

ORIGINAL

VOLUME II OF III

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Roger M. Young, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BREON JACOBY MAYERS,

APPELLANT

APPELLATE CASE NO, 2012-213003

RECORD ON APPEAL

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1 the truth. I couldn't remember --

2 Q Well, which time?

3 A -- when I wrote the first statement. I

4 couldn't remember when I wrote the first statement.

5 I've been in jail for ten months, too much has been

6 going on.

7 Q Well, if you know what the truth is, why is

8 that so hard to remember?

9 A Because the first statement was not the full

10 truth because I was trying to cover my own tail

11 thinking that I can make my way out the back door

12 and get off and be home, but I realize now that I

13 couldn't, so that's why I came back and told the

14 truth. I'm a totally different man.. My morals are

15 different now.

16 Q So you think that by saying you had a .38

17 caliber, that will get you home quicker than saying

18 you had a 9mm?

19 A To tell you the God honest truth, I don't know

20 why I said I had a .38. I don't know why I said

21 they had Glock 9s. I was confused. I was scared.

22 I was shook up. And when somebody's shook up and

23 confused, they don't know exact -- their train of

24 thought is not exactly right.

25 Q Are you confused now?

1 A No, I'm not con --

2 Q You're not shook up at all?

3 A No, I'm not shook up at all.

4 Q Okay. So -- so Jermaine and Breon did not both
5 have 9mm guns?

6 A No, sir.

7 Q And now you had a .38 caliber pistol, right?

8 A Yes, sir.

9 Q Well, I'm sure in that written statement since
10 you pay attention to written versus oral so much...

11 A Not necessarily.

12 Q Not necessarily.

13 A I'm just telling you that that's the statement
14 that I wrote in my own hands.

15 Q And that's the only problem in your statement.
16 That's the only error you made in all of this that
17 you've talked about?

18 A No, sir. I told you that that statement there
19 is only half truth because it was the first time I
20 got arrested and I didn't want to tell the whole
21 truth.

22 Q Well, what else is wrong in that statement?

23 A I never really said a lot of things. I mean,
24 the only thing I really mentioned that was truth in
25 that statement was I partook in the robbery and

1 Breon was there and Jermaine was there.

2 Q So everything else in here is a lie?

3 A I'm not saying everything else in there is a
4 lie because I honestly can't remember the whole
5 statement.

6 Q Well, here, I want you to sit there and look at
7 it.

8 A (Witness reviewing document.)

9 In my statement, I said I didn't know who shot
10 him.

11 Q But now you know who shot him?

12 A Yeah, because I'm not going to lie. I felt
13 like I was going to try and keep the so-called
14 street code, you know, and not tell on nobody, you
15 know what I mean, but all that switched up once I
16 realized that every man was for hisself in this
17 situation and we all was going to get in trouble
18 anyway. And I had it already set in my mind that I
19 wasn't going down for a murder that I didn't commit.

20 So, yes, I did lie in this statement about not
21 knowing who shot who and I lied about I don't know
22 what they got out the house. And I lied about all
23 three of us having guns, Jermaine and Breon having a
24 Glock 9. Yes, I lied because I was confused. I was
25 shook up, like I said. I was frantic, didn't know

1 what to do, didn't know what to say.

2 Q But once you got over this -- this is back
3 October 26?

4 A Yes, sir -- no, that was the 27th I want to
5 say. It was the same -- the same night I wrote that
6 statement is the same night I got locked up.

7 Q What's the date at the top of that page?

8 A It's the 26th. Sorry if I couldn't remember to
9 the exact day, the 26th or the 27th, but, you know.
10 Well, put it like this, by the time I got booked and
11 got housed, it was the 27th, so that's why I keep
12 referring to it as the 27th.

13 Q So, surely, by December the 13th when you had
14 another interview with the police, you were a
15 hundred percent, weren't you?

16 A December the 13th?

17 Q Did you have anymore meetings with the police?

18 A I know I never talked to the police again. My
19 attorney's advised me not to talk to the police.
20 And the only time I had anything to do with the
21 system in December was when I went to bond court.

22 Q Well -- so is it your testimony that you've
23 only had a conversation with any law enforcement or
24 Solicitor's office on one occasion?

25 A No. You said police. You didn't say

1 Solicitor's office.

2 Q All right. Well, how many times did you talk
3 to the Solicitor's office?

4 A I talked to the Solicitor's office twice.

5 Q Did you ever talk to this officer right here,
6 Douglas Novak?

7 A Yes, sir, with the Solicitors.

8 Q With the Solicitor?

9 A Yes, sir.

10 Q Is that the only time you talked to him?

11 A Yes, sir, that's the only time I can remember
12 that he actually was in the presence of the
13 Solicitors when we were talking.

14 Q Did you ever tell the police that you were not
15 involved, that you were with Jermaine the whole
16 time?

17 A No, sir.

18 Q You didn't talk to Detective Derrenbacher and
19 tell him that you were with Jermaine?

20 A Not that I can remember. I don't even -- who
21 is Detective Derrenbacher again?

22 Q Do you ever remember meeting a Detective
23 Derrenbacher?

24 A I remember meeting Detective Novak and another
25 detective, but I didn't know his name when I -- the

1 day I got arrested.

2 Q Okay. And when you met with that gentleman,
3 did you tell them that you were not involved in any
4 murder and that you were with Jermaine?

5 A I know at first before I wrote that statement,
6 I told them I wasn't involved in any murder, but I
7 can't remember if I said I was with Jermaine or not.

8 Q Why is it you can't remember if you told them
9 you were with Jermaine or not?

10 A Because like I said, my mind wasn't right. My
11 mind was fogged. I was shook up. I'm sitting here
12 looking at they got four charges that they fixing to
13 hit me with, that's over 120 years, that's a life
14 sentence. I'm sitting here thinking about not ever
15 seeing my son again or my family again. I don't
16 remember what I told them first, I really don't, and
17 that's just the honest truth.

18 Q Do you remember telling the officers that you
19 were woke up around 10:00 or 10:15 and they woke you
20 up, meaning Jermaine and Breon?

21 A Yes, sir.

22 Q Well now, didn't you testify earlier on direct
23 examination that Jermaine was the person who came
24 and knocked on the window and woke you up?

25 A Well, I would say both of them woke me up

1 because Breon called me and Jermaine knocked on the
2 window and both of them were outside waiting on me.

3 So I just say both of them woke me up.

4 Q And you rode your son down the road?

5 A Rode my son down the road, no.

6 Q You didn't tell the officers that?

7 A No.

8 Q Does your son live with you?

9 A No, sir. My son even wasn't mentioned except
10 for I had to buy him some stuff, that's it.

11 Q Did you tell the officers that you didn't know
12 what anybody got out of the house?

13 A Yes, I wrote that down, yes, sir.

14 Q Did you tell the officer that you didn't ride
15 back with them?

16 MR. GRAHAM: Your Honor, just to object for
17 clarification, if he would refer to what officer and
18 when.

19 MR. WILLIAMS: Sure. On the 31st, talking to
20 Derrenbacher.

21 BY MR. WILLIAMS:

22 Q Did you tell that officer --

23 A The 31st of October?

24 Q Uh-huh.

25 A I didn't talk to any officers after the point

1 of me being arrested.

2 Q Did you tell any officer that you did not ride
3 back with the two individuals that you said you were
4 with?

5 A Not to my recollection, but if I did, then it
6 was a lie.

7 Q So you're not denying that you've been lying
8 throughout this whole thing?

9 A No, not throughout the whole thing. At first,
10 I was lying, yes, I was, but from that point on, I
11 haven't told not one lie. I have no reason to lie.
12 My part was my part, you know. And I'm going --
13 I've got to accept the consequences for my part by
14 partaking in the event, you know. And I just know I
15 can't lie. I got to tell the truth because if I
16 don't tell the truth, then the wrong person will
17 wind up getting blamed for the wrong things.

18 Me, I'm responsible for going to this man's
19 house and wanting to go to this man's house, you
20 know. And it's a tragedy, you know. And I'm not
21 responsible for killing this man, Breon is.

22 Q You didn't tell anyone that you ran home after
23 it happened?

24 A Not to my recollection, but if I did, then it
25 was a lie. If it's in the first statement, then it

1 probably was a lie. It wouldn't -- it wouldn't make
2 any sense for me to having run home, that was too
3 far. And I'm not from Chapin. I don't even know
4 those streets. Like I said, if I did say that, it's
5 because my mind was running a hundred miles an hour
6 and I didn't know what to say and what not to say.

7 Q What did Jermaine have on?

8 A At what point in time?

9 Q During the robbery.

10 A What did he have on?

11 Q Uh-huh.

12 A I don't really remember. I just know he had on
13 some type of running shoes.

14 Q So you didn't tell the officer, go through this
15 litany of what everybody had on or anything like
16 that?

17 A I can't really remember what Jermaine had on,
18 but I do remember what Breon had on because he left
19 his clothes at my house for me to dispose of them.

20 Q For you to dispose of them?

21 A Yes.

22 Q Where are they?

23 A In the garbage.

24 Q Which garbage?

25 A The city dump somewhere. I don't know. I

1 threw them in the garbage can on trash day.

2 Q And why didn't you save the clothes so that
3 they could be examined to see if anybody was --

4 A Because I wasn't thinking about getting caught
5 at that point in time.

6 Q When did you start thinking about getting
7 caught?

8 A When the police were canvassing the area.
9 Honestly, I thought about getting caught as soon as
10 it happened, but I knew if I stayed away from
11 Chapin, then I probably wouldn't get caught. Then
12 once the police started canvassing the area and
13 mentioned my name the day before I got locked up, I
14 knew I was going to jail. I pretty much knew what
15 was going to go down from that day when Breon shot
16 Mr. Dave, but, you know, I was just really counting
17 times and hoping to get lucky and, obviously, I
18 didn't.

19 Q When was the first time that you told anybody
20 that you saw Breon shoot anyone?

21 A I never really came out and said that Breon
22 shot anyone as far as on the street goes. He told
23 -- the first person to know about anybody getting
24 shot was my cousin, Chris.

25 Q When was the first time you told law

1 enforcement or the Solicitor's office that you saw
2 Breon do it?

3 A After -- probably, I want to say the first time
4 at the Solicitor's office or -- no, the first time I
5 met with Ms. Amy for the first time, my lawyer.

6 Q You talked with Ms. Amy and told her that?

7 A Yeah, I told her everything.

8 Q And when is the first time you told the
9 Solicitor about it?

10 A When I met with the Solicitor for the first
11 time. I can't really remember the day.

12 Q Well, let's say you met with the Solicitor
13 around June the 7th of 2012. Do you remember the
14 first words out of your mouth when you met with the
15 Solicitor and Derrenbacher?

