the mobile home?

A In the interior or the exterior?

Q Yeah. I'm sorry, the interior of the house.

A Let me review that one more time. I was looking at the exterior.

Q Oh, I'm sorry. I should have been more precise. That -- okay. You got them?

A I do.

Q Okay. I'll take it back from you.

What was recovered from inside the residence?

A The rifle rounds.

Q You said "rifle rounds"?

A Yes.

Q Would those be .9 millimeter rounds?

A No, they would not.

Q So, they are a separate caliber?

A They are.

MR. WHETSEL: Your Honor, I don't have any more questions for the detective.

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

MS. DEWITT: I have just a few, Your Honor.

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REDIRECT EXAMINATION OF JARED PHILLIPS BY MR. WHETSEL

THE COURT: Do you have any objection to her asking another question?

MR. WHETSEL: I don't have an objection, Your Honor.

THE COURT: Okay. Yes, ma'am.

MS. DEWITT: Thank you, sir.

RE-CROSS EXAMINATION

BY MS. DEWITT:

Q Officer, thank you. You read Mr. Hugue his Miranda rights.

A I did.

Q And you testified that he understood those rights?

A I did.

Q He understood he had the right to remain silent and he didn't have to talk to you at all, correct?

A That is correct.

Q Yet -- yet, he did talk to you.

A That is correct.

Q And he consistently throughout your investigation had said he did not shoot Mr. Heyward, hasn't he?

A That is correct.

MS. DEWITT: Thank you, sir. That is all.

MR. WHETSEL: Your Honor, I have no more questions. Thank you.

THE COURT: You may step down. Thank you, sir.

RECROSS EXAMINATION OF JARED PHILLIPS BY MS. DEWITT

MR. WHETSEL: May the sergeant be released?

THE COURT: Any objection?

MS. DEWITT: Without objection, Your Honor.

THE COURT: Okay.

MR. WHETSEL: Call the next witness, Your Honor?

THE COURT: Any of y'all need a break? Y'all want another witness?

MR. WHETSEL: The next witness is probably about 45 minutes or so.

THE COURT: All right. Understand, if y'all need a break before we start this next witness.

Okay. We'll take a five, ten-minute break.

(Recess.)

THE COURT: Bring the jury in.

(The jury enters the courtroom.)

THE COURT: All right. Sir, you may call your next witness.

MR. WHETSEL: Your Honor, we would recall Investigator Elvin Wright.

THE COURT: Okay. I remind you you're still under oath, Mr. Wright.

Thereupon,

ELVIN WRIGHT

was called as a witness, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Investigator Wright, just as a reminder, your involvements in this investigation were an interview with Mr. Hugue; is that correct?

A Yes.

Q And do you recognize the name that you interviewed on that day?

A Yes.

Q Will you point him out to the Court, please?

A Mr. Hugue, sitting over on the defense side.

MR. WHETSEL: Just so the record reflects, Your Honor, he was pointing to Mr. Hugue, the Defendant.

THE COURT: Okay.

BY MR. WHETSEL:

Q Investigator Wright, you would have -- your interview would have been conducted immediately after Investigator Phillips?

A Yes.

Q And that was on February 23rd, 2017?

A Yes.

MR. WHETSEL: Your Honor, at this time I would like to publish the remainder of the interview.

THE COURT: Okay.

(Video published.)

BY MR. WHETSEL:

Q Detective Wright, with the exception of that interview, did you participate in any other part of the investigation?

A Yes, I did.

Q What else did you do, sir?

A I received what is called a buccal swab from David's person.

Q So you later took a buccal swab from Mr. Hugue?

A Yes.

Q And we have already had somebody explain to the jury, will you tell them what a buccal swab is?

A A buccal swab is a sample that is taken from an individual by way of a swab. And the way we do that is we swab the inside of a person's mouth around the gum line.

Q And is that for the purpose of submitting to a lab for, like, a DNA comparison?

A Yes. It's known to law enforcement as a known standard that we sent in to the lab to be compared to other DNA.

Q Investigator Wright, I'm going to approach you here.

I'm going to hand you what is marked as State's 28 and ask if you recognize this item?

A Yes, I do.

Q And what is that item?

A This is the buccal swab that I collected from David Hugue on March the 3rd, 2017.

Q That is the same Mr. Hugue in the courtroom?

A Yes, sir.

Q I'll take that back from you.

When you collect a buccal swab, how do you package it in order that it'll be submitted into the lab?

A You take it and package it in a paper bag, and we seal it and we put the date and the time for when we collected it and sealed it. Also, when we seal it, we put the date where we sealed it so that it'll show that it was secured.

Q And did you -- did you package this particular buccal in that same way?

A Yes, I did.

Q And when you were done taking that buccal and packaging it, what would you have done with it?

A If I remember correctly, I believe I transferred it to evidence.

Q You submitted it to your evidence?

A Right.

Q And somebody else would have taken it up to the lab?

A Yes.

Q Just a couple of questions about the interview. When Mr. Hugue was telling you about Tiffany, did you assist in attempting to locate her, or did you just pass that information to Sergeant Phillips?

A I passed it on to Sergeant Phillips.

Q Just a couple of the questions that you guys went over, he was telling you -- do you remember something he was telling you about her parents living at Port Royal Plantation in Beaufort; do you remember that?

A Yes.

Q Is there a Port Royal Plantation in Beaufort that you are aware of?

A No, it's not.

Q Are you aware of a Port Royal Plantation?

A Yes, I am.

Q Where is that located?

A Hilton Head.

Q And as far as a Social Security office, did he tell you what he did at the Social Security office that day?

A He said that he received, I believe, the paperwork to re-apply for his Social Security card, which he had lost, and he was given direction, I believe he said, to mail it back in.

Q And as far as his location most of the day, where did he say he was most of the day?

A Most of the day, he was in Beaufort.

Q And at some point later that evening, where does he go?

A He returns back to his grandmother's.

Q Do you remember about what time he said he went back out there?

A I believe he said around 11:30, I believe he said.

Q That would have been in the evening time or morning time?

A In the evening.

Q And he was given a very -- he was given a very, I guess, precise description of how he went from Ridgeland to Beaufort; do you remember that?

A Yes.

Q Are you familiar with that route?

A Yes.

Q Is that the most direct route to get to Beaufort from Ridgeland?

A It depends on where you are.

Q As far as that route, would that take you anywhere near Port Royal Plantation?

A Yes, it would.

Q It would take you to --

A Oh, Port Royal Plantation, no. I'm sorry.

Q That route that he described to you, would that

take you near Port Royal Plantation?

A No, it wouldn't.

Q Okay. Investigator Wright, I don't have any more questions for you, sir. Ms. Dewitt may. Just answer her questions.

A Okay.

CROSS EXAMINATION

BY MS. DEWITT:

Q Now, sir, you testified Port Royal Plantation is actually on Hilton Head. But Hilton Head Island is in Beaufort County, correct?

A Yes, it is.

Q So you got town of Port Royal, which is also in Beaufort County?

A Yes, ma'am.

Q Or the other end of Beaufort County.

And are there any other developments that you know of that go by similar names over in Beaufort County?

A Similar to?

Q Such as Royal Pines Plantation. Are you familiar with where that is?

A I'm not familiar with Royal Pines.

Q Now, there is at least two ways to get to Beaufort from here, from Ridgeland, isn't there?

A Yes, ma'am.

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CROSS EXAMINATION OF ELVIN WRIGHT BY MR. DEWITT

Q Okay. Are there more than two ways?

A No, ma'am.

Q Does it depend on where you are going?

A You're asking me if there's more than two ways, depending on where you are going?

Q Yes, sir. Yes, sir.

A There's only two ways into Beaufort from Ridgeland, as I know of, unless you fly.

Q And that would be through Yemassee as one way to get to Beaufort?

A That would be through -- from the Point South side, and then the other way would be via Old House area.

Q Okay. Which would from 170, down Snake Road?

A Right, 170 into Beaufort or 17 into 21.

Q Okay. Now, you are aware that the GSR kit on Mr. Hugue came back negative for gun residue?

A I'm not sure. I had no dealings with the GSR kit at all.

Q Are you aware that the DNA evidence came back negative for Mr. Hugue?

A I'm not sure. The only dealings I had with the DNA was collecting the buccal swab.

Q Did you participate in collecting DNA samples from any other persons?

A No, ma'am.

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Q Now, throughout your interview, your time talking to Mr. Hugue, he repeatedly and consistently told you he did not shoot that man, didn't he?

A Whenever I asked him, he did tell me he did not.

Q He also denied firing a gun?

A Yes, he did. He denied it.

Q All right. Thank you.

MS. DEWITT: That is all the questions I have.

MR. WHETSEL: Judge, I have no more questions for Investigator Wright. May he be excused?

THE COURT: Yes, sir.

MR. WHETSEL: Your Honor, may we approach briefly?

THE COURT: Yes.

(Off-the-record discussion held.)

MR. WHETSEL: Your Honor, we would next call Sara Zapata.

THE COURT: Okay.

MR. WHETSEL: Beg the Court's indulgence at this time.

(Pause.)

Thereupon,

SARA ZAPATA

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Ma'am, would you state your name for the record and spell your name as well?

A Sara Zapata. Last name is Z-A-P-A-T-A.

Q And, ma'am, where are you employed?

A At the South Carolina Law Enforcement Division, commonly known as SLED.

Q What is your job at SLED?

A I am a DNA analyst in the DNA casework department.

Q Ma'am, I want to go through some of your education and experience. Okay?

A Okay.

Q Would you tell the Court and the jury about your education as it relates to DNA.

A I have a Bachelor of Science in forensic science from the Pennsylvania State University, and then upon employment at SLED I went through a training process for approximately a year and a half under a court qualified DNA analyst.

Q And how long have you been qualified as a DNA analyst?

A I have been at SLED a little over four years, and the training process was about a year and a half. So about

three years now.

Q And do you undergo any type of in-house training from SLED as it relates to DNA analysis?

A Yes. So our training, once we are employed at SLED, is under another analyst. And we go through all the different laboratory procedures. And we have to do training samples that our trainer grades. And make sure that we're getting the correct results as expected. And then we'd have several mock cases. We have several written exams, an oral exam, and a mock trial. And then finally, a competency test. And once we pass all of those successfully, we are able to do actual casework.

Q And, ma'am, how long have you been qualified -- I think I have already asked this, but how long have you been qualified to do casework?

A About three years.

Q Have you ever been qualified as an expert in the field of DNA analysis before?

A Yes, I have.

Q Do you know approximately how many times?

A I think it's about eight.

MR. WHETSEL: Your Honor, we would offer Ms. Zapata as an expert in the field of DNA analysis.

THE COURT: What says the Defense?

MS. DEWITT: Without objection.

THE COURT: Court so finds.

BY MR. WHETSEL:

Q Ms. Zapata, did you test several items submitted to your lab in this case?

A I did.

Q And I think maybe the best way to do this, I'm going to hand you each item and have you identify it, and then we'll go through the results after that.

A Okay.

Q Ms. Zapata, I'm going to -- bear with me for a moment here. I'm going to hand you what has been marked as State's 19, marked as State's 20, marked as State's 21, marked as State's 24, State's 25, and finally State's 28.

Take your time and then look at them, and whenever you are ready I'll ask about them.

I have one more item for you, Ms. Zapata, State's 11 as well.

A Thank you. Okay.

Q If it is okay, I want to refer to them by my exhibit numbers. Would that be okay?

A Okay.

Q There's the red stickers on there.

A Okay.

Q State's 11, do you recognize that item?

A That is our lab Item No. 3. That is a cigarette

butt from the yard.

Q Is that an item you would have tested in this case?

A Yes, it is.

Q And when it's submitted to your lab and you receive it, would it still be sealed?

A Yes. So this seal at the top is how it's submitted to us with the person who sealed it and the date, and then these seals are from when I analyzed it. So it was sealed just like that before I received it.

MR. WHETSEL: Your Honor, we would move State's 11 into evidence.

MS. DEWITT: Without objection.

THE COURT: It's in without objection.

(Whereupon, State's Exhibit No(s). 11 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q Ms. Zapata, I'm going to move next to what is marked as State's 19.

A Okay.

Q Do you recognize that item?

A Yes. This is our lab Item 1, which is a blood standard from Lamar Heyward.

Q And when you would have received that item in your lab, would it still have been sealed?

A Yes. Just like the other one. You can see the seal at the top.

Q Would you have been the first to break the seal?

A Yes.

MR. WHETSEL: Your Honor, we would move State's 19 into evidence.

THE COURT: Any objection?

MS. DEWITT: No, Your Honor.

THE COURT: In without objection.

(Whereupon, State's Exhibit No(s). 19 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q I will have you look at State's 20 and 21, as they're similar items.

A Okay.

Q Do you recognize both of those items?

A Yes, I do. Twenty is our Item 10, which are fingernail clippings from Lamar Heyward's left hand, and 21 is our Item 11, which is fingernail clippings from Lamar Heyward's right hand.

Q And same question, when you would have received them into your lab, they still were sealed?

A Yes.

Q Would you have been the first to break that seal?

A Yes.

MR. WHETSEL: Your Honor, we would move State's 20 and 21 into evidence.

MS. DEWITT: Without objection, Your Honor.

THE COURT: Okay. In without objection.

(Whereupon, State's Exhibit No(s). 20-21 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q Ma'am, I'll have you look at 24 and 25 next. They are similar items, State's 24 and 25.

A Okay, 24 is our Item 8, which is a buccal swab from Gary Scott. And 25 is our Item 6, which is buccal swabs from Kyle Riley.

Q When those were received into your lab, would they have been sealed still?

A Yes.

Q Would you have been the first to break that seal?

A Yes.

MR. WHETSEL: Your Honor, we would move State's 24 and 25 into evidence.

MS. DEWITT: Without objection.

THE COURT: It's in without objection.

(Whereupon, State's Exhibit No(s). 24-25 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q All right. The last one, ma'am, for you will be

State's 28.

A Okay.

Q Do you recognize that item?

A I do. That is our Item 9, which is buccal swabs from David Hugue, Junior.

Q And when that was submitted to your lab, was it still sealed?

A Yes.

Q And would you have been the first to break that seal?

A Yes.

MR. WHETSEL: Your Honor, we would move State's 28 into evidence.

MS. DEWITT: Without objection.

THE COURT: In without objection.

(Whereupon, State's Exhibit No(s). 28 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q And, Ms. Zapata, would these be all the items you would have tested in this particular case?

A I was trying to count them all -- I believe so.

Q And you also did test a swab from a bottle as well. But in addition to that, are these all the physical items you examined?

A Yes, with the other bottle. Yes, that would be

all of them.

MR. WHETSEL: Your Honor, so now I'm going to approach and take those items back from her just to hold them.

THE COURT: Okay.

BY MR. WHETSEL:

Q Now, Ms. Zapata, when you test items, do you prepare a report?

A Yes, I do.

Q Now, I do want to go through your results, but before we do that, can you tell the jury, just in the best way you can explain, what is DNA analysis?

A DNA analysis is our laboratory procedures to develop a DNA profile from an item of evidence. And then, if we develop a DNA profile from the evidence, we do the same procedures on a standard and then make a comparison between the two, if possible.

Q And when you say "a standard," what is a standard?

A So that is a known sample of DNA, which can be either a blood standard or a buccal swab, which is a swab from the inside of a person's mouth. And so when that item is collected, we know exactly who that DNA belongs to. And so we use it as a known to make a comparison to the evidence with.

Q So you would take a standard and you would compare

those against items of evidence submitted to the lab?

A Correct.

Q I want to go through your results now.

As far -- you tested the cigarette butt; is that correct?

A I did.

Q And what would be your results for that?

A The DNA profile developed is from an unidentified male individual.

Q Now, when you say, "unidentified male individual," what does that mean as far as being able to compare it to items that you have submitted to you?

A So that result means that I developed the DNA profile from the cigarette butt, and I also developed the DNA profile from all those standards that we had read earlier. And the DNA profile from that cigarette butt did not match any of the DNA profiles from the standards.

Q So you were given four standards and it just didn't match one of those; is that correct?

A Correct.

Q You were also submitted a swab from a Bud Light bottle collected as well; is that correct?

A Yes.

Q And did you have any results from that?

A The DNA profile developed is a possible mixture

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and is not suitable for comparison.

Q When you say it's "not suitable for comparison," what does that mean?

A So sometimes we have a DNA profile, and we can tell that there is information there, but there's not enough that meets our guidelines for making a comparison.

So in this case there was not enough information there to even tell, is this one person, is this more than one person, and so we don't make any comparisons to that because we cannot be sure how many people were on that item.

Q So you would not have been able to compare it to standards submitted to you?

A Correct. I couldn't make comparisons to anything.

Q You also -- make sure I don't miss anything -- you also tested fingernail clippings; is that correct?

A Yes.

Q And the fingernail clippings from the left hand, what was your result?

A The DNA profile developed is attributable to Lamar Heyward.

Q And that would have been the person associated with those fingernail clippings?

A Right. They were his own fingernail clippings.

Q And, now, the right fingernail clippings, what

result did you have?

A A DNA profile suitable for comparison was developed. DNA attributable to Lamar Heyward is present in this profile. DNA not attributable to Lamar Heyward is present in this profile.

Kyle Riley, Gary Scott, and David Eric Hugue, Junior are excluded as possible contributors.

Q Is that kind of similar, you were able to exclude the standards given to you, outside of Lamar Heyward obviously, correct?

A Correct. So I had a DNA profile, and there was DNA from more than one person present. That's why it says, DNA attributable to Lamar Heyward is present, and also DNA not attributable to him is present.

And I was able to compare the other standards as well, and they were excluded as possible contributors of that other profile.

Q So whatever profile there is just doesn't belong to a standard submitted to you; is that fair to say?

A Correct.

Q I want to talk just briefly about DNA. Can you explain, like, reasons DNA may or may not be left on items?

A So when we are talking about touch DNA, that is DNA that's left behind when a person touches an item, so it's DNA left from your skin cells. Some people are just

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naturally heavier shedders than other people. And so they may touch an item for not a lot of time but leave a lot of DNA behind, whereas another person may not just because they don't lose as many skin cells.

The amount of time that someone touches an item for can also affect how much DNA is left behind, as well as if the person has just washed their hands and there's not as much skin cells left behind, or if they have touched their face maybe, and then touched an item, then you may expect more. But we're never certain with touch DNA how much DNA we are going to get behind, because there's lots of factors that can determine that.

Q So is it fair to say that somebody could be somewhere and not leave DNA?

A Yes.

Q Let me ask you about timing. Say, for example, DNA under fingernails, are you able to tell, based on your analysis, when that DNA would have been placed under those fingernails?

A I am not.

Q You can just say there is DNA or there's not DNA?

A Correct.

MR. WHETSEL: Ms. Zapata, I don't have more questions. I think Ms. Dewitt probably will, if you will just answer her questions. Thank you.

THE WITNESS: Okay.

MS. DEWITT: Thank you.

CROSS EXAMINATION

BY MS. DEWITT:

Q Now, concerning the cigarette butt that you tested, you compared the DNA on the cigarette butt, you said, to the four samples that were provided, and that would be the decedent, Lamar Heyward, Kyle Riley, Gary Scott, and Mr. David Hugue. Is that what you meant by the four samples?

A Yes. Those are the four standards that I received.

Q And as a result of your analysis, you found that the DNA belonged to an unidentified person?

A Yes.

Q Okay. Meaning not one of those four?

A Correct.

Q And you also testified that there was DNA underneath the fingernails of the decedent that does not belong to the decedent or to Mr. David Hugue. I think he was excluded, Mr. Scott was excluded, and the other gentlemen were excluded, correct?

A Lamar Heyward was included, it was his own fingernail clippings. But the other three standards, Kyle Riley, Gary Scott, and David Hugue, Junior were excluded.

MS. DEWITT: Thank you, Your Honor. Those are all the questions I have for this witness.

MR. WHETSEL: Your Honor, I have no more questions for Ms. Zapata. I'd ask that she be excused.

THE COURT: Okay. Thank you. You're excused.

THE WITNESS: Thank you.

MR. WHETSEL: Your Honor, we would next call Megan Fletcher.

THE COURT: Okay.

Thereupon,

MEGAN FLETCHER

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Ma'am, would you state and spell your name for the record.

A It's Megan Fletcher. M-E-G-A-N, F-L-E-T-C-H-E-R.

Q And for whom do you work?

A I work for the South Carolina Law Enforcement Division, commonly known as SLED.

Q And what specifically do you do with SLED?

A I work in the forensic services laboratory in the trace evidence department. In the trace evidence department I analyze evidence like fire debris, paint fibers,

explosives, glass, and gunshot residue.

Q Can you tell the jury and the Court about some of the education that you received as it relates to the trace evidence?

A I have my bachelor's degree in biochemistry and English from Chatham College. I also have my master's in forensic science from Marshall University, emphasizing in computer forensics and forensic chemistry.

I also underwent in-house training once I started my job at SLED right out of college, and that included specific training with every discipline including gunshot residue.

Q For how long have you worked at SLED in this area?

A Twelve years.

Q During your time at SLED, have you had to testify as an expert in this field in Court?

A Yes, sir, I have.

Q Do you know approximately how many times?

A In trace evidence, approximately 27 times.

MR. WHETSEL: Your Honor, we would move to qualify Megan Fletcher as an expert in trace evidence.

MS. DEWITT: Without objection.

THE COURT: Okay. The Court so finds.

BY MR. WHETSEL:

Q Ms. Fletcher, did you test a kit commonly known as

a GSR kit in this case?

A Yes, sir, I did.

Q And what is GSR?

A Gunshot residue is everything that comes out of a gun when it's fired. And that includes the smoke, pieces of the bullet fragments, and also something called gunshot primer residue. And that's the residue that comes from the primer of the actual cartridge, and that is what I actually analyze at SLED.

Q So when you receive a kit to you, just so the jury knows, what does the kit look like?

A So it -- different kits look physically different, but they all contain the same primary component. In this particular case, they contained four particle lifts, which basically look like hand stamps, but instead of a stamp surface, it has a sticky surface on it.

And those stamps are used to dab on a person's hand until all the sticky is removed. So there would be one for the right palm of the hand, one for the right back of the hand, one for the left palm of the hand, and one for the left back of the hand.

Q So those are the items that you actually physically tested?

A Yes, sir, they are.

MR. WHETSEL: Your Honor, may I approach the

witness?

THE COURT: Yes.

BY MR. WHETSEL:

Q Ms. Fletcher, I'm going to hand you what's been marked as our exhibit, State's 17.

A Yes, sir.

Q And just ask you if you recognize this item.

A Yes, sir.

I do recognize this item. This is SLED Lab No. L17-03497, Item No. 2. I recognize it based on my initials here, and my initials here on the outer container.

The same laboratory number with Item No. 2 is also present on the GSR kit itself, with my initials.

Q And would that be the same item you would have tested in this case?

A Yes, sir, it was.

MR. WHETSEL: Your Honor, we would move to admit State's 17 into evidence.

MS. DEWITT: Without objection, Your Honor.

THE COURT: It's in without objection.

(Whereupon, State's Exhibit No(s). 17 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q Ms. Fletcher, I'll come back and retrieve that from you.

A Okay.

Q Now, ma'am, as part of your testing, do you generate a report with your conclusions?

A Yes, sir, I do.

Q And in this particular case, what were your conclusions?

A May I refer to my notes?

Q Yes, please.

A In this particular case, SLED Lab L17-03497, Item No. 2, was one GSR kit from David Hugue, and is the results of my examination of that GSR kit were that no particles characteristic of gunshot primer residue were detected.

Q Now, let me ask you this. You said "Hogue," I just want to make sure I spelled it right, but it's spelled H-U-G-U-E on your report, correct?

A That's correct.

Q Okay. Just make sure we are talking about the same person.

You list on your report some possible reasons for residue not being present; is that correct?

A That is correct.

Q Would you explain to the jury possible reasons for that.

A So gunshot residue evidence is extremely fragile. It's very easily removed, it's very easily transferred. So

you could wash your hands and remove it, you could wipe your hands on your pants and remove it. Every time you touch an object, if you had gunshot residue on your hands, you have the potential to transfer it to a different object.

So for that reason, we do list a number of reasons why gunshot residue might not be permanent. The first reason is that the individual might not have discharged the firearm. Additionally, because it is so fragile and easily removed, there is a time frame in which we will not analyze gunshot residue, and that would be after six hours.

Normal physical activity between firing and sampling, it can be removed. Washing the hands, wearing gloves during the discharge, excessive blood or debris on the hands, environmental factors like wind and rain.

Certain ammunitions don't contain lead, barium, and antimony, which is what we're actually looking for in our analysis. And certain firearms do not produce the primer residue on the hands when they are discharged.

Q You had said something about wiping or rubbing hands could also explain it; is that correct?

A Yes, sir.

Q Would wiping your hands inside of a pocket, could that account for not having residue?

A That would be a way that you could remove residue,

yes, sir.

MR. WHETSEL: Ms. Fletcher, thank you for your time. I have no more questions. Ms. Dewitt may have some for you.

THE WITNESS: Yes, sir.

CROSS EXAMINATION

BY MS. DEWITT:

Q Ma'am, if your testimony is that it can be so easily washed off or removed with environmental factors and the like, what is the point in running this test?

A If gunshot primer residue had been found, there are three scenarios in which we can say that it was deposited. It was either deposited by the discharge of a firearm, touching something that has gunshot primer residue on it, or being in the vicinity. In this particular case, there was nothing present so there's no opinion that I have on the particular GSR kit.

Q And this is -- there were no articles of clothing or any other objects for you to compare or run this test on.

A The only item of evidence that I tested was the GSR kit.

Q Which was negative?

A That's correct.

MS. DEWITT: Thank you.

MR. WHETSEL: Your Honor, I have no more questions

for this witness.

THE COURT: Thank you.

MR. WHETSEL: Your Honor, we would next call Suzann Cromer.

THE COURT: Okay.

Thereupon,

SUZANN CROMER

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Ma'am, would you state and spell your name for the record?

A My name is Suzanne Cromer, C-R-O-M-E-R. My first name is spelled S-U-Z-A-N-N.

Q Ma'am, for whom do you work?

A I'm employed by the South Carolina Law Enforcement Division, commonly referred to as SLED.

Q And what job do you perform at SLED?

A I am a firearm and tool mark examiner in the forensic services laboratory.

Q Will you tell the jury and the Court what education you received in that particular field?

A I have a bachelor's degree from Clemson University, I did some graduate work at the University of

South Carolina in criminal justice. From there, I did an internship in the firearms department.

I was hired on at SLED and I completed their in-house training program. It is a multi-year intense study program. It's more of an apprenticeship, if you will, where we work under other court qualified firearms examiners. We take written tests, oral tests, practical exercises, and even prepare cases for those examiners.

Upon completion of all of the modules in our training manual, we are given a comprehensive final exam which includes mock casework that is graded on by our training officer and a lieutenant before we are allowed to take casework.

I am a member of the Association of Firearm and Tool Mark Examiners, which is an international organization for our profession that meets every year for a week long seminar. I have attended several of those seminars and extra workshops with AFTSME, as we call it, and barrel making, machine gun conversions, Hi-Point firearms, just to name a few.

I am also taking classes with the South Carolina Chapter of the International Association of Identification, most pertinent being two different three-day shooting scenery construction workshops.

I have also taken classes with the Bureau of

Alcohol, Tobacco, Firearms, and Explosives, commonly referred to as the ATF, on serial number restoration and the National Integrated Ballistics Identification Network, which is a digital database for pictures or images of cartridge cases, that can seemingly link together to unknown before cases through firearms evidence.

Also, the NIBIN program administrator for SLED and the representative on the users' group for ATF for North and South Carolina.

Q Okay. Firearms examination, would that also encompass spent cases as well as projectiles?

A Yes. What we call -- we call it firearms identification, and it's a discipline of forensic science where we look at ammunition components such as bullets, cartridge cases, shotgun shells to determine whether they were fired by a specific firearm.

If we do not have a specific firearm, we can look at all that ammunition evidence from a scene and give investigators an idea of how many firearms were fired at the scene, and even potentially a list of guns that they are looking for.

Q Ms. Cromer, approximately how many -- have you been qualified as an expert in this field before?

A Yes, I have.

Q Approximately how many times have you testified as

an expert?

A Between 115 and 116.

MR. WHETSEL: Your Honor, we'd move to qualify Ms. Cromer as an expert in firearms identification.

MS. DEWITT: Without objection, Your Honor.

THE COURT: The Court so finds.

BY MR. WHETSEL:

Q Ms. Cromer, did you test two items as it relates to this particular case?

A Yes, I did.

Q I'm going to hand you what's been -- for our purposes, what's been marked as State's 12 and State's 18, and ask you if you recognize the items.

A State's 12 was my Item 7. It is a fired .9 millimeter Luger caliber cartridge case.

State's 18 was my Item 4. It is a fired bullet. And, again, these are still in sealed containers with my initials and seal date.

Q Now, Ms. Cromer, when that item would have been submitted to the lab, when you received it, would it still have been sealed?

A Yes, it was.

Q And if an item is not sealed, do you test it?

A We can. What we do when we get a particular evidence item that is not sealed, we stop, we call the

submitter, we determine what happened, where the breakdown was, and then we determine whether we need to move forward with testing.