16 A No, sir.

17 Q If I were to say that the first words out of
18 your mouth was, I saw him do it, would you dispute
19 that?

20 A I really couldn't because I don't remember.

21 Q Well, that would be a little unusual when you
22 go to meet with somebody and the first words out of
23 your mouth was, I saw him do it, I saw Breon do it,
24 not how you doing, what happened that morning,
25 anything like that, just come out with that, I saw

1 Breon do it; wouldn't you agree?

2 A No, because, in my opinion, that would be an
3 awful way to start up a conversation, you know.
4 And, secondly, that was a two-hour long meeting, so
5 I can't remember the first words and I can't
6 remember the last words, you know. This case has
7 been, you know what I'm saying, on the way for the
8 past month, you know, so I don't remember.

9 Q Did you tell the Solicitor that -- or tell
10 anyone that y'all actually hatched this plan two
11 days before it happened?

12 A No, sir.

13 Q You didn't state in the presence of the
14 Solicitor and Derrenbacher that you had talked about
15 robbing Dave two days prior to the murder?

16 A No, sir. Breon and Jermaine had talked about
17 it, but it was a short conversation. And like I
18 said before, I brushed that to the side. I didn't
19 think twice about it.

20 Q So you didn't tell Derrenbacher that the three
21 of y'all talked about it?

22 A No, no, sir.

23 Q On June the 7th of 2012?

24 A No, sir.

25 Q And did you tell the Solicitor's office and the

1 detective that you took a pound of weed?

2 A No, sir.

3 Q And a thousand dollars?

4 A I did tell them that Jasmine got a thousand
5 dollars.

6 Q You took a half a pound of weed?

7 A No, sir. It wasn't quite a half a pound. I
8 said it wasn't quite a half a pound.

9 Q So it wasn't a pound, it wasn't a half a pound?

10 A It was four ounces short of a half a pound.

11 Q What happened to the .357 that was stolen?

12 A They gave it to me and I traded it back to one
13 of my homeboys for a .45.

14 Q All right. Did you ever tell any law
15 enforcement or Solicitors that you traded the .357
16 for another weapon?

17 A Yes, sir.

18 Q Who did you trade it with?

19 A One of my friends around the way in Friarsgate.

20 ~~Q Who did you trade it with?~~

21 A His name is Rude Boy.

22 Q What's his name?

23 A Dusty.

24 Q So you got a .45 caliber for selling this
25 stolen .357?

1 A I didn't sell it.

2 Q You traded it?

3 A I traded it back because the .45 was originally
4 mine.

5 Q So, in your mind, that's different; is that
6 right?

7 A Yeah, because I didn't -- he didn't purchase
8 it. He didn't purchase it and I didn't receive any
9 money for it. I just got my gun back.

10 Q So you didn't do anything wrong about getting
11 rid of that .357?

12 A I didn't say that, no. It was wrong to even
13 have the .357.

14 Q Now, this Blackberry that you've talked about,
15 this old-fashioned Blackberry --

16 A No, it's not old fashion. It's the Blackberry
17 Storm the first one, touch screen, but the buttons
18 at the bottom are not touch screen. On the second
19 one, the buttons at the bottom are touch screen.

20 Q Didn't you say in direct examination that you
21 sell or give Breon a Blackberry?

22 A No. I said I gave him a Blackberry Storm, the
23 first one.

24 Q All right. And does that -- is that a touch
25 screen or is that a buttons on the bottom?

1 A It's a touch screen with buttons on the bottom.
2 The second one is the one that's straight touch
3 screen. The buttons are touch screen on the bottom.

4 Q So you didn't say on direct examination that
5 the Blackberry you sold him had buttons on the
6 bottom and nothing about a touch screen?

7 A No. I said that it was a touch screen with
8 buttons on the bottom, the first one.

9 Q And you sold it to him for how much?

10 A I gave it to him.

11 Q You gave it to him how long ago?

12 A Like I say, at the minimum, three or four days
13 before the robbery occurred. I can't really
14 remember the exact time, but I know he didn't have
15 it for more than a week.

16 Q All right. So it's three or four days?

17 A Or maybe a week. I can't really --

18 Q A week. It certainly wouldn't be weeks, would
19 it?

20 A No. I said, or a week, not weeks.

21 Q And this is a phone which was in your mother's
22 name or your grandfather's name?

23 A Yes, sir, that's the phone line that was in
24 their name. The phone came from my girlfriend's mom
25 who gave it to me.

1 Q Your girlfriend's mom gave you the phone?

2 A Yeah.

3 Q What's her name?

4 A Patricia.

5 Q Patricia what?

6 A Peterson.

7 Q And when did she give you the phone?

8 A Probably around May 2011.

9 Q And when she gave you the phone, what was the
10 phone number to it?

11 A I don't really know.

12 Q It was a phone number you used, right?

13 A No, sir.

14 Q Well, it was your phone, right?

15 A It wasn't a phone number I used, though. The
16 phone was already off. It was an old Verizon phone
17 she had. So I went and got it turned on at Page
18 Plus.

19 Q And what was the number that you had it turned
20 on to?

21 A I can't really remember. I can't really
22 remember.

23 Q Why is it you remember some of these things so
24 distinctly, but things like that you can't --

25 A Because things like that, you know, that number

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1 got washed from my memory when I had to remember my
2 new number, you know.

3 Q You remember your mama's number growing up,
4 don't you, your home number?

5 A No, sir.

6 Q Well, when is it that you turned off the
7 service to that particular phone?

8 A I didn't turn it off. It got cut off because I
9 didn't pay a bill.

10 Q And when was that?

11 A Some time around, I want to say, the beginning
12 of October or the end of September, I didn't pay a
13 bill.

14 Q The end of October or the beginning of
15 September?

16 A No. The end of September or the beginning of
17 October somewhere in between there.

18 Q So how long did you keep the phone without
19 having any service connected to it?

20 A Before I gave it to Breon, I probably had the
21 phone without any service on it probably a little
22 less than a month, maybe a month I only had,
23 somewhere around there.

24 Q Come on now, let's -- I mean, let's work on our
25 dates a little bit. Follow me, if you will. You've

1 got a cell phone, service goes off on it the end of
2 September or the beginning of October.

3 A Uh-huh.

4 Q You take that same cell phone and you give it
5 to Breon three to four days to a week before this
6 incident, which is October the 21st.

7 A Yes, sir -- no, not October the 21st.

8 Q No?

9 A The incident happened on October 21st.

10 Q Right.

11 A Yeah. I thought you were referring to when we
12 got locked up.

13 Q Okay. Pick a date. October 26th, you want to
14 go with that date?

15 A No.

16 Q Does that help you out any?

17 A No. Go ahead, the 21st.

18 Q No. Let's go with the 26th.

19 A No. Go ahead with the 21st.

20 Q Well, if you rode around with it for a month
21 with no service on it, that would put you into
22 November before you would have given the phone to
23 Breon, wouldn't it?

24 A Not necessarily. If it got turned off towards
25 the end of September, that could be anywhere from

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1 the 20th of September to the 1st of August, that
2 would be considered the end of September, about the
3 end of September.

4 Q And that's how you look at things. You just
5 have to manipulate those things until they work for
6 you, don't you?

7 A No, because if I was to give you an exact date,
8 I would be lying because I don't remember the exact
9 date.

10 Q Now, you went with Breon, as I understand it,
11 to Mr. Beeper to have his phone cut back on?

12 A Yes, sir.

13 Q Because you remember exactly how much it was to
14 cut the phone back on?

15 A Because I paid the phone bill for about seven
16 months. Let me see, May, June, July, August,
17 September. I paid the phone bill for five months.
18 And my mom gave me that phone in 2010 of July. So
19 that mean I was paying the phone bill at that same
20 place, the same price for over a year, so, of
21 course, I remember the exact price.

22 Q You just said your mom gave you that phone.

23 A No. My mom gave me that phone line.

24 Q Was that just a slip when you said your mom
25 gave you that phone?

1 A Yeah. She gave me that phone line. She gave
2 me her phone line in 2010.

3 Q Because your mother -- your mother had nothing
4 to do with giving you the phone?

5 A Not the Blackberry, no.

6 Q Well, when you and Breon went in to turn the
7 service on, you went in with him, right?

8 A Breon stayed in the car.

9 Q So Breon did not go in to turn the cell phone
10 on?

11 A No, because he didn't think they would let him
12 do it because it was in my mom's name or my
13 granddad's name.

14 Q So that's why if we did have a video of someone
15 turning the service on on such and such a date,
16 that's why we wouldn't see Breon on the video
17 because he never went inside to do it?

18 A No, you wouldn't because he didn't go inside to
19 do it, I did.

20 Q That's right because you did?

21 A Uh-huh.

22 Q And that's convenient, isn't it?

23 A Not really. I mean, he didn't know if they was
24 going to let him do it, so I did it for him. And it
25 was -- and no -- go ahead.

1 Q It certainly would have a picture of you
2 turning the service back on, wouldn't it?

3 A Yes, sir.

4 Q And whose name would the service be in?

5 A Like I said before, I don't know. It's either
6 in my mom's name or my granddad's name.

7 Q So what you're saying is this phone which you
8 said is Breon's is not in his name. And it's a
9 phone which, as far as the telephone people are
10 thinking, it's your phone?

11 A I mean, as far as Page Plus goes, they don't
12 really keep track of the account and whose account
13 it is, but the account has to be open in someone's
14 name. So I'm saying that it's either been open in
15 my mom's name or my granddad's name. I can't sit
16 here and tell you a lie to which one of those it is,
17 but I know it's got to be one of them.

18 Q And when did you go to do that?

19 A About a week -- three days to a week before the
20 robbery took place.

21 Q Did you tell law enforcement that you went
22 there the Wednesday before the Friday in which this
23 actually occurred?

24 A Not to my recollection.

25 Q Did you tell law enforcement anything about

1 this 9mm which Breon had, he bought from some
2 neighbor of his?

3 A Yes, sir.

4 Q Well, tell me about that. Where did Breon get
5 this gun from?

6 A His next-door neighbor.

7 Q All right. Who's his next-door neighbor?

8 A I couldn't tell you his name. I just know that
9 he told me, after he shot him, he said, Should I
10 call my next-door neighbor and let him know that I
11 just caught a body with his gun? Because the gun
12 was registered in his next-door neighbor's name. I
13 said, Yeah, that's what you need to do, you know
14 what I mean. And he was like, All right.

15 And then the night we get arrested, his
16 next-door neighbor took me back to my mom's house
17 after we came from Saluda and dropped Breon car off
18 at his grandma house. And we rode in the PT Cruiser
19 that his next-door neighbor owns back to my house
20 and dropped me off and that's when we dispersed.

21 Q So you know who the next-door neighbor is?

22 A I don't know his name.

23 Q You rode in the PT Cruiser with him and you did
24 all these things with him and he's the one who sold
25 the gun to Breon and you don't know his name?