Q But in this particular case, were the items still sealed?

A Yes, they were.

MR. WHETSEL: Your Honor, we'd move State's 12 and 18 into evidence.

THE COURT: Any objection?

MS. DEWITT: No, Your Honor.

THE COURT: Okay. In without objection.

(Whereupon, State's Exhibit No(s). 12 marked for identification and received in evidence.)

(Whereupon, State's Exhibit No(s). 18 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q Ms. Cromer, I'm going to retrieve the items from you just so I can keep track of them.

Now, ma'am, did you develop a report as far as reaching conclusions in this case?

A Yes, I did.

Q I want to ask if you would tell the jury what your conclusions are as it relates to your Item 4?

A My Item 4, the fired bullet that was labeled from autopsy of Lamar Heyward, I determined it to be most

consistent with .9 millimeter Luger caliber bullets, and that it had enough marks of value on it to be suitable for identification with a specific firearm.

I then determined that it was fired by a firearm that was conventionally rifled with six lands and grooves, right twist. And rifling is what's put by the gun manufacturer in the barrel of the gun to give that bullet rotary motion.

So similar to a quarterback who throws a football, he wants it to go into a tight spiral. That's what rifling is going to do, it's going to make that bullet spin.

So you can have two types of rifling. You can have conventional or polygonal. Conventional has more right angle edges, polygonal is more scalloped, more smooth-edged. And lands and grooves is the number of raised and depressed areas that makes up that rifling, and the twist is which way that bullet is going to spin.

So it was determined that this bullet was a .9 millimeter Luger caliber. Most consistent with .9 millimeter Luger caliber bullet that was fired by a gun with conventional rifling, six lands and grooves, right twist.

Q So this particular characteristics, are you able to determine certain manufacturers that could have fired this particular projectile?

A Yes, I did.

Q And let me ask, would Keltech brand manufacturer, would that be one of those potential manufacturers?

A Yes, it was.

Q Now, you were never actually given a firearm to compare; is that correct?

A No, I was not.

Q Now, let me ask you about your Item 7. Did you reach a conclusion on Item 7?

A Yes. Item 7 was -- was a fired .9 millimeter Luger caliber cartridge case, and it was suitable for identification. Meaning that it had enough marks on it that if I had a specific firearm, I could compare it to it.

Q So just to make sure, your Item 7 was a .9 millimeter Luger cartridge case.

A That's correct.

Q And then your Item 4, the projectile, is most consistent with a .9 millimeter Luger -- can be fired from a .9 millimeter cartridge?

A That's correct.

Q Which could include a Keltech brand?

A That's correct.

MR. WHETSEL: Your Honor, I have no more questions for Ms. Cromer.

THE COURT: Okay.

CROSS EXAMINATION

BY MS. DEWITT:

Q Good afternoon.

A Good afternoon.

Q Do you have your report in front of you?

A Yes, I do.

Q If you would, under Item 4, second paragraph, you go on to state that based on the general rifling characteristics, possible makes and/or origins of firearms in the .9 millimeter Luger caliber that could have fired that bullet include a long list.

If you would, read that list of guns that could have fired this bullet.

A Okay. Ingram. American Eagle. Argus. Australia. Belgium. Beretta. Browning. Canik, Caska zbrojovka -- this one I can't pronounce, but the common name for it is CZ.

China. Colt. Czechoslavakia, Daewoo, DWMEAA Corp. Federal Engineering. FM Browning. England UK. FM. Fox Company. H & K, or Heckler and Koch.

Germany. Hungary. IMI or UZI. Industry Argentina. Ingram or Mack. Intratech, Indodynamics. KSN Industries. Kart Arms. Keltech. Luger. Mauser. MK Arms, Incorporated. Navy Arms. National Cartridge. Norenco. Paletter. Radom. Remington. Ruger. Sardis. Sig Sauer

CROSS EXAMINATION OF SUZANN CROMER BY MS. DEWITT

Springfield, Incorporation. Stowing Arms. Sten. Steyr. SWD, Inc. Tanfoglio (phonetic), or EAA. Taurus. Teesus (phonetic). Thompson Center. Volunteer Folsom. Walker. Vasta. And Vulcan Armament. Approximately 57 manufacturers or origins.

Q How many?

A Fifty-seven.

Q That could -- and any number of those or any one of those models could have fired the bullet, is what you are saying?

A That is correct.

MS. DEWITT: Thank you. That is all the questions I have for the witness.

MR. WHETSEL: Your Honor, I have no questions for Ms. Cromer. Okay?

THE COURT: Okay. Thank you. You may step down.

MR. WHETSEL: May she be excused, Your Honor?

THE COURT: Yes, sir.

MR. WHETSEL: May we approach briefly, Judge?

THE COURT: Yes, sir.

MR. WHETSEL: Your Honor, the State, before lunch break, would call Dr. Angelina Phillips.

THE COURT: Okay.

Thereupon,

ANGELINA PHILLIPS

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Doctor, would you state and spell your name for the record.

A Angelina Phillips. A-N-G-E-L-I-N-A, P-H-I-L-L-I-P-S.

Q And, ma'am, what do you do for a living?

A I am a forensic pathologist.

Q And, I guess in layman's terms, what is a forensic pathologist?

A Forensic pathologist is a doctor who practices pathology, and in that field of pathology, we are tasked with performing autopsies for the purposes of determining cause and manner of death.

Q Can you tell the Court and the jury what your educational background is, as far as being a forensic pathologist?

A Yes. I completed my medical education in Upstate New York, and subsequent to that, pathology residency in Massachusetts. Then completing that, I came down here to South Carolina to do a forensic pathology fellowship. And now I practice in the field of forensic pathology.

Q And how long have you worked in this field?

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A In pathology, it's been over nine years. In forensic pathology, five.

Q Ma'am, have you had to testify in court before as to your findings at an autopsy?

A Yes.

Q And do you know approximately how many times?

A Over 20.

MR. WHETSEL: Your Honor, we would move to qualify Dr. Phillips as an expert in forensic pathology.

MS. DEWITT: Without objection.

THE COURT: Okay. The Court so finds.

BY MR. WHETSEL:

Q Dr. Phillips, were you the person, the doctor, that actually performed the autopsy on Lamar Heyward?

A Yes.

Q And do you recall the date that you performed that autopsy?

A That would be on the 20th of February, 2017.

Q So February 20th, 2017?

A Yeah.

Q Okay. I want to start kind of big picture, and then we will move down.

Can you just tell the jury just in general terms, what is an autopsy and what are you looking for?

A An autopsy is the examination of the body for the

purposes of determining cause and manner of death. To do that, we receive the body and we examine the external findings on the body looking for any natural disease or injury.

We take photographs, we document any evidence that is there, any injury, and then we proceed to an internal examination in that we are again looking for any injuries or natural disease that may be present.

Q And in this particular case, during your examination of the deceased, are photographs taken?

A Yes.

Q Ma'am, I'm going to approach and hand you two photographs. I'm going to ask if you recognize those two photographs.

A Yes, I do.

Q And would those be photographs from the autopsy in this particular case?

A Yes, they are.

MR. WHETSEL: Your Honor, we would move to admit State's 51 and 52 into evidence.

THE COURT: What says the Defense?

MS. DEWITT: Without objection, Your Honor.

THE COURT: Okay. It's in without objection.

(Whereupon, State's Exhibit No(s). 51-52 marked for identification and received in evidence.)

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MR. WHETSEL: And, Your Honor, I would like to publish during the testimony.

THE COURT: Okay.

BY MR. WHETSEL:

Q Dr. Phillips, when you first are examining Mr. Heyward, is there any obvious trauma that you note?

A Yes. He had a gunshot wound to the abdomen.

Q And was that just based initially on your visual examination?

A Yes.

Q When you are trying to locate a projectile, what other steps are you taking to see if you can find that projectile?

A For every case that comes in that has -- a decedent has received gunshot wounds, we tend to do x-ray examination to identify any projectiles that may remain in the body. So, in this case he would have received an x-ray in addition to the photographs.

Q After the visual examination and the x-rays are completed, what other examination do you conduct?

A We begin the external examination, and then the internal examination of the body. In that process, we collect samples for toxicology and we will retrieve any projectiles should they be present in the body.

Q And did you actually collect a projectile in this

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case?

A Yes.

Q Ma'am, I'm going to hand you a couple of items and just ask if you recognize them.

I'm going to hand you what has been admitted as State's 18 and just ask you if you recognize that item?

A Yes, I do.

Q And what is that item?

A This would be the projectile that we recovered from Mr. Heyward's body.

Q And once you collect that item, how is that submitted to law enforcement as far as, like, chain purposes?

A We collect the projectile from the body, photograph it, and package it in an envelope that is labeled with the decedent's name, and it is documented on a chain of evidence form, and transferred to the officer or investigator that is present at the autopsy.

Q I'll take that back from you, Doctor.

And then I'm going to hand you these other three items just to ask for you to identify them, State's 19, 20, and 21.

A So 21 is fingernail clippings from the right hand collected at the time of autopsy. Twenty is fingernail clippings collected from the left hand at the time of

autopsy. And 19, I can't quite see my label on this to tell you what 19 is.

Q It is hard to read, it's actually on the bag. Is that the blood spot?

A I can't see the label, but ...

Q If I can approach, I can help direct you.

A Okay. I believe it is the blood spot, yes. So it would also be collected at the time of autopsy.

Q And those items were turned over to law enforcement?

A Yes.

Q I'll collect those back from you.

I'm going to publish these couple of photographs and just have you explain your findings in this case.

With the exception of the gunshot wound, did you note any other major trauma?

A No.

Q Ma'am, would this be a photograph of the deceased in this case that you examined?

A Yes.

Q And what are we looking at?

A We are looking at a picture taken at the time of autopsy of the decedent's chest and abdomen, showing the location of the gunshot wound on the abdomen. The gunshot

wound is the rounded defect that is near the labeled ruler, and it is an entrance gunshot wound. And we can tell that by visual examination.

It's round, it's got an abrasion quarter, and those are features of entrance gunshot wounds. It perforates through the skin, and the bullet is lodged in the body.

Q Based on your examination, were you able to retrieve that particular projectile?

A Yes.

Q I'll ask you, is this that same projectile that you also examined a moment ago in person?

A Yes, it is.

Q And during your examination of the deceased, where did you find that projectile?

A That projectile was recovered from the muscles of the decedent's back.

Q As that -- was it ever determined as that bullet entered his body, what damage, if any, it would have caused?

A I can tell you that from my report.

It goes through the skin and subcutaneous tissue and muscles of the abdomen. Before perforating the small bowel and head of the pancreas, the mesentery fat, which is the fat around the bowel, it disrupts the left renal artery, which is a blood vessel going from your large

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aorta, which is a large blood vessel in the body, going to the left renal kidney.

It also disrupts the 12th thoracic vertebra, so one of the lower vertebra in the back, and the spinal cord at that level, before coming to rest in the muscles of the back.

Q Ma'am, based on your examination, can you determine to the degree of medical certainty that you are able to, what the cause of death was?

A Yes.

Q And what would that cause of death be?

A A gunshot wound to the abdomen.

Q And, again, based on your expertise and examination, were you able to determine a manner of death?

A Yes.

Q And what would that manner he?

A Homicide.

MR. WHETSEL: Your Honor, I don't have any more questions for Dr. Phillips. Thank you.

THE COURT: Okay.

CROSS EXAMINATION

BY MS. DEWITT:

Q And, Doctor, did you also run a toxicology test or samples?

A We collected samples and submitted it for

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toxicology, yes.

Q And in this particular case, Mr. Heyward, he had a blood alcohol level of -- was it .07?

A Let me check and I'll verify that for you.

Yes. I have it documented as a blood ethanol of .072.

MS. DEWITT: Thank you. That is all the questions I have for this witness.

MR. WHETSEL: Your Honor, I don't have any more questions for the Doctor.

THE COURT: Thank you, Doctor.

MR. WHETSEL: Judge, would now be a good time for a lunch break? We are getting close, Your Honor, but now might be a good time.

THE COURT: Okay. Ladies and gentlemen, we're going to break for lunch and I ask you to be back in the jury room at 2:30. I have some stuff I need to deal with outside your presence, and that's why I'm giving you an hour and a half.

Don't discuss this case, or allow anyone to discuss it with you. I'll see you back at 2:30.

(The jury exits the courtroom at 1:07 p.m.)

THE COURT: Okay. We will be in recess until two. That will give you enough time to come back and we'll deal with legal matters at 2:00.

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MR. WHETSEL: That will be fine. Yes, sir.

(Lunch recess.)

MR. WHETSEL: Your Honor, I'll address two issues, if that's okay. The first would be the cell phone number, and then the messages.

THE COURT: Okay.

MR. WHETSEL: The cell phone number, the argument, Your Honor, I would make is the number was elicited through the detective in this case, Sergeant Phillips.

He had originally got that from Ms. Hugue, the grandmother of Mr. Hugue. Going into the testimony, I knew that she would admit telling them a number, but could not recall the exact digits. Sergeant Phillips, in his report, the number that she had given to him and that he later acquired the search warrant for, based on that, I made an effort under 613(b) to impeach her, by advising her the substance of the statement, which was the actual digits. So when she said, "I can't remember if that's the number," the time and place it was made, she did recall talking to a detective that night, giving him a phone number that she knew it was a number that she used to call Mr. Hugue with.

To whom it was made, I don't think she recalls Sergeant Phillips specifically, but she knew it was a detective she talked to on the phone, and given an

opportunity to explain or not that statement, and she said, "And, yes, I gave a number, I just don't recall the exact number."

And then as far as that particular rule, I'd cite State V Blalock, Your Honor, which is 357 S.C. 74. I have a copy, if the Court would like it.

But essentially, it just analyzes 613, and my reading of it is essentially that if the witness doesn't unequivocally admit to making that statement, then that party is allowed to then offer extrinsic proof of that statement.

So based on that rule and case law, I would submit that number coming from the detective was properly admitted.

THE COURT: Okay. All right. Now, do you want to respond back at this point, or do you want him to finish that?

MS. DEWITT: I'd like him to go ahead and finish his argument.

THE COURT: So assuming -- well, it is in -- the phone number is, in fact, in evidence in this case.

MR. WHETSEL: Yes, sir.

THE COURT: So under what theory are these, what connection in the Green case, as well as from what paragraph of 901 do you think that the text messages

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come in?

MR. WHETSEL: Understood, Your Honor. And, sir, just for -- if it's okay with the Court, just for record purposes, however the Court may rule, I have them marked as Court's exhibits. Would that be okay if I have that as Court's exhibits?

THE COURT: Sure.

MR. WHETSEL: And there are 20 individual messages, and they're just marked for Court's record, 5 through 24. And, Your Honor, I believe you had an opportunity to review these already?

THE COURT: I have.

MR. WHETSEL: The argument, Judge, would be this. First is the actual number. These messages would be data that Verizon provided in response to a search warrant for this number during this particular time period. It is to a specific, or it's data associated with a specific number.

Again, that number that came from ultimately Ms. Hugue as saying this was Mr. Hugue's number. That is the first one.

And the second, under State V Green, which I guess the best way I could cite it is, 2019 SC appellate decision, and Lexis 55 or 2019 W.L. Westlaw .2608756, Court of Appeals case from March of 2019.

Basically the Court discusses, you know, 901, Your Honor. In just looking at the language the Court uses, they cite the rule that requirement of authentication or identification is up to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what his opponent claims. And then it goes on to say the authentication standard is not high, and cited it's a D-Kill (phonetic) LLC.

Then going down the opinion, looking on Page 3, the Court continues the language, the proponent need only make a prima facie showing, the true author is who the proponent claims it would be.

And then once the trial and the Court determines the prima facie showing is met, the evidence is admitted. And then it goes down to this particular case we're talking about social media messages, which I know are different than text messages, but yet, still, the same authentication challenges would likely apply. You have messages, you have content that you can't necessarily put in somebody's hands.

That being said, the Court continues on, saying that social media messages and other content may appear with those unique authentication problems, but these problems resolved gets the framework in 901. So they are really kind of hanging their hat on 901 as far as

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authentication.

And then it goes on to say that you can't just offer the writing on its own, you have to have something else set forth, and that could be the writing. And then in this particular case, the Green case, they're looking at 901(b)4, which would have distinctive characteristics. I think I have that in this as well, Your Honor.

You have -- most important, you have a message from the target number being sent, saying, "This is D," or "This D," I think is exactly how it's phrased. And we've had multiple witnesses testify that D is a nickname for Mr. Hugue.

That being said, you also have multiple messages, for example, Court's 5 says, "I'm coming," and that is sent about 5:05.

Ms. Hugue said that he left her house around 5:00. Court's 6 is the "This D," text message. Court's 7 is a message that's received at 8:41 that says, "You good," question mark. And then Court's 8 is a response saying, "Yeah, Granny house." And that's sent at 8:42.

Again, Ms. Hugue's statement saying that he arrived back at her residence between 8:30 and 9:00. That would line up with her testimony that she did give.

And then you have other messages that are talking about deleting Facebook. You have other messages talking about, "What have you heard," or words to that effect. And then finally, the last one states, Court's 24, message sent at 11:30 saying, "Just need to lay low, but I will see how this night comes."

I think when you take all that in context with the evidence presented thus far, the context requirement for 901(b)4, as far as that prima facie showing that little burden, I think it's met. I think it's open to an argument interpretation from both sides. But as far as the burden, we submit that we met it, Your Honor.

THE COURT: Thank you, sir.

Ms. Dewitt.

MS. DEWITT: Your Honor, I think clearly, State V Green is distinguishable from the facts of the case we have before you today. In Mr. Hugue's case, there is no evidence he was actually in possession of that phone that day.

The police did not remove it from him. There's been no testimony of anyone or from anyone saying they saw him use it that day or that night, whereas in the State V Green case there was substantial evidence that the Defendant in that case actually used the computer and all the social media and met the facts in the Green

case, also met almost all of the criteria set forth in the case.

The text messages themselves, in my opinion, contain hearsay. They, in addition, would confuse the jury. I think they are not admissible under Rule 403, that it would be confusing and a waste of time.

But also there's no indicia of the reliability. Anyone can take a telephone and type in text messages. Telephones can be hijacked. Not hijacked, but hacked, just like Facebook accounts can be hacked.

They are -- it's none of those things that would establish my client actually sending those messages or even receiving those messages. None of those things have been proven by the State.

THE COURT: Okay.

MS. DEWITT: And I believe they should be excluded.

THE COURT: Thank you.

All right. And in examining the State versus Green opinion from the Court of Appeals, and setting out the criteria that Justice Hill set out, and in the Green case there was more indicators in that case connecting back to the Defendants in the case. But the 2019 United States versus Davis case in Fourth Circuit, states that it needs to be only a prima facie showing

that that is the true author who the proponent claims it to be, and that hopefully the jury can decide to accept the evidence as genuine or -- and what weight, if any, it should carry.

And I agree with the prosecutor's threshold admitting it is relatively low, and at 901(b)4 authentication can be made by circumstantial evidence, which that basically is what we have in this case.

There's testimony in the record, in evidence in this record, that the phone number obtained by the grandmother was the phone number that actually the State ran the records on, and the text messages that resulted back from that phone number also characterize "This is D," there's evidence in this record that Defendant in this case is also known by D. A number of people have testified that that was his name or nickname, or what a lot of people called him.

And the fact that there's other evidence based on the grandmother's testimony that he was -- got back -- he left around 5:00, returned home between 8:30 and 9:00, and this text message that he texted -- or that number texted back, said he was at his granny's house at 8:42. So I think the threshold's been met. And I'll admit it into evidence.

Having understanding that the jury can -- you can

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certainly argue to the jury at what weight they can give this evidence and the fact that cell phones, computers, as most people know, those can be altered and tricked, tampered with, and the jury can take that into consideration in determining what weight, if any, they give this evidence, and how it plays out in the whole scheme of things.

But I think it meets the authentication requirement of 901, and the fact that it is allegedly, at least part of it, from the Defendant's phone is an exception to the hearsay rule.

The other information I assume was not hearsay because it's not being offered to prove the truth of the matter asserted, simply that it was communication back between the alleged Defendant and somebody. So I'll let them in.

MR. WHETSEL: Thank you, Your Honor.

THE COURT: Okay. We ready to go? Do y'all need a minute? We got all the jury here?

THE CLERK: Yes.

MR. WHETSEL: We are ready, sir.

THE COURT: All right. Bring in the jury.

(The jury enters the courtroom at 2:35 p.m.)

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

CROSS EXAMINATION OF ANGELINA PHILLIPS BY MS. DEWITT

MR. WHETSEL: The State would next call Jennifer Dalmida.

Thereupon,

JENNIFER DALMIDA

was called as a witness, having been first duly sworn, was examined and testified as follows:

MR. WHETSEL: May it please the Court, Your Honor.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Ma'am, would you state your name for the record and spell it as well.

A Jennifer Dalmida. D-A-L-M-I-D-A.

Q And, ma'am, for whom do you work?

A Verizon Wireless.

Q And what is your job at Verizon Wireless?

A I'm a senior analyst, who is a custodian of records for the company.

Q And just so the jury is aware, what does that mean exactly?

A Basically as a custodian of records, I'm the record keeper of any business records. So any type of records that happens on a network, including calls, data, text messages, we basically interpret those records and court appearances.

DIRECT EXAMINATION OF JENNIFER DALMIDA BY MR. WHETSEL

Q As a records custodian, does that mean that Verizon will maintain certain records in the ordinary course of their business?

A Yes.

Q And what type of records does Verizon maintain?

A We keep call records, text records, any type of Internet usage, subscriber information, cell tower data.

Q Is there a document called a call detail record, or call detail report?

A Yes.

Q And what exactly is that type of document?

A That's basically one of our call records. So it indicates the date, time, any type of cell towers that were initiated and terminated, and who the call was placed to and from.

Q And, again, is that information that Verizon maintains in the course of their business?

A Yes.

Q Now, this information, how does Verizon maintain all of this vast data?

A Well, everything is kept electronically on our switch.

Q And what is a switch?

A It's basically just the brain of the network. It's a large computer base.

Q So if you receive a request, say, from law enforcement, some type of legal demand for a number, are you able then to provide records for information or data back to that investigative agency?

A Yes.

Q This data that you maintain, is it made or maintained at a time of the transition of that call?

A Yes.

Q What about the text messages?

A Same.

Q Is there also a report, I think it's called a text detail report, or what would be the term for that?

A There's a text detail report, which provides content.

Q And what exactly would that information show?

A It would show who sent the message, who received the message, the date, the time the message was sent, and what the context of the message was.

Q Now, ma'am, I want to ask you, did Verizon receive a search warrant for a number [redacted]-9514?

A Yes.

Q And when Verizon receives that search warrant for that number, what information, if any, does Verizon provide back to the investigative agency?

A It all depends what was requested. So typically

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whatever is requested on the court order, the subpoena, once the proper legal process is followed, we will go ahead and provide that information back to the agency.

Q Now, did you have an opportunity to review some records as it related to a search warrant in this particular case?

A Yes.

Q Ma'am, I want to approach and hand you what's marked as State's 29 and ask you if you recognize it?

A Yes.

Q What is that document?

A This is a copy of our call detail report with cell phone information.

Q And would that be the call detail report as it relates to the target number, so to speak, in this case?

A Yes.

Q And when I use the phrase, "target number," would that be a proper phrase to use?

A Yes.

Q What is a target number?

A It's our subscriber's telephone number that was assigned.

Q Would that be the subject of the search warrant? Like, for example, the law enforcement agency is looking for information based on a particular phone number?

A Correct.

Q And we're calling it a target number, that would be a proper term to use?

A Yes.

Q Would that be the call detail record as it relates to the search warrant for the number of this particular case?

A Yes.

MR. WHETSEL: Your Honor, I would move to admit State's 29 at this point.

THE COURT: Okay. It's in over objection.

(Whereupon, State's Exhibit No(s). 29 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q Ma'am, that information there in the call detail record that we're looking at, State's 29, what time frame does that cover?

A This -- these calls begin on February 17th, 2017 through February 21st, 2017.

Q And the target number for this particular call detail record, what would that number be?

A The target telephone number is [redacted]-9514.

Q Thank you, ma'am. I'm going to come back and retrieve that from you.

And, again, Ms. Dalmida, this information

DIRECT EXAMINATION OF JENNIFER DALMIDA BY MR. WHETSEL

would have been returned back to law enforcement agency?

A Yes.

Q Now, ma'am, you mentioned a moment ago, or I asked you about the text detail record; is that the right term?

A Yes.

Q Again, was that information provided back in response to the search warrant in this particular case?

A It was.

Q Did you have an opportunity to review some of the text messages that were provided in response to search warrant?

A Yes.

Q Ms. Dalmida, I'm going to hand you what has been marked as State's 30, all the way through State's 49. And if you will just take a look, and I'm going to ask if you recognize these documents.

I'm sorry. Did you have a chance to review those documents?

A Yes.

Q I apologize. I was looking down.

Ms. Dalmida, are those a fair and accurate copy of messages from the text detail record that was provided in response to the search warrant for this party number?

A Yes, it is.

Q And you had an opportunity to review those documents?

A Yes.

Q Would this information have been maintained by Verizon at or near the time of the transmission?

A Yes, it would have.

Q And is it maintained in the ordinary course of Verizon's business?

A Yes.

MR. WHETSEL: Your Honor, we would move to admit State's 30 through 49 at this point.

THE COURT: Okay. It is in evidence.

(Whereupon, State's Exhibit No(s). 30-49 marked for identification and received in evidence.)

MR. WHETSEL: And, Your Honor, I would ask to publish these documents at this point.

THE COURT: Okay.

BY MR. WHETSEL:

Q Ms. Dalmida, what I'm going to do, if you hold that copy, I'm going to put them up on the board, and then we're just going to go through each one, I'm going to ask a couple of questions about them. Okay?

A Okay.

Q While I'm setting that up, there's some information contained in the text detail record for each

individual message; is that correct?

A Correct.

Q What is some of the information that you can see, like kind of the raw data that you can tell based on each individual text?

A The date, the time the message was sent. Also who originated -- the originating number for the message and the terminating number, as well as the context of the message.

Q Now, what's an originating number?

A That's the number that initiated the text message.

Q And what would be a terminating number?

A That is the number that received the text message.

Q Bear with me a moment.

Ma'am, I'm going to first show what would be State's 30.

Ma'am, do you see State's 30?

A Yes.

Q And are you able to tell me the originating number for that particular text?

A Yes.

Q What was the originating number?

A [redacted]-9514.

Q And I guess in order to speed stuff up, would it be okay if I call it the target number?

A Correct. That's fine.

Q What date and time was that message sent?

A This was on 2/18/2017, at 1705.

Q And can you see a terminating number?

A Yes.

Q And do you see the last four digits of the terminating number?

A Three eight three nine.

Q And what is the content of the message?

A "I'm coming."

Q Now, if we can go to State's 31, please. Do you see that okay, ma'am, State's 31?

A Yes.

Q Same question. What date and time is that message sent?

A This is February 18, 2017 at 1718.

Q And is the originating number the target number?

A Yes.

Q And what is the content of the message?

A "This D."

Q We can go to State's 32, please. What date and time is this message sent?

A 2/18/2017, at 2041.

Q Now, this originating number is different than the target number; is that correct?

A Correct.

Q What is the last four of that one?

A Six three one two.

Q Now, what is the terminating number though in this one?

A Our target number.

Q And would that mean that that's the -- that target number received that message?

A Correct.

Q And what's the content of the message?

A "You good?"

Q Can we go to the next one, please.

And then, what date and time is this message sent?

A 2/18/2017, at 2042.

Q And what number is the originating number?

A Our target number.

Q And what is the content?

A "Yeah granny house."

Q Can we go to the next one, please.

Now, what date and time is this message sent?

A 2/18/2017, at 2140.

Q What would the originating number be?

A Our target number.

Q What would the content of the message be?

A Reactivate my Facebook delete.

Q All right. The next exhibit, please?

A Or "Reactive my Facebook delete."

Q All right, ma'am. We are looking at State's 35 now. What is the date and time this message was sent?

A 2/18/2017, at 2141.

Q And what would the originating number be?

A Our target number.

Q And what is the content of the message?

A "Delete it ASAP."

Q Now, State's 36, please. What date and time is this message sent?

A 2/18/2017, at 2143.

Q And let me stop for just a minute. I apologize. At 2143, is that the 24-hour clock, or military time?

A Correct.

Q I guess let me clarify that, 2143 would be what time on a 12-hour clock?

A 9:43 p.m.

Q Okay. Thank you.

And is that -- what time zone would that time be -- what time zone would that time actually be in?

A These will all be in Eastern.

Q So that time would be Eastern time as to when this message was sent?

A Correct.

Q Okay. Thank you.

Okay. So that message is sent what time again?

A At 2143.

Q And then the originating number is what?

A Our target number.

Q And what would the message be, the content?

A "What dude I find out let me know what he said."

Q State's 37, please. What date and time is this message sent?

A 2/18/2017, at 2147.

Q And, again, that's 9:47 in the evening?

A Correct.

Q The originating number would be what number?

A Our target.

Q And then the content would be what?

A "Tell meat I love him."