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- 1 A I don't know his name. I'm not from Chapin. I
2 didn't care to know his name.
- 3 Q He's not a drug dealer from Columbia, is he?
- 4 A Not that I know of.
- 5 Q Tell me about the .357 that was taken out of
6 the house. Is it your testimony that Breon was the
7 one who brought this .357 out of the house?
- 8 A Yes, sir, Breon was the one that brought it out
9 the house.
- 10 Q And you didn't take anything out of the house?
- 11 A No, sir.
- 12 Q All of this stuff ends up at your house, the
13 drugs, the money, the gun; is that right?
- 14 A It all ended up at my house because we all
15 ended up at my house.
- 16 Q And then all these -- the gun ends up with your
17 cousin -- with your cousin?
- 18 A Yes, sir.
- 19 Q And the weed ends up with who?
- 20 A The weed ends up getting distributed and --
- 21 Q Who did it get distributed to?
- 22 A Ty, one of my homeboys out at Friarsgate.
- 23 Q So the weed goes to your homeboy, right?
- 24 A Uh-huh.
- 25 Q And the gun goes to who?

1 **A** The guns stay at my cousin's house.

2 **Q** So the guns stays at your cousin's house. Are
3 you getting the picture that all of this stuff, all
4 of the bad stuff, the gun, the weed, the money, none
5 of it's with Breon? It's all with you, isn't it?

6 **A** Technically, it was with Breon if Breon was
7 with me. If it's with me and Breon is with me, then
8 both are with me.

9 **Q** The cell phone that supposedly Breon was using
10 was your cell phone?

11 **A** My old cell phone.

12 **Q** Did you tell law enforcement that Breon had the
13 number changed?

14 **A** I had the number changed when I paid the bill.

15 **Q** Did you tell law enforcement that Breon had the
16 number changed?

17 **A** Not that I can remember.

18 **Q** Well, you know, there's a far cry between not
19 that I can remember and, no, I didn't, isn't there?

20 **A** Well, if I say, no, I didn't, then I will be
21 lying. If I said I did, then I will be lying, too.
22 So, therefore, I don't remember.

23 **Q** You've got some wiggle room with that, right?

24 **A** I wouldn't call it wiggle room. I'm just not
25 going to sit up here and tell no lie. If I don't

1 know it, then I'm going to tell you I don't know it.

2 Q What kind of car does Breon drive?

3 A A Maz Millenia {verbatim}.

4 Q What color is it?

5 A Champagne slash silver, somewhere around there.

6 Q Champagne slash silver. You know what color
7 champagne is, right?

8 A Okay. Well, let me say this, a lighter version
9 of champagne, I guess. I'm not too great with
10 colors, but I know it was -- it wasn't exactly
11 silver and it wasn't exactly champagne.

12 Q And, of course, if you say champagne, slightly
13 silver, if your friend in jail said it was silver or
14 something like that, you got that matched up, don't
15 you?

16 A I don't know what he said.

17 Q Or if you said it was silver, you got it
18 matched up?

19 A I don't talk to him about my case.

20 Q What about yourself? Do you talk to yourself
21 about the case?

22 A I'm not crazy.

23 Q Well, part of -- part of your, I guess, your
24 argument or story is that you said you're helpless
25 and you didn't have a way to go around, right?

1 A Right.

2 Q But then you've already told us on direct
3 examination that you did have access to your
4 mother's car?

5 A Not after the crime took place because my mom
6 had to go to work.

7 Q Let's talk about before the crime took place.
8 Did you have access to a car?

9 A No. I asked my mom for the car and she said,
10 no.

11 Q You asked your mother for the car so that you
12 could go out and rob him?

13 A No, because the plan wasn't to go rob nobody.
14 The plan was just to go pick up some weed from the
15 weed man in Friarsgate.

16 Q Who's the weed man?

17 A In Friarsgate.

18 Q Who is the weed man?

19 A This dude named Kevin.

20 Q Kevin what?

21 A Kevin, I don't know his last name. You know,
22 because usually when you meet somebody who sells
23 weed, they don't really tell you their first and
24 last name.

25 Q Did you go see the weed man?

1 **A** He was already at work, so we went by my dad's
2 house.

3 **Q** Where did the weed man work?

4 **A** He worked at Zaxby's -- well, then he worked at
5 Zaxby's. I don't know where he works at now.

6 **Q** You talked about that after this happened, that
7 Breon was blowing up the phone, but you basically
8 didn't want to have anything to do with it; isn't
9 that right?

10 **A** This was a day after it happened after we all
11 had done went out that Friday night, he was blowing
12 me up, but I was ignoring him because I was spending
13 time with my family.

14 **Q** Whose phone was he blowing up?

15 **A** Mine, my phone.

16 **Q** What is Cedric's role in all this?

17 **A** Cedric, he -- Breon told Cedric what was up
18 before we went and did what we did, you know, and
19 pretty much just so Cedric could cover for him, you
20 know. And then when I got home, Cedric came
21 through. Breon said, Toss Ced some tree, toss him
22 some tree. Ced said, Y'all need to get on through
23 because the police is swarming right now, y'all need
24 to go.

25 **Q** So now you're saying that Breon told you to

1 toss Ced some tree, talking about marijuana, right?

2 A Yes, sir.

3 Q And you threw some marijuana underneath the
4 house?

5 A No. Breon threw some marijuana underneath the
6 house, but I took it back.

7 Q Didn't you just say two seconds ago that Breon
8 told you to toss Cedric some tree?

9 A I said that when I got to the house, Cedric
10 came through to the house. And Breon text me, while
11 he was at his house getting dressed and washed after
12 the crime took place, to toss Ced some tree.

13 Q And who said that now?

14 A Breon told me to toss Ced some tree.

15 Q Okay.. I feel like we're in a circular
16 argument. Are you saying that Breon told you to
17 toss some marijuana to Cedric?

18 A Yes, sir.

19 Q So he did tell you to do that?

20 A Toss as in give.

21 Q And did you?

22 A Yes, sir.

23 Q But you're saying you just didn't do it then?

24 A No, because then I said that when we came out
25 of the house, Breon tossed the bag up under the

1 porch and I snatched the bag back and that's when we
2 left.

3 Q Let's talk about this shooting. It's my
4 understanding you had a .38. Who goes in first?

5 A Breon.

6 Q And who's second?

7 A Me.

8 Q And then Jermaine?

9 A Yeah, but you can kind of say we all went in.
10 Me and Jermaine went in in unison.

11 Q Y'all went in at the same time?

12 A Pretty much.

13 Q Well, y'all both can't fit through that
14 doorway, can you, at the same time?

15 A Well, when I say same time, he was right on my
16 heels.

17 Q So he came in after you?

18 A Yes, sir. Jasmine and Breon were already in
19 the room.

20 Q So you fired your .38 caliber pistol before
21 Jermaine came in the house?

22 A Yes, sir, before we even went in the house.

23 Q Where did you fire it?

24 A In the air.

25 Q So you didn't do it as you were going into the

1 house?

2 A No. I fired it in the air.

3 Q Why did you fire it in the air?

4 A Because, like I said, I didn't know how to
5 release the hammer and I didn't want it to go off.

6 Q So you thought you would cause a disturbance.
7 You thought you would --

8 A It was far from a disturbance, two shots had
9 already been fired, somebody got killed. It really
10 didn't matter. I just had to get the hammer down so
11 nobody else got hurt, so I didn't hurt myself, so
12 Jermaine didn't hurt himself.

13 Q Oh, you wanted to make sure you didn't hurt
14 anybody?

15 A Of course.

16 Q Because that's what this is all about, nobody
17 getting hurt?

18 A Yes, that's what it was all about, but,
19 obviously, your client, Breon, took it upon himself
20 to kill someone. That's not my intentions. I would
21 never want to take another man's life, especially
22 not over not even a half a pound of weed and a
23 thousand dollars. It's not worth it.

24 Q So you had a .38 caliber pistol because you
25 wanted to wear it and show it to somebody?

1 A No.

2 Q Why did you have the gun?

3 A Because we had two guns, two people was going
4 to carry a gun, one person was going to grab him.

5 Q Why did you have the gun?

6 A Because I was one of the people carrying the
7 guns.

8 Q Okay. I understand that part. Why would you
9 have a gone in your possession if you didn't intend
10 on using it?

11 A Because I don't know if you know or not, but if
12 you're going to rob somebody, you're not going to go
13 empty handed.

14 Q I wouldn't know.

15 A Well, I'm telling you that's not -- that's not
16 what you're not -- you're not going to do that.
17 You're not going to go run up in somebody's house
18 without a gun because you never know what can
19 happen. And, plus, the guns were just going to make
20 it easier for him to give up what he had to give up.

21 Like I said, the plan -- my intention was not
22 for nobody to get killed, you know. I'm terribly
23 sorry for this man's life getting taken, you know.
24 My intention was just to get this money, you know,
25 and leave.

1 Q Now, you would have touched everything there,
2 wouldn't you?

3 A I didn't touch nothing there.

4 Q Well, you touched the .357, didn't you?

5 A No. I touched the .357 once we were back at my
6 house.

7 Q But you touched the .357, didn't you?

8 A You said there. I didn't touch anything at the
9 house.

10 Q Well, you're concerned about particulars now?

11 A No. You just said that I touched everything
12 there. When you referred to there, I thought you
13 was referring to the house where the crime took
14 place at and I didn't touch anything in the house.

15 Q Did you touch the .357?

16 A No, not until he handed it to me in the car
17 before we went in the house.

18 Q So you did touch the .357?

19 A Yes, after the crime.

20 Q Did you touch the 9mm?

21 A No, I didn't touch the 9mm.

22 Q Did you touch the money?

23 A No, nobody touched the money. Jasmine got the
24 money and went her separate way.

25 Q Did you touch the wallet?

- 1 A No.
- 2 Q What kind of shoes did you have on?
- 3 A Nike Air Max.
- 4 Q What kind of shoes did Breon have on?
- 5 A Black Folk Flag Vans {phonetic}.
- 6 Q And what happened to those shoes?
- 7 A All of them got put in the garbage.
- 8 Q Conveniently placed in the garbage?
- 9 A Yeah.
- 10 Q And who threw it away?
- 11 A Me.
- 12 Q So you threw away the clothing, you got rid of
- 13 the guns, you got rid of the marijuana.
- 14 A I didn't get rid of the guns. I got rid of the
- 15 .357. The 9mm didn't get got until the police went
- 16 and got it once we're all locked up.
- 17 Q From your cousin?
- 18 A From my cousin.
- 19 **MR. WILLIAMS:** Court's indulgence one minute.
- 20 (Pause.)
- 21 Q Why did you say that Breon had to shoot David
- 22 Cannon?
- 23 A Honestly, it was out of vengeance.
- 24 Q Vengeance --
- 25 A Vengeance. They didn't like him. They wanted

1 to kill him. They didn't like him. So when you
2 don't like somebody, then honestly you could care
3 less about their life. So he took their life. He
4 took his life.

5 And I know it was out of vengeance because, for
6 one, him and Jermaine both told me stories about how
7 this man is racist and how he did this, this and
8 this to him, you know. And, for two, he said, I got
9 to kill him. I mean, I couldn't tell you why. The
10 only thing I can come up with is out of vengeance,
11 out of spite.

12 Q You didn't know about any vengeance, did you?

13 A About any what?

14 Q Any vengeance. He was selling drugs to
15 Jermaine, wasn't he?

16 A I knew about vengeance because Breon expressed
17 how much he didn't like him and Jermaine expressed
18 how much he didn't like him, too. And both
19 expressed if they had the chance, they would kill
20 him.

21 Q Did you not like David Cannon?

22 A I didn't know David Cannon.

23 Q So you didn't have any vengeance?

24 A I don't know him. You can't have vengeance on
25 somebody if you don't know him.

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1 **MR. WILLIAMS:** I don't have any other
2 questions, Your Honor.

3 **THE COURT:** Redirect.

4 **MR. GRAHAM:** Yes, Your Honor.

5 REDIRECT EXAMINATION

6 **BY MR. GRAHAM:**

7 **Q** When you went over there that day, Tyrome, did
8 you know Dave Cannon?

9 **A** No, sir.

10 **Q** Have you ever seen him before?

11 **A** No, sir.

12 **Q** You ever met him before?

13 **A** No, sir.

14 **Q** What had you heard about him before?

15 **A** That he sells drugs and he choked Jermaine and
16 he was a racist because he wouldn't sell Breon weed,
17 and that they'll both kill him, and that Breon knew
18 the exact times that his wife went to work and came
19 back.

20 **Q** So that was a conversation that happened a
21 couple days before?

22 **A** Yes, sir.

23 **Q** When you -- that's the conversation I think you
24 just said that you brushed off?

25 **A** Yes, sir.

1 Q And why was Breon talking about the times that
2 his wife went to work?

3 A Just because he was just saying how easy it
4 would be to rob him.

5 Q Let's clear the phones up. Where did you get
6 the Blackberry Storm from?

7 A From Chelsea's mother, Patricia Peterson.

8 Q Did you use that phone as your phone for a
9 while?

10 A Yes, sir.

11 Q Do you remember the number you had on that
12 phone?

13 A Kind of, I kind of can remember the last four
14 digits. It's 3719 I want to say.

15 Q That's not the number when I asked you in the
16 beginning the -- that's not the phone number you had
17 at the time on October 21st, is it?

18 A No, sir.

19 Q That's that other number. What number was
20 that?

21 A 261-8869, that was my phone number when I got
22 locked up.

23 Q Okay. When you got locked up, you had the 8869
24 number?

25 A Yes, sir.

1 Q What kind of phone was that?

2 A An Android, a purple looking Android.

3 Q A purple Droid?

4 A Yes, sir.

5 Q Where did you get that phone from?

6 A My mom.

7 Q Your mom gave you that phone?

8 A Yes, sir.

9 Q And why did she give you that phone?

10 A Because her and Doc had went and got a twin
11 plan with Verizon and that was with Simple Mobile.
12 So she gave me that one because I couldn't pay the
13 bill, afford to pay the bill on the Blackberry at
14 that time. So she went ahead and paid it for me and
15 gave me that phone.

16 Q All right. So, at one point, you got a touch
17 screen Blackberry that you got from your
18 girlfriend's mom, that's the one you'd been using,
19 right?

20 A Yes, sir.

21 Q Your mom gets a plan with Doc, with Chris
22 Davis, and she gives you her purple Droid?

23 A Yes, sir.

24 Q You got two phones at the same time?

25 A Yes, sir.

1 Q Did they both have service?

2 A No, sir.

3 Q Which one had service?

4 A The Android.

5 Q The purple Droid your mom gave you?

6 A Yes, sir.

7 Q Why did you choose the purple Droid over the
8 Blackberry?

9 A Because my mom offered to pay the bill on that
10 one. So she paid the bill on that one and I took
11 that one and gave the other one to Breon.

12 Q So you were using the purple Droid because your
13 mom was paying for it?

14 A Yes, sir.

15 Q And you got that 8869 number with that one?

16 A Yes, sir.

17 Q When was that?

18 A She paid the bill -- it lasts for a month. I
19 really can't remember the exact day, but I know once
20 I got locked up, the month was still running, so it
21 wasn't time for a new bill. So I want to say about
22 two weeks, two weeks, maybe three weeks.

23 Q All right. So she gave you the purple Droid
24 and you had the Blackberry Storm, touch screen?

25 A Uh-huh.

1 Q You didn't need two phones, so what did you do
2 with the Blackberry Storm?

3 A I gave it to Breon.

4 Q Why?

5 A Because he was expressing how he didn't have a
6 phone. I said, I got a Blackberry Storm if you want
7 it. He was like, You don't want nothing for it? I
8 said, Nah, you can just have it. And I gave it to
9 him.

10 Q When did -- how did -- when did the service end
11 or get cut off on the Blackberry?

12 A Some time in September, some time in September
13 -- the end of September, beginning of October, some
14 time around there.

15 Q All right. So you're using your Droid. You
16 give Breon the Blackberry.

17 A Yes, sir.

18 Q Why do you go to Mr. Beeper or wherever you go?

19 A Because Breon attempted to get it turned on at
20 a Mr. Beeper or a Page Plus store up in Little
21 Mountain or somewhere or something like that up in
22 the country. And then he called me and said they
23 wouldn't let him turn it on. So I said, All right,
24 we can go to Broad River. We went to Broad River
25 and I got it turned on for him and got --

1 Q Let me stop you for a second so I can
2 understand. At this point, which is, I think you
3 were testifying, when Mr. Williams asked you to, it
4 was a day or two before, right? He asked you
5 something about a Wednesday, but it was a day or two
6 or three days before Dave Cannon got killed?

7 A Yes, sir.

8 Q The Blackberry does not have service?

9 A No. The Blackberry didn't have service until I
10 went to the Mr. Beeper.

11 Q Right, because it had been cut off in
12 September. You stopped paying on it in September?

13 A Yes, sir.

14 Q And the phone line was dead?

15 A Yes, sir.

16 Q So you didn't give Breon a phone with an active
17 line, you gave him a phone?

18 A Yeah. And when I gave him the phone, the line
19 wasn't active and the number was still the 3719
20 number.

21 Q Your old number?

22 A Yes, sir.

23 Q But you couldn't call on it because there
24 wasn't any service?

25 A No, there wasn't no service.

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1 Q So if somebody had dialed your old number, it
2 wasn't going to ring on the Blackberry, was it?

3 A No, sir.

4 Q Were people calling you on the 3719 number?

5 A I don't remember honestly. No, I wouldn't be
6 able to tell because I couldn't get no calls.

7 Q You didn't have service, right?

8 A Yes, sir.

9 Q So Breon told you that he tried to go to Little
10 Mountain and get that phone activated --

11 A Yes, sir.

12 Q -- to start service up on the Blackberry that
13 you'd given him?

14 A Yes, sir.

15 Q And he told you what, that he'd gotten service
16 or he didn't?

17 A He said he didn't. So I told him I can take
18 him to Broad River where I pay my bill at and
19 they'll do it. He was like --

20 Q Broad River is where you do what?

21 A Where I used to pay my bill at, my Page Plus
22 bill, at Mr. Beeper right across from -- in the
23 Dutch Square area.

24 Q On that phone, on that Blackberry, when you
25 were paying, that's where you paid service at?

1 A Yes, sir.

2 Q So you and Breon went there?

3 A Yes, sir.

4 Q Tell me what happened when you went there.

5 A When I went there, he stayed in the car. I
6 went in, paid the bill.

7 Q There's no service on the phone, so what are
8 you doing?

9 A I paid the bill. You know, if you pay the
10 bill, then service gets cut back on.

11 Q I'm sorry?

12 A If you pay the bill, then they cut the service
13 back on, no late fees or nothing. It's like a --
14 kind of like a prepaid, you know what I mean. So I
15 paid the \$48 that Breon gave me to pay it with
16 and --

17 Q Did you register the phone -- whose name did
18 you register that phone in?

19 A I didn't register in anybody's name. I just
20 kept it as whoever's name it was in, either my mom
21 or my granddaddy's.

22 Q Well, the phone has no service on it anymore,
23 right?

24 A Yes --

25 Q You understand that there is a difference

1 between a phone and a phone number and a line.

2 Those are two separate --

3 MR. WILLIAMS: Your Honor, objection to the
4 leading.

5 THE COURT: Try to rephrase your question.

6 BY MR. GRAHAM:

7 Q What, if any, understanding do you have about
8 the difference between a physical phone that you
9 make calls on versus the phone number and the phone
10 line? Tell me what your understanding of that is.

11 A Well, a phone number and a phone line to me is
12 -- I mean, honestly, I think they're both the same
13 things, but the phone number and the phone line,
14 that's a phone that's activated. And a phone that
15 you can make calls on is just a phone that you can
16 make calls on, but it's not activated.

17 Q Your phone line was dead. That's what you
18 testified to, correct?

19 A Uh-huh.

20 Q So whatever contract -- was there an active
21 contract anymore or was it ended?

22 A The contract with Page Plus, it's not really a
23 contract. It's just prepay. You pay as you go.

24 Q Okay. So when you went to Page Plus with Breon
25 on that day to help activate it, did you have a

1 contract or was it prepaid?

2 A It's prepaid.

3 Q Anybody can go --

4 MR. WILLIAMS: Objection to leading.

5 THE COURT: Probably, but just go ahead and
6 rephrase it since he didn't get much out of there.

7 BY MR. GRAHAM:

8 Q Mr. Brennan, explain what your understanding of
9 prepaid means.

10 A It means it's not a contract and you pay as you
11 go. You can keep your phone cut off for two, three
12 months at a time and still only have to pay \$48,
13 rather than if you got T-Mobile or Verizon on a
14 contract and you get your phone cut off, then you
15 got to pay late fees or you could go over your
16 minutes or over your Internet usage. You can't do
17 none of that with prepaid. You just pay \$48 for
18 unlimited talk as you go.

19 Q Where did the -- you said \$48?

20 A Yes, sir.

21 Q Where did the \$48 come from?

22 A He beat Jermaine real bad the night before in a
23 card game and beat him out of like a hundred
24 dollars.

25 Q So Breon beat Jermaine at cards and that's

1 where the money came to activate it?