Q State's 38, please. What date and time is this message sent?

A 2/18/2017, at 2201.

Q And that would be 10:01 p.m.?

A Correct.

Q The originating number would be what?

A Our target.

Q And then what is the content?

A "Tell Lex to delete my Facebook."

Q State's 39, please. What date and time is this message sent?

A 2/18/2017, at 2202.

Q And what would the originating number be?

A Our target.

Q And what would the content of the message be?

A "Delete my Facebook text me."

Q Forty, please. This message is sent at what date and time?

A 2/18/2017, at 2216.

Q And the originating number would be what?

A Our target.

Q And then finally the content?

A "I love you Ms. Hugue."

Q Is that spelled H-U-G-U-E?

A Yeah.

Q Next exhibit, please. What date and time is this message sent?

A 2/18/2017.

Q And what would the originating number be?

A Our target.

Q And then the content, please?

A "What all you heard?"

Q Next exhibit, 42, please. What is the date and

time for this message?

A 2/18/2017, at 2227.

Q And the originating number?

A Our target.

Q And then finally, the content?

A "Ask KD what he got going on. He just call me say he coming to get that what he heard."

Q Next exhibit, please. What is the date and time?

A 2/18/2017, at 2250.

Q And the originating number would be what?

A Our target.

Q And then finally, the content?

A "Keep y'all phone charged."

Q Next exhibit, please. What date and time is this message sent?

A 2/18/2017, at 2253.

Q And the originating number would be what?

A Our target.

Q And then the content of the message would be what?

A "They say I need to leave. Text me Chris cuz number PR. I want to be safe. RHO ain't answer."

Q Next exhibit, please. What date and time is this message sent?

A 2/18/2017, at 2259.

Q And what's the originating number?

A Our target.

Q And then the content of the message, please?

A "Tell Leslie put her phone on charge, put on ringer so she can hear the phone and Imma call her when I need her."

Q Next exhibit, please. What is the date and time of 46?

A 2/18/2017, at 2301.

Q And that would be 11:01 in the evening?

A Yes.

Q And what's the originating number?

A Our target.

Q And the actual content of the message?

A "Tell her to put her phone on charger and Imma call her if I need her."

Q Next exhibit, please. What is the date and time this message was sent?

A 2/18/2017, at 2306.

Q What is the originating number?

A Our target.

Q And what is the content of the message?

A "Keep your phone charged so I call you when I need you."

Q Forty-eight, please. What is the date and time this message was sent?

A 2/18/2017, at 2309.

Q And the originating number?

A Our target.

Q And then the content, please?

A "Keep your phone charged ringer call you when I need you auntie love you."

Q Then, finally, Exhibit 49, please?

A 2/18/2017.

Q What was the time on that one?

A At 2330.

Q Would that be 11:30 in the evening?

A Yes.

Q What is the originating number?

A Our target.

Q And then finally, what's the content of this message?

A "Just need to lay low, but I'm up. Imma see how the night come."

Q Ms. Dalmida, I'll come and retrieve those exhibits from you. Thank you.

MR. WHETSEL: Ms. Dalmida, I don't have any more questions for you. Thank you for your time.

Ms. Dewitt may, if you will just answer her questions.

CROSS EXAMINATION

BY MS. DEWITT:

Q Now, ma'am, is the account for that number in any -- a person's name?

A That phone is registered as a prepaid.

Q It's a prepaid telephone, so you don't know who owns it?

A Correct.

Q You don't know who purchased it either, do you?

A Correct.

Q And you initially in your testimony, you were referring to your detail report that keeps track of who called who. Who is the word you used, W-H-O. But did you mean it keeps a record of what phone number called another phone number?

A Correct.

Q So you didn't mean who, the phone company does not know the name of the person who calls, say, me, do they?

A We only know a target telephone number and who it is assigned to.

Q Right. You only know what phone number is used?

A Correct.

Q When a call is made or received, correct?

A Correct.

Q The phone company has no knowledge of who actually is holding the phone when the phone call is made, correct?

A No, we do not.

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CROSS EXAMINATION OF JENNIFER DALMIDA BY MS. DEQITT

Q And the same goes for text messages, correct?

A Correct.

Q Right. You don't know who is typing in text messages on a telephone when they are typed?

A We do not.

Q And you don't know anything about the facts of this particular case that is being tried today, do you?

A No.

MS. DEWITT: Thank you. That is all of the questions I have.

MR. WHETSEL: Your Honor, I have no more questions. May she be excused?

THE COURT: Yes. Thank you.

MR. WHETSEL: Your Honor, the State would next call Investigator Dylan Hightower.

THE COURT: Okay.

Thereupon,

DYLAN HIGHTOWER

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Investigator Hightower, will you state your name and spell it for the record.

A My name is Dylan Hightower, H-I-G-H-T-O-W-E-R.

Q And, sir, for whom do you work?

A I currently work for the Fourteenth Circuit Solicitor's Office, as an investigator in the criminal unit at Beaufort County.

Q So you are a sworn law enforcement officer?

A Yes, sir, I am.

Q How long have you worked an investigator?

A Well, going back to my background, I graduated from the University of South Carolina in 2010. I then traveled down here for a criminal intelligence analyst position with the Fourteenth Circuit Solicitor's Office. That was in 2011.

After that, I conducted a four-week on-the-job training course at the Fusion Center at SLED in Columbia that taught me basically all aspects of criminal intelligence analysis.

After that, later in the year in 2011, I went to a training at Columbia as well for Penlink analysis training school. After that, in 2013, I went to the law enforcement criminal justice academy in Columbia. Obtained my Class I certification as a law enforcement officer.

Later that year, I also attended an ETS fundamentals of call detail records analysis in North Carolina. And then after that, in 2018, I attended a training in Charleston by the FBI CAS team, the Cellular

Analysis Survey team. Which basically all of these courses in call detail records analysis teach you how to interpret and analyze records as a competent provider from the cell phone company, map the data onto a mapping software, as well as teach you how to read and interpret the records to figure out how long the call lasted, when it lasted, the location, what tower was utilized to process that transaction, as well as the duration of the call.

Q So as far as the, I guess discipline, for lack of a better word, historical cell site analysis, are you familiar with that?

A Yes, sir, I am.

Q And the training that you just described, is it related to historical cell site analysis?

A Yes, sir, it is.

Q Beyond what you just described, have you received any additional training or any other expertise in this particular field?

A I have no other certifications in this field, however, I've attended multiple conferences, online trainings, to kind of stay up with upper trends of the changes in cellular technology.

Q Have you ever testified in this area of historical cell site analysis?

A Yes, sir, I have.

MR. WHETSEL: Your Honor, I would move to admit Investigator Hightower as an expert in historical cell site analysis.

MS. DEWITT: May I ask a question or two, Your Honor?

THE COURT: Yes, ma'am.

BY MS. DEWITT:

Q Investigator Hightower, did you just say you are not certified in this area?

A No, ma'am. I have certifications in each one of these courses that I attended.

Q Well, what was that last qualification you had testified to?

A The FBI CAS team?

Q I could not hear you well.

A I'm not sure exactly which one you're referring to.

Q Well, you said something about what you're certified in and not certified in.

A As far as all these courses that I just spoke about, Penlink analysis training school, which was in 2011, in Columbia, the ETS fundamentals of call detail record analysis in North Carolina, that was in 2014, as well as the FBI CAS course that taught you the same fundamentals of call detail records analysis. I received certificates in each of

those courses.

Q And have you taken any advanced courses in analysis for this type of information?

A I mean, I would think that each of these courses would be an advanced course.

Q Well, but are they, is my question?

A I mean, they're historical cell site analysis courses. They don't really title them advanced versus basic, anything like that.

Q So you are not aware of any additional training most experts have in this area?

A I'm familiar with other trainings in cellular theory that other experts are certified in, which I'm not.

Q And are those more advanced and more comprehensive training?

A When it comes to the cellular network perspective, yes, but not in particular to the cell tower analysis that I conduct.

MS. DEWITT: Thank you, sir.

That's all the questions I have, Your Honor.

THE COURT: Do you have any objection to qualifying him as an expert?

MS. DEWITT: Yes, Your Honor. I don't think he meets the qualifications as an expert.

THE COURT: Is he going to give an opinion?

MR. WHETSEL: He is going to interpret the records provided through Verizon.

THE COURT: And is he going to give an opinion as to what those records say or mean?

MR. WHETSEL: He will state what the records say, as far as the information provided there.

THE COURT: Can a normal lay person look at those records and interpret them?

MR. WHETSEL: It would be difficult.

THE COURT: Okay. Then I find he is an expert in the field.

MR. WHETSEL: Thank you, Your Honor.

BY MR. WHETSEL:

Q Investigator Hightower, did you have an opportunity to review records for a call detail report in this particular case?

A Yes, sir, I did.

Q I want to hand you State's 29 and ask if you recognize these records.

A Yes, sir. These are the call detail records that I used to analyze what actually was happening with that particular phone number.

Q And was there a particular time range within those records that you focused on?

A Yes, sir, there was.

DIRECT EXAMINATION OF DYLAN HIGHTOWER BY MR. WHETSEL

Q And, again, just to be clear, the target number is that 305 number; is that correct?

A That is correct.

Q And you are not going to offer any testimony as to the person that may have had that number; is that correct?

A No, sir.

Q It's just based on raw data; is that fair to say?

A Essentially how it works is I get contacted by a local law enforcement agency, and they say, hey, I have some phone records that I just got a return on from a search warrant. They send the records to me, I interpret, analyze them and map them, send them back my report showing what I found.

Q Based on your analysis of the records, what was that time frame you looked at again?

A So I conducted a historical cell site analysis on target number [redacted]-9514, on the date of February 18th of 2017, from 1800 hours, 6:00 p.m. to 2200 hours, 10:00 p.m.

Q And are you looking at incoming and outgoing phone calls that are being made?

A Yes, sir.

Q And based on your review of the report, do you know how many incoming and outgoing phone calls are being made with that particular party number?

A During the time frame of 6:00 p.m. to 10:00 p.m,

there were a total of 56 calls incoming and outgoing for target number [redacted]-9514.

Q And, again, based on review of the information provided, does it indicate a particular cell tower that those calls were transmitted through?

A Yes, sir, it does.

Q And is it -- in that time frame, is it one cell tower or multiple cell towers?

A Yes, sir, one cell tower for all 56 calls.

Q And what was the cell tower number?

A Tower No. 216.

Q And are you familiar with the location of Tower 216?

A Yes, sir, I am.

Q Did you have an opportunity to create a map showing where that tower is located?

A Yes, sir, I have.

Q Investigator Hightower, I want to hand you what has been premarked as State's Exhibit 50, and just ask if you recognize that map.

A Yes, sir, I do.

Q Are you familiar with that particular area?

A Yes, sir, I am.

Q And does it depict the location of Tower 216?

A Yes, sir, it does.

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DIRECT EXAMINATION OF DYLAN HIGHTOWER BY MR. WHETSEL

Q Is it, to your knowledge, a fair and accurate depiction of the, I guess, the locations that are depicted on said map?

A Yes, sir, that's correct.

MR. WHETSEL: Your Honor, we would move to admit State's 50 into evidence.

THE COURT: Ways says Defense?

MS. DEWITT: Without objection, Your Honor.

THE COURT: Okay. It's in without objection.

(Whereupon, State's Exhibit No(s). 50 marked for identification and received in evidence.)

BY MR. WHETSEL:

Q Investigator Hightower, this might be the easiest way to do this, if you don't mind just standing up, sir.

Can you indicate where Tower 216 is located on the map?

A Tower 216 is located here. You can actually see the base of the tower itself, as well as the Defendant's residence, David Hugue, here.

The incident location, where the crime occurred, at [redacted] Westberry Street, just north of that, and then over here is Cooler's Grocery, all within about a mile radius.

Q You said within about a mile radius?

A Yes, sir.

Q Now, after Tower 216, what would be the closest and next cellular tower?

A The next closest tower in Jasper County, at least to Tower 216, would be Tower 208, which is off of Henry *Lawton Road in downtown Ridgeland, it's approximately 5½ miles from Tower 216.

Q And would it be fair to say whether you are making a call at the Hugue residence or [redacted] Westberry, it's likely to use Tower 216?

A That is correct.

Q That would be the closest tower in that particular area?

A Yes, sir. Verizon tower, that is.

Q And I guess, finally, on your review of the report, were you able to tell if any of the phone calls in that time frame were made in a tower near Beaufort?

A No, sir, they were not. Every single one of them utilized Tower 216, located right there by the incident location.

MR. WHETSEL: Investigator Hightower, I have no more questions for you, sir. I will retrieve the exhibit from you. And Ms. Dewitt may have some questions, if you will just answer them.

CROSS EXAMINATION

BY MS. DEWITT:

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CROSS EXAMINATION OF DYLAN HIGHTOWER BY MS. DEWITT

Q Mr. Hightower, is it true that if a tower is busy, calls might ping off that tower and go to another one?

A Yes, ma'am, in some cases.

Q And you can't tell from the data you reviewed who had the telephone that night, can you?

A No, ma'am, I cannot.

Q And, in fact, you don't know who it was registered to or if it's registered at all?

A I believe this phone number did not have a subscriber attached to it on the search warrant return.

MS. DEWITT: Thank you. That's all the questions I have, Your Honor.

MR. WHETSEL: Your Honor, I have no more questions for Investigator Hightower. I'd ask that he be excused.

THE COURT: Okay. Thank you, sir. You are excused.

MR. WHETSEL: We have probably two more witnesses, Your Honor.

Your Honor, the State would next call Justin Rose.

Thereupon,

JUSTIN ROSE

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Sir, would you state and spell your name for the record?

A It's Justin Rose, spelled J-U-S-T-I-N, R-O-S-E.

Q And, sir, where do you work?

A The City of Beaufort.

Q And specifically within the City of Beaufort, what do you do?

A I'm the business license inspector.

Q And as a business license inspector, is it fair to say you are familiar with what businesses are open in the City of Beaufort?

A Of course.

Q Sir, we asked you a particular question prior to trial; do you remember that?

A Yes, sir.

Q And the question was, based on your position and what you do, do you know if a Checkers food restaurant was open back on February the 18th of 2017 within Beaufort?

A No, sir.

Q You are not familiar with it?

A They were not open.

Q Oh, you're saying they were not open.

A No, they were not open throughout.

Q Do you know when a Checkers would have last been

opened in Beaufort?

A Their records shows that their last hospitality tax that they remitted was in December of 2007.

Q So back in 2007?

A Correct. And then their account was made inactive.

Q So after that, it was inactive?

A Correct.

MR. WHETSEL: Your Honor, I don't have any more questions for this witness.

CROSS EXAMINATION

BY MS. DEWITT:

Q Sir, how long have you worked at the City of Beaufort?

A Be seven years in December.

Q And is that in the license department?

A Yes, ma'am.

Q How many fast food restaurants are there in Beaufort?

A Approximately 15, give or take.

Q Thank you.

MS. DEWITT: That is all the questions I have.

MR. WHETSEL: No more questions, Your Honor. May he be excused?

THE COURT: Yes.

MR. WHETSEL: Thank you.

THE WITNESS: Thank you.

MR. WHETSEL: Your Honor, the State would call Garrett Cooper.

THE COURT: Okay.

Thereupon,

GARRETT COOPER

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHETSEL:

Q Good afternoon, sir. Would you state and spell your name for the record?

A Garrett Cooper. G-A-R-R-E-T-T, C-O-O-P-E-R.

Q And, sir, for whom do you work?

A The Social Security Administration.

Q How long have you been with the Social Security Administration?

A Sixteen years.

Q And where do you currently work?

A In the Beaufort, South Carolina office.

Q And what was your -- what is your job title?

A I am the operations supervisor.

Q How long have you worked for the Beaufort location?

A Eight years.

Q Sir, I have got a relatively straightforward question for you. Your office, on a Saturday, would it be open to the general public?

A No.

MR. WHETSEL: Your Honor, I don't have any more questions for Mr. Cooper.

CROSS EXAMINATION

BY MS. DEWITT:

Q Sir, are there employees working on occasion on Saturday?

A Yes.

Q Do you -- are there people who come in on Saturday for professional appointments?

A On occasion.

MS. DEWITT: Thank you. That is all the questions I have.

THE COURT: Anything further, Mr. Whetsel?

MR. WHETSEL: Your Honor, I don't have any more questions for Mr. Cooper.

THE COURT: Okay. Thank you, sir.

MR. WHETSEL: Your Honor, at this time, the State would rest its case.

THE COURT: Okay. Ladies and gentlemen, I need you to go to the jury room for a few minutes. While

you are back there, I need you to select a foreperson. That person has no greater vote than anyone else, they will simply preside over the deliberations of this case and sign the verdict form. And that person needs to be from the original 12, not the alternates.

So if you will go back and select a foreperson, I'll get you back out in a few minutes.

(The jury exits the courtroom at 3:16 p.m.)

THE COURT: Mr. Hugue, how about standing up, please, sir, and let me talk to you a minute.

Raise your right hand. Do you solemnly swear the testimony you will give me is the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that the State has rested and you have an opportunity to put up evidence, if you want to? You also have an opportunity to testify, but you have a Constitutional right not to testify.

If you choose not to testify, I'll instruct the jury that they cannot hold that against you in any way. They can't even discuss that in the jury room.

However, if you decide to testify, you will be treated like any other witness. And you will be subject to cross-examination by the State and possibly

impeached. I don't know if you have a criminal record or not, but if you do, certain parts of your criminal record could be held against you to impeach. I don't know it, so I don't -- but I'm sure you already discussed it.

Your right to testify or not to testify is your decision. Your lawyer can advise you to what she thinks you should do, but ultimately it is your call as to whether you testify or not. You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And you have a Constitutional right not to, if you choose not to. As I told you, I'll instruct the jury they can't hold that against you. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: Do you got any questions you want to ask me concerning your rights about testifying?

THE DEFENDANT: No, sir.

THE COURT: Thank you, sir.

And, yes, ma'am. You got anything?

MS. DEWITT: Your Honor, if it pleases the Court. If the State rests, at this time I make my motion for directed verdict on behalf of the Defendant. As Your Honor knows, this is a circumstantial evidence case. And in this particular case, of course, the reason it's

circumstantial, there's no weapons in this case, no gun has been located, no weapons found on my client.

The gun residue kit came back negative. There's some third person, third unknown person's DNA on a smoldering cigarette that was found at the scene by the body. My client's DNA was not on that. There was no match of his DNA on the beer bottle there, there's no fingerprints.

He -- there is repeated denials by him that he is the one who is responsible for killing Mr. Heyward. It is a circumstantial kind of case, and even considering all of the evidence relied upon by the State, viewing the evidence in the light most favorable to the State, I would submit that their evidence falls short. Basically it raises not only a suspicion of my client's guilt and as such, he should be entitled to a directed verdict under the prior case law, including State V Bostick, and State V Bennett, Your Honor.

THE COURT: Bostick and what?

MS. DEWITT: State V Bennett, B-E-N-N-E-T-T. That's a 2014 case.

State V Bostick is -- Your Honor, State V Bostick, 392 SE 134.

Seven out of -- that was Docket 774, 2011 case.

THE COURT: Okay. Anything else?

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MS. DEWITT: No, Your Honor.

THE COURT: Okay. Yes.

MR. WHETSEL: Your Honor, there is substantial circumstantial evidence, but the case isn't entirely circumstantial. Kyle Riley took the stand and testified that he walked back over to the residence with Mr. Hugue, that he walked inside with Mr. Hugue, and then moments later Mr. Hugue and the victim in this case walked back outside. He heard a gunshot, he ran outside, the victim was on the ground and, as he testified, he saw Mr. Hugue running away. That is about as close to an eyewitness as you can get.

Now, outside of that, I think there is substantial circumstantial evidence. The Bostick case, Your Honor, says that a case should be submitted to the jury if there is any substantial evidence which would reasonably tend to prove the guilt, or from which his guilt may be fairly and logically deduced.

You have that evidence from Mr. Riley. You have testimony from Mr. Scott putting the Defendant there at the time. He heard an argument, or words being exchanged between the Defendant and victim, he heard them go outside, and then he heard a gunshot. When he came outside, the victim is on the ground, Mr. Hugue is gone.

You have evidence or testimony from Derrick Heyward, who says that he heard a shot. He wasn't there, but he heard the shot, he had seen Mr. Hugue there earlier in the day.

All three also testified that they had seen on that day Mr. Hugue carrying a semiautomatic black pistol. Kyle Riley went so far as to say that it was a .9 millimeter Keltech.

Now, what is interesting about that is that the bullet found in Mr. Heyward was most consistent with a .9 millimeter, and one of the manufacturers that could have fired it was a Keltech.

You also have the statement that Mr. Hugue provides, it's a relatively lengthy statement. The Court has heard it. It certainly -- there was no badgering, there was no forcing of him making any type of statements, it was freely and voluntarily given, and the statements for which he provided were then, at least, if I would submit, disproved based on additional evidence. He claimed to be in Beaufort all day. He claimed to go to a restaurant that didn't exist. He claimed to go to a government office that wasn't open. He claimed to be in Beaufort all day, up until about 11:30 at night.

There's evidence that, from other witnesses

including Ms. Hugue, saying that he was there during that time frame. In addition, you have the cell evidence.

I think all that taken together would be that circumstantial evidence that would get this case past a directed verdict that would be substantial again, which would prove the guilt, or which his guilt may be fairly and logically deduced. And I would submit that it should go to the jury.

THE COURT: Okay. And I find that is sufficient evidence in this case, and tangible evidence and this is, is a largely circumstantial evidence case. And then have testimony from Mr. Kyle Riley, that, in fact, he saw the Defendant and the victim together when they left together, and he heard a gunshot. A few moments later he exited and saw the Defendant running away.

So I think it's sufficient evidence to go to the jury, and I'm going to deny your motion.

Okay. Anything else? Y'all need a break? You need to talk to your client and decide whether, in fact, you are going to put up any testimony or whether he's going to testify?

We can take a 15-minute break and y'all can discuss that.

MS. DEWITT: I could use ten minutes. Thank you.

THE COURT: Okay. We will take a break and we'll come back and decide where we go from here.

(Brief recess.)

THE COURT: Okay. Did y'all make a decision?

MS. DEWITT: Yes, Your Honor. The Defendant is not going to testify, so the Defense rests.

THE COURT: Okay.

MS. DEWITT: And, of course --

THE COURT: So, it's 20 minutes till 4:00, or 18 minutes to 4:00, so I assume -- I normally don't like to argue and charge and give it to the jury at 5:00. So I suggest we stop and start back in the morning. Argue and charge in the morning, and give it to the jury. Do y'all have any objection to that?

MR. WHETSEL: I wouldn't, Your Honor.

Do you want her to rest in front of the jury, that way --

THE COURT: I do.

MR. WHETSEL: -- it's done, and then let them go home and we can talk about charges?

THE COURT: Sure. But technically, I'm going to do it in the morning. But I'll bring the jury in and let her rest.

I hate to even give a case to a jury after 4:00. Well, it's going to be at least 5:00, I assume, before

we can get to the jury. That means that the clerk has to feed them supper and we're going to be here half the night. So I'd just as soon start afresh in the morning.

MR. WHETSEL: Yes, sir, that would be fine.

MS. DEWITT: Yes, that's fine, sir. And then we can discuss instructions in the morning, if that's okay.

THE COURT: I'm in no rush. I just don't want the jury locked up. We can discuss charges as soon as I get rid of this jury.

Bring me the jury.

(The jury enters the courtroom at 3:44 p.m.)

THE COURT: Y'all select a foreperson?

THE JUROR: Yes, sir.

THE COURT: Who is that, Ms. Bass?

Okay. Ms. Dewitt.

MS. DEWITT: Your Honor, at this time, the Defense rests.

THE COURT: Okay. Ladies and gentlemen, you have heard all the evidence that you are going to hear in this case. The next part of this trial will be the closing arguments of the attorneys, and I will charge you on the law and give you this case to decide.

The problem with that, once I give you this case,

you can't go home. And since it is a quarter to 4:00, and it's going to take at least an hour, an hour and a half to argue and charge, we're going to stop today and let you go home, and come back at 9:30 in the morning. And then at 9:30 in the morning, we're going to do the closing arguments, I will charge you on the law and give you this case to decide.

In the meantime, don't talk about it yet. Tomorrow night, you can tell anybody you want to anything you want to. But until you all get a verdict, you can't talk to nobody.

So I'll see you all back at 9:30 in the morning. If you have an emergency, please let us know. You have a great evening. Thank you.

(The jury exits the courtroom at 3:45 p.m.)

THE COURT: Okay. Y'all got any particular charges you want me to charge, or do you want me to tell you what I've got?

MR. WHETSEL: Yes, sir, I think that will be fine. If you want to tell us what you plan to charge.

THE COURT: Okay. I'll do my standard charge about their role, my role, presumption of innocence, beyond a reasonable doubt, define reasonable doubt to them.

You know, credibility of witnesses, expert

witness, the fact the Defendant did not testify, circumstantial evidence and direct evidence, criminal intent.

I'll charge them on the fact that the Defendant's statement and the Defendant was introduced at trial. I will charge them that they must find that statement was voluntarily made. The fact the Defendant made it, and it was voluntarily done, I have a whole charge on that.

And then I will charge murder, possession of a weapon during a violent crime. Is there any other charges that y'all think is appropriate besides that?

MS. DEWITT: Of course, Your Honor, I don't have a copy of your charges or know what you usually charge, but I do have a request to charge on circumstantial evidence, which I can pass up if you care to read it tonight.

THE COURT: I'll be glad to.

MS. DEWITT: With a case attached to it.

THE COURT: Okay.

MS. DEWITT: I also have a request to charge a definition of suspicion as to suspicion implying the guilt.

THE COURT: Okay. And I can show you my circumstantial evidence charge if you want to, but I'll be glad to look at yours.

MS. DEWITT: And I have a charge on -- let's see, mere presence at the scene of the crime. But I can pass these up for Your Honor to read now or later, either way.

THE COURT: Okay. This circumstantial evidence charge you have given me is basically the same as the one that I have in my book.

MS. DEWITT: All right. Then thank you, sir.

THE COURT: Okay. And also Logan case, I have -- most judges do that. The only difference is my first paragraph says there are two types of evidence which is generally presented during the trial, direct evidence and circumstantial evidence. "Direct evidence directly 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."

And then the next two paragraphs are the exact same paragraphs you have here in the Logan case.

MS. DEWITT: All right. Thank you.

THE COURT: Okay. And what is the State's position about --

MR. WHETSEL: Which one, Your Honor?

THE COURT: She wants me to charge mere suspicion. Of course, circumstantial evidence has suspicion

definition. You know, these circumstances merely portray the Defendant's behavior as suspicious. To prove (reading).

In here, (reading) suspicion implied the belief or opinion as to guilt based upon facts and circumstances that do not amount to proof. She sent me that. That was State versus Cherry.

MR. WHETSEL: Your Honor, I would, I guess, object to that and just ask that you charge what you had just read a moment ago.

THE COURT: Okay. And I will do that. What about mere presence?

MR. WHETSEL: Your Honor, does your charge, does it already contain a mere presence charge?

THE COURT: I do have it. I do have a mere presence charge. I'll pull that up. And I will charge mere presence. I think, at least there are some factual issues in this case. He doesn't claim he's present at all, but other people put him at the scene.

MR. WHETSEL: Yes, sir.

THE COURT: You know. He --

MR. WHETSEL: I wouldn't object to a mere presence charge.

THE COURT: You wouldn't?

MR. WHETSEL: I would not, no, sir.

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THE COURT: All right. What about anything else?

MR. WHETSEL: Judge, just the case is escaping me, but there was a new case that came out a couple months ago talking about malice and not being able to imply.

THE COURT: Well, you can believe I won't put that in there. No, no, no, I -- there will be no charge of malice. I took it out when the Belcher case came along, and Belcher allowed it in certain rare circumstances. New cases don't allow it, period.

So I never charge, because of Belcher, I never charge implied malice by use of a deadly weapon. That is not in my charge anywhere.

MR. WHETSEL: Yes, sir. That was the only thing I could think of.

THE COURT: That will come back as fast as you can get it to Columbia, and that won't happen.

MR. WHETSEL: Co-counsel mentioned maybe a -- is there, like, a charge of inconsistent statements? Because I think we have gotten some inconsistent testimony.

THE COURT: I do have a charge on inconsistent statements, and I will pull that up and show it to y'all in the morning.

MR. WHETSEL: Other than that, Your Honor, I don't have anything else.

THE COURT: So murder and possession of a weapon, only two charges y'all want me to charge?

MR. WHETSEL: Sir?

THE COURT: Murder and possession of a weapon during a violent crime are the only two charges you want me to charge?

MR. WHETSEL: Yes, sir. I don't think there's any evidence that would indicate a lesser-included.

THE COURT: Okay. Do you agree with that?

MS. DEWITT: I do, Your Honor.

THE COURT: All right. I will get that together and show it to you in the morning. That was a pretty standard. And we start at 9:30?

MR. WHETSEL: Yes, sir.

MS. DEWITT: Yes, Your Honor.

THE COURT: And how long do you think your closing arguments will be?