2 A Yes, sir.

3 Q Did you have to go give your name to anybody to
4 get that line turned on?

5 A No, sir, because they knew me already. As soon
6 as I walked in, they was like, Mr. Brennan, it's
7 good to see you again. And I paid the bill and told
8 them I needed to change the number and that's how it
9 happened.

10 Q What, if anything, do you know about Straight
11 Talk? Have you ever heard of that?

12 A Straight Talk, that's with Wal-Mart.

13 Q What kind of service is that?

14 A It's probably -- I want to say it's probably
15 the same thing. I don't really know because I never
16 really had Straight Talk. All I had was Page Plus
17 and Simple Mobile.

18 Q You chose to go to Page Plus because why?

19 A Because that's where I paid my bill at.

20 Q How long had it been since you'd been in there
21 to pay your bill?

22 A Probably about a month. I know I paid the bill
23 right before my birthday and that was September the
24 6th. So it was probably around the end of August
25 the last time I had been in there.

1 Q Did you have to fill out any paperwork when you
2 were at Page Plus activating Breon's phone?

3 A No, sir.

4 Q Did you have to show a driver's license?

5 A No, sir.

6 Q Did you have to give them your name?

7 A No, sir.

8 Q Did they ask you for your name?

9 A No, sir.

10 Q Did they ask you for a credit card?

11 A No, sir.

12 Q Did they ask you for an address?

13 A No, sir.

14 Q Did they ask you for a phone number?

15 A No, sir.

16 Q What did they ask you for?

17 A They just asked me -- they knew -- they knew
18 me, you know what I mean, so they already knew where
19 to go, you know what I'm saying, and how to do what
20 they had to do for me and that's how they did it
21 because I was -- like I say, I was paying a bill
22 there since my mom gave me -- gave over the line in
23 2010, so they knew me.

24 Q Are you telling the truth about going to Page
25 Plus with Breon Mayers?

TYROME BRENNAN - RECROSS BY MR. WILLIAMS

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1 **A** Yes, sir. And when I -- matter of fact, when I
2 got there, I saw my granddaddy there, so.

3 **Q** Did you and Jermaine get together and come up
4 with this plan?

5 **A** No, sir.

6 **Q** Did you tell the truth when you first talked to
7 the police?

8 **A** A half truth. I didn't tell the full truth.
9 So I guess I would say, no, I didn't tell the truth.

10 **Q** I want you to look over here at these people on
11 this jury. Did you shoot Dave Cannon?

12 **A** No, sir, I did not shoot Dave Cannon.

13 **Q** Who shot Dave Cannon?

14 **A** Breon Mayers.

15 **Q** And are you telling the truth?

16 **A** Yes, sir.

17 **MR. GRAHAM:** Thank you.

18 **MR. WILLIAMS:** Just one question on recross.

19 RECCROSS-EXAMINATION

20 **BY MR. WILLIAMS:**

21 **Q** You said that Breon beat Jermaine out of a
22 hundred dollars playing cards the day before there
23 was this purchase or reinstatement, if you will, of
24 the cell phone; is that right?

25 **A** Yes, sir.

1 **MR. WILLIAMS:** That's all I have, Your Honor.

2 **THE COURT:** Okay. Let me see y'all up here
3 just a second.

4 (Whereupon, a bench conference was held off
5 the record, in the presence of the jury, but out of
6 the hearing of the jury.)

7 **THE COURT:** Okay. Folks, we're going to go
8 ahead and break for lunch then. It looks like a
9 good break point. So when you're at lunch, again,
10 don't talk to anybody about the case, don't discuss
11 it with each other. If anybody does approach you
12 about talking about the case, please report that
13 when you get back, all right.

14 See y'all at 1:30. If you would be back at
15 just before then, we'll try to get started at 1:30.
16 Thank you.

17 (The jury was excused for lunch.)

18 **THE COURT:** Okay. You can step down.

19 All right. So how do you want -- what do you
20 need to do this afternoon again?

21 **MR. GRAHAM:** We do need to have a Neil versus
22 Biggers hearing for the individual who will testify
23 that Breon Mayers gave him the gun to hold, that was
24 the first time, my understanding was, that he had
25 met Mr. Mayers. And that would be about where we're

1 ready to go witness wise.

2 **THE COURT:** How long do you think that might
3 take?

4 **MR. GRAHAM:** The only witnesses will be that
5 individual who's testifying and one police officer.
6 I can't imagine, I don't know how many questions
7 Mr. Williams would have, but it should be a
8 20-minute hearing probably, Your Honor.

9 **THE COURT:** Okay. All right. Well, let's meet
10 back here at 1:30 and we'll just have them wait for
11 just a few minutes and we'll get it started. If you
12 can have everybody lined up, okay. Thank you.

13 (Whereupon, there was a luncheon recess.)

14 **THE COURT:** Didn't we have a hearing on Monday?

15 **MR. SCOTT:** A Jackson v. Denno, yes, Your
16 Honor.

17 **THE COURT:** Okay. So you needed something
18 different. Are you ready to go?

19 **MR. SCOTT:** We are, Your Honor.

20 **THE COURT:** All right. Call your witness.

21 Would you let the jury know we're going to be
22 about 20, 30 minutes and so if they want to go
23 downstairs and smoke or something like that, that'll
24 be fine, otherwise just relax and we're going to
25 start in about 20, 30 minutes. We've just got to

WILLIAM FREUND (IN CAMERA) - DIRECT BY MR. SCOTT

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1 take care of something.

2 Okay. Call your witness.

3 **MR. SCOTT:** Thank you, Your Honor. The State
4 calls Bill Freund. Your Honor, this is a Neil v.
5 Biggers hearing.

6 **WILLIAM FREUND,**
7 having been duly sworn, testified as follows:

8 **THE CLERK:** Once you're seated, state your full
9 name, spelling your last on the record.

10 **THE WITNESS:** My name is William Freund, last
11 name is F-r-e-u-n-d.

12 **DIRECT EXAMINATION**

13 **BY MR. SCOTT:**

14 **Q** Thank you. Mr. Freund, where are you employed?

15 **A** Currently at the Lexington County Sheriff's
16 Department.

17 **Q** How long have you been with that agency?

18 **A** Since November of 2008.

19 **Q** Do you have any law enforcement experience
20 before that?

21 **A** I do. I've served as a police officer in
22 Arlington County, Virginia, from July of 2006 until
23 November of 2008.

24 **Q** What are your duties with Lexington County?

25 **A** Since August of 2010, I have been a major

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1 crimes investigator.

2 Q Is one of your duties speaking with witnesses
3 to a crime?

4 A Yes, it is.

5 Q And do you have occasion from time to time to
6 show photo lineups?

7 A Yes, I do.

8 Q How many times have you done that in your
9 career?

10 A I would guess about a dozen times.

11 Q What procedure do you follow in showing photo
12 lineups?

13 A I state to the person who I'm going to show a
14 lineup to that I'm going to show a piece of paper
15 with six photographs on it that you may or may not
16 notice -- or know somebody that is in this photo
17 lineup. If you do, please tell me who it is, which
18 number that it is and explain how you know them.

19 Q All right. Do you ever suggest to them that a
20 suspect is in your photo lineup?

21 A I do not.

22 Q Your, I guess, instruction to them is that
23 there may or may not be somebody you know in this
24 lineup?

25 A That's correct.

1 Q Did you have an opportunity to show anyone a
2 photo lineup in this case we're here for?

3 A Yes, I did.

4 Q And who did you show a photo lineup to?

5 A I showed a photo lineup to Christopher
6 Benjamin.

7 Q And when was that lineup shown?

8 A It was on October the 28th of 2011.

9 Q Where was it shown to him?

10 A It was shown in the parking lot of his place of
11 employment.

12 Q Okay. Do you know how long after the incident
13 that he witnessed -- do you know how much time has
14 surpassed between then and when you showed him the
15 lineup?

16 A It was approximately a week. I don't know an
17 exact number of days.

18 Q Would you agree with me that the, I guess, the
19 incident we're here for today happened on October
20 21st?

21 A Yes.

22 Q So that is seven days, a week. Where did you
23 say it was shown to him?

24 A It was in the parking lot of his place of
25 employment.

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1 Q Okay. In the daytime or nighttime?

2 A It was 9:30 in the morning.

3 Q Okay. Did you follow your standard procedure
4 before you showed the photo lineup to him?

5 A I did.

6 Q And, again, what is your instruction to him?

7 A Prior to showing the photographs, I explained
8 to him -- I explained to Christopher in this case
9 that there may or may not be somebody in this series
10 of six photographs that I'm going to show you. If
11 there is somebody that you know, please explain how
12 you know them to me.

13 Q All right. Now, how are they presented on the
14 sheet of paper?

15 A What I do is I -- I have the paper hidden from
16 them, the photographs, and I simply put the
17 photographs in front of them. In this case, it was
18 on the trunk of my patrol vehicle.

19 Q What is that you have with you that you brought
20 with you into court?

21 A I have -- we always do two original copies and
22 I have the two original copies of the photo lineup
23 that I presented to Christopher that he initialled
24 and signed.

25 (State's Exhibit Numbers 11 and 12, photo

1 lineups, marked for identification purposes.)

2 Q Let me show you what's been marked for
3 identification as State's Number 11 and State's
4 Number 12. Do you recognize those?

5 A I do.

6 Q How are you able to recognize those?

7 A These are the lineups that I generated using
8 the Records Management System that the sheriff's
9 department has and then I showed both of these to
10 Christopher Benjamin.

11 Q Describe the pictures of the individuals you
12 used there.

13 A What we're -- what the program allows us to do
14 is take the suspect, whoever we're making the photo
15 lineup for, and then we're able to generate other
16 people based on gender, race, age range. And based
17 on that, several, I think in this case -- in this
18 case, there was 1,094 pictures that came up based on
19 the search criteria that I used. And I went through
20 and selected pictures that closely resembled the
21 suspect.

22 Q What's the purpose of that?

23 A The purpose of that is to try and make sure
24 that we are identifying the correct person.

25 Q Well, tell me about the suspect in this case.

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1 What is his gender?

2 A He's a male.

3 Q Approximately how old is he?

4 A He's in his early 20s.

5 Q What is his race?

6 A He is a black male.

7 Q Therefore, what were the pictures you used to
8 generate your lineup?

9 A The photos I used were a black male. And I do
10 not know the suspect's age right offhand, but what I
11 do is I do three years prior and three years after.
12 So, for instance, if he was a 24-year-old male, I
13 would use 21 to 27.

14 Q Okay. Did you -- or let me ask you this. Who
15 was the person -- what was the race of the person
16 you showed that lineup to?

17 A He was a black male as well.

18 Q Okay. Did you or anyone in your presence
19 influence or suggest the witness which photo to
20 select?

21 A No.

22 Q The witness being Christopher Benjamin. Did
23 you show Mr. Benjamin any other photos of the
24 suspect before showing him that lineup?