MR. WHETSEL: Judge, I'm thinking maybe about 20, 30 minutes. I'm intending to use a PowerPoint to help summarize the evidence. But 20, 30 final -- let's say 30 minutes.

THE COURT: I'm not going to limit you. You got two hours, which would be a huge mistake. But, you know, when I finished law school, they said the average adult's attention span was 19 minutes. Now they say

it's eight minutes. So my preacher starts losing me after 19 minutes. So y'all can do whatever you want to.

Now, these young people text all the time and everything just like this. So I think my grandchildren's is about eight seconds. Anyway.

You know, if some of you, if you are long and you want to take two hours each, I just need to know that ahead of time. But most lawyers don't do that.

MS. DEWITT: Right. I'm not long-winded, Your Honor.

THE COURT: You know, if you take over two hours, me and the jury may be asleep. But I think that 20, 30 minutes will be fine. Okay.

Anything else we need to do today?

MR. WHETSEL: Not from the State, Your Honor.

MS. DEWITT: No, Your Honor.

THE COURT: All right. I'll see y'all in the morning. Thank you.

(Court adjourned for the day. Proceedings continue on 10-31-2019.)

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10-31-2019 PROCEEDINGS

MS. DEWITT: Your Honor, before you bring the jury out, I do, for the record, want to renew my motion for directed verdict.

THE COURT: Okay. And it is noted on the record, but I think that there is sufficient evidence for it to go to jury trial, so I'll deny your motion.

Anything else before I bring the jury out?

MR. WHETSEL: Not from the State, Your Honor.

MS. DEWITT: Not from the Defense.

THE COURT: All right. Bring me the jury, please, sir.

THE COURT: Okay. Go ahead.

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

THE COURT: Yes, sir.

CLOSING ARGUMENT BY THE STATE

MR. WHETSEL: Good morning, ladies and gentlemen. I told you at the beginning of this trial, this case was about one person who pulled a trigger and killed Mont Heyward on February 18th of 2017.

There was one person lying on the ground dying, there was one bullet fired, there was one fired shell casing, and there was one person running away. And that one person running away was David Hugue.

What I want to do is I want to review the evidence. I want to go through what we have that way you know beyond a reasonable doubt that the one man that killed Mont Heyward was David Hugue.

So what do we know? We know that on February the 18th, 2017, Kyle Riley called 911 at 8:28 p.m. You have that 911 call. You can hear the panic in Kyle Riley's voice.

As he's pleading with the dispatcher to get somebody there to help his uncle, you heard him talking to somebody, Gary Scott, asking Gary questions. Gary, what is the address? How old is Mont? Where was he shot? You can hear that on the 911 call, Gary Scott saying that.

You also hear the dispatcher say, "Do you know who shot him?" And he said, "Ma'am, please, just get somebody here."

In that moment Kyle Riley, a young man, who told you on the stand he's 20 today, but back then would have been 17, just wanted somebody there to help his uncle. He wasn't worried about telling the dispatcher that David Hugue was the man running away, he just wanted somebody to get there to help his uncle.

You also heard him, near the end of the recording, Sir, when did this happen? He said 20, 30 minutes ago.

He had been on the phone for about ten minutes or so. It probably seemed that long, but as he told you, as he was standing in that kitchen and he hears that gunshot, he runs outside and he sees his Uncle Mont lying on the ground. He runs back inside, grabs Mont's cell phone and makes that 911 call.

He does what he thinks he's supposed to do in the moment, and that was try to get help for his uncle.

What else do we know based on the evidence? Paramedics and police are there within minutes of the 911 call. You heard Sergeant Bailey testify when he got on scene, you can see in the body cam footage, that that one fired shell casing is on the ground feet from where Mont lied dying, this .9 millimeter Luger brand spent shell casing.

You can see right here in the photograph, Marker 1, Marker 1, and you can see the medical equipment where Mont was there just minutes before.

What else do we know based on the evidence? We know that paramedics were there within minutes, and they were fighting to save his life. We know that they tried to life flight him out, and when they got to the landing zone he was too unstable to transport via air. We know that they then tried to drive him to the nearest hospital, and that he went into cardiac arrest

three times. And we know that when he got to the hospital he was pronounced dead.

We also know, based on Dr. Phillips' testimony, that there was a single gunshot wound to the abdomen that killed Mont Heyward. There was no other major trauma noted. One bullet, most consistent with a .9 millimeter Luger, took Mont Heyward's life that night.

We also know, based on Dr. Phillips' testimony, that his death was as a result of a gunshot wound, and the manner was a homicide. STOP P

Now, what else do we know, ladies and gentlemen? We know that [redacted] Westberry is right here, just to the left of Cooler's Grocery on the map. We know that [redacted] Bellgrove is right down here at the bottom left-hand corner of the map, and that's just under a half a mile from each other. These two locations are incredibly close. And we know that Tower 216, the cell tower, is right there in the middle.

Let's go through some of the other forensic evidence. You had Ms. Zapata testify yesterday. When police arrived on scene they collected what they thought could be evidence in this case. The police did what they are supposed to. They arrive at a gunshot case, a possible homicide. They learn that later Mont dies, they are treating this like a crime scene, as

they should.

They see a cigarette butt, they collect it. They see a beer bottle, and they collect it. But not everything that is collected ends up having as much value. And that's what happened in this case.

You have a cigarette butt that has an unknown profile on it. All that means is that a standard submitted to Ms. Zapata, those standards did not match. They didn't match David Hugue, they didn't match Gary Scott, it didn't match Kyle Riley, and they didn't match Mont Heyward.

But there were other folks on that scene, like Derrick Heyward. Anybody else could have dropped that cigarette butt. At the end of the day it doesn't prove or disprove anything. What it shows is the police were collecting what they should, the evidence.

And what about the beer bottle again? That bottle was swabbed, and a profile just wasn't enough there compared to anything. Again, the police are doing what they are supposed to do at a crime, they're collecting evidence in an effort to solve the case.

And the fingernail clippings, evidence that Zapata told you, left hand from Lamar Heyward, victim in this case. Right hand, Lamar Heyward, another profile.

Now, what's interesting about DNA, as Ms. Zapata

told you, she can't tell you when it got there, can't tell you how it got there. All we know is that, there was some DNA under his fingernails that could have come from anywhere, that could have come from a handshake, it could have come from grabbing some type of object or item. All we know is it didn't match the standards submitted to her.

And, again, based on the doctor's testimony, Dr. Phillips, there's no signs of a struggle. There's no other major trauma, just a gunshot. So that other DNA, it just doesn't tell you anything in this case.

But at the end of the day, that is evidence that you should have. You should have everything. There's nothing to hide from you, you should get it all. But, frankly, this doesn't tell you much about what happened in this case.

Let's talk a little bit about the Defendant's statements. You can see on the body camera, police go out to [redacted] Bellgrove. They go out to Ms. Hugue's residence so they can talk to David a little after 12 midnight, after the murder -- right on 12:30, actually, you can hear on the body camera when they ask what time it is. It's at 12:33.

David comes outside, Lieutenant Atwood talks to him, and you -- you've got that in evidence. You can

re-watch that interview. It's about three or four minutes long.

And all Lieutenant Atwood wants to know is, hey, where were you tonight? We have a homicide, tell me where you were tonight.

And the Defendant provides a statement. And what was the statement? He said, Oh, I was in Beaufort from 5:00 until 11:30. I was with this person named Tiffany Jones. Tiffany Jones.

Well, do you have phone number for Tiffany? Again, this name has come up, and the police are trying to figure out, well, if he didn't do it, let's figure out his alibi so we can move on to the next person. What is her number?

Oh, it's [redacted]-2111 -- maybe, 2211 -- maybe 2203. Okay. So what do the police do that night? They go knocking on doors. They're trying to find this Tiffany. They're trying to call these numbers. They're trying to find this person that can verify his whereabouts that night. They don't go home and go to sleep and call it a day. They're trying to figure it out that night, this Tiffany.

They're trying to locate Tiffany. Because if Tiffany can verify where the Defendant was that night, then he's not our guy. That's the problem. There is

no Tiffany.

What else? Lamar Heyward, they call him Mont, he was murdered tonight. Do you know Mont? No, I don't know Mont. I don't know Lamar Heyward.

Do you know Gary Scott? Well, I heard of Gary Scott. Have you ever been at [redacted] Westberry? It's just right down the road. No, I've never been over there. Never been at [redacted] Westberry. It's just right down the road. No, I have never been over there. Never been at [redacted] Westberry.

Okay. That is his statement, four and a half hours after the murder. That is the first statement. The police let him go that night.

Now, a couple days later he gives a second statement. Now, what is in the second statement? Well, where were you all day? Well, I was in Beaufort. Who were you in Beaufort with? Tiffany James. Goes from Jones to James.

Do you have a number for her? [redacted]-2231 -- 2213. Okay. Well, how long were you in Beaufort? I was there from 8:00 in the morning until about 11:00 or 12:00 that night before I got back home.

Time wise shifting now a little bit. That is the problem, when you start telling a lie it's really hard to remember those details that you're telling. It's

easy to remember the truth, hard to remember a lie.

Well, what did you do in Beaufort? Well, got there about 8:00, tried to go to the Social Security Office, but they're closed. Went back later, about 4:00, and reapplied for my Social Security card.

We had Mr. Cooper up here testify that they are closed to the general public on Saturday. You might have an appointment there, but you have an appointment there. You go there at a particular time, you don't just show up.

He didn't have an appointment that day, or he would have been seen that day. He didn't go to the Social Security Office.

What did you do from 8:00 to 3:00? Just rode around. Rode around Beaufort for seven hours.

Where else did you go? Went to Chic Fil-A. Went to Checkers. Oh, you ate at Checkers? The Checkers that doesn't exist in Beaufort, hasn't been there since 2007.

Mr. Rose told you that, from the Beaufort business license department. Hadn't been a Checkers in Beaufort since 2007.

Do you know Lamar Heyward? Don't know Lamar Heyward. What's interesting though, listen to that interview, about halfway through, the Defendant says,

Hey, is Investigator Wright out there? Wants to talk to him.

Elvin Wright, the investigator, testified. Came in there, you could hear him on the recording talking to the Defendant. They are talking about what was going on that particular day, going through what his version of events were, and the Defendant slips into calling Lamar Heyward Mont.

This man that he doesn't know, all of a sudden he starts using the word "Mont," starts calling him Mont. He knows exactly who Mont Heyward is.

Never been to that [redacted] Westberry? No, sir, never been there. You got three witnesses that put him there that day: Kyle Riley, Derrick Heyward, and Gary Scott. All put David Hugue at [redacted] Westberry that day. D, as they call him. All three testified.

Is he known by anything other than David? Yeah, people call him D. Was at [redacted] Westberry that day. That same [redacted] Westberry, it's not even a half a mile away from where he lives with his grandmother.

Now, what about Tiffany? He gave a very particular description of Tiffany. In fact, spelled her name as "Tiftany," T, but it's pronounced Tiffany.

Thirty-one years old, white female, about 5'11" or 6 feet tall, about 130 pounds. Parents live in Port

Royal. Mom's name Shalana, drives a yellow Nissan. Got all these phone numbers.

What do the police do? They search databases, they call around, they are trying to figure this out. Cannot find a Tiffany James. Cannot find a Tiffany Jones. Why? Because she doesn't exist.

I asked Kyle, I asked Gary, and I asked Derrick, do you know a Tiffany James or a Tiffany Jones? Never heard of her. Have you ever seen David with a tall white female? I have never seen anybody like that. She doesn't exist.

While he is talking to Investigator Phillips, how long you known Tiffany? A couple of months. And then later, when he's talking to Investigator Wright, how long have you known Tiffany? Oh, about seven months.

These details are hard to remember when you are not telling the truth. Very, very hard to remember.

Where does Tiffany's parents live? Oh, they live in Port Royal Plantation. You mean on the island, or you mean in Beaufort? In Beaufort. The problem with that is, Port Royal Plantation is on Hilton Head. There's no Port Royal Plantation in Port Royal near Beaufort.

So, now that we got his version of what happened, let's go through the actual evidence. So he claims to

be in Beaufort. First statement from 5:00 in the afternoon until about 11:30 at night. Second statement, he was there from 8:00 in the morning all the way to 11:30 at night.

But the problem with that, every other piece of evidence puts him in Ridgeland. You have got the three witnesses. You got Kyle Riley, you got Gary Scott, you got Derrick Heyward, all saw him at [redacted] Westberry that day.

You got Kyle Riley and Gary Scott putting him there that night, right at the time of the murder. And you got Ms. Linda Hugue, his own grandmother. Ms. Hugue had to come and testify. She doesn't want to be up there, but she got up there and she told you the same thing the she told the police. He was at my house about 5:00 that afternoon, left my house and got back about 8:30 or 9:00.

So Ms. Hugue, his grandmother, puts him at her house up till 5:00 in the afternoon on the 18th. He leaves and then comes back between 8:30 and 9:00.

That phone number, that [redacted]-9514 phone number, that night of the murder, as Sergeant Phillips told you, he was trying to get in contact with David again. With the Defendant. So he calls Ms. Hugue and he asks her, Is there a good number for him? And Ms.

Hugue told you on the stand, I remember the detective calling me and asking me for a phone number, and I gave him the phone number that I use to get in contact with David. I don't remember those digits, but I gave him a phone number.

And as Sergeant Phillips told you, yeah, she gave me a phone number, and it was this number, [redacted]-9514. And what's interesting is, you get the data back from that number, and he's not just pulling this number out of thin air, because there's text messages. The content of those text messages line up with what happened that night.

I'm going to go through those text messages in a minute. But one of them, a message sent from the 305 number, says, This is D. David Hugue. The nickname that everybody calls him.

There's another message in there: I love you Ms. Hugue. Not pulling this number out of thin air, this was David's number. And what is interesting about that number is, when you get that raw data back from Verizon there are 56 calls made and received between 6:00 that evening and 10:00 that night. So before and after the murder.

Every single one of those were pinging off Tower 215, that tower that is right outside [redacted] Westberry. So

whoever is using that phone, which was the Defendant, is pinging off of 216. He is not in Beaufort. That phone is right there outside [redacted] Westberry.

And the Social Security Office, went there and applied for a card. The Defendant didn't have an appointment that day because he would have been seen that day. It wouldn't have been closed to him. Because, as Mr. Cooper told you, they are closed to the general public on weekends. He didn't go to the Social Security Office that day. He didn't go to Checkers, because Checkers didn't exist.

Now, whether it's Tiffany James or Tiffany Jones, I was with Tiffany James, the second interview -- or her name is Tiffany Jones.

What is her phone number? I have got about five or six of them. Very particular description. If this person existed, the police would have found her within days, maybe hours. There's not a yellow Nissan in Beaufort/Jasper County at that time that belonged to any Tiffany. They cannot locate this person because this person does not exist.

Doesn't know Lamar Heyward. Never been to [redacted] Westberry. But it is -- when he's talking to Investigator Wright, he starts calling him Mont. Because he knows exactly who Mont Heyward is. He just

murdered him.

What else do we know? We know that Gary Scott told you that same day, prior to the murder, there was a prior difficulty between Mont and the Defendant. Had an issue with each other just an hour before he killed him. And when he's talking to Investigator Wright, he changes that story from, I don't know Lamont Heyward to, Oh, I've heard of him for a couple of years. Mont. Mont. He knows exactly who Lamont Heyward is.

Let's talk about the murder weapon. We know that the bullet that took Mont Heyward's life that night is most consistent with a .9 millimeter Luger brand cartridge. We know that the fired shell casing is a .9 millimeter Luger brand cartridge. And we also know that based on the characteristics of the projectile, there are multiple gun manufacturers that could have fired that bullet. But the most interesting one is KelTec. Why is that interesting? Because Kyle Riley saw a .9 millimeter KelTec on the Defendant that night.

How is Kyle Riley going to know that the murder weapon could have been a .9 millimeter KelTec based on the forensic evidence if he didn't actually see that gun on the Defendant that night. And you got Derrick Heyward, you got Gary Scott saw a black semiautomatic gun on the Defendant that night. And when that 911

call goes out at 8:28, it is over four hours before the police are able to find the Defendant. More than enough time to get rid of a critical piece of evidence.

Now, let's go a little bit through Kyle Riley's statement. Kyle Riley told you on the stand, as of yesterday he's 20 years old. This happened back February 2017. He was 17 years old at the time. Young man.

Kyle is over at Gary Scott's house, because his house is just -- just a walking path away. He lives very close. He would go over there. And that particular day David Hugue was with him. He also knows him as D.

Well, that evening his girlfriend had bought him some food, some Zaxby's. And you can see that Zaxby's in the photographs. So he walks over with D to get that food, and when he walks back they go inside [redacted] Westberry. As Kyle told you, nobody else is outside. When he walks inside his Uncle Mont is there. Mont wasn't there when he left. Mont is there now.

A guy named Brent Walker is sitting on one of the chairs, and as they walk inside, remember this prior difficulty, Mont sees David and says, "Let's go outside."

They walk outside. Kyle is standing there at the

kitchen table, as you can see in the photograph, the food. And he told you he's not looking out the window, he's eating his food. But moments after they walk outside, he can see that flash and he can hear that gunshot, and he runs outside. And what does he see? He sees his uncle lying in the dirt dying and he sees one person running away, David Hugue.

He was just outside moments before, nobody else was out there. Him and David enter, the Defendant and Mont walk outside, Mont is shot, and David is running away.

You can see from the photographs, right there in front of the grill. You can see on the body camera, too, that is where the paramedics were working on Mont. And you can see right over here to the right, right outside of the frame is where that -- that spent casing is. And you can see this window. This window right to the left of the porch is the same window that on the second picture is right in front of the kitchen table. Right where the Zaxby's was located. That is a perfect vantage point to see that flash and to hear that single gunshot.

Now, there was some question when Kyle was testifying, about it was nighttime. Probably couldn't see that well, right? Ladies and gentlemen, that is

just not true. Watch the first few seconds of Sergeant Bailey's body cam. Watch these streetlights. You got one streetlight, you got two streetlights, and you got the third streetlight that is directly above the gate where the Defendant is running, as Kyle races outside to call for help for his uncle.

It may have been nighttime, but it was not dark outside. Kyle was just with that man, just with the Defendant moments before. He knew exactly who that was. He knew exactly who was running away, as his uncle lie dying in the dirt.

Let's talk about Gary Scott. Now, Gary told you, as Lieutenant Atwood told you, that his initial statement was, I wasn't there, I was in Columbia. Now, Gary told you why he said that. He had a municipal warrant. He didn't want to get arrested that night. That is a terrible reason for not staying around, but that's the truth. That's what happened.

And when he comes clean, when Lieutenant Atwood tells him, I can hear you on the 911 call. And if you need to, listen to the call again. You can hear Gary on there. You can hear him talking. So Gary says, okay, let me tell you what happened.

First, he tells us about that prior difficulty earlier in the day between the Defendant and the

victim. But then he tells you, comes back home, goes inside his room, and I'm folding clothes, he says. And what's interesting is, these are police photographs. That is his bedroom, and what's there on the bed? His folded clothes. That corroborates his statement. I'm in the room folding clothes. His bedroom is down over here, left side of the mobile home. I'm folding clothes when I can hear the Defendant walk in. How do you know that? Because I recognize his voice.

And I hear Mont say, Let's go outside. And moments later I hear a gunshot. So what does Gary do? He comes outside. Well, Gary, where is Brent at? Brent was inside. Where's Marquee at? Marquee was inside. Where were they when you came outside? They came running after me. They are still inside the trailer.

Kyle, where is Brent? He was sitting on the -- sitting on the chair, inside, at the time of the shooting. Where's Marquee? He's asleep.

They didn't stick around. They didn't pull that trigger either. One man that pulled that trigger, one man that went outside with the victim. One man that had an issue with the victim. That's David Hugue.

Let's talk about the gunshot residue. Came back negative. Uh-oh. Sounds like an issue.

It's not an issue. Why is it not an issue? The police were not able to take this gunshot residue test until after four hours from the time of the murder. We know the murder is right around 8:28, the time of the 911 call. We know they're not taking that gunshot residue test until about 12:40 or so that night, because you can hear on the tape it was 12:33 when they first got out there. Several minutes later, before they actually took it.

Megan Fletcher, the SLED analyst, tested and told you about that shot residue. It's fragile material, the particles that can end up on clothing or hands when a firearm is discharged.

Well, Ms. Fletcher, what happens when you don't find gunshot residue? Well, there's a bunch of reasons why that could be true.

Well, it could be the time. After six hours in, it's not tested. This is in the four- to six-hour window where it may not be there. Normal physical activity, washing hands, wiping hands, sweating profusely, wearing of gloves, water and debris on hands, wind and rain, ammunition not producing particles, firearm not producing particles.

But what's most telling is the wiping of the hands. As Detective Croft is getting ready to

administer this test, what is Defendant doing? Somebody who didn't fire a firearm four hours before probably doesn't need to be rubbing their hands quite like that.

And in those four hours, what is he doing? When it comes down to it, the lack of GSR does not mean that he's innocent. What that shows you right there is a sign of guilt. Four hours after he murdered this man, right before he's getting a gunshot residue test, he is vigorously rubbing his hands inside of his jacket pocket.

MS. DEWITT: Your Honor, I do have an objection, if we could approach.

THE COURT: Okay. Yes, ma'am.

(Off-the-record discussion held.)

MR. WHETSEL: Ladies and gentlemen, that is directly from the body camera. That is a clip that I put in there for your reference. You can re-watch that whole body camera again if you want to. All this evidence in the record is yours. It is yours to look at, and to look at as long and as much as you want to as you come to a decision.

Now, let's talk about the firearms analysis. The bullet that killed Mont Heyward most consistent with .9 millimeter Luger. One bullet. The one fired spent

shell casing, a .9 millimeter Luger. A firearm that could have fired this bullet, the gun that was never recovered, but that could have fired this bullet, a KelTec, the same gun that Kyle Riley said that David Hugue had that night, a .9 millimeter KelTec.

How does Kyle know that that gun could have been a murder weapon based on forensic evidence if he didn't see that gun?

Now, let's talk about the cell records. This 305 number, the number give to the police by the grandmother, Ms. Hugue. From 6:00 to 10:00 that night, the raw data, the Verizon records, the paper says that there are 56 incoming and outgoing calls, and they all used Tower 216.

Ladies and gentlemen, this document is in evidence. Feel free to look at it, it's right here. That is the raw data for this phone number, for this target number, this 305 number. During this time period from 6:00 to 10:00, 56 calls, all using Tower 216. The number that Ms. Hugue gave to the police, they could recheck.

Now, what other Verizon evidence were they able to provide? Text detail records. Now, as Ms. Dalmida told you, as a records custodian, this is just the data from this number. This is the data from this number.

The number that Ms. Hugue gave to the police.

And what's interesting about these messages, there's 20 in evidence. I put a few up here for you to review during closing. But this first message sent by the target number, the 305, the one that David Hugue had that night, sent at 5:05 on the day of the murder, 5:05 in the afternoon, and he says, "I'm coming."

Why is that important? Well, according to David, he is in Beaufort all day. But according to the grandmother, he is at her house and leaves about 5:00.

What does the message say? It says, "I'm coming."

What can you infer from that? It means I'm leaving from somewhere. I'm leaving my grandmother's house. This message from the 305 number at 5:18 on the day of the murder, the message sent from the 305 number, "This D." D. David Hugue.

Now, maybe what is most interesting is this text message, the one right before the one that is in the record that you can look at, but the one right before it is sent to his number at 8:41, and it says, "You good," question mark. This is after the murder. The murder is at least by 8:28. At 8:41 this number, David's number, receives a message, "You good," question mark. And what does the number respond? "Yeah, granny house."

David's supposed to be in Beaufort right now. But the grandmother says, He got back to my house between 8:30 and 9:00. And the message said, "Yeah, granny house."

That phone, the phone that David had, puts him back at granny's house.

What other messages are being frantically sent from this number? Delete my Facebook. Delete it ASAP. Delete my Facebook. Put your phone on the charger.

Why? Because there's something in that Facebook that he doesn't want the police to get. As Sergeant Phillips told you, he sent out search warrants and he got back the Facebook data, nothing relevant in Facebook. Something in that Facebook, it didn't come back to the police though.

Delete my Facebook. Put your phone on the charger. Delete my Facebook texting. Sent at 10:02 that night.

And really perhaps the most telling text of all at 11:30 that night, sent from the 305 number, Just need to lay low, but Imma see how the night comes.

Who needs to lay low? Somebody who just murdered a man.

Sent one hour before the police arrived at [redacted] Bellgrove. "Just need to lay low, Imma see how the

night comes."

Ladies and gentlemen, when it comes down to it, the evidence is clear, points to one person. Mont Heyward was murdered that night by a single bullet fired most consistently with a .9 millimeter. There was one spent shell casing deep in his body, a .9 millimeter Luger.

There was one person who had a .9 millimeter KelTec on him that night. There was one person who was outside with Mont when that gunshot was fired. There's one person who was running away as Mont falls and is lying in the dirt dying. There is one person that is vigorously wiping their hands right before the GSR test. And there's one person that has to lay low that night. And there's one person that did this crime. There's one person that committed this murder. There's one explanation for all this evidence that makes sense, that explains everything. And it is this: That David Hugue murdered Mont Heyward. That explains all the evidence. That explains the witness testimony. That explains cell phone evidence. That explains the grandmother's testimony. That explains the lies that David repeatedly tells the police as he tries to out lie himself. That explains why the police could not find Tiffany, because she does not exist.

CLOSING ARGUMENT BY THE STATE

Ladies and gentlemen, I want you to carefully consider this evidence. I'm asking for one verdict, a verdict of guilty. Thank you.

CLOSING ARGUMENT BY THE DEFENSE

MS. DEWITT: May it please the Court.

THE COURT: Yes, ma'am.

MS. DEWITT: Good morning. I realize it's Thursday and y'all have been here all week. I promise I won't talk as long as the Solicitor.

Now, what you have heard all week long is a whole lot of talk in this case, mostly from the Solicitor, Mr. Whetsel. He is the one who has done the talking, and the Judge will tell you in his closing statements to you and in his jury instructions, nothing the prosecutor said is evidence in the case. Nothing I tell you is evidence in the case. We are just lawyers representing each side.

The prosecutor's interpretation of the evidence is not the same as mine. May not be the same as yours. It's up to you as jurors to determine what weight you give to each piece of evidence introduced.

Now, what you have got in this box here is a whole bunch of nothing. You have got DNA samples, DNA taken from underneath the fingernails of the decedent that belong to an unidentified person, or it is an

unidentified sample, which means it did not match Mr. Hugue. It did not match either of the two witnesses who testified. It did not match the decedent's known DNA.

And you have one bullet that could have been fired from any of 57 different models of guns, according to the SLED expert. You have a cigarette butt, smoldering at the time the officers collected it. And on the cigarette butt was DNA of an unidentified third person, meaning nothing in this box is on this DNA belonging to Mr. David Hugue.

In this box you have some phone records from a telephone number on which my client's grandmother could reach her grandson. There is no evidence. I'm going to pick this up. There is no evidence in this case that the phone actually belonged to David Hugue. It was not taken from his person. It was not in evidence. It was not located. There's no witnesses saying he had a phone in his possession that night. There's no evidence that he actually used that telephone himself on the date of this incident. What you have in the box, like I said, is a bunch of nothing.

Now, you heard from some witnesses in this case. You heard from the two lying witnesses who say, who first said, The young one called 911, said he did not

know who shot the decedent. He told them that nobody else was at the house. Upon being questioned at the police department, he denied knowing what happened. And then later, when he was advised that taking the decedent's phone might be a crime, he changed his story.

He testified everyone in that house had a gun, and when the shot was heard, they all left. Everyone in the house ran. He testified he saw Mr. Hugue run. If you believe him, and you believe that Mr. Hugue was there, then I want you to ask yourself this question. If you walked out a door and somebody next to you was shot, would you run too? Would you run?

Everyone in that house ran. That is if you believe that witness. Would you run?

Ask yourself this. If you believe that Mr. Hugue was present, who was the target? Was it the decedent or was it the Defendant? Would you run? Would you lay low? Would you go home?

Second witness, the second lying witness, the convicted forger. You know, the forger. A forger is a thief and a liar. They sign somebody else's name to a check and then steal that person's money. Second witness told the police he was in Columbia. He wasn't in Columbia, they heard him on the 911 tape.

Obviously, he was still there.

When they brought him into the police station, he initially lied, again. So you got two witnesses who lied at least twice before they came up with the story that they finally gave the police. You have got those witnesses.

Now, the police went to Mr. Hugue's house that night. He was cooperative. They run the gun residue test. That is more of nothing. No gun residue on him. They were there within three and a half hours within that window. There was no evidence he had fired a gun, no evidence he held a gun.

There's, as you all know, no eye witness to the shooting, period. They asked him where he had been, he said, Beaufort. But if you look at that video, the question, I believe, was, Where have you been today? Beaufort is what he said. He gave a girl's phone number.

So the police officer testified, he verified that this Tiffany does exist. Verified it through the grandmother who knew her.

Mr. Hugue was not arrested that night. The other two individuals, two witnesses who were at the scene, they did gun residue tests on them. Their evidence also was negative. They didn't fire a gun that night,

but they did test them. It's interesting the witness' clothes and Mr. Hugue's clothes, were not taken into evidence to be tested. That wasn't done.