25 A No.

1 Q Was he able to select a photo out of that
2 lineup?

3 A Yes, he was.

4 Q And did he indicate that this was the person
5 who had left the gun at his home?

6 A Yes, he did.

7 Q How long did it take him to select a photo?

8 A He immediately identified the defendant.

9 Q Did he show any hesitancy?

10 A None.

11 Q How did he make his selection?

12 A He pointed his finger directly to the picture
13 of the defendant and said, That's Breon. He is the
14 one that left the weapon at my house.

15 Q He pointed it. Did he select -- did he make
16 his selection any other way?

17 A He circled -- after pointing out the suspect,
18 he then circled and initialled both the number
19 underneath the picture and then in the bottom
20 right-hand corner, it asks again to select the
21 proper number, he initialled there and then signed
22 it.

23 Q And you witnessed him signing this and marking
24 which selection he made?

25 A Yes, I did.

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1 Q And you heard him say the name of the person?

2 A Yes.

3 Q Now, I'm going to ask you -- there are two of
4 these. There are State's 11 and State's 12. Are
5 these both originals?

6 A They are both originals.

7 Q And you brought these in here today and you'll
8 say these are the original ones that you witnessed
9 him sign on October 28th?

10 A Yes, I did.

11 Q What is the purpose of having two originals?
12 And they're -- they appear to be the same exact
13 lineup?

14 A It is the same exact lineup. My training has
15 always been that we provide two originals and both
16 of them get signed by the witness.

17 Q Okay. Just because I've never understood this,
18 why not just make a photocopy of the one he -- have
19 one original and make a photocopy?

20 A It would probably work just as well. I don't
21 have an answer for that.

22 MR. SCOTT: Thank you. That's all. Please
23 answer any questions Mr. Williams may have for you.

24 *****

25 *****

1 CROSS-EXAMINATION

2 BY MR. WILLIAMS:

3 Q Can I see your list there?

4 A (Witness complies.)

5 Q Now, these are the originals; is that correct?

6 A Yes, sir.

7 Q And all six of these are pictures of inmates
8 who are in jumpsuits?

9 A That's correct.

10 Q Is there any connection between the six?

11 A Just that they came back in the search criteria
12 that I used, sir.

13 Q I mean, do they live near each other or do you
14 know where the individuals' residences are from?

15 A No idea, sir.

16 Q It's just that when you went into your -- you
17 pulled that out of a Lexington County Sheriff's
18 Department Inmate Search?

19 A Yes, sir.

20 Q Did you know that the person you were trying to
21 identify was an inmate at the Lexington County
22 Sheriff's Department?

23 A At the time, he was not, no, sir.

24 Q He was not an inmate at the time?

25 A That's correct.

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1 **MR. WILLIAMS:** No other questions, Your Honor.

2 **THE COURT:** Redirect.

3 **MR. SCOTT:** Nothing further from the State,
4 Your Honor.

5 **THE COURT:** You can step down.

6 Have you got another witness?

7 **MR. SCOTT:** Yes, Your Honor. The State calls
8 Christopher Benjamin.

9 CHRISTOPHER BENJAMIN,
10 having been duly sworn, testified as follows:

11 **THE CLERK:** Once you're seated, state your full
12 name, spelling your last on the record.

13 **THE WITNESS:** Christopher Benjamin,
14 B-e-n-j-a-m-i-n.

15 DIRECT EXAMINATION

16 BY MR. SCOTT:

17 **Q** Mr. Benjamin, how far did you get in school?

18 **A** A semester in college.

19 **Q** Okay. So you graduated high school and you
20 spent one semester in college?

21 **A** Yes, sir.

22 **Q** Are you employed?

23 **A** Yes, sir.

24 **Q** Where are you employed?

25 **A** The Better Business Bureau.

- 1 Q How long have you been employed there?
- 2 A A year and a half.
- 3 Q Have you testified in court before?
- 4 A Never.
- 5 Q Do you remember October 21st, 2011?
- 6 A Yes, sir.
- 7 Q What were you doing that day?
- 8 A Working 9:00 to 3:00.
- 9 Q Okay. Do you work from 9:00 to 3:00 everyday?
- 10 A I work 9:00 to 5:00 Monday through Thursday and
- 11 then 9:00 to 3:00 Fridays.
- 12 Q So you remember this as being a Friday?
- 13 A Yes, sir.
- 14 Q And what time do you go into work at the Better
- 15 Business Bureau?
- 16 A 9:00.
- 17 Q How do you get to work?
- 18 A My grandfather.
- 19 Q You said you got off at three o'clock?
- 20 A Yes, sir.
- 21 Q Where was home at that time?
- 22 A 649 North Royal Tower.
- 23 Q What did you see when you got home?
- 24 A Tyrome and Breon sitting on my porch.
- 25 Q Okay. Who was Tyrome?

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1 A A homey of mine that I've known since I was a
2 child.

3 Q Are you related to him?

4 A No, sir.

5 Q Do you call him your cousin, though?

6 A I do.

7 Q And did you recognize the other person he was
8 with?

9 A No, sir, that was my first time meeting him
10 that day.

11 Q What did he look like, describe him?

12 A Skinny, dark skin, short hair.

13 Q Were you under the influence of alcohol or
14 drugs?

15 A No, sir.

16 Q They were standing outside, is that what you
17 said?

18 A Sitting on the porch, yes, sir.

19 Q It was three o'clock or 3:30 perhaps in
20 October?

21 A Yes, sir.

22 Q So was there daylight?

23 A There was.

24 Q And how close did you get to Tyrome and this
25 other individual on your front porch?

1 A I walked past them and then went to my --
2 inside my house.

3 Q Did you have a clear view of both of them?

4 A Yes, sir.

5 Q Did the other -- did Tyrome and this other
6 person go inside with you?

7 A Yes, sir.

8 Q Were you able to observe this man and Tyrome
9 once you were inside?

10 A Yes, sir.

11 Q Where did y'all go inside your house?

12 A We went straight to my room.

13 Q How big is your room?

14 A Like a room.

15 Q A 10 by 10?

16 A I'd say a 12 by 12.

17 Q 12 by 12?

18 A Yeah.

19 Q And what did you all do -- well, let me ask you
20 this. How close did you get to Tyrome and this
21 other individual in your room?

22 A Pretty close because I got a chair in my room,
23 so it's kind of confined.

24 Q Okay. What happened when you were in your
25 room?

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1 A Tyrome pulled out some marijuana. Breon pulled
2 out a gun.

3 Q Okay. At some point while you were in your
4 room, did you learn this other individual's name who
5 was with Tyrome?

6 A Yes, sir.

7 Q And what did he say his name was?

8 A Breon.

9 Q Did he tell you his last name?

10 A No, sir.

11 Q What did -- you said -- I'm sorry. Tyrome
12 pulled out weed and what did Breon do?

13 A Pulled out a gun.

14 Q Okay. How long were you with Tyrome Brennan
15 and Breon that day?

16 A I'd say about three hours.

17 Q Did you see Tyrome with Breon any time after
18 October 21st?

19 A Yes, sir.

20 Q When was that?

21 A The next day for sure, Saturday, and then on
22 and off throughout the week, I guess.

23 Q Okay. So you saw Breon with Tyrome more than
24 once?

25 A Yes, sir.

1 Q How long did you spend with him on Saturday?

2 A Not too long, maybe about an hour or maybe two.

3 Q And then after that, how many other times do
4 you think you saw him?

5 A I'm pretty sure I had seen him Sunday and then
6 I worked Monday through Friday again, so. I keep a
7 solid schedule.

8 Q Okay. But you saw him for at least three hours
9 on Friday, October 21st -- and he I'm speaking of is
10 Breon Mayers -- and then you saw him one to two
11 hours the next day, Breon?

12 A Yes, sir.

13 Q Do you remember being contacted by law
14 enforcement?

15 A Yes, sir.

16 Q Do you remember when that was?

17 A The 27th.

18 Q Okay. How do you remember that day?

19 A Or -- it had to be the 28th because Tyrome got
20 taken in the 27th and I think they called me the
21 next day.

22 Q Okay. Where did you meet the officer?

23 A The first time at my job.

24 Q The Better Business Bureau?

25 A Yes, sir.

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1 Q Did you give a statement?

2 A Yes, sir.

3 Q Do you remember that officer's name?

4 A Detective Freund, Friend, Frond.

5 Q Freund?

6 A Freund.

7 Q Okay. Did you see him again after you gave him
8 that statement?

9 A I don't think so. I think we just kept in
10 contact by -- oh, the day that I picked Breon out
11 the lineup.

12 Q All right. Do you remember what day that was?

13 A It was the day after that day, the 29th.

14 Q Where did y'all meet?

15 A At my job again.

16 Q Tell me about -- what did that photo lineup
17 look like?

18 A Six people on the lineup and I think it was in
19 color and it was in a binder.

20 Q Okay. And what color were the individuals?

21 A They were all black males.

22 Q What were you told, if anything, about the
23 lineup? What instructions were you given before you
24 made your selection?

25 A This person may or may not be in the lineup,

1 so. If it's not, just choose or...

2 Q Where at the Better Business Bureau did you
3 meet? Where were you shown the lineup?

4 A Outside.

5 Q How long did it take you to make your
6 selection?

7 A As soon as he opened the book, I already knew,
8 one second.

9 Q So would you say you were certain?

10 A Pretty certain, yes, sir.

11 Q Pretty certain or --

12 A Most definitely certain.

13 Q Let me show you State's 11 and 12.

14 A All right.

15 Q Do you recognize those?

16 A Yes, sir.

17 Q How are you able to recognize them?

18 A It's the same photos I seen when they showed me
19 the lineup the first time.

20 Q Well, do you see any marks on there that you're
21 familiar with?

22 A Yes, sir, my initials.

23 Q Okay. How did you select the photo on there?

24 A (Witness indicating.)

25 Q You pointed. Did you do anything else?

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1 A No, sir. I signed it.

2 Q Besides pointing, did you make any other marks
3 to indicate you were selecting a certain individual?

4 A My initials under the name and then I signed it
5 to make sure.

6 Q Okay. And are those -- are there any names
7 beside those pictures?

8 A No, sir, just numbers.

9 Q And did you do anything with the numbers?

10 A No, sir. Oh, I circled it.

11 Q You circled the numbers?

12 A Yes, sir.

13 Q And what number did you circle?

14 A Number two.

15 Q And who is number two a picture of?

16 A Breon.

17 Q And do you see Breon Mayers in the courtroom
18 today?

19 A Yes, sir.

20 Q Would you point to him and describe what he's
21 wearing?

22 A A blue -- a suit, blue, a tie.

23 Q It's the black male sitting beside the white
24 male with the beard?

25 A Yes, sir.

1 **MR. SCOTT:** Mr. Benjamin, please answer any
2 questions that Mr. Williams may have for you.