Mr. Hugue wasn't told not to leave town or to stand by or anything like that. He was left at his grandmother's house.

Other individuals, the police later learned, were present in the mobile home. Now, one of them who they found, they know who he is, well, he wouldn't talk to the police. They didn't track him down that night. They didn't do any kind of gun residue test on him, but he didn't testify in this case. Wasn't cooperative. So he was there, and no telling who else was there.

Now, Mr. Hugue, he doesn't have to prove he did not do this. He consistently told the police officers he did not shoot this man. He did not shoot a gun that day. He did not do it. He said it over and over and over.

So he's told y'all he did not shoot that man. It's up to State of South Carolina to prove that he did. They have to prove it to you beyond a reasonable doubt, each and every element of the offense. The fact that a person is merely present when a crime is committed is an insufficient reason to find somebody guilty. It is not enough reason. The fact that

somebody flees is not just, that fact alone, is not sufficient reason. Everyone in that house ran.

If you have a reasonable doubt as to whether or not Mr. Hugue is the shooter, then you have to find him not guilty. And the law is going to instruct you on that reasonable doubt. You know, it doesn't really matter what Mr. Hugue ate for breakfast and lunch that day. It doesn't really matter what he did during the day. The officer testified he got the date wrong on the incident at least once. Okay? And you might ask yourself, if you are unemployed, and you don't live by a calendar where you have to know what day it is and whether or not you go to work, is there really any difference between a Saturday and a Thursday or Friday? Do you know what exact date of month it is when you don't work?

People get mixed up sometimes in their dates. The details Mr. Hugue gave about going to Beaufort with this woman who drives him around are so detailed, I submit to you that she, in fact, did at some point drive him to these places. Now, whether or not he got the days mixed up, that's for you to decide. But the truth is, it doesn't matter what he did. It doesn't matter what he did that day. It doesn't matter what he ate.

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CLOSING ARGUMENT BY THE DEFENSE

I submit to you that the State falls very short in meeting its burden of proof. Mr. Hugue has always said consistently that he did not shoot that man. He is not guilty. I ask that you find him not guilty. I ask that you consider every possible scenario that gives you reasonable doubt as to guilt in this case. Thank you.

JURY CHARGE

THE COURT: Now that you have heard the arguments of counsel, now I need to charge you in the law. It's going to take about 15 to 20 minutes. Anybody need a break? Everybody good?

Okay. Now, that you've heard all the evidence in this case, and the arguments of the attorney for the State and the Defense, I'm now going to charge you on the law that you are to apply in this case.

Under our Constitution and code of laws, only the jury can make a finding of fact in a case. I am not permitted to indicate how I might feel about the facts of the case. So if I have said anything or done anything throughout this trial that you think that I have an opinion about the facts, you are to disregard that, because you and only you are to determine what the facts are in this case.

And that same Constitution, that same code of law

that makes you the exclusive judge of the facts makes me the exclusive judge of the law. So if you have an opinion about what you think the law is, or what the law should be, and it differs from what I now tell you the law is in this case, on your oath you are to disregard your opinion and accept the law exactly as I give it to you.

And the fact that this gentleman was arrested, charged, and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case. Nor does it create presumption of or inference of guilt. Indictment simply is a form of legal document that processes this case through the court system.

Now, the Defendant has pled not guilty to these indictments. That plea casts the burden from the State of South Carolina to prove each and every element of these indictments to you beyond a reasonable doubt.

A person charged with committing a criminal offense in South Carolina is never required to prove himself or herself innocent. And I instruct you and emphasize to you the fact that the Defendant did not testify in this case is not a fact to be considered by you in any way in your deliberations, and in your considerations of guilt or innocence. It must not be

considered by you in any manner whatsoever.

The Defendant has a Constitutional right to remain silent, and the assertion of this right cannot be considered by you in your deliberations. Under your oath, you are to draw no conclusions whatsoever from the fact the Defendant did not testify in the case. The fact that this Defendant did not testify should not even be discussed in the jury room. It is an important rule of law of this country that a Defendant in a criminal trial will always be presumed innocent of the crime for which he or she is indicted unless and until his guilt has been proven to you by evidence which satisfies you of that guilt beyond a reasonable doubt.

The presumption of innocence is not a mere legal theory. It is not just a legal phrase. It is a substantial Constitutional right, which every Defendant is entitled to. The presumption of innocence accompanies the Defendant from the time he's charged, throughout the trial, when you reach a verdict of guilt based on evidence that satisfies you of that guilt beyond a reasonable doubt.

And reasonable doubt is a doubt which makes an honest, sincere, conscientious juror in search of the truth to hesitate to act. Proof beyond a reasonable doubt is proof of such a convincing act that a

reasonable person would not hesitate to rely and act upon it in most important of his or her own affairs.

Proof beyond a reasonable doubt can also be described as proof that leaves you firmly convinced of the Defendant's guilt. Now, there are very few things in this world that we know with absolute certainty. And in a criminal case the law does not require proof that overcomes every possible doubt.

If based on your consideration of the evidence, you are firmly convinced this Defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you think there's a real possibility that he is not guilty, you must give him the benefit of that doubt and find him not guilty.

In determining the facts in a case, you must necessarily pass upon the credibility, which simply means believability of a witness and the value and weight to be given to their testimony. You alone must decide the force and effect and truth of this testimony.

In making these decisions, there are many things that you may and should take into consideration, such as the appearance and manner of the witness on the stand, sometimes referred to as the demeanor of the witness.

Was the witness forthright or hesitant? Was the witness' testimony consistent, or did it contain discrepancies? What was the ability of the witness to know the facts about which he or she testified? Did the witness have call or reason to be biased and prejudice in favor of the testimony he or she gave?

Was the witness' testimony corroborated and made stronger by other evidence and testimony, or was it made weaker and impeached by such other evidence and testimony?

Now, the rules of evidence do not automatically permit a witness to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who, by education and experience, has become an expert in some art, science, profession, or calling, may state an opinion as to relevant material, matters in which the witness claims to be an expert.

It may also state the reason for that opinion. You should consider an expert opinion received in evidence in this case like any other evidence. Give it the weight you think it deserves. If you decide the opinion of an 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 the opinion in its entirety.

An expert witness' testimony is to be given no greater weight than that of any other witness simply because the witness is an expert. And further, you are not required to accept an expert's opinion even though it is not contradicted. As a juror you have the right to believe a small portion of a witness' testimony and disregard the larger, or vice versa. You may believe the testimony of a single witness against that of many, or the other way around.

Now, the evidence presented and the witnesses have made prior statements which are not consistent with the witness' present testimony, you may use this evidence to decide whether to believe the witness. You may also use the evidence from the earlier contradictory statements to determine the truth of those statements. And it's up to you to decide whether to believe the earlier statements or the testimony given at trial.

If a witness is shown to have knowingly testified untruthfully concerning any material matter, you may consider this in determining whether to trust the witness' testimony. As to other matters, you may reject all of the testimony of that witness, or give all or part of the testimony the weight you think that

it deserves.

Now, there are two types of evidence which are generally presented during a trial. Direct evidence and circumstantial evidence. Direct evidence directly 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, all of 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 this Defendant guilty beyond a reasonable doubt, and this burden rests on the State regardless of whether the State relies on direct evidence, circumstantial evidence, or a combination of the two.

Now, criminal intent is a necessary element of

each crime that must be proved by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury in circumstances surrounding the situation. There's no way to prove intent to a mathematical certainty.

There is no way medical science can dissect a person's brain and determine what he or she had in mind. The law states criminal intent may be inferred if circumstances are shown to have existed both before the and after the fact. This is how you, the jury, make a determination of whether or not the elements requiring an intent were present.

Criminal intent is a state of mind that operates jointly with an act or omission in the commission of a crime. Criminal intent is a mental state of conscious wrongdoing.

So it is up to you, the jury, to determine what the Defendant intended, based on the circumstances shown to have existed, and I tell you the State must prove criminal intent beyond a reasonable doubt. This is a statement that proves each element beyond a reasonable doubt.

Now, I have admitted into evidence in this case statements alleged to have been made by the Defendant. Before you may consider these statements as evidence,

for any purpose, you must find that the State has proven beyond a reasonable doubt the answer is yes to both of the following questions.

One, did the State -- did the Defendant make the statement? And number two, was the statement made voluntarily?

The word voluntarily means that he freely chose to make the statement, and it was not induced by pressure, force, or intimidation. If the statement was voluntarily given, it may be used against him. If the statement was not voluntarily given, it cannot be used against him.

In determining whether or not the statement of the Defendant was voluntary, you should consider all the facts and circumstances surrounding the statement, including the Defendant's demeanor, maturity, level of education, intellect, his physical and mental health, his background and environment, the nature of any questions, and any other evidence that you believe bears on the voluntariness of the Defendant's statement.

If the Defendant was in custody at the time the statement was made, then you should also consider the place and length of that custody, and whether or not he was given or whether or not he understood his

Constitutional rights that are commonly referred to as Miranda rights.

And these rights are as follows: One, that he had the right to remain silent. That any statement that he does make can and will be used against him in a court of law; that he has the right to consult a lawyer before and during any questioning; and if he cannot afford a lawyer, the Court will appoint one to represent him without any cost; that he has the right to exercise these rights at any time and terminate the questioning or not answer any questions or make any statements.

And I find as a matter of law that the Defendant was in custody at the time he made the statement, or the last statement.

Now, mere presence at a scene is not sufficient to prove someone guilty of a crime. If the Defendant's mere presence where a crime has been committed or mere association with a person who commits a crime does not make a Defendant an accomplice, or if they are the -- the person committing the crime. The burden is on the State to prove every element of a crime charged. If you find, after hearing all of the evidence, the State has proved that the Defendant was only present at the scene of the crime, and that they have not proved

beyond a reasonable doubt any other participation of the crime, then you must find the Defendant not guilty. The law is that proof of someone at the scene of a crime is not sufficient to find someone guilty.

Now, suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. A Defendant in this case is charged with the crime of murder. The State must prove beyond a reasonable doubt that the Defendant killed another person with malice aforethought.

Malice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse with an intent to inflict an injury under the circumstances the law will infer an evil intent.

Malice aforethought does not require that malice exists for any particular time before the act is committed. But malice must exist in the mind of the Defendant just before and at the time the act is committed. Therefore, there must be a combination of previous ill will or ill intent or evil intent and the act.

Malice aforethought may be expressed or inferred. These terms, expressed and inferred, do not mean a different kind of malice, but merely that the manner in

which malice was shown to have existed. That is either by direct evidence or by inference of a fact or circumstance which draw proof.

Expressed malice is shown when a person speaks words which express hatred or ill will for another person, or when the person prepares beforehand to do an act which was later accomplished. For example, lying in wait for a person, or any other act of preparation bourn to show that the deed was within the Defendant's mind would be expressed malice. Malice may be inferred in conduct showing a total disregard for human life.

Now, the Defendant is also charged with possession of a weapon during the commission of a violent crime. The State must prove beyond a reasonable doubt that the Defendant was in possession of a firearm or displayed, visibly displayed, a firearm during the commission of a violent crime.

Firearm means any machine gun, automatic rifle, revolver, pistol, or any other weapon which will and is designed to be readily converted to -- I'm sorry, readily converted to be able to expel a projectile.

In order to find the Defendant guilty of possession of a weapon during the commission of a violent crime, you must first find the Defendant guilty of either committing a violent crime or attempting to

commit a violent crime. And I instruct you the crime of murder is a violent crime in South Carolina. And the State must prove beyond a reasonable doubt that the weapon furthered, advanced, or helped in the commission of the crime.

Now, ladies and gentlemen, you are not parsed with the State of South Carolina on this defendant. You do not serve as jurors to reward your friend or punish your enemy. That system of justice simply would not be tolerated.

You have been selected by both the State and this Defendant to be fair and impartial jurors. And it is your duty then to apply the law as I've given it to you and determine what the facts are in this case. And when you have done this, you will have satisfied your duty to this Court.

Now, I have had my law clerk print out a verdict form in this case and, Madam Forelady, this form simply states the caption of the case. And it is two different forms because it's two different indictments in this case. The first is, the caption of the case, State of South Carolina, County of Jasper, the State versus David Hugue, Junior. We, the jury, unanimously find the Defendant guilty of murder or not guilty of murder. And once you have reached a verdict from that

form, you check the appropriate box, date it, and sign it. Now the order in which we put these in, you should draw no conclusion from whatsoever. We just had to put it in some order.

On the other verdict form is we, the jury, by unanimous consent find the Defendant guilty of possession of a weapon during the commission of a violent crime or not guilty. You should check the appropriate box, date it, and sign it when you have reached a verdict.

That verdict must be unanimous. All 12 of you must agree to that verdict before you are instructed to sign it.

Now, if you find the Defendant not guilty of the crime of murder, he cannot be guilty of possession of a weapon during a violent crime. If you find him guilty of murder, then you would go to the other verdict form and determine whether the State has proven to you beyond a reasonable doubt he's guilty of possession of a weapon during the commission of a violent crime.

Now, I'm going to send you to the jury room in a few minutes. I got to talk to these lawyers to be sure that I have not missed anything. If I have not -- if I need to instruct you further on the law, I'll bring you back out and instruct you further. If I have covered

everything, then I will send this verdict form into the jury room along with the evidence. Once you received that evidence that will be your indication to begin your deliberations.

If for any reason, during your deliberation, one of the jurors needs to be excused for some reason, may need to go to the restroom or whatever, you got to stop talking about the case, because you can only talk about it when all 12 of you are present in the jury room.

Your verdict must be unanimous. When you reach a verdict, you will simply knock on the door, we will bring you back out and receive your verdict.

Now, if for any reason during your deliberation you have a question, you must write that question down on a piece of paper and give it to the bailiff, and they will bring it in here to me, and I will bring you back out and try to answer that question.

Having said that, if it's a question of fact, I can't answer that question. I can't reopen this case and give you more evidence. It is over. The only question I can answer are questions of law.

So if you want me to instruct you, go over part of my verdict -- I mean, part of my charge with you, I can do that. If you have a question of law, I can answer that. If you have a question of fact, I can't answer

that.

So if you will go to your jury room, either I'll bring you back out in a second or I'll send this paperwork in and you will begin your deliberation.

The two alternates, you need to stay with me. The only reason I needed y'all was in case somebody gets sick, and it looks like the other 12 are going to make it. So if y'all just hang with me a minute.

All right. You can go to your jury room. I'll either send this in or bring you back out.

(The jury exits the courtroom at 10:55 a.m.)

Are there any exceptions from the State?

MR. WHETSEL: No, sir, there is not.

THE COURT: From Defense?

MS. DEWITT: None, Your Honor.

THE COURT: Okay. If y'all will get the evidence together. Make sure you have it all. And here's the verdict.

(Jury begins deliberations.)

Ready

(The alternate jurors were released from jury duty.)

(Jury deliberating.)

THE COURT: Okay. They sent me a note that they want to hear the 911 call.

MR. WHETSEL: Yes, sir, we can do that.

MS. DEWITT: We are waiting on my client, Your Honor.

THE COURT: I know. I'm not going to do anything until he gets here.

(The jury enters the courtroom at 1:10 p.m.)

THE COURT: Okay. Madam Foreman, I have two questions from you. One is: What is the definition of reasonable doubt?

THE FORELADY: Yes.

THE COURT: I'll recharge you on that definition.

THE FORELADY: Thank you.

THE COURT: The second one is that you want to hear the 911 call.

THE FORELADY: Yes.

THE COURT: I'll recharge you on this and then play the 911 call.

Reasonable doubt is a doubt that makes an honest, sincere, conscientious person in search of the truth to hesitate to act. Proof beyond a reasonable doubt must be proved in such a convincing character that a reasonable person would hesitate to act on it in his or her own affairs. Proof beyond a reasonable doubt can also be described as proof that leaves you firmly convinced of the Defendant's guilt. There are very few

things in this world that we know of with absolute certainty. In a criminal case, the law does not require proof that overcomes every possible doubt.

Based on your consideration of the evidence, if you are firmly convinced that the Defendant is guilty of the crime charged you must find him guilty. On the other hand, if you think that there is a real possibility that he's not guilty, you must give him the benefit of the doubt and find him not guilty.

Okay. That is the legal definition of reasonable doubt.

Now, I'll get the Solicitor to play you the 911 tape again.

(911 call published to the jury.)

THE FORELADY: Yes, sir.

THE COURT: Okay. Y'all return to your jury room and let me know.

(Whereupon, Court's Exhibit No(s). 5-7 marked for identification and received in evidence.)

(The jury exits the courtroom and continues deliberating.)

THE COURT: Okay. I understand we have a verdict. Everybody ready?

MR. WHETSEL: Yes, sir.

THE COURT: Okay. Bring me the jury.

(The jury enters the courtroom at 3:24 p.m.)

THE COURT: I understand you have reached a verdict.

THE FORELADY: Yes, Your Honor.

THE COURT: Okay. If you would pass it up, please.

THE CLERK: State of South Carolina, County of Jasper, the State versus David Eric Hugue, Junior, case number 2017GS270151, verdict of the jury, guilty of murder.

State of South Carolina versus David Eric Hugue, Junior, 2017GS270153, we, the jury, find the Defendant guilty of possession of a weapon during the commission of a violent crime. Signed by the foreperson.

THE COURT: Okay. Anything before I dismiss the jury on behalf of the State?

MR. WHETSEL: Not from the State, Your Honor.

THE COURT: From the Defense?

MS. DEWITT: I would ask that they be polled, Your Honor.

THE COURT: All right. If you will poll the jury, please, ma'am.

THE CLERK: As I call your name, will you please stand or just raise your right hand instead of standing.

Khatie Shaw, was this your verdict?

JUROR: Yes, ma'am.

THE CLERK: Is it still your verdict?

JUROR: Yes, ma'am.

THE CLERK: Thank you.

Janice Bass, was this your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

JUROR: Yes.

THE CLERK: Timothy Williams, was this your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

JUROR: Yes, ma'am.

THE CLERK: Thank you. Madison Conner, was this your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

JUROR: Yes.

THE CLERK: Thank you. Leroy Ryans, was this your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

JUROR: Yes.

THE CLERK: Thank you. Juror Brinson, was this

your verdict?

JUROR: Yes, ma'am.

THE CLERK: Is it still your verdict?

JUROR: Yes, ma'am.

THE CLERK: Kathleen Wilson, was this your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

JUROR: Yes.

THE CLERK: Thank you. Trevor Cormack, was this your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

JUROR: Yes.

THE CLERK: Thank you. Antonio Paul, was this your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

JUROR: Yes.

THE CLERK: Thank you. Sandy Williams, was this your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

JUROR: Yes.

THE CLERK: Thank you. Juror Easley, was this

your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

JUROR: Yes, ma'am.

THE CLERK: Thank you. Laura Tindall, was this your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

JUROR: Yes.

THE COURT: Thank you.

Okay. Anything else before I dismiss the jury?

MS. DEWITT: No, Your Honor.

THE COURT: Okay. Ladies and gentlemen, I want to thank you for your service this week. I've been telling you you can't talk about this case, now you can talk about it to anybody you want to, and you don't have to if you don't want to.

The clerk is going to mail you a huge check for your service. It won't come close to covering what you have done for us this week. If we paid you what you are really worth, you couldn't pay your property taxes.

You won't have to do this again for three years. You have a nice weekend. Thank you.

(The jury exits the courtroom.)

MR. WHETSEL: May I approach?

THE COURT: Yes, sir.

All right. Anything from the State?

MR. WHETSEL: Your Honor, I believe there is a family member or two that may want to address the Court.

THE COURT: Okay.

FAMILY MEMBER: Thank you, Your Honor.

THE COURT: Can you tell me your name for the record, please, ma'am.

FAMILY MEMBER: My name is Colleen (phonetic), first name. Last name is Lock. I am Lamar's sister.

I just wanted to say thank you. David, as we know him, his whole story was a lie. Thank you. It was found out, we have justice. But just to sit here and hear him say that he did not know my brother -- he was in our homes, we fed him. Right now, I'm sorry. I can't do this. I'm sorry.

THE COURT: Does he have a prior record, Solicitor?

MR. WHETSEL: Yes, sir, he does. In 2007 he received a YOA sentence for a burglary, as well as grand larceny. In 2008 he had a public disorderly conduct and a trespassing. In 2009 he had a burglary second violent conviction, for which he received ten years. And then in 2016, a false information to police

and resisting arrest.

THE COURT: Thank you.

Yes, ma'am. Ms. Dewitt, do you want to tell me anything?

MS. DEWITT: Your Honor, Mr. Hugue is 30 years old. His father, my understanding, his father died when he was around 10 and he's been raised by his mother and grandmother. They have been in the courtroom off and on all week. But I'm fairly certain they are not here right this minute.

There's nothing in my client's criminal background that involved any kind of crimes involving assault or handguns or things of this nature, and I would ask you to take that into consideration.

I will tell you that, as a client, he has been a good client. He's been helpful. He's done his own homework. He's been most respectful and courteous, and not all of our clients, of course, are that way.

I would ask that you consider, of course, his age in sentencing. And I do want you to know that he has always -- at least since I have known him for almost three years now as counsel, he's maintained his innocence on this charge. Thank you.

THE COURT: Thank you, ma'am.

Okay. On the crime for murder, the sentence of

the Court is: You are committed to the State Department of Corrections for a term of 30 years.

On possession of a weapon during a violent crime, the sentence is five years, to run concurrent. I'm giving you credit for time served.

MS. DEWITT: Thank you, Your Honor.

MR. WHETSEL: Thank you, Your Honor.

(Trial concluded.)

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 9th day of May, 2020.

Mona L. Manley /s/

MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
(850) 893-6662
mmanley@sccourts.org

FILED
JASPER COUNTY
CLERK OF COURT
2019 NOV -8 PM 1:13

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
STATE OF SOUTH CAROLINA,	)	
	)	NOTICE OF MOTION AND MOTION
vs.	)	FOR NEW TRIAL
	)	
DAVID ERIC HUGUE, JR.,.	)	INDICTMENT NOS.2017GS2700151
	)	and 2017GS2700153
Defendant	)	
	)	

TO: DUSTIN WHETSELL, ESQUIRE, FOURTEENTH JUDICIAL CIRCUIT SOLICITOR'S OFFICE:

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through his undersigned attorney, will move before the Honorable R. Ferrell Cothran, Jr. , within 10 days after service hereof, or as soon as counsel may be heard, for an order granting Defendant a new trial. Defendant's case was tried commencing on October 28, 2019 and ending on October 31, 2019 and sentenced by the court on October 31, 2019 in Ridgeland, S. C., Jasper County Court of General Sessions. Grounds for Defendant's Motion are as follows:

1. The trial judge erred in denying Defendant's motion to suppress text messages obtained by the State in response to a subpoena iussed to Verizon.

2. The trial judge erred in allowing witness Hightower to testify as an expert witness.

3. The trial judge erred in denying Defendant's motion for directed verdict.

4. The trial judge erred in denying all other motions and/or objections made by Defendant during the trial.

5. The evidence did not support the verdict.

POSTED
BY DATE 12-3-19

7: 2017A2710200094

Respectfully submitted,

Diane P. DeWitt
Attorney for Defendant
14th Circuit Public Defender Office
P.O. Box 506, Hampton, SC 29924
Telephone: 843-812-6071
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SC Bar No. 4463

Ridgeland, South Carolina

November 5th 2019

STATE OF SOUTH CAROLINA)
) FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER) COURT OF GENERAL SESSIONS

FILED
JASPER COUNTY
CLERK OF COURT
2019 NOV -8 PM 1:13

STATE OF SOUTH CAROLINA,,)
)
) CERTIFICATE OF MAILING
vs.)
)
DAVID ERIC HUGUE, JR.,)
Defendant,) INDICTMENT NOS. 2017GS2700151
) 2017GS2700153
_____)

I HEREBY CERTIFY that I, Diane P. DeWitt, Attorney for Defendant, have this date mailed and emailed a true and accurate copy of the Defendant's Notice of Motion and Motion for New Trial in the above-entitled matter via the United States Postal Service, regular mail, postage pre-paid, addressed to the following:

Dustin Whetsell, Esq.
14th Circuit Solicitor's Office
P. O. Box 1880
Bluffton, South Carolina 29910

D. P. DeW

Diane P. DeWitt
Attorney for Defendant

Ridgeland, South Carolina
November 8, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF JASPER	)	CASE NO.: 2017-GS-27-151 & 153

THE STATE OF SOUTH CAROLINA,	)	
	)	
	)	
	)	
v.	)	TRANSCRIPT OF RECORD
	)	
DAVID HUGUE,	)	
	)	
DEFENDANT.	)	
	)	

JANUARY 27, 2020
COMMENCING AT
ALLENDALE COUNTY COURTHOUSE
ALLENDALE, SOUTH CAROLINA
BEFORE THE HONORABLE THOMAS COTHRAN, JUDGE.

APPEARANCES:

ASST. SOL. DUSTIN WHETSEL, ESQUIRE
FOURTEENTH CIRCUIT SOLICITOR'S OFFICE
Attorney for the State of South Carolina

MS. DIANE DEWITT, ESQUIRE
FOURTEENTH CIRCUIT PUBLIC DEFENDER'S OFFICE
Attorney for the Defendant

Rebecca H. Hill
Official Court Reporter

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NONE.

THE COURT: Good morning, Mr. Whetsel.

ASST. SOL. WHETSEL: Your Honor, this is State v. David Hugue, with two separate indictments: 2017-GS-27-151 and 153. This was a Jasper County case. We are now in Allendale. My understanding, though, is that these are post-trial motions on behalf of Ms. Dewitt. I understand that she will waive venue -- or that the defendant will waive venue in order to have the hearing heard today.

THE COURT: Okay. Is that right?

MS. DEWITT: Yes, Judge.

ASST. SOL. WHETSEL: Your Honor, just to remind the Court that this trial was held back during the week of October 28th in Jasper County. It was a murder trial. The jury came back with a guilty verdict. The Court sentenced Mr. Hugue to 35 years total; 30 on the murder and five on the possession of a weapon during the commission of a violent crime. These are Ms. Dewitt's post-trial motions.

THE COURT: Yes, ma'am?

MS. DEWITT: Your Honor, this trial was in Jasper County with the trial commencing on October 28th and concluded on October 31st, 2019, and was sentenced on October 31st, 2019. It was basically a murder trial in which there was no forensic evidence.

It was a case in which the weapon, the gun, was never located. As I recall, there was no physical evidence and

during the course of the trial, Your Honor allowed the State to introduce certain text messages that were basically from a Tracfone. A telephone that was never recovered by the police; not in my client's possession. The Tracfone was not registered in my client's name.

The State introduced a woman who worked, I think it was, for Verizon who testified as to the text messages taken off of a particular phone and admitting that evidence. And in ruling, the State relied on a case, State v. Green.

State v. Green involved Facebook messages. That case was distinguishable because the Facebook account was registered in the suspect's name. The messages were connected to the computer in the suspect's home. There were many factors allowing for authentication of the messages in the State v. Green case.

Whereas, in this case, there are none of those factors. In particular, as I just said, the phone was not in my client's name, the account was not in my client's name. The phone itself was not in evidence. Messages were taken off the telephone directly. The only connection to my client was testimony of the grandmother that the number had been given to her by my client as a number she could reach him on.

Your Honor, I submit to you as I did then, that those text messages, one, were not properly authenticated. Two,

they were highly prejudicial, so that any probative value was outweighed by the prejudice to my client in the case that was really just circumstantial. And three, it just served to confuse the jurors.

In addition to allowing the text messages, which I believe was error on your part, the Court also allowed the testimony of Mr. Hightower who worked for the Solicitor's Office and who testified as an expert witness about that particular phone pinging off of various cell phone towers in the area of the city of Ridgeland on the night of the shooting. Based on his testimony, I think that he was not qualified, and the evidence was not clear enough as to exact location of the use of the phone that night.

I know Your Honor has been on the bench and has probably heard many cases since this trial, but in this particular case, the State's evidence was a witness who testified that Mr. Hugue had been with the decedent right before he heard the gun go off. There were no eyewitnesses to the shooting. The State put up many witnesses to rebut, basically, my client's statement to police after his arrest that he had an alibi; although, no notice of alibi was given to the Solicitor. Mr. Hugue did not testify at trial nor present an alibi defense, but many witnesses put up by the State were for the purpose of disproving an alibi.

Your Honor, I think that the text messages were highly

prejudicial and did affect the outcome of the trial, and for that reason, and other reasons that I've already stated, I would move for a new trial for Mr. Hugue at this time.

THE COURT: Okay.

ASST. SOL. WHETSEL: Your Honor, I'll just rebut, if I may, each ground that Ms. Dewitt put in her motion. The first being that the Court erred in allowing the text messages. The number that police obtained in a search warrant for was a [redacted]-9514 number. That number was provided by Ms. Linda Hugue, the defendant's grandmother, to police on the night of the murder as a number that she used to get in touch with Mr. Hugue; that testimony was given at trial.

Additionally, once police obtained those records pursuant to a search warrant, there were a number of text messages. Some of those messages included numbers being sent to and from that 305 number. Of particular importance was a 9-1-1 call that was initially placed at 8:28 p.m. on the night of the murder. When you compare that to the messages, the 305 number receives a message at 8:41 p.m. that says, "You good?" And then that number, the 305 number that we believe belonged to the defendant, based on what the grandmother said as far as the number that she said she used for him, replied back, "Yeah, Granny's house."

The reason that's important is Ms. Hugue gave a

statement to police as to the whereabouts of her grandson on the night of the murder, and she had told police, and she testified to, that he was at her house about 5:00 or 5:30 that afternoon, and then left. Then, came back to her house between 8:30 and 9:00. So with her testimony and then these messages as well, it goes to further corroboration as far as the true owner of the messages and that particular number.

Additionally, a message sent from that 305 number to another number at 5:18 on the night of the murder was the message, "This Dee," D-E-E. There is testimony from three separate witnesses -- well, four, actually, including the grandmother. Kyle Riley, Derek Heyward and Gary -- I'm sorry; I'm blanking on Gary's last name. Gary Scott, excuse me, as well as Ms. Hugue, that "Dee" was a nickname for the defendant.

Then, another message that was sent at 10:16 on the night of the murder to another number that said, "I love you, Ms. Hugue." Again, David Hugue's last name being Hugue, it appears that he was talking to a family member. I say all of that to say this, as Ms. Dewitt cited to the Green case, it was about Facebook, but the Court also interdict, as well as in their ruling, reminded us that 901 in authentications are a low burden. And what they further said was that the proponent for the evidence must only make a prima fascia showing that the true author is who the

proponent claims, and that was really the crux of her argument.

And I know the Court knows this, *prima fascia* is a Latin phrase for "at first sight." And then looking at Black's Law Dictionary, "Sufficient to establish a fact or raise a presumption of less disproved or rebutted."

And then, State v. Green goes on to say that once that prima fascia showing is met, then the evidence is admitted and the jury decides whether to accept as genuine, and if so, what weight to carry.

I believe that prima fascia showing was more than met based on the number being given by the grandmother, as well as the particular content, which again, is what State v. Green goes to citing back to rule of evidence 901. So I believe the Court did not err in allowing that and standard of review, as the Court also knows, on appeal is going to be abuse of discretion. And based on all of the factors, all of the evidence presented, I believe that will sufficiently authenticate it to allow it to go to the jury and again, the jury can give it whatever weight them deem it appropriate. That's my argument on that.

The second error that Ms. Dewitt claims is that the Trial Court erred in allowing investigator Dylan Hightower to testify as an expert. Investigator Hightower -- I qualified him and he had been qualified before as an expert

in historical cell side analysis. Before going further into his background, I will say that his testimony was ultimately limited though to explaining the raw data of the underlying cell phone records. So that cell phone records for that 305 number were obtained pursuant to the search warrant. Ms. Jennifer Dalmida, who is an employee of Verizon and who also testifies as a records custodian for Verizon, actually testified as to the business record and authentication in order to have the raw data, the records, admitted. Investigator Hightower then explained to the jury the raw data within those records. But what he ultimately testified to was the time of incoming and outgoing calls and text messages and the towers that were being utilized. All of that was raw data within the records themselves. He never opined onto like sector analysis or anything like that. Of particular importance, is that that particular tower that was being used was the same tower that would have serviced either the location of the murder as well as Ms. Linda Hugue's residence, the defendant's mother, where she lived. All of that came out in his testimony.

I say all of that to say this, as the Court knows, the Rule of Evidence 702 allows for expert witnesses. Investigator Hightower's credentials, as he testified to, included certification as a SLED Criminal Intelligence Analyst, Penlink Call Analysis Training School, ETS

Fundamentals of Call Detailed Analysis records. He is also certified as a mobilized cellular forensics operator. He attended the FBI CAST Historical Cell Site Analysis course. And he also participates in yearly conferences and online trainings regarding his field.

I believe his testimony as to his credentials was sufficient to establish his expertise in this field and his testimony was properly admitted.

All of that being said, his ultimate testimony ended up just explaining the raw data of the records. Ms. Dewitt in her motion also said the trial judge erred in denying the defendant's motion for directed verdict, citing State v. Pittman that explains the directed verdict motion. At the time that motion was made, the trial Court was only concerned with the existence or non-existence that that met. Not giving it any weight. And the accused is entitled to a directed verdict and that evidence merely raises a suspicion of guilt. That's not what we have in this case.

There was substantial circumstantial evidence in this case. You had Kyle Riley who testified. He was one of the people that was at the mobile home the night of the murder. He saw the defendant and the victim together inside. There was an argument between the two. They went outside, and moments later, he heard a gunshot. And he testified that when he looked out the window, he could see the defendant

running away. And when he went outside, the victim, who was his uncle, was lying on the ground with a gunshot.

Gary Scott testified that he was in a back bedroom folding laundry when he could hear an argument between the defendant and the victim. And he knew it was them because he recognized their voices. He heard a door slam and then moments later, a gunshot. Gary Scott also testified of a prior difficulty between the two. That's as far as he went with the jury, but he did proffer to the Court the circumstances of that prior difficulty, and there was an argument earlier in the day between the defendant and the victim. Although, the jury did hear of the blanket term, "prior difficulty."

You also had Derek Heyward who as a neighbor, who knows the defendant and who knows the victim, and who saw the defendant earlier in the day with a small black semi-automatic handgun. Gary Scott also saw the defendant with a handgun. Kyle Riley testified that he saw the defendant with a handgun, specifically, a Keltec. And the reason why that's important is that though the gun was never recovered, there was a single spent shell casing; it was beside the body. It was a 9 mm. And there were multiple brands that could have fired a 9 mm, but a Keltec was one of those brands.

Ms. Hugue gives a number for the defendant. It was a

305 number. She also said that he was at her house about 5 or 5:30 in the evening, and then left and then came back about 8:30 or 9:00. The murder is about 8:28 in the evening. That is when the 9-1-1 call is made. So she puts him out of the house at the time of the murder. Then, you also have the cell messages, the text messages, as well that talk about, "Yeah, Granny's." And that's as far as being back after the murder. That talks about deleting a Facebook account. But probably the most important evidence is a statement that the defendant tells the police that is demonstratively false when other evidence was presented. He initially gave a statement to police on the night of the murder that he was in Beaufort and said he was in Beaufort from 5:00 to 11:30 in the evening, which would have put him not in the area to commit the murder. He then changed his statement when interviewed further a couple of days later that he was in Beaufort from 8:00 in the morning until 11:30 in the evening. One, the cell records don't match that up because those numbers are pinging off of a tower that serviced the murder location and the grandmother. But he also said that he went to the Social Security Office on Saturday. There was a witness from the Social Security Administration to testify that that office does not open to the general public on a Saturday. Further, he said that he had eaten at a Checkers Restaurant in Beaufort, which did

not exist at the time, and we had a witness testify from the licensing office.

Additionally, police did perform a GSR test on him the night of the murder. This was several hours after the homicide. But of particular importance, the body cam. You could see his hands in his pocket, and he appeared to be rubbing them vigorously prior to the test. That was something that I pointed out in closing arguments. He also told the police multiple times that he did not know the victim, but then as you listen to his second interview, there is a second detective that comes in, and as that detective is talking with him, the defendant keeps referring to him as Mont. He just goes from, "I don't know this man," until all of a sudden, he starts referring to him as "Mont" in a very casual way. Mont was his nickname.

I say all of that to say that the evidence in this case was well beyond a mere suspicion, and I believe it was properly submitted to the jury. And they did unanimously vote him guilty. Her fourth assigned err was that the trial judge erred in denying all of their motions and/or objections. I'll rest on our arguments made at the time.

And then finally, the evidence did not support the verdict. Again, I rest on the evidence presented at trial and the arguments made at trial in support of that motion. I believe that there were no errors in the initial trial

that would require a new trial to be granted. Thank you, Your Honor.

THE COURT: Thank you.

MS. DEWITT: Your Honor, again, I would just say after hearing the State's argument that there was no evidence submitted that my client was in possession of that telephone that day or that night. No evidence it belonged to him. Text messages could have applied to other matters and could have been written by anybody. The witness -- one witness the State referred to, told 9-1-1 that he did not know who shot the decedent. Those are the facts and I just wanted to call it to your attention before you ruled.

THE COURT: Thank you. All right. I will take this under advisement. I will let you all know sometime this week.

MS. DEWITT: Okay. Thank you, Your Honor.

ASST. SOL. WHETSELL: Thank you, Your Honor.

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Court of General Sessions Non-Jury for Allendale County, South Carolina, on the 27th day of January 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 8, 2020

Rebecca H. Hill
Rebecca H. Hill,
Official Court Reporter

STATE OF SOUTH CAROLINA)
)
)
)
COUNTY OF JASPER)
)
STATE OF SOUTH CAROLINA)
)
)
v.)
David Eric Hugue Jr.,)
Defendant.)
)
_____)

IN THE COURT OF GENERAL SESSIONS
INDICTMENTS: 2017-GS-27-00151
2017-GS-27-00153

ORDER DENYING MOTION FOR NEW TRIAL

FILED
JASPER COUNTY
CLERK OF COURT
2020 FEB -3 AM 9:43

This matter came before the Court on a Motion of the Defense to request a new trial. The Defendant, David Eric Hugue Jr., was charged with Murder and Possession of a Weapon During the Commission of a Violent Crime. The Defendant was convicted of these two charges, by a Jasper County jury, on October 31st, 2019. This motion was filed within 10 days. A hearing was conducted on January 27th, 2020 in Allendale County. The Defendant waived venue and consented to have his motion heard.

The Defendant lists five separate grounds for error. First, the Court erred in denying the Defendant's motion to suppress text messages. Second, the Court erred in allowing Investigator Hightower to testify as an expert witness. Third, the Court erred in denying the Defendant's motion for a directed verdict. Fourth, the Court erred in denying all other motions and/or objections made by the Defendant during the trial. Fifth, the evidence did not support the verdict.

After hearing arguments from the Defendant and the State, the Court respectfully DENIES the Defendant's motion for a new trial. As to the first assignment of error, the Court

finds, pursuant to *State v. Green*[1] and Rule 901, SCRE, the State laid an adequate foundation as to admissibility of the text messages. As to the second assignment of error, the Court finds, pursuant to *State v. Rose*[2] and Rule 702, SCRE, the State established that Investigator Hightower had sufficient training and experience in the area for which he was ultimately qualified. As to the third assignment of error, the Court finds, pursuant to *State v. Pittman,*[3] there was evidence presented at trial that reasonably tended to prove guilt or from which the defendant's guilt could be fairly and logically deduced. As to the fourth assignment of error, the Court again denies all other motions and overrules all other objections that were previously denied or overruled during the trial. As to the fifth assignment of error, the Court finds, pursuant to *State v. Pittman* and the directed verdict standard, the case was properly submitted to the jury.

Therefore, the Defendant's Motion for a New Trial is DENIED.

IT IS SO ORDERED.

R. Ferrell Cothran, Jr.
Presiding Judge
Fourteenth Judicial Circuit

Jan. 29, 2020

[1] State v. Green, 427 S.C. 223, 830 S.E. 2d 711 (2019)
[2] State v. Rose, 423 S.C. 382, 814 S.E.2d 529 (2018)
[3] State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)

FORM 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF Jasper)
)
David Eric Hugue, Jr.)
Full name and prison number (if any) of Applicant.)
)
v.)
)
State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2022-CP-27-00111

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence Jasper County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) Murder, warrant # 2017A2710200092, Indictment # 2017GS2700151
   (b) Possion of weapon during commission of a vilent crime warrant # 2017A2710200094, indictment # 2017GS2700153
   (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) Oct. 28, 2019 30years
   (b) Oct. 28, 2019 5years

(c) ____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere ____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. Court of Appeals

ii. ____

iii. ____

(b) the result in each such Court to which you appealed:

i. Appeal Denied

ii. ____

iii. ____

(c) the date of each such result:

i. Feb. 09, 2022

ii. ____

iii. ____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Dismissed without oral arguments.

ii. ____

iii. ____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) ____

(c) ____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

10. State concisely the grounds on which you based your allegation that you are being held in custody unlawfully:

a) Applicant's right to due process of law as guaranteed by the fifth and fourteenth amendments to the United States Constitution and South Carolina law was violated because he is actually innocent of the charges.

b) Applicant was denied the right to effective assistance of trial counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution.

c) Applicant was denied the right to effective assistance of appellate counsel during direct appeal, guaranteed by the Sixth and Fourteenth amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution.

d) Applicant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution was violated when the prosecution failed to disclose exculpatory evidence.

e) Applicant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution was violated when the prosecution knowingly allowed witnesses called by the state to commit perjury.

(a) please see added pgs marked Q10 pg 1 of 1

(b) ____

(c) ____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) please see added pgs marked Q11 pg 1-3

(b) ____

(c) ____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. ____

iii. ____

iv. ____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. ____

iii. ____

iv. ____

(c) the disposition thereof:

i. N/A

ii. ____

iii. ____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

a) Considerable evidence exists to show the applicant is actually innocent of the victims murder. As described above, evidence of third party guilt existed at the time of trial and was in possession of trial counsel. There was exculpatory evidence of applicant's innocence that was withheld by the prosecution. Applicant's continued incarceration for a crime he did not commit is a miscarriage of justice and should be remedied immediately.

b) Applicant was denied the effective assistance of trial counsel because trial counsel:

1.) failed to properly investigate applicant's case.
2.) failed to raise double jeopardy clause sence applicant had already had one trial were he was not found guilty.
3.) failed to present factual evidence or testimony to the jury.
4.) failed to petition the court to have the State fully comply with discovery.
5.) failed to object to recorded interrogations and statements of applicant when police clearly had shown a repeated practice of muting and redacting portions thereof branging the constitutionality of the statements into question.
6.) failed to object to court rulings that statements were voluntary.
7.) failed to effectively pursue a suppression hearing.
8.) failed to present available evidence of applicants

actual innocence and third party guilt.

9.) failed to properly confront or impeach almost all of the states witnesses violating applicant's right to confront witnesses against him, when it is counsel's duty to do so as legal representation.

10.) failed to request lesser included offense.

11.) failed to object to and allowed tampered evidence to be presented to the jury.

12.) Failed to present DNA evidence of third party guilt.

13.) Failed to locate and present alibi witness.

Each one and all of these issues concerning the ineffectiveness of trial counsel prejudiced the applicant violating applicant's rights to a fair trial, due process and effective assistance of counsel.

C.) Applicant was denied the right to effective assistance of appellate counsel because appellate counsel:

1) failed to properly investigate applicant's case nor fully present issues of merit.

2.) failed to present issues concerning prosecutorial misconduct and "Brady" violations.

d.) Applicant was denied his due process rights when prosecutor failed to disclose exculpatory evidence, such as:

1) DNA profiles of third party, who is the guilty party.

2) impeachment evidence relating to deals made with state witnesses that produced false testimony.

see: Brady V. Maryland, 373 U.S. 83, 83 S.Ct. 1194.

e.) The ground for relief states the relevant facts. See: U.S. Const. Amends. 5th and 14th

iv. ____

(d) the date of each such disposition:

i. N/A

ii. ____

iii. ____

iv. ____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. ____

iii. ____

iv. ____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. ____

iii. ____

(b) the proceedings in which each ground was raised:

i. N/A

ii. ____

iii. ____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) ineffective assistance of trial counsel

(b) ineffective assistance of Appellate counsel

(c) prosecutorial misconduct for withholding the evidence

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Eric Staggs, Public defender Po. Box 525, Beaufort, SC. 29901

ii. Diane Dewitte, Caroline Carmody, Public defender Po. Box 525 Beaufort SC 29901

iii. David Alexander, Com. Indigent Defense P.o. Box 11589, Columbia, S 29201

(b) the proceedings at which each such attorney represented you:

i. 1st trial ended in mistrial / hung jury

ii. 2nd trial were convicted

iii. Direct Appeal

19. State clearly the relief you seek in filing this application:

Vacate applicant's conviction and order his release from custody due to his actual innocence.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Jasper)

David E. Hugue Jr.

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

David E. Hugue D.E.H.J.
David E. Hugue Jr.

SWORN to and subscribed before me this 8th day of March, 2022

Kanzora Robinson (L.S.)
Notary Public

My Commission Expires: 8/5/2022

FILED
JASPER COUNTY
CLERK OF COURT
2022 OCT 13 AM 9:11

STATE OF SOUTH CAROLINA COUNTY OF JASPER	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
David Eric Hugue, Jr., SCDC #335417, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2022-CP-27-00111 **RETURN TO APPLICATION FOR POST-CONVICTION RELIEF, PARTIAL MOTION TO DISMISS, AND MOTION FOR A MORE DEFINITE STATMENT** (Counsel Already Appointed)

Respondent the State of South Carolina, making its return[1] to the application for post-conviction relief filed by Applicant David Eric Hugue, Jr.[2] on March 10, 2022, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. During its July 2017 term, the Jasper County Grand Jury indicted Applicant for murder (2017-GS-27-00151) and possession of a weapon during a violent crime (2017-GS-27-00153).

On October 28-31, 2019, Applicant proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr.. Diane Dewitt and Caroline Carmody, Esquires, represented Applicant. Assistant Solicitors Dustin Whetsel and Mary Jones of the Fourteenth Circuit Solicitor's Office

[1] Respondent's return was due to be filed within ninety days of receipt of Applicant's instant post-conviction relief application. *See* Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

[2] Applicant filed this post-conviction relief application *pro se*. Counsel, Michael H. Lifsey, has since been appointed on October 5, 2022, to represent Applicant in this matter.

prosecuted the case. The jury found Applicant guilty as indicted. Judge Cothran sentenced Applicant to concurrent terms of thirty years imprisonment for murder and five years for the possession of a weapon during the commission of a violent crime charge. Applicant subsequently filed a motion for a new trial. That post-trial motion was heard on January 27, 2020. Judge Cothran denied the post-trial motion by Order signed January 29, 2020, and filed February 3, 2020.

Applicant timely filed a notice of appeal and was represented on appeal by Appellate Defender David Alexander (Appellate Counsel) of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. Appellate Counsel filed a brief pursuant to *Anders*[3] on Applicant's behalf and a petition to be relived as counsel. On appeal, Applicant raised one issue: Whether the trial court erred in admitting unauthenticated text messages into evidence?

On February 9, 2022, the South Carolina Court of Appeals dismissed the appeal in an unpublished opinion and granted Appellate Counsel's motion to be relieved as counsel. *State v. Hugue,* 2022-UP-049 (S.C. Ct. App. filed February 9, 2022). The remittitur was returned to the circuit court on February 9, 2022.

II. Allegations Raised and Relief Sought in Post-Conviction Relief Application

Applicant timely commenced his PCR action on March 10, 2022. In his application for post-conviction relief, Applicant asserts that he is being held in custody unlawfully, alleging:

1. Actual Innocence
    a. "Applicant's right to due process of law as guaranteed by the Fifth and Fourteenth amendments to the United States Constitution and South Carolina Law was violated because he is actually innocent of the charges;"
2. Ineffective Assistance of Counsel
    a. Counsel failed to properly investigate;

[3] *Anders v. California,* 386 U.S. 738 (1967).

b. Counsel failed to raise double jeopardy clause where "Applicant already had one trial were [*sic*] he was not found guilty";
c. Counsel failed to present factual evidence or testimony to the jury;
d. Counsel "failed to petition the court to have the State fully comply with discovery";
e. Counsel failed to object to "recorded interrogations and statements of Applicant when police clearly had shown a repeated practice of muting and redacting portions thereof";
f. Counsel failed to object to "court rulings that statements were voluntary";
g. Counsel failed to "effectively pursue a suppression hearing";
h. Counsel failed to argue third-party guilty;
i. Counsel failed to "properly confront or impeach almost all of the State's witnesses violating applicant's right to confront witnesses against him";
j. Counsel failed to "request lesser included offense";
k. Counsel "failed to object to and allowed tampered evidence to be presented to the jury";
l. Counsel "failed to present DNA evidence of third-party guilt";
m. Counsel "failed to locate and present alibi witnesses";

3. Ineffective Assistance of Appellate Counsel
   a. Appellate Counsel "failed to properly investigate applicant's case nor fully present issues of merit";
   b. Appellate Counsel "failed to present issues concerning prosecutorial misconduct and "Brady" violations"; and
4. Prosecutorial misconduct
   a. "Prosecution failed to disclose exculpatory evidence";
      i. "DNA profiles of third party, who is the guilty party";
   b. "Prosecution knowingly allowed witnesses called by the State to commit perjury";
      i. "Impeachment evidence relating to deals made with state witnesses that produced false-testimony".

Applicant requests relief as follows:

> "Vacate applicant's conviction and order his release from custody due to his actual innocence[4]."

Attached to this return and incorporated by reference are the Jasper County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the

[4] As addressed within, actual innocence is not a cognizable claim.

trial transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. Partial Motion to Dismiss

Respondent submits Applicant's allegations that his due process rights were violated based on actual innocence and that the State failed to disclose all exculpatory evidence and all "evidence relating to deal made with state witnesses that produced false-testimony" should be summarily dismissed.

Response to Allegation of Actual Innocence

Applicant's allegation that his due process rights were violated based on actual innocence should be summarily dismissed for failure to state a cognizable claim under the Uniform Post-Conviction Procedure Act[5] (the Act). *See, e.g., Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) ("[PCR] is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal."). An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. United States or the Constitution or laws of this State;
3. That the court was without jurisdiction to impose sentence;
4. That the sentence exceeds the maximum authorized by law;
5. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
6. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

[5] S.C. Code Ann. § 17-27-10 to -160.

> 7. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

Post-conviction relief "is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence*." *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). Applicant's allegations do not support a cognizable claim for post-conviction relief under any of the statutory grounds.

Post-conviction relief is not a substitute for remedies incident to the proceedings in the trial court or on direct appeal. S.C. Code Ann. § 17-27-20(B). An applicant can allege constitutional violations in a PCR action unless he could have raised the issue on direct appeal. *Gibson v. State*, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998) (citing *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975) (affirming the PCR court's denial of relief because the applicant could have argued on direct appeal that the trial court erred in admonishing applicant's defense attorney and that the State improperly commented on the applicant's failure to call his wife as a witness at trial); S.C. Code Ann. § 17-27-20(b) (1976)); *but see Fortune v. State*, 428 S.C. 545, 837 S.E.2d 37, 44 (2019) (instructing that, in some instances, an applicant may argue a claim for post-conviction relief based on constitutional violations other than a violation of his Sixth Amendment right to counsel due to the ineffective assistance of counsel; recognizing Fortune was entitled to a new trial because the State made improper statements during its closing arguments at trial).

However, because an application for post-conviction relief is not a substitute for a direct appeal, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of

"ineffective assistance of counsel," a contention under the Sixth Amendment to the Constitution of the United States. *See Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (noting that allegations of trial court error are not cognizable on PCR); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975) (finding that alleged trial errors and sufficiency of evidence are direct appeal issues that are not cognizable PCR claims); *Stepney v. State,* 278 S.C. 47, 292 S.E.2d 41 (1982) (explaining that issues that could have been raised on direct appeal cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel).

Absent a proper claim of newly discovered evidence, a claim of actual innocence is not a valid post-conviction relief allegation, nor does it support a cognizable claim for relief under any of the statutory grounds. S.C. Code Ann. § 17-27-20(B) ("This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction."). Accordingly, the State moves to dismiss this allegation pursuant to Rule 12(b)(6), SCRCP, for failure to state a cognizable claim.

Response to Allegation Regarding
Brady[6] Violation/ Fraud Upon the Court

Applicant's allegations the State failed to disclose exculpatory evidence prior to his trial regarding DNA profiles pertinent to a defense of third party guilt[7], that the State failed to disclose impeachment evidence "relating to deals made with state witnesses that produced false testimony[8]", and the State knowingly allowed state witnesses to commit perjury should be summarily dismissed pursuant to section 17-27-70 of the South Carolina Code because there is no genuine issue of material fact which would necessitate an evidentiary hearing on the claims.

---

[6] *See Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194 (1963). ("We hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.")
[7] Respondent interprets Applicant's allegation as a *Brady* violation.
[8] Respondent interprets Applicant's allegation as fraud upon the court.

See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); *Sutton v. State*, 361 S.C. 644, 647, 606 S.E.2d 779, 780 (2004) ("A PCR action is a civil action generally subject to rules and statutes that apply in civil proceedings"), *abrogated on other grounds by Bray v. State*, 366 S.C. 137, 620 S.E.2d 743 (2005); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing).

Though Applicant claims the solicitor committed fraud upon the court by allowing multiple state's witnesses to perjure themselves during their testimony, he does not present any *prima facie* evidence to support this claim other than his unsupported allegation, nor does he state which state's witnesses perjured themselves, how these state's witnesses perjured themselves, or otherwise substantiate this claim with any supporting facts or evidence. Therefore, Respondent submits this allegation is without merit.

Applicant additionally submits the State failed to disclose exculpatory evidence prior to his trial pertaining to DNA evidence of third-party guilt. Respondent submits this allegation is without merit. *Brady* requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. *Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). A *Brady* claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) that the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution and (4) it was material to guilt or punishment. *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Exculpatory evidence is material only if there is a reasonable probability that,

had the evidence been disclosed to the defense, the result of the proceeding would have been different. *Clark*, 315 S.C. at 388, 434 S.E.2d at 268 (citing *U.S. v. Bagley*, 473 U.S. 667 (1985)). Respondent submits this argument is without merit.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. *Welch*, 246 S.C. 258, 143 S.E.2d 455. Based on Applicant's unsupported allegations of what Respondent has interpreted as fraud upon the court and a *Brady* violation, there is no genuine issue of material fact which would necessitate a hearing on Applicant's claims. Accordingly, these allegations should be summarily dismissed pursuant to section 17-27-70.

IV. Response to Allegations of Ineffective Assistance of Counsel

Applicant asserts multiple allegations of ineffective assistance of counsel and allegations of ineffective assistance of appellate counsel. Specifically, Applicant asserts trial counsel failed to: properly investigate applicant's case; assert double jeopardy; object to recorded interrogations and statements of Applicant when "police clearly had shown a repeated practice of muting and redacting portions"; object to court rulings that statements were voluntary; properly confront or impeach "almost all of the state's witnesses violating applicant's right to confront witnesses against him"; request lesser included offense; object to tampered evidence; and locate and present alibi witnesses.

Applicant asserts Appellate Counsel failed to: properly investigate Applicant's case and fully present issues of merit. Applicant additionally alleges Appellate Counsel failed to present issues concerning prosecutorial misconduct and Brady violations to the appellate court. Respondent submits these allegations are without merit.

Ineffective Assistance of Trial Counsel, Generally

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRCP. The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. *Id.*

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonably professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. "The burden of rebutting this presumption 'rests squarely on the [applicant],' and 'it should go without saying that the absence of evidence cannot overcome it.'" *Dunn v. Reeves*, No. 20-1084, 2021 WL 2742771, slip op. at *4 (U.S. July 2, 2021) (internal brackets omitted) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, "even if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if 'the record does not reveal' that counsel took an approach that *no competent lawyer would have chosen*." *Id.* (emphasis added) (internal brackets omitted) (quoting *Titlow*, 571 U.S. at 23–24).

"When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not

automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Review of counsel's actions is hallmarked by deference, as "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). "Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." *Reeves*, slip op. at *4 (quoting *Harrington*, 562 U.S. at 106–107). "Such decisions are particularly difficult because certain tactics carry the risk of 'harm[ing] the defense' by undermining credibility with the jury or distracting from more important issues." *Id* (quoting *Harrington*, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. at 689. The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*'s deferential standard.

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify

reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt").

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient "to show [counsel's] errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial*." *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690. Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The

applicant's burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Id.* at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); *cf. United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.")

Response to Allegation Counsel was Ineffective for Failing to Investigate & Call Witnesses

Applicant alleges counsel was ineffective for failing to properly investigate his case and ineffective for failing to locate and present alibi witnesses on his behalf. Though Respondent asserts Applicant's allegations are likely without merit, it is impossible for Respondent to reply specifically to Applicant's claims without more specific facts and detail. Therefore, Respondent responds to Applicant's general and vague claims below and moves for Applicant, through appointed counsel, to file an amended application detailing what counsel failed to investigate, which witnesses counsel failed to locate and call as alibi witnesses, and how Applicant was prejudiced.

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to

make an independent investigation of the facts and circumstances of the case." *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." *Edwards v. State*, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. *Harris*, 377 S.C. at 75–76, 659 S.E.2d at 145–46. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597 ("this duty is limited to a reasonable investigation"). Reviewing courts "should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." *Strickland*, 466 U.S. at 690. Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel's decision not to undertake a

particular investigation must be evaluated with heavy deference to counsel's judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

Moreover, to support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant' s mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Id.*

There is a "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*, 466 U.S. at 689, 104 S.Ct. at 2052). Conduct will not be deemed ineffective assistance of counsel when counsel is able to articulate a valid reason for employing their strategy. *Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008).

Not calling these supposedly favorable witnesses as suggested by the Applicant could have been part of trial counsel' s strategy for the case. However, even if the court finds trial counsel' s strategy unsound, the Applicant must still meet the burden set forth in *Bannister* in order to show prejudice from the witness' failure to testify at the trial. Therefore, these witnesses must be produced at the PCR hearing and Applicant must demonstrate how their testimony would have impacted the trial.