3 **THE WITNESS:** Will do.

4 **MR. WILLIAMS:** I don't have any questions.

5 **THE COURT:** Okay. You can step down.

6 Anything else?

7 **MR. SCOTT:** Nothing else, Your Honor.

8 **THE COURT:** You want to make an argument?

9 **MR. SCOTT:** Well, Your Honor, obviously, we
10 were trying to show Your Honor that the
11 identification procedure used on October 28th was
12 reliable and any in-court identification by
13 Mr. Benjamin would be reliable in the future.

14 **MR. WILLIAMS:** Your Honor, any objection would
15 be if they attempt to introduce the lineup card
16 because I think the lineup card is overly suggestive
17 in regards to -- and I assume they're not going to
18 try to do that.

19 **MR. SCOTT:** We don't intend to introduce that.

20 **MR. WILLIAMS:** Then that would be my only
21 concern.

22 **THE COURT:** Well, it doesn't sound like you
23 have one then.

24 **MR. WILLIAMS:** I don't.

25 **THE COURT:** Okay. Anything else?

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1 **MR. GRAHAM:** No, Your Honor. We're ready.

2 **THE COURT:** Okay. Bring the jury in

3 (The jury returns to the courtroom.)

4 **THE COURT:** All right. Folks, thank you for
5 your patience. We just had to take care of some
6 administrative matters before we got started, but
7 we're back on track now so the State can call their
8 next witness.

9 Mr. Solicitor, whenever you're ready.

10 **MR. SCOTT:** Thank you, Your Honor. The State
11 calls Chris Benjamin.

12 CHRISTOPHER BENJAMIN,
13 having been duly sworn, testified as follows:

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

16 **THE WITNESS:** Christopher Benjamin,
17 B-e-n-j-a-m-i-n.

18 DIRECT EXAMINATION

19 BY MR. SCOTT:

20 **Q** Mr. Benjamin, where are you from?

21 **A** Florence, South Carolina.

22 **Q** Do you still live in Florence?

23 **A** No, sir.

24 **Q** What town do you live in?

25 **A** Irmo.

- 1 Q Did you go to school?
- 2 A Not in Irmo. In Florence, I did.
- 3 Q Did you graduate?
- 4 A Yes, sir.
- 5 Q And did you go to college at all?
- 6 A For a semester, yes, sir.
- 7 Q How old are you?
- 8 A Twenty-one.
- 9 Q Do you have a job?
- 10 A Yes, sir.
- 11 Q And where do you work?
- 12 A The Better Business Bureau.
- 13 Q How long have you been working there?
- 14 A A year and a half, two years in October.
- 15 Q Okay. So would you have been working there
- 16 October 21st of 2011?
- 17 A Yes, sir.
- 18 Q How do you get to work in the morning?
- 19 A My grandfather.
- 20 Q What time does work start at the Better
- 21 Business Bureau for you?
- 22 A Nine o'clock.
- 23 Q And what time do you get off?
- 24 A 5:00 Monday through Thursdays and to 3:00 on
- 25 Fridays.

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1 Q And does your grandfather take you home?

2 A Yes, sir.

3 Q Tell me -- where was your home on October 21st,
4 2011?

5 A 649 North Royal Tower.

6 Q Do you remember getting home that day?

7 A Yes, sir.

8 Q Approximately, what time was it?

9 A Around 3:30.

10 Q What did you see when you got home?

11 A Breon and Tyrome sitting on my porch.

12 Q Well, did you recognize both of these men at
13 the time?

14 A It was my first time meeting Breon, but I knew
15 Tyrome.

16 Q And how have you known Tyrome?

17 A Since childhood.

18 Q Okay. Are you related to him?

19 A No, sir.

20 Q Do you call him your cousin, though?

21 A I do.

22 Q Okay. Let me back up for a minute. You
23 mention you live at 649 North Royal Tower?

24 A Yes, sir.

25 Q Give me the town and the zip code there.

- 1 A Irmo, South Carolina, 29063.
- 2 Q Okay. What's the name of that neighborhood?
- 3 A Friarsgate -- New Friarsgate.
- 4 Q New Friarsgate?
- 5 A Yes, sir.
- 6 Q When you were talking about Breon and Tyrome
- 7 being there and you were introduced to Breon that
- 8 day, did he tell you his name?
- 9 A Yes, sir.
- 10 Q Did he tell you his last name?
- 11 A No, sir.
- 12 Q You just knew him as Breon?
- 13 A Yes, sir.
- 14 Q And do you see Breon in this courtroom today?
- 15 A Yes, sir.
- 16 Q Would you point to him, describe him for us?
- 17 A The guy over there (indicating) in the suit,
- 18 blue suit, and tie beside the white guy.
- 19 Q The defendant over here?
- 20 A Yes, sir.
- 21 Q Tyrome, did you all go to school together?
- 22 A No, sir.
- 23 Q But you've known him since childhood?
- 24 A Yes, sir.
- 25 Q How had they gotten to your home that day?

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- 1 A I think Breon drove. It was a gold car.
- 2 Q Gold?
- 3 A Yes, sir.
- 4 Q Okay. Do you remember what kind of car it was?
- 5 A Saturn maybe, Taurus, Saturn.
- 6 Q Do you know for sure what kind of car it was?
- 7 A No, sir.
- 8 Q You think it was a gold color?
- 9 A It was a gold color.
- 10 Q All right. Two-door or four-door?
- 11 A Four-door.
- 12 Q Now, what happened when you got out -- did your
- 13 grandfather stick around?
- 14 A No, sir. He just dropped me off and left.
- 15 Q Okay. What happened after he dropped you off?
- 16 A He left and then me, Breon and Tyrome went into
- 17 my house.
- 18 Q Was it unusual to you that they were just
- 19 sitting on your front porch when you got home?
- 20 A Kind of, yes, sir.
- 21 Q What happened when you went inside your house?
- 22 A We went straight to my room.
- 23 Q And what happened there?
- 24 A Tyrome pulled out some marijuana and then Breon
- 25 pulled out a gun.

- 1 Q How much marijuana was it; do you remember?
- 2 A Two or three Os, ounces.
- 3 Q Two or three ounces. Had you smoked marijuana
- 4 with Tyrome before?
- 5 A Yes, sir.
- 6 Q And what did Breon show you?
- 7 A A gun.
- 8 Q Describe that gun.
- 9 A 9mm, black.
- 10 Q What did Tyrome tell you?
- 11 A That something just went down basically.
- 12 Q What went down; did he tell you?
- 13 A He proceeded to tell me, but I do believe that
- 14 Breon started telling me the rest of the story.
- 15 Q Okay. So Tyrome begins to tell you and then
- 16 Breon breaks in?
- 17 A Yes, sir.
- 18 Q What did Breon tell you?
- 19 A He was like that they went to -- they went to
- 20 this house and --
- 21 Q Do you know where the house was?
- 22 A No, sir, somewhere in Chapin or something like
- 23 that.
- 24 Q What did he say?
- 25 A That they went and went to go rob the guy

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1 basically. The plan was to tussle with him, but
2 since Breon went in first and since he had a gun, he
3 was saying that his first instinct was to shoot. So
4 as he goes in around the corner, he says that the
5 door was open and then the victim stepped out and
6 Breon said he shot him two times in the chest. And
7 then the guy grabbed his chest, fell and turned
8 pale, died.

9 Q How was he acting when he told you this story?

10 A Kind of like his adrenaline was rushing,
11 excited, if you will.

12 Q How did that make you feel?

13 A Pretty uncomfortable.

14 Q What was Tyrome doing?

15 A Just looking, kind of had a not so cool look on
16 his face.

17 Q What else did Breon say?

18 A Details of the story of how it happened. He
19 said he kicked the guy and told him to move for one
20 thing, but, clearly, he was dead. And then --

21 Q I'm sorry. He kicked the guy and told him to
22 move?

23 A Yeah, kicked him in the leg.

24 Q You're referring to the man he shot?

25 A Say it again.

1 Q You're referring to the man he shot?

2 A Yes, sir.

3 Q Okay. Go on.

4 A He also was like, well, this was his first body
5 and whatnot.

6 Q What does that mean?

7 A That he was the first person that he shot and
8 killed.

9 Q He referred to him as a body?

10 A Yes, sir.

11 Q Have you ever heard that term before?

12 A Yes, sir.

13 Q Where have you heard that?

14 A Songs, people.

15 Q Getting a body, that's what people say about
16 murdering people?

17 A I suppose, yes, sir.

18 Q How did you feel when he said that?

19 A I felt uncomfortable because he was pretty
20 excited about it.

21 Q Let me back up for a moment because I should
22 have covered this before. When he pulled out the
23 marijuana, you saw the marijuana before the gun?

24 A Yes, sir.

25 Q Were you excited to see some marijuana?

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1 A No. I was wondering how it got in my house.

2 Q Were you excited when you first saw the gun?

3 A No, sir.

4 Q What did you say about the gun before he told
5 you the story?

6 A I actually wanted to buy it.

7 Q Why did you want a gun?

8 A Because I'm above the age of 18, I'm allowed to
9 have a gun.

10 Q You asked him to buy the gun, though?

11 A Yes, sir.

12 Q What did he say about it?

13 A He was like, Nah, you can't have this. This is
14 my baby.

15 Q He called the gun his baby?

16 A Yes, sir.

17 Q Why were they at your house? Why did they come
18 to Christopher Benjamin's house that day?

19 A I have no idea.

20 Q What did they want you to do?

21 A I guess they wanted to stash the stuff there,
22 my assumption is, since it was the farthest way from
23 Chapin.

24 Q All right. You guess they wanted to stash
25 their stuff there or did they tell you they wanted

1 to stash their stuff there?

2 A They didn't tell me. It was already there when
3 I got home. I didn't know they were doing that.

4 Q Well, what did you say about them wanting to
5 keep a gun and marijuana at your house?

6 A I was pretty confused at first. They didn't
7 keep the marijuana there. They just left the gun
8 there.

9 Q Why did they want to keep the gun at your
10 house?

11 A I have no idea. I guess because they knew I
12 wasn't going to touch it --

13 MR. WILLIAMS: Objection to speculation, Your
14 Honor.

15 THE COURT: Sustained.

16 BY MR. SCOTT:

17 Q How did you feel -- did you agree to do it?
18 Did you agree to let them stash the gun there?

19 A Yes, sir.

20 Q Why in the world would you do that?

21 A Stupidity. I wasn't thinking straight
22 honestly.

23 Q They had told you that gun had been used in a
24 murder?

25 A Yes, sir.

CHRISTOPHER BENJAMIN - DIRECT BY MR. SCOTT

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1 Q And you still agreed to let them keep it in
2 your drawers?