The State submits Applicant can satisfy neither requirement of the *Strickland* standard. However, as discussed above, it is impossible for the State to adequately and specifically respond to Applicant's allegations of ineffective assistance of counsel because Applicant has failed to

provide any specific facts to support his allegations. Thus, the State moves to require Applicant, through appointed counsel, to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRCP. Thereafter, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper* v. *State,* 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court.

Response to Allegation Counsel was Ineffective for Failing to Object to Charges that Constituted Double Jeopardy

Applicant asserts counsel was ineffective for failing to object to Applicant's charges which he alleges constituted double jeopardy. Applicant contends prior to his general sessions trial on the instant convictions, he was found not guilty at a previous trial. Respondent asserts Applicant's allegations of double jeopardy are likely without merit.

The "Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction, and protects against multiple punishments for the same offense." *State v. Brandt*, 393 S.C. 526, 538, 713 S.E.2d 591, 597 (2011) (quoting *Stevenson v. State*, 335 S.C. 193, 198, 516 S.E.2d 434, 436 (1999)).

Respondent submits Applicant's allegation lacks merit and Applicant cannot satisfy the standard to prove double jeopardy. However, the State requests an evidentiary hearing to fully resolve the issues. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court").

Response to Allegations Counsel was Ineffective for Failing to Object

Applicant asserts counsel was ineffective for failing to object to "recorded interrogations and statements of Applicant when police clearly had shown a repeated practice of muting and redacting portions" and for failing to object to "court rulings that statements were voluntary". Applicant further assert counsel was ineffective for failing to object to and allow "tampered evidence" to be presented to the jury. Respondent asserts Applicant's allegations are likely without merit; however, it is impossible for Respondent to reply specifically to Applicant's claim counsel failed to object to "tampered evidence" without more specific facts and detail. Therefore, Respondent responds to Applicant's general and vague claim below, as well as Applicant's other allegations regarding failure to object, and moves for Applicant, through appointed counsel, to file an amended application detailing what "tampered evidence" counsel failed to object to and how Applicant was prejudiced.

Leaving an issue unpreserved does not automatically constitute ineffective assistance of counsel. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800–01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue); *see also id.* at 380, 811 S.E.2d at 804 ("[T]he proper inquiry for determining prejudice . . . is whether there is evidence in the record to support the trial court's finding . . . . If so, an appellate court would necessarily have affirmed the trial court's [ruling] . . . .").

Similarly, "[a]n ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." *Hough v. Anderson*, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the *Strickland* test: failing to object to admissible evidence cannot be a

professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." *Id.*; *see Miller v. Keeney,* 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both *Strickland* prongs); *U.S. ex rel. Link v. Lane*, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from failure to object unless there is a legally supportable argument for exclusion of the evidence).

The State submits Applicant can satisfy neither requirement of the *Strickland* standard. However, as discussed above, it is impossible for the State to adequately and specifically respond to Applicant's allegation counsel was ineffective for failing to object to "tampered evidence" which was presented to the jury because Applicant has failed to provide any specific facts to support his allegation. Thus, the State moves to require Applicant, through appointed counsel, to provide a more definite statement of that allegation pursuant to Rule 12(e), SCRCP. Thereafter, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper* v. *State,* 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court.

Response to Allegation Counsel was Ineffective for Failing to Effectively Cross-Examine State's Witnesses

Applicant contends counsel was ineffective for failing to "properly confront or impeach almost all of the State's witnesses violating applicant's right to confront witnesses against him." Respondent asserts Applicant's allegation is likely without merit; however, it is impossible for Respondent to reply specifically to Applicant's claims without more specific facts and detail. Therefore, Respondent responds to Applicant's general and vague claim below and moves for Applicant, through appointed counsel, to file an amended application detailing which witnesses

counsel failed to effectively cross-examine, how counsel failed to effectively cross-examine the witnesses, and how Applicant was prejudiced.

The manner and extent of cross-examination should not be second-guessed. *See Sallie v. North Carolina*, 587 F.2d 636, 640 (4th Cir. 1978) *(Marzullo* is not intended to promote judicial second guessing on questions of strategy as basic as handling of a witness); *United States v. Nersesian*, 824 F.2d 1294, 3121 (2d Cir. 1987) ("decisions whether to engage in cross-examination and if so to what extent and in what manner, are . . . strategic in nature" and will not support an ineffective assistance claim); *Gustave v. United States*, 627 F.2d 901, 906 (9th Cir. 1980). *Strickland* requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689.

The State submits Applicant can satisfy neither requirement of the *Strickland* standard. However, as discussed above, it is impossible for the State to adequately and specifically respond to Applicant's allegation of ineffective assistance of counsel because Applicant has failed to provide any specific facts to support his allegation. Thus, the State moves to require Applicant, through appointed counsel, to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRCP. Thereafter, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper* v. *State,* 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court.

Response to Allegation Counsel was Ineffective for Failing to Request Jury Charge on Lesser Included Offense

Applicant contends counsel was ineffective for failing to request a jury charge on the lesser included offense of the originally indicted charges. Respondent asserts Applicant's allegation is likely without merit.

The trial court is required to charge a jury on a lesser included offense only "if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed." *State v. Gourdine*, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996). However, the trial court should refuse to charge on a lesser-included offense where there is no evidence that the defendant committed the lesser rather than the greater offense. *Suber v. State*, 371 S.C. 554, 559, 640 S.E.2d 884, 886 (2007).

Moreover, concerning deficiency, trial counsel must articulate a valid reason for employing a certain strategy, which is measured under an objective standard of reasonableness. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1992). Counsel is not ineffective for failing to request a lesser included offense jury instruction when there is no evidence that the defendant committed the lesser, as opposed to the greater offense. *Bozeman v. State*, 307 S.C. 172, 176, 414 S.E.2d 144, 146 (1992).

For the above-reasons, Respondent submits Applicant's allegation lacks merit and Applicant cannot satisfy either requirement of *Strickland*. However, Respondent requests an evidentiary hearing be held on this issue to fully resolve the matter. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. Response to Allegations of Ineffective Assistance of Appellate Counsel

Applicant asserts Appellate Counsel failed to: properly investigate Applicant's case and fully present issues of merit. Applicant additionally alleges Appellate Counsel failed to present issues concerning prosecutorial misconduct and Brady violations to the appellate court. Respondent asserts Applicant's allegations are likely without merit; however, it is impossible for Respondent to reply specifically to Applicant's claims without more specific facts and detail. Therefore, Respondent responds to Applicant's general and vague claims below and moves for Applicant, through appointed counsel, to file an amended application detailing what Appellate Counsel failed to investigate and which issues Appellate Counsel failed to present on appeal.

Beyond the right to effective assistance of counsel at trial, a criminal defendant is constitutionally entitled to the effective assistance of appellate counsel on direct appeal. *Evitts v. Lucey*, 469 U.S. 387, (1985) (finding that to be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair). However, appellate counsel is *not* obligated to raise every non-frivolous issue that is presented by the record. *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990); *Bell v. Jarvis*, 236 F.3d 149, 164 (4th Cir. 2000); *cf. Jones v. Barnes,* 463 U.S. 745, 752 (1983) ("There can hardly be any question about the importance of having the appellate advocate examine the record with a view to selecting the most promising issues for review."). Indeed, "[w]innowing out weaker arguments on appeal and focusing on those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy." *Smith v. Murray,* 477 U.S. 527, 536 (1986). "For [courts] to second-guess reasonable professional judgments and impose on [appellate] counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . ." *Jones*, 463 U.S. at 754. Similarly, our courts have refused

to impose a duty on appellate counsel to pursue rehearing following the decision of the Court of Appeals in a criminal direct appeal. *See Douglas v. State*, 369 S.C. 213, 215, 631 S.E.2d 542, 543 (2006).

In analyzing a claim of ineffective assistance of appellate counsel, the reviewing court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *E.g., Southerland v. State,* 337 S.C. 610, 524 S.E.2d 833 (1999). The applicant must demonstrate (1) that his "counsel's representation fell below an objective standard of reasonableness" in light of the prevailing professional norms, *Strickland*, 466 U.S. at 688, and (2) that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," *Id.* at 694; *see Smith v. Robbins*, 528 U.S. 259 (2000) (holding that habeas applicant must demonstrate that "counsel was objectively unreasonable" in failing to file a merits brief addressing a nonfrivolous issue and that there is "a reasonable probability that, but for his counsel's unreasonable failure . . . , he would have prevailed on his appeal").

Specifically, when an applicant contends appellate counsel rendered ineffective assistance for failing to argue a specific issue on appeal, he must show failure to raise that issue was objectively unreasonable and that, but for this failure, there is a reasonable probability he would have prevailed on appeal. *Southerland*, 337 S.C. at 616, 524 S.E.2d at 836; *Anderson v. State,* 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). In applying *Strickland* to claims of ineffective assistance of counsel on appeal, however, "reviewing courts must accord appellate counsel the presumption that he decided which issues were most likely to afford relief on appeal." *Jarvis*, 236 F.3d at 164 (internal citation omitted). "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel

be overcome." *Id.* (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)).

The State submits Applicant can satisfy neither requirement of the *Strickland* standard. However, as discussed above, it is impossible for the State to adequately and specifically respond to Applicant's allegations of ineffective assistance of appellate counsel because Applicant has failed to provide any specific facts to support his allegations. Thus, the State moves to require Applicant, through appointed counsel, to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRCP. Thereafter, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper* v. *State,* 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of [appellate] counsel which are not conclusively refuted by the record before the lower court.

VI. Motion for a More Definite Statement

As mentioned *supra*, Applicant alleges counsel was ineffective for failing to investigate his case, for failing to locate and present alibi witnesses, for failing to object to "tampered evidence", and for failing to "properly confront or impeach almost all of the State's witnesses." Applicant also alleges appellate counsel was ineffective for failing to properly investigate his case and fully present issues of merit on appeal. Though not specifically addressed above, Applicant further contends counsel was ineffective for failing to present factual evidence or testimony to the jury and ineffective for failing to effectively pursue a suppression hearing.

For all of the above-referenced allegations, Applicant fails to state specifically how counsel was ineffective and how Applicant was prejudiced. Without more definite facts and circumstances to support Applicant's claims, it is impossible for the State to adequately respond to Applicant's allegations because he has failed to provide specific facts to support each ground

or to explain with any specificity the facts upon which his claims are based. S.C. Code Ann. § 17-27-50 (requiring an applicant to "specifically set forth the grounds upon which the application is based"); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a prima facie showing entitling him to relief before an evidentiary hearing will be scheduled and held); *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court"); Rule 8(a)(2), SCRCP (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d), SCRCP ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.").

Accordingly, the State moves for Applicant, through appointed counsel, to amend his application to provide specific claims and facts to support the above-referenced vague allegations pursuant to Rule 12(e), SCRCP, and the Post-Conviction Procedure Act.

VII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) ("If, however, the proposed

amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP; *see also* Rules 15(a)-(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VIII. Response to Any and All other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

[*conclusion and signature on following page*]

IX. Conclusion

WHEREFORE, the State moves to dismiss the allegations of actual innocence and prosecutorial misconduct and requests this Court grant its partial motion to dismiss as set forth in section III. Thereafter, the State respectfully requests this Court grant its motion for a more definite statement and allow the State an opportunity to respond to the more definite statement, if necessary. Once a more definite statement is provided, the State requests an evidentiary hearing be held on Applicant's allegations of ineffective assistance of counsel and ineffective assistance of appellate counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMANTHA J. WEIDAUER
Assistant Attorney General

By: Samantha Weidauer

ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

October 11, 2022

STATE OF SOUTH CAROLINA COUNTY OF JASPER	)	IN THE COURT OF COMMON PLEAS FOR THE FOUREENTH JUDICIAL CIRCUIT
David E. Hugue, Jr., #335417 Applicant,	)	Case No.: Case No: 2022-CP-27-00111
v.	)	Certificate of Service by Mail
State of South Carolina Respondent,	)	

FILED
JASPER COUNTY
CLERK OF COURT
2022 OCT 13 AM 9:11

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return to the Application for Post-Conviction Relief, Partial Motion to Dismiss, and Motion for More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Michael H. Lifsey, Esquire
Post Office Box 548
Chester, SC 29706

DATED this 11th day of October, 2022.

Jennifer Jennison, Administrative Coordinator
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	Case No.: 2022-CP-27-00111
David Eric Hugue, Jr, SCDC # 335417, Applicant,	)	**AMENDED POST-CONVICTION RELIEF APPLICATION**
v.	)	
State of South Carolina.	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on March 10, 2022, to add the following allegations:

1. Ineffective assistance of counsel for
   (a) Applicant's trial counsel did not meet with Applicant a sufficient number of times prior to his trial, did not fully explain the strengths and weaknesses of the State's case, and did not explain the elements of the crimes of which he was charged.
   (b) Applicant's trial counsel did not properly cross-examine witnesses for the state and did not lodge appropriate and timely objections to inadmissible evidence.
   (c) Applicant's trial counsel did not properly preserve objections in order to make them subject to appellate review.
   (d) The ineffective assistance of counsel as described above, both individually and in cumulative effect, resulted in prejudice to the Applicant and absent such ineffective assistance of counsel, the results of his trial would have been different.
2. Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed

issues arise during the course of the hearing that have not been specifically addressed in the Application. *See* Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,

MICHAEL H. LIFSEY
PO BOX 548
CHESTER, SC 29706
803-899-5040
MICHAEL.LIFSEY@GMAIL.COM
SC BAR NO. 015154
ATTORNEY FOR APPLICANT

April 30, 2024

CERTIFICATE OF SERVICE

I certify that I have served this document via first class mail on:

T. Cruise Mitchell
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

This 30th Day of April, 2024.

MICHAEL H. LIFSEY
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SC BAR NO. 015154
ATTORNEY FOR APPLICANT

April 30, 2024

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2022-CP-27-002111

David E. Hugue, Jr.

Plaintiff,

vs.

State of South Carolina,

Defendant.

TRANSCRIPT OF HEARING

May 8, 2024
Beaufort, South Carolina

B E F O R E:

The Honorable J.D. Cole, Judge Presiding

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

For the Applicant -
Michael Lifsey, Esquire
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Chester, SC 29706

For the State -
Cruise Mitchell, Esquire
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Cathy L. Young, CVR-M
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Beaufort, South Carolina 29903

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No exhibits were introduced in this proceeding.

P R O C E E D I N G S

* * * * *

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

THE COURT: Mr. Mitchell.

MR. MITCHELL: This is the post-conviction relief matter of David Hugue, Jr. v. State, Case Number 2022-CP-27-00111 out of Jasper County. I'm Cruise Mitchell on behalf of the State of South Carolina. Applicant is present and represented by counsel, Michael Lifsey. During his July 17 term the Jasper County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime. On October 28th, 2019, Applicant proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr. Diane P. DeWitt, Esquire represented Applicant. Then Assistant Solicitor Dustin Whetsel prosecuted the case. The jury found Applicant guilty as indicted. Judge Cothran sentenced Applicant to 30 years imprisonment for murder and five years for possession of a weapon during the commission of a violent crime, with those sentences to be served concurrently. The Applicant filed a timely Notice of Appeal. Appellate Defender

David Alexander perfected the appeal. On February 9th, 2022, the South Carolina Court of Appeals dismissed Applicant's appeal. The remittitur was issued on February 9th, 2022. And, Your Honor, with that I'll turn it over to Mr. Lifsey.

MR. LIFSEY: Thank you, Your Honor. We filed an amended application, and we're ready to proceed on the grounds stated in that application, Judge.

THE COURT: Do you have a packet for me?

MR. MITCHELL: Yes, Your Honor.

THE COURT: Thank you. Mr. Lifsey?

MR. LIFSEY: Thank you, Your Honor. I call David Hugue to the stand, please.

* * * * *

David E. Hugue, Jr.,

having been duly sworn,

testifies as follows:

* * * * *

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

DIRECT EXAMINATION

MR. LIFSEY:

Q. Mr. Hugue, what kind of sentence are you doing right now?

A. 30-year -- 30-year sentence.

Q. Where are you held?

A. Evans Correctional Institution.

Q. And you're doing 30 years. What were you convicted of?

A. Murder -- murder -- murder and possession of a weapon during the commission of a violent crime.

Q. All right, I want to ask you a question before we really get started because I want to make sure you understand, you and I talked about this, but what PCR is. You do understand that in a PCR hearing, if you win, you get a new trial. You don't get a time cut, or anything automatic like that, you get a new trial; do you understand that?

A. Yes, sir.

Q. Do you understand that murder carries from 30 up to life in prison? You do realize that, right?

A. Yes, sir.

Q. And you understand that if you won the PCR hearing and got a new trial, of course, you could be found not guilty and go home, okay, but on the other hand, you could be convicted to life in prison; do you understand that?

A. Yes, sir.

Q. In fact, if you're convicted, you can't get less than what the Judge gave you; do you understand that?

A. Yes, sir.

Q. Knowing all that, do you still want to go forward today with your PCR hearing?

A. Yes, sir.

Q. All right, okay. So tell me about your lawyer, who was your lawyer in this case?

A. Mr. -- Mr. Hughes, Stephen Plexico, and with Cam (ph) Wright.

Q. Okay. Did you hire those lawyers, or were those ---

A. No, sir, those are State attorneys.

Q. Okay. All right, what kind of relationship did you have with those lawyers?

A. It was -- it was all right -- it was all right, but it was wishy-washy.

Q. Well, how many -- how often did you meet with your lawyers? Tell us about how you met with them.

A. I -- I met with Ms. Diane DeWitt three times before she -- before I went to trial. I met with Mr. Eric Styres (ph) three times before I went

to trial. Mr. Hughes, I met Mr. Hughes like two or three times before I went to -- before I got my other attorneys.

Q. Okay, but the one who went to trial with you was who?

A. Mr. -- Mr. Eric Styres.

Q. And --

A. Eric -- Eric Styres was at my first trial. I had Carolyn Carmody and then Diane DeWitt in my second trial.

Q. Okay, what happened on the first trial?

A. It was a mistrial, hung jury.

Q. But the trial you were convicted of, who represented you at that one?

A. Ms. Carolyn Carmody and Ms. Diane DeWitt.

Q. Why did your lawyers change from the first trial?

A. You've got to ask the Solicitor that.

Q. You don't know why?

A. No, sir.

Q. All right. How many times did you meet with your -- the lawyers that represented you at trial prior to your trial?

A. I spoke with Diane DeWitt two times at

the County Jail before I went to trial.

Q. Okay. What did y'all talk about?

A. Basically -- basically, she was going in detail about my case, 'cause she asked me like what -- what happened with my other attorney, and why was he relieved from my case? I told her -- I told her that I had a mistrial, hung jury, and I guess -- I guess they took them off my case. So she was kind of asking me, did I get a motion for discovery Rule 5, and I told her ---

Q. All right.

A. -- I got parts of it. She said she would -- she was gonna try to get the rest of it for me.

Q. Okay, did she ever do that?

A. Yes, sir, I got -- I got my motion.

Q. All right. Well, what -- did she explain to you what was involved in a murder case, and ---

A. She -- she really -- she really had an assistant lawyer helping -- helping her on the side.

Q. Uh-huh.

A. So it was like whatever her assistant was telling her, she was training her, and she would translate it then to me.

Q. And by translating you don't mean actually speaking another language, do you?

A. No, sir, no, sir.

Q. You mean just explaining things to you?

A. Yes, sir.

Q. I gotcha, okay. And so tell me what you think your lawyer did wrong in representing you?

A. The lawyer -- the lawyer -- the lawyer did the whole -- like the whole -- the whole investigation was done wrong from the way it should be.

Q. Well, tell -- tell me specifically.

A. Because I feel like my lawyer -- lawyer done wrong, because I didn't get a fair -- I didn't get a fair time at trial. And -- and if the lawyer would have represented me correctly, the outcome of my trial would be different. I wouldn't still be here fighting -- fighting.

Q. Okay. Give me some examples of what you mean by your lawyer tried.

A. My lawyer -- the lawyer didn't cross-examine me like -- like they're supposed to. She didn't cross-examine the law enforcement like they're supposed to. A whole -- a whole -- a whole lot was missing out of my case.

Q. Can you give some details of what you mean by what she should have -- what she ---

A. She should have ---

Q. -- should have done.

A. She should have cross-examined -- she should have cross-examined law enforcement.

Q. Uh-huh.

A. She should have cross-examined the Solicitor's witnesses, she should have cross-examined, so she could have got a better understanding. She -- ain't -- ain't none it was done.

Q. So you don't believe she properly cross-examined ---

A. Yes, sir.

Q. -- the witnesses?

A. Yes, sir.

Q. Do you have any more specifics in regard to the cross-examinations you want to put on the record?

A. No, sir.

Q. Okay. What about objecting to certain evidence? Do you think she should ---

A. Yes, she should have objected to a lot of evidence, a lot of evidence that should -- should

have never happened. And the preliminary hearing later to trial she should have objected to certain issues and certain statements that was made, she should have objected to them, but she didn't object to them.

Q. Okay. Can you talk about in specifics what things you're saying she should have objected to?

A. Like with the law -- with the law enforcement, the Solicitor, she -- she didn't object to it, and she left it out.

Q. Okay, what do you think -- what should have been her objection; do you know?

A. She should have objected to them.

Q. Okay. All right, what other things do you think she should have objected to she didn't object to?

A. She should have objected to the law enforcement -- how they -- how they -- the evidence in the trial, evidence in the case. That whole case was jacked up.

Q. Okay. Can you give some details on what ---

A. Like the ---

Q. -- you mean by that?

A. -- whole case -- the whole case was -- the case was rushed and put together. The hearing, they rushed the case, they -- it wasn't properly -- done properly. They rushed the case, rushed things together, and it was all jacked up.

Q. Do you -- do you want to -- are there specific ways you want to complain about it was --

A. It was unprofessional.

Q. How exactly do you believe it was unprofessional?

A. Because by me reading -- by me reading my Rule 5 motion for discovery, by me reading my full reading material, it's things that was said that don't make no sense accurate to what my trial transcript's saying, it's not accurate.

Q. Okay. What things don't make sense to you?

A. What -- in my transcript and that was stated -- was said between the law enforcement, the Solicitors, the whole entire case.

Q. Okay, so are there specific examples you want to give the Judge of what you think was unprofessional, and should have been objected to?

A. She should have objected to the law enforcement's statements. She should have objected

to the Solicitor's statements. The statements they gave -- opening statements, and opening – opening -- beginning.

Q. All right. What do you think in the opening statements was objectionable that she should have objected to in the Solicitor's opening statement?

A. Well, she -- what she should have objected to?

Q. Yes, sir.

A. She should -- she should have objected to anything she saw wrong, not by what I saw wrong. She should have objected to what she saw wrong.

Q. Okay. All right. So do you have any specific issues regarding the opening statement you want to address?

A. No, sir.

Q. Okay. How about the closing statement? Any objection that you think she should have made to the closing statement?

A. Yeah, she should have -- she should have done a whole lot.

Q. All right, specifically, what do you think she should have done?

A. If -- if she would have done -- if she

would have done it properly and professionally, the whole outcome of the trial would have been different, we wouldn't be sitting here right now.

Q. What do you mean by that? Explain that.

A. If she would have -- if she would have had done -- properly investigated her case, and investigate this transcript, and investigate everything, the whole outcome of the trial would be different. The whole -- everything would be added up, it wouldn't be pieces here, pieces here, pieces here, everything would be added up together.

Q. I want to make sure I'm giving you your opportunity to say anything you want to say here. I'm not trying to trick you. Is there any specific -- more specific complaints ---

A. No, sir.

Q. -- that you want to make about your lawyer ---

A. No, sir.

Q. -- at all during the performance of the trial?

A. No, sir. I believe she's ineffective.

Q. Do you want to give anymore details as to how she was ineffective?

A. No, sir.

Q. Okay.

MR. LIFSEY: I don't have any further questions. Please answer anything the Solicitor -- excuse me, the Attorney General has for you.

MR. MITCHELL: Your Honor, the State has no questions for this witness.

THE COURT: All right. Thank you, you may step down.

MR. LIFSEY: We don't have any further witnesses.

THE COURT: Okay.

MR. MITCHELL: Your Honor, the State calls Ms. Diane DeWitt to the stand.

THE COURT: All right.

* * * * *

Diane DeWitt,

having been duly sworn,

testifies as follows:

* * * * *

DIRECT EXAMINATION

BY MR. MITCHELL:

Q. May it please the Court? Good afternoon, Ms. DeWitt, how are you today?

A. Fine.

Q. Ms. DeWitt, how long have you been practicing law?

A. Forty-one years.

Q. And how much of that has been in criminal law?

A. Like the first five.

Q. So, roughly, 35 years?

A. Yes.

Q. And were you appointed or retained in this case?

A. I was employed by the Public Defender's Office, and -- for Hampton, Jasper, Allendale counties, and it was assigned to me.

Q. And as there was -- as the Applicant testified to earlier, this was a second trial?

A. Yes.

Q. And in your preparation with Mr. Hugue prior to trial, did you -- how many times did you meet with him?

A. I met with him, initially, when I first got the case. And I -- I was kind of in -- I was in the process of closing out my private practice, so I think -- I think I started with the Public Defender's around August 19th, 2018. So I met with him, initially, just to meet with him, after I -- I

looked through the file, and to see what other information I could get from him about a possible alibi witness. And ---

Q. And do you ---

A. -- he -- he had questions about the bond -- bond hearing again.

Q. And in those meetings did you review the discovery with Mr. Hugue?

A. Probably not at the first meeting where I just touched base with him.

Q. But in subsequent meetings?

A. Yes. Well, see what happened was, I came on in August, and I thought his previous lawyers had been -- the lawyer who tried his first trial, Mr. Staggs, he didn't work for the PD anymore, it was taken over by the Deputy Public Defender, Ian, his last name escapes me, but he also did not work for the PD, so I -- I actually replaced Ian, who I believe had never met Mr. Hugue before he left. I didn't know about involvement of Mr. Plexico, but he could have been an interim who was assigned the case in between lawyers. So anyway I -- I mean I was hired, basically, to come in and to start trying cases. Mr. Hugue was originally supposed to be retried in October 2018, and we had a

hurricane evacuation, so I think that term of court was cancelled.

Q. Yes, ma'am.

A. But -- so I mean I met with him at the jail a couple times to get specific information from him. I ordered the transcript from the first hearing, got funding for it, ordered that. I got him copies of that transcript. I started from scratch, because I didn't want to -- I wanted to make sure I had every single piece of evidence the State had and then also any evidence that -- or reports, lab reports, or anything that may have come in after the first trial. And so I read all the evidence, and made copies, and either my -- the paralegal, or I would drop it off at the jail. Sometimes I'd put a sticky note on something, put it in an envelope for him at the jail. He called the office a good bit. The jail would let him call the office, and I'd talk to him on the phone. So I got -- I met with him in-person a couple times, but spent I think eight -- it was like eight hours on a Saturday with him, a week or two before the trial, and we discussed everything. The jail was very accommodating. They provided us with a room where I could sit next to Mr. Hugue at the table with my

laptop and show him his videotape confession, all the bodycam evidence from the night of the shooting. When the police had gone to his grandmother's house and got him out of the house and were talking to him outside, that was one of the bodycam videos that was introduced at trial. We went over all the lab reports and every piece of evidence. Went over the criminal records of the witnesses against him, we went over his criminal record and started -- the reason it takes so long, this is the process I used always before trial is to have a really long meeting with the client to explain how the process is gonna go at the trial. Starting with pretrial motions, the voir dire of the jury. I'm pretty sure I went over the jury list with him, because I would have had it at that time, just to see if any -- he knew anybody. 'Cause, you know, it cuts both ways, if any of the jurors ends up knowing the Defendant, they may know -- they may know good things, but they may know bad things too. So we -- and we talked about, you know, what would come next, they'd go first, they'd put up their witness, what the cross-examination of their witness would be, what documents or other evidence might come in with them. We talked about, you know, I'd tell him what the

directed verdict motion is. And then on to what we would present as a defense, if anything, and in detail discuss whether or not he's gonna testify. And the cross that the Solicitor would likely do on him, you know, besides asking about his criminal record. Mr. Hugue had made a videotaped statement. He would have had a much better defense if he had not done that. And the -- the videotape -- he turned himself into the Police Department and voluntarily made this videotaped statement. And I haven't read the transcript lately, I'm sure -- I'm pretty sure I moved to suppress it, but he said he had an alibi. And me and the lawyers before me had wasted a whole lot of time trying to verify his alibi. And then at some point close to the -- close to that Saturday when I met with him, he told me to stop looking for the witness. He said, "Stop wasting your time looking for the witnesses," is what he told me. So I think -- I mean I think there was some truth to this -- what he told them about where he'd been, but he may have been a day or two off. I mean his alibi might have worked if the shooting had been a day or two sooner than it was, but -- so I spent a lot of time doing that. And the prosecutor spent a lot of time and put up quite a

few witnesses disproving the alibi he had given in his statement.

So let's see, one of the witnesses to disprove the alibi was the manager of the Beaufort County Social Security Office, because Mr. Hugue had said that this white female, he was with her, and they had gone out of town to Beaufort that day, and first she had taken him by Social Security. Well, it was a Saturday, and so the Solicitor put up the witness to say that they're closed on Saturday, but I had gone by to check their hours to see if they're open on Saturdays and found out that they do see people by appointment once in a while on Saturday, so ---

Q. And you cross-examined him on that as well?

A. I cross-examined the witness in that regard. So I did that. Went by the scene where it happened, the shooting happened. I talked to other witnesses that the State would present, and but in detail talked to the client about whether or not he was going to testify, and if he did, what was he gonna say? Because he never told me he shot the man, or he didn't shoot the man, he just never said. I will say that he was -- that Mr. Hugue was

actually a good client. He was -- he could read and write very -- pretty well, he spoke well. He spoke like he had an education. He was interested in his case. He wrote notes on the transcript that I passed to him, and he would copy those note pages and give them back to me. He sent me letters with other information and questions in it, so I mean he -- we communicated some by writing. He was very attentive when he met with me, and when we prepared for his case. He was very attentive during the trial. He took good notes that I could read. He made a good appearance or presence in the courtroom. He was dressed nice for court, so he made a good appearance in front of the jury. He was very courteous and respectful to me and to the Judge. So I mean -- I mean he did what I asked of him, too, for that trial, and the notetaking and the -- helping me by reading the transcript and taking the notes. Yeah, he was one of the better clients that I've had.

Q. Now, going back to pretrial, you did make several pretrial motions ---

A. Yes.

Q. -- to exclude various pieces of evidence ---

A. Yes.
Q. Correct?
A. Yes, and I -- I think the transcript probably speaks for itself as to ---
Q. Yes, ma'am.
A. -- all those motions.
Q. The Jackson v. Denno motion ---
A. Yes.
Q. -- objected to witness Gary Scott being able to testify about a prior dispute ---
A. Right.
Q. -- between the Defendant and victim. And for the call details and the text message records as well?
A. Yes. Now, Ms. Carmody was -- she was a new lawyer in the office, and she never met with Mr. Hugue that I can just recall off the top of my head except in the courtroom. She and him had had some conversation, but she had researched and written the motion. She wrote a brief that went with the motion, and that's why she argued it during the trial, and she was my notetaker. And, of course, how -- she's a little tiny woman, he was sitting between me and her, but, you know, it helped -- it helped me to have somebody next to him that he could

whisper to instead of me when I was trying to listen.

Q. And during the trial did you -- do you remember saying anything objectionable on the opening statement?

A. Not the opening statement.

Q. What about the closing?

A. Well, it just didn't seem right to me at the time. I know you're not supposed to object during the opening or the close, if you can help it, but it just -- it didn't sit right with me, and I did object. I mean I stood up and objected to a piece of the video in evidence. The Solicitor -- what I had argued in my closing, or was going to argue and did argue, that -- or I brought it up in cross, there's no gunshot residue on my client's hands. And so what the Solicitor did was, in his closing, he played this little part of the in-evidence bodycam video showing Mr. Hugue when he was interviewed by the police that February night outside his grandma's, he -- and it was cold -- really cold that night, you could tell it was cold, you could see the smoke coming out of everybody's mouth, he kept putting his hands into his hoodie front pocket. And anyway when the Solicitor played

that one little clip with him putting it in -- his hands in and out of his pockets, he played it about six times before I jumped up, because it just seemed unfair. And I couldn't -- and I couldn't stop myself from objecting to that, and we were called up to the bench. I guess what we said did not end up in the record, but -- and what the Judge ruled was, because the videotape itself, the whole videotape, was in evidence, it, you know, the juror -- it was clear to the jurors that he had just taken that one piece and was showing it repeatedly, so that is -- that's what that bench conference was about.

Q. And then, finally, during this trial, you did cross-examine witnesses, correct?

A. As far as I remember, I cross-examined every witness. The one -- the grandmother, Mr. Hugue's -- I think it was his grandmother, it might have been his mom, she was real fragile, an elderly lady, seemed elderly, probably younger than me, but seemed elderly, she was very -- kind of fragile, and didn't have a very good memory; but I -- when I got up to ask her the questions, he pulled me back down, he didn't want me to ask her anything. And so I did ask her a question or two, but it was obvious that she didn't want to be there, she'd been subpoenaed,

and she didn't seem to know much of anything either way.

Q. And her testimony wasn't particularly damaging?

A. No, in the grand -- it wasn't. I didn't -- and, of course, I objected to the cell phone evidence and the pinging and all that stuff, because there was no -- I thought it was a good issue to appeal on, because there -- other than the grandma saying that was a phone number he had given her, there was no evidence that put that cell phone in Mr. Hugue's hands on that night the man was shot.

Q. And you objected that the State had not met the burden of connecting the phone to ---

A. Right, I argued that in closing. I think I argued it in my cross of the police witnesses too.

Q. And your cross of the Verizon Wireless ---

A. Right, that's correct. So, you know, I -- oh, the other thing we -- I discussed with Mr. Hugue is -- which is my usual practice in all these years, the status of any plea negotiations. And though I don't have my file on Mr. Hugue, it's a whole box of information, but I couldn't access it

from the PD's office, and to the best of my memory, I think the lowest offer I got was voluntary manslaughter for 25 years, and he would not take it. Mr. Hugue may have been the inmate who'd been in the Jasper County Jail the longest, because he'd been in jail continuously since the incident, and then he -- I think he got no bond at all after his mistrial. And even though there were several bond motions made, he was -- I think he was never granted bond. So he had been in jail going on three years, or almost three years, I think. It was frustrating to him that he got a mistrial and still had no bond at all. So I remember that. And I -- I can tell you after he was convicted, I think he was totally shocked the jury found him guilty, and I don't know why he just -- he had it in his mind that they were going to find him not guilty, so he was surprised.

I did go and try to talk to him at the jail before they shipped him out, but he was gone already, and so I didn't see him again until I had filed a written motion for a new trial, but it had to be heard in front of that same Judge, who may have been a retired Judge, so it was a couple months before that motion was heard, and that's when -- the next time I saw Mr. Hugue.

Q. Ms. DeWitt, I don't think I have any more questions for you.

A. Okay, thank you.

THE COURT: What about you, Mr. Lifsey, have you got some?

MR. LIFSEY: Just a little.

THE COURT: Okay.

MR. LIFSEY: Not too long.

CROSS-EXAMINATION

BY MR. LIFSEY:

Q. Ms. DeWitt, ---

A. Yes.

Q. -- did I hear you right to say you met with him twice prior to this murder case?

A. It could have been more than that. I was at the jail all the time with a list of clients, and he would be on the list and I'd see as many people as I could at a time when I went. I mean I remember -- I recall -- besides the very long meeting in getting ready for trial, I can recall like two -- two other meetings when we talked about specific things.

Q. So you think you met with him three times, correct?

A. At least, yes. It could have been

more, and I talked to him on the phone, and he sent me letters.

Q. Do you generally make notes regarding when you meet with clients?

A. Yeah.

Q. Do you ---

A. But I don't -- I do not have access to my PD records.

Q. Uh-huh.

A. I had to retire during the -- I had to retire during the pandemic shutdown.

Q. What was your -- I was reading your opening. Do you have a copy of your transcript -- the trial transcript?

A. Uh-huh.

Q. In looking at your opening statement, what was your theory in this case?

A. Well, that's where I got no help from Mr. Hugue. Since we couldn't prove an alibi ---

Q. Uh-huh.

A. -- my -- my personal theory, and he didn't tell me -- he never told me if he shot the man, if there had been a scuffle or a fight or an argument, he never told me anything. He didn't tell me he didn't shoot him, he didn't tell me he did, so

all I could figure is it's either -- either he shot him, or he was covering for somebody else who did shoot him. So like he knew who did, but he didn't want to tell on him. So my strategy was to make the State prove its case.

Q. I gotcha.

A. That was the only thing I had to go on.

Q. Well, I mean ---

A. And that's what the lawyer before me had done, and he got a mistrial.

Q. And did he -- did he admit being there to you ---

A. No.

Q. So I mean I wasn't there would have certainly been some defense, right?

A. Well, you know, if he had not made the videotaped statement to the police ---

Q. Let me ask you about ---

A. -- and he said he wasn't there, then, yes, that would have been a possibility, but the cross-examination after he made that statement would have just made him look like ---

Q. Yeah.

A. -- a bad liar ---

Q. Well, let me ---

A. -- not even a good liar.

Q. Let me ask you, do you -- do you have a copy of the transcript?

A. Yes.

Q. I'll direct your attention to page 169 of the transcript. Are you there?

A. Yeah.

Q. Okay. Look on line 12 and 13 and 14 where the testifying witness says, "I know he had a gun," and Mr. Whetsel asked, "How you know that?" And then he answers, "Because D always carried a gun." You remember that exchange, correct?

A. Yes.

Q. And you objected to that testimony at pretrial.

A. Yes.

Q. But you did not renew that objection when it happened during the trial; is that correct?

A. Yes.

Q. Then I think you covered it on direct, but I want to ask about it again. On page 374 of the transcript during the closing argument, you objected, correct?

A. Yes.

Q. All right. First of all, why did you

not just put your grounds for your objection on the record?

A. Well, you know, it was -- I mean I was trying to think of the grounds for my objection, as I'm walking up to the bench towards the Judge, and ---

Q. What were ---

A. -- I don't know if we would have had to send the jury out.

Q. Well, what -- what -- what were the grounds of the objection?

A. I objected because I thought it was highly prejudicial.

Q. All right, gotcha. So -- but, obviously, you had a bench conference you said ---

A. Uh-huh.

Q. -- and when you expressed that at the bench, the Judge overruled your objection presumably during the bench conference; is that correct?

A. Right, because the video was in evidence.

Q. Okay. And you never placed that on the record, so that could be reviewed by the Appellate Court?

A. Right.

Q. Okay.

MR. LIFSEY: Can I have just one moment, Judge?

THE COURT: Yes.

MR. LIFSEY: I don't have any further questions.

MR. MITCHELL: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. MITCHELL:

Q. Ms. DeWitt, can you turn to page 172, please? This is your cross-examination of the Gary Scott, the same witness you and Mr. Lifsey referred to on direct. After he testified that he knew that D had a gun, you crossed the same witness on it, lines one through five -- one through seven. So you crossed him on that everyone in the residence carried a gun?

A. Right.

Q. And so ---

A. But I remember the gun, that much.

Q. And I think it was mentioned more than once at trial that the neighborhood was known to carry ---

A. Right, everybody in that neighborhood had guns ---

Q. Right.

A. -- and kept them in their houses. There's another witness, the man -- neighbor walked over after the shooting, he testified to that. I think I -- I cross-examined him, and he said something about everybody who lived in the neighborhood had gun -- a gun, at least a gun.

Q. And that was to show the jury that anyway, correct?

A. Right, and something -- it was to the effect he wouldn't live in Jasper County if he didn't own a gun.

Q. And in regards to the closing, the bodycam footage that the Solicitor played, was that admitted into evidence?

A. Yes.

MR. MITCHELL: I think that's all I have for you, Ms. DeWitt, thank you.

WITNESS: Thank you.

RECROSS-EXAMINATION

BY MR. LIFSEY:

Q. It's presumable you make objections because you think things are objectionable, correct?

A. Well, yes, and -- I mean as a lawyer ---

Q. Sure.
A. -- I ---
Q. And ---
A. -- but within the rules, you're supposed to do it within the rules. Objecting during closing is something to avoid, if you can.
Q. Why? People say that all the time, and I don't understand why.
A. Well, I'll tell you ---
Q. Because if there's an objection ---
A. -- because it has the effect of breaking down the other lawyer's momentum, the momentum, you know. When somebody's starts a closing argument, they're kind of on a roll, and if you object, then it disrupts. I mean the jury, it breaks up whatever they were thinking and following along with closing argument.
Q. It's not your job to help the Solicitor stay on a roll, is it?
A. Well, I did object, I mean I did.
Q. What I'm saying though is ---
A. So, obviously, it -- it bothered me enough that I jumped up and objected to it right away.
Q. My only point, that objection, the

prior objection, the reason you objected is you think they're objectionable because ---

A. Yes.

Q. But those can't be reviewed ---

A. Right.

Q. -- on direct appeal unless the error is properly preserved.

A. Right, that's correct. No, I didn't preserve it.

Q. Okay.

MR. LIFSEY: I don't have anything further.

MR. MITCHELL: Nothing further, Your Honor.

THE COURT: Thank you, step down.

WITNESS: Thank you.

MR. MITCHELL: Your Honor, the State has no further witnesses.

THE COURT: Anything else? Do y'all have any arguments?

MR. LIFSEY: I think in large part is credibility arguments ---

COURT REPORTER: Can you speak up?

MR. LIFSEY: I'm sorry. My -- my -- my issue was, I said I think most of these are credibility arguments, and the Judge has to make decisions based on his review of the witnesses and

testimony ---

MR. MITCHELL: Just briefly, Your Honor, Mr. Hugue made various vague allegations of ineffective assistance of counsel without specifying, failure to object, failure to cross-examine. Their allegations of ineffective assistance of counsel is not enough to meet your burden of establishing post-conviction relief.

So on those vague allegations, I would ask you to deny it on that basis. With regard to the closing argument, failure to preserve issue, even if it was preserved, the Solicitor was merely using a piece of evidence already admitted into evidence, the bodycam record. And the case law is clear, Washington v. State, 440 S.C. 550, "The closing argument must stay contained to the evidence within the record or any reasonable inferences that can be drawn from it." A video of a defendant vigorously rubbing his hands in his pockets just prior to being subjected to a GSR kit test, it's very reasonable to infer that he's trying to get his gunshot residue off his hands. So I think it was highly proper for the Solicitor to make that argument in closing, and I don't believe there was anything objectionable there anyway. So he has not -- he has failed to

establish his burden of prejudice with regard to that allegation. No pretrial objections, Ms. DeWitt actually testified to make various pretrial objections to various pieces of evidence on this case. Once again, I have no idea what piece of evidence he's referring to because he didn't specifically tell us which ones. So for those reasons, Your Honor, I would ask that you deny Mr. Hugue's post relief application.

THE COURT: All right, I'll review it and issue an order.

(Whereupon, the hearing was concluded.)

- - -END OF TRANSCRIPT- - -

CERTIFICATE OF REPORTER

I, Cathy L. Young, CVR-M, for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of introduced in the hearing of the captioned case, relative to appear, in the Circuit Court for Jasper County, South Carolina, on the 8th day of May, 2024.

I do further certify that I am neither of kin, counsel nor interest to any party herein.

Cathy L. Young

Cathy L. Young, CVR-M
Court Reporter and Notary
Public in and for South Carolina
My Commission expires: 3-28-2029

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	
	)	
David Eric **HUGUE**, Jr., SCDC #335417,	)	
Applicant,	)	**ORDER OF DISMISSAL**
v.	)	Civil Action No. **2022-CP-27-00111**
The **STATE** of South Carolina,	)	
Respondent.	)	

FILED
2024 DEC 23 A 9:59
CLERK OF COURT
JASPER COUNTY, SC

I. INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by David Eric Hugue, Jr. ("Applicant") on March 10, 2022. On May 8, 2024, a hearing into the matter was held at the Beaufort County Courthouse. Applicant was present with counsel Michael H. Lifsey, Esquire. Assistant Attorney General T. Cruise Mitchell represented the respondent. Testimony was taken from Applicant and trial counsel Diane P. Dewitt, Esquire ("Counsel").

After a full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of trial counsel are without merit. The action is dismissed with prejudice.

II. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its July 2017 term, the Jasper County Grand Jury indicted Applicant for Murder (2017-GS-27-00151) and Possession of a Weapon During the Commission of a Violent Crime (2017-GS-27-00153).

Applicant went to trial before Circuit Judge R. Ferrell Cothran, Jr. and a jury on October 28-31, 2019. Diane Dewitt and Caroline Carmody, Esquires, represented Applicant. Assistant Solicitors Dustin Whetsel and Mary Jones of the Fourteenth Circuit Solicitor's Office prosecuted the case. Applicant was found guilty as indicted. Applicant was sentenced to concurrent terms of thirty years imprisonment for Murder and five years for the weapon charge. Applicant's motion for a new trial was heard on January 27,

2020 and denied by Order filed February 3, 2020.

Applicant, represented on appeal by Appellate Defender David Alexander (Appellate Counsel) of the South Carolina Commission on Indigent Defense – Division of Appellate Defense, filed a timely notice of appeal. Appellate Counsel filed an *Anders*[1] and a petition to be relived as counsel. On appeal, Applicant raised one issue: whether the trial court erred in admitting unauthenticated text messages into evidence?

On February 9, 2022, the South Carolina Court of Appeals dismissed the appeal in an unpublished opinion and granted Appellate Counsel's motion to be relieved as counsel. *State v. Hugue,* 2022-UP-049 (S.C. Ct. App. filed February 9, 2022). The remittitur was returned to the circuit court on February 9, 2022.

III. STATEMENT OF FACTS

On February 18, 2017, Applicant was at the trailer of Gary Scott along with Kyle Riley and Victim. Scott testified Applicant entered the trailer, and the Victim told Applicant to "come outside." R. p. 167. Scott then heard a gunshot and when he went outside, he found Victim on the ground. Applicant had already left the scene. Applicant was later arrested for the murder of Victim.

IV. CURRENT APPLICATION

Applicant timely commenced his PCR action on March 10, 2022. In his application for post-conviction relief, Applicant asserts that he is being held in custody unlawfully, alleging:

1. Actual Innocence
    a. "Applicant's right to due process of law as guaranteed by the Fifth and Fourteenth amendments to the United States Constitution and South Carolina Law was violated because he is actually innocent of the charges;"
2. Ineffective Assistance of Counsel
    a. Counsel failed to properly investigate;
    b. Counsel failed to raise double jeopardy clause where "Applicant already had one trial were [*sic*] he was not found guilty";
    c. Counsel failed to present factual evidence or testimony to the jury;
    d. Counsel "failed to petition the court to have the State fully comply with discovery";
    e. Counsel failed to object to "recorded interrogations and statements of Applicant when police clearly had shown a repeated practice of muting and redacting portions thereof";
    f. Counsel failed to object to "court rulings that statements were voluntary";

[1] *Anders v. California,* 386 U.S. 738 (1967).

g. Counsel failed to "effectively pursue a suppression hearing";
h. Counsel failed to argue third-party guilty;
i. Counsel failed to "properly confront or impeach almost all of the State's witnesses violating applicant's right to confront witnesses against him";
j. Counsel failed to "request lesser included offense";
k. Counsel "failed to object to and allowed tampered evidence to be presented to the jury";
l. Counsel "failed to present DNA evidence of third-party guilt";
m. Counsel "failed to locate and present alibi witnesses";

3. Ineffective Assistance of Appellate Counsel
   a. Appellate Counsel "failed to properly investigate applicant's case nor fully present issues of merit";
   b. Appellate Counsel "failed to present issues concerning prosecutorial misconduct and "Brady" violations"; and
4. Prosecutorial misconduct
   a. "Prosecution failed to disclose exculpatory evidence";
      i. "DNA profiles of third party, who is the guilty party";
   b. "Prosecution knowingly allowed witnesses called by the State to commit perjury";
      i. "Impeachment evidence relating to deals made with state witnesses that produced false-testimony".

On April 30, 2024, Applicant, through PCR counsel, amended his application to include the following allegations:

1. Ineffective Assistance of Counsel for
   a. Applicant's trial counsel did not meet with Applicant a sufficient number of times prior to his trial, did not fully explain the strengths and weaknesses of the State's case, and did not explain the elements of the crimes of which he was charged.
   b. Applicant's trial counsel did not properly cross-examine witnesses for the state and did not lodge appropriate and timely objections to inadmissible evidence.
   c. Applicant's trial counsel did not properly preserve objections in order to make them subject to appellate review.
   d. The ineffective assistance of counsel as described above, both individually and in cumulative effect, resulted in prejudice to the Applicant and absent such ineffective assistance of counsel, the results of his trial would have been different.
2. Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See* Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

At the evidentiary hearing, Applicant only went forward on the allegations raised in his amended application.

V. INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such

representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *accord. Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Id.* Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated

by way of the State's return, this Court finds Applicant's claims to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Failed to Adequately Consult and Review Discovery with Applicant

Applicant contends Counsel was ineffective for failing to adequately consult with him. Applicant suggests a failure to adequately meet with him prior to trial. Additionally, Applicant contends Counsel failed to review discovery with him. This Court finds Counsel's credible testimony refutes this allegation. There is no established "minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel." *United States v. Olson*, 846 F.2d 1103, 1108 (7th Cir.1988) (there is no constitutional minimum number of meetings between attorney and client and observes that an experienced attorney may get more out of a single meeting than a neophyte); *Moody v. Polk*, 408 F.3d 141, 148 (4th Cir. 2005); *Campbell v. Polk*, 447 F.3d 270, 279, n.2 (4th Cir. 2006) ("we cannot conclude that the fact that Campbell's counsel only met with him five times before trial made them ineffective."). "'[B]revity of consultation time between a defendant and his counsel, alone,' 'cannot support a claim of ineffective assistance of counsel.'" *Davis v. State*, 44 So. 3d 1118, 1130 (Ala. Crim. App. 2009) (quoting *Murray v. Maggio*, 736 F.2d 279, 282 (5th Cir. 1984)); *White v. Godinez*, 301 F.3d 796, 800 (7th Cir. 2002) ("A brief consultation does not by itself establish that counsel's performance was inadequate."); *Chavez v. Pulley*, 623 F. Supp. 672, 685 (E.D. Cal. 1985) ("brevity of consultation time between a defendant and his counsel alone cannot support a claim of ineffective assistance of counsel," especially where the defendant "fails to allege what purpose further consultation with his attorney would have served and fails to demonstrate how further consultation with his attorney would have produced a different result"). Applicant testified Counsel met with him three times. Applicant explained he received discovery prior to his first trial which resulted in a mistrial. Counsel stated she met with Applicant several times and reviewed the discovery with him from scratch. Counsel explained that a room was provided for them at the jail in which to review all the video evidence, including the video confession and body camera footage. Based on

the credible testimony of Counsel, Applicant has failed to prove she was deficient in her consultations with him.

Furthermore, Applicant has failed to specify what, if anything, could have been achieved had Counsel spent more time with him in consultation regarding his case. *See Smith v. State*, 404 S.C. 493, 500–01, 745 S.E.2d 378, 382 (Ct. App. 2012) (noting that an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief). Applicant has failed to show how further consultation with Counsel would have resulted in a different outcome at trial. Applicant has failed to meet his burden establishing prejudice as to this allegation.

Relief based upon his allegation is without merit and therefore DENIED.

Failure to Cross-Examine Witnesses

Applicant alleges Counsel was ineffective for failing to properly cross-examine witnesses. Applicant asserts Counsel should have more thoroughly cross-examined law enforcement. Applicant has failed to specifically articulate which witnesses Counsel did not properly cross-examine nor how further cross-examination of any witness would have led to a different outcome at trial. Applicant has failed to meet his burden establishing both deficiency and prejudice.

Relief based upon his allegation is without merit and therefore DENIED.

Failure to Object

Applicant alleges Counsel did not properly preserve objections in order to make them subject to appellate review. Applicant asserts Counsel should have objected to what she saw wrong. When asked to be specific, Applicant stated Counsel should have objected to law enforcement statements and the Solicitor's opening statement with no further specificity or explanation being provided. Applicant has failed to meet his burden establishing prejudice as to this allegation.

Relief based upon his allegation is without merit and therefore DENIED.

VII. CONCLUSION

Based on the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require granting his application for relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds that Applicant's allegations supporting his request for relief are without merit and the **APPLICATION** should be an **IS** therefore **DISMISSED** with **PREJUDICE**.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 16th day of December, 2024.

J. DERHAM COLE, Presiding Judge
The Fourteenth Judicial Circuit Court

WITNESSES

Mike Atwood--JCSO

ARREST WARRANT NUMBER

2017A2710200092

TRUE BILL ✓

NO BILL

Foreperson of Grand Jury

FOREMAN

Date: DATE 7/20/17

VERDICT

Guilty

Janet R. Bass

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2017GS2700151

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

July Term 2017

THE STATE

vs.

David Eric Hugue, Jr.

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

INDICTMENT
2017GS2700151

At a Court of General Sessions, convened on July 20, 2017, the Grand Jurors of Jasper County present upon their oath:

Murder

That in Jasper County, South Carolina, on or about February 18, 2017, the Defendant, David Eric Hugue, Jr., did, with malice aforethought, kill Lamar Heyward and Lamar Heyward did die as a proximate result of David Eric Hugue, Jr.'s actions, to wit: The Defendant did shoot Lamar Heyward resulting in the death of Lamar Heyward., all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Solicitor

WITNESSES

Mike Atwood--JCSO

ARREST WARRANT NUMBER

2017A2710200094

TRUE BILL
NO BILL
FOREMAN
Foreperson of Grand Jury
Date: DATE 7/20/17

VERDICT

Guilty

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2017GS2700153

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

July Term 2017

THE STATE

vs.

David Eric Hugue, Jr.

Indictment For

Possession of Weapon During Violent Crime

SC Code: 16-23-490

CDR Code: 0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

520

STATE OF SOUTH CAROLINA	)	INDICTMENT
	)	
COUNTY OF JASPER	)	2017GS2700153

At a Court of General Sessions, convened on July 20, 2017, the Grand Jurors of Jasper County present upon their oath:

Possession of Weapon During Violent Crime

That in Jasper County, South Carolina, on or about February 18, 2017, the Defendant, David Eric Hugue, Jr., did possess a firearm, visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent crime, to wit: Murder and David Eric Hugue, Jr. was convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, to wit: Murder, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF Jasper)
STATE)
vs
David Eric Hogue Jr.)
AKA:)
Race: B Sex: M Age: 30)
DOB: [redacted] SS#:)
Address: [redacted])
City, State, Zip: Ridgeland, SC [redacted])
DL# SID#)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017-GS-27-00153
A/W#: 20178271020009 4
Date of Offense: 2/18/17
S.C. Code §: 16-23-500(A)
CDR Code #: 3434

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ☐ PLEADS
TO poss. of a weapon during violent crime
In violation of § 16-23-500(A) of the S.C. Code of Laws, bearing CDR Code # 3434
☑ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)
The charge is: ☑ As indicted ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☐ Recommendation by the State.
ATTEST: [signature] 78998
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 5 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____ : provided that upon the service of _____ days/months/years and or payment of $ _____ : plus costs and assessments as applicable*: the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference.
☑ CONCURRENT or ☐ CONSECUTIVE to sentence on _____
☑ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135
Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total: $ _____ plus 20% fee _____ $ _____

Payment Terms:
☐ Set by SCDPPPS

Recipient: _____

*Fine:		$ 0
§14-1-206 (Assessments 107.5%)		$ 0
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$ 0
§56-5-2995 (DUI Assessment)	$12	$ 0
§56-1-286 (DUI Breath Test)	$25	$ 0
Proviso (Public Def/Probation)	$500	$ 0
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$ 0
§50-21-114 (BUI Breath Test Fee)	$50	$ 0
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$ 0
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. Or Job Corp _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly monthly pmts. of $ _____ Beginning _____
$ _____ Paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel.
Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: Mayed Boshe
Court Reporter: NONA MANLEY
Presiding Judge: [signature]
Judge Code: 21401
Sentence Date: Oct. 31, 2019

SCCA/217 (04/2018)

522

STATE OF SOUTH CAROLINA)
COUNTY OF Jasper)
STATE)
VS
David Eric Hogue Jr.)
AKA:)
Race: B Sex: M Age: 29)
DOB: [redacted] SS#:)
Address: [redacted])
City. State. Zip: Ridgeland SC)
DL# SID#)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017-GS-27-00151
A/W#: 2017A2710200092
Date of Offense: February 18, 2017
S.C. Code §: 16-3-10
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ☐ PLEADS TO Murder
In violation of § 16-3-10 of the S.C. Code of Laws. bearing CDR Code # 0116
☐ NON-VIOLENT ☑ VIOLENT ☐ SERIOUS ☑ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd))
The charge is: ☐ As indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. _____ (def. s initials)
The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☐ Recommendation by the State.
ATTEST:

Solicitor SC Bar # 78998 Defendant Attorney for Defendant SC Bar #

WHEREFORE. the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 30 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____ : provided that upon the service of _____ days/months/years and or payment of $ _____ : plus costs and assessments as applicable*: the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation. Parole and Pardon Services standard conditions of probation. which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total: $ _____ plus 20% fee _____ $ _____

Payment Terms: _____
☐ Set by SCDPPPS

Recipient: _____

*Fine:		$ 0
§14-1-206 (Assessments 107.5%)		$ 0
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3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

Clerk of Court/Deputy Clerk Mayra Bostick
Court Reporter: MONA MANLEY

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐
Attend Voc. Rehab. Or Job Corp _____

May serve W/E beginning _____
Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐
Fine may be pd: in equal consecutive weekly/monthly pmts. of $ _____ Beginning _____
$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel.
Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge R. Lawton McIntosh
Judge Code: 2144
Sentence Date Oct. 31, 2019

SCCA/217 (04/2018)