3 A I did.

4 Q I said drawers. Where did they keep it?

5 A In the bottom drawer.

6 Q The dresser?

7 A Yes, sir.

8 Q How did you feel after you heard this entire
9 story of what had just happened?

10 A Really kind of shocked. I really didn't want
11 no parts of it.

12 Q But you still agreed to let them keep the gun
13 at your house?

14 A Stupidity part.

15 Q And how old were you at the time?

16 A Twenty.

17 Q All right. Well, after they tell you the story
18 and they ask you to keep the gun at your house and
19 you agree, what did y'all do after that?

20 A I do believe that we went to the daycare, which
21 was right up the street from my house. I can't
22 remember if he bought -- he bought some speakers
23 from me. I can't remember if he bought speakers
24 from me that day or was it Saturday.

25 Q Who's he?

- 1 A Breon.
- 2 Q What kind of speakers were they?
- 3 A Two 12 Kickers.
- 4 Q All right. He bought some speakers from you.
- 5 Where did you say y'all went after that?
- 6 A To a daycare.
- 7 Q Then where?
- 8 A If he bought the speakers that day, we went to
- 9 Best Buy.
- 10 Q What was at Best Buy?
- 11 A Speaker wires.
- 12 Q What did you do after that?
- 13 A I went home.
- 14 Q How long did you spend with Tyrome and Breon
- 15 Mayers that day?
- 16 A About three hours, two or three hours.
- 17 Q Did you see those two again?
- 18 A The next day, Saturday, yes, sir.
- 19 Q Okay. Why -- where did you see them?
- 20 A At my house.
- 21 Q Why were they at your house?
- 22 A To check on the gun.
- 23 Q What were they checking on? Just to see if it
- 24 was still there?
- 25 A Yes, sir, that's Breon's baby. I guess he

1 wanted to make sure that I didn't throw it away or
2 something like that.

3 Q All right. Do you remember eventually getting
4 a visit from law enforcement?

5 A Yes, sir.

6 Q What were they wanting from you?

7 A They wanted the gun and then they asked for a
8 statement as well.

9 Q Did you deny having the gun?

10 A No, sir.

11 Q Did you give them a statement?

12 A Yes, sir.

13 Q Did you tell them how you got the gun?

14 A Yes, sir.

15 Q Where did you first meet with law enforcement?

16 A They met me at my job the first time.

17 Q Where did they take you?

18 A Back to my house.

19 Q To do what?

20 A Get the gun and write a statement.

21 Q Did you show them where the gun was?

22 A Yes, sir.

23 Q Did you try to hide anything from them?

24 A No, sir, not at all.

25 Q Where was the gun when you showed it to them?

- 1 A In my drawer, same spot where they put it.
- 2 Q Did you ever touch that gun?
- 3 A Only the time when I asked to buy it, but after
- 4 that, no, sir.
- 5 Q Do you remember any pictures being taken?
- 6 A Yes, sir.
- 7 (State's Exhibit Numbers 13 through 16,
- 8 photograph, marked for identification purposes.)
- 9 Q I'm going to show you State's --
- 10 (Mr. Williams reviewing documents.)
- 11 Q I'm going to show you State's 13, 14, 15 and
- 12 16.
- 13 A All right.
- 14 Q State's Exhibit Number 14, what is that?
- 15 A My dresser drawer, my room.
- 16 Q Was that how it appeared October 21st, 2011?
- 17 A Yes, sir.
- 18 Q Do you remember the officer who was there that
- 19 day?
- 20 A It could have been Detective Freund, but there
- 21 was another officer with him as well.
- 22 Q Detective Freund was there?
- 23 A I think.
- 24 Q Okay. And describe what's in that picture.
- 25 A My dresser and my pants.

CHRISTOPHER BENJAMIN - DIRECT BY MR. SCOTT

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1 Q Okay.

2 A Table.

3 Q Is that how -- had that gun been moved at all
4 since the time it was put there?

5 A No, sir.

6 Q All right. What about 13, 15 and 16, what are
7 those photos of?

8 A The 9mm gun that was in my drawer.

9 Q And do each of those pictures accurately
10 reflect how your room and that gun and everything
11 appeared on October 21st, 2011?

12 A Yes, sir.

13 MR. SCOTT: Your Honor, the State would offer
14 13, 14, 15 and 16 for admission into evidence.

15 MR. WILLIAMS: Without objection, Your Honor.

16 THE COURT: Admitted.

17 (State's Exhibit Numbers 13 through 16,
18 photographs, admitted into evidence.)

19 BY MR. SCOTT:

20 Q Did you come clean with the whole story to the
21 officers when you first met with them?

22 A Yes, sir.

23 Q Okay.

24 (State's Exhibit Number 17, pistol, marked
25 for identification purposes.)

1 Q This is State's Number 17. Do you recognize
2 this?

3 A Yes, sir.

4 Q How are you able to do so?

5 A That's the gun that was in the picture.

6 Q Okay. Where else have you seen this gun?

7 A In my drawer.

8 Q How long was that gun in your possession?

9 A From -- to the 21st through the 27th, 28th.

10 Q A week?

11 A Yes, sir.

12 Q Is that the gun Breon Mayers left with you?

13 A Yes, sir.

14 Q Is this the gun you gave Detective Freund?

15 A Yes, sir.

16 MR. SCOTT: Your Honor, the State would offer
17 State's Exhibit Number 17 for admission into
18 evidence.

19 MR. WILLIAMS: I haven't seen this yet.

20 (Pause.)

21 MR. WILLIAMS: Your Honor, I don't know that
22 there's been a proper foundation laid yet.

23 THE COURT: Well, I believe it has. He stated
24 that it was the same gun that was brought -- given
25 to him, which he turned over to the police officer.

CHRISTOPHER BENJAMIN - DIRECT BY MR. SCOTT

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1 I think that's probably about as good as you're
2 going to get.

3 Folks, we're going to have the admission of a
4 firearm now and firearms make a lot of people
5 nervous, including myself. We want you to know that
6 we take precautions about handling a firearm in the
7 courtroom.

8 First of all, you'll notice there's a lock that
9 goes through it and so it goes in through the
10 chambers so no bullets can go in. It's been
11 checked. There's nothing in there and nothing can
12 go in there.

13 A firearm when it gets handled in a court like
14 this wherein there's -- they have to act with
15 certain rules about handling them. Number one, they
16 only handle it by the barrel. No waving it around.
17 Ammunition is not going to be with the gun. So
18 later on if there is any ammunition, I don't know if
19 there is at this point, if there'll be any
20 ammunition, but if there is and you decide you want
21 to see it later on in the room, the ammunition and
22 the gun will not be in the room at the same time.

23 We take these precautions so that it puts you
24 at ease, but there's no possibility that that gun is
25 going to have ammunition put in it or if there is

1 any in it, then special precautions have been taken
2 to make sure that none was in it and that it be
3 handled properly while it's in the courtroom. So we
4 want to put you at ease about that, okay.

5 It's admitted.

6 (State's Exhibit Number 17, pistol, admitted
7 into evidence.)

8 BY MR. SCOTT:

9 Q Now, after you turn the gun over to law
10 enforcement and gave your statement, were you paid a
11 visit by law enforcement after that?

12 A Yes, sir.

13 Q Do you remember when that was?

14 A It had to be the day that they took the swabs,
15 the swab test.

16 Q What -- tell me about the swab test.

17 A They wanted to check and see if my DNA was
18 matched to the gun.

19 Q Did you give consent for them to take your DNA?

20 A Yes, sir.

21 Q Did they ask you for consent to take your DNA?

22 A Yes, sir.

23 Q Did you refuse at any time?

24 A No, sir.

25 Q How did they take the sample of your DNA?

1 A Swab test in my mouth, both sides of my cheeks.

2 Q What did they use?

3 A A Q-tip looking thing.

4 Q Do you remember the officer who took that
5 sample?

6 A Yes, sir.

7 Q What was his name?

8 A I can't remember him by name, but I know him by
9 face.

10 Q Who did you see touch that gun on October the
11 21st, 2011?

12 A Just me and Breon.

13 Q Who gave that gun to you?

14 A Breon.

15 Q Who brought it into your house?

16 A That I don't know. I would assume Breon, but I
17 wasn't there when they brought it in. I was at
18 work.

19 Q Who called that gun their baby?

20 A Breon.

21 Q Who told you the story about shooting a man in
22 Chapin?

23 A Breon.

24 Q Is this Breon Mayers sitting over here?

25 A Yes, sir.

1 **MR. SCOTT:** Please answer any questions
2 Mr. Williams may have for you.

3 **THE WITNESS:** Will do.

4 **THE COURT:** Cross.

5 **MR. WILLIAMS:** Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. WILLIAMS:

8 **Q** Mr. Benjamin.

9 **A** Yes, sir.

10 **Q** The weapon which you just identified, is there
11 anything distinctive about that weapon versus any
12 other 9mm pistol?

13 **A** No, sir. The only distinctive part of it is
14 that that's the one they left with me, Breon left
15 with me.

16 **Q** I mean, can you look at it -- is there anything
17 about this particular weapon which you're looking at
18 which is distinctive from any other 9mm weapon?

19 **A** No, sir.

20 **Q** Having said that, if I came in to court five
21 minutes from now or something like that and handed
22 you a bag or handed you a 9mm that looked just like
23 this, you couldn't say which 9mm weapon was the one
24 that supposedly Breon handed you, can you?

25 **A** Well, I know no other 9mm were in my house.

CHRISTOPHER BENJAMIN - CROSS BY MR. WILLIAMS

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1 Q So a 9mm pistol was in your house is all you
2 can say, right?

3 A That one, yes, sir.

4 Q And why do you say it's this one?

5 A Because no one else would bring a gun in my
6 house.

7 Q But this one looks like every other 9mm,
8 doesn't it?

9 A But that's the one that was in my drawer --

10 Q Because?

11 A -- and stayed in my drawer.

12 Q Because?

13 A No one else comes to my house.

14 Q Because you put your marks on it?

15 A What marks would I have to put on there?

16 Q Now, you call Tyrome your cousin?

17 A Yes, sir.

18 Q And as I recall your testimony, you said that
19 Tyrome and Breon come to your house on the 21st, is
20 that right? And you were not home at the time -- or
21 they were sitting on the front porch when you got
22 home from work?

23 A Yes, sir.

24 Q And they come inside. And when they come
25 inside, Breon starts telling you about what

1 happened?

2 **A** Yes, sir.

3 **Q** Where is the gun then?

4 **A** It was already out my drawer by the time he
5 started telling me the story.

6 **Q** So Breon doesn't bring the gun in. You don't
7 see Breon with the gun at that point in time? The
8 gun's already in your drawer?

9 **A** Right, until I get home.

10 **Q** Okay. I mean, you don't know what happened
11 before you got home, do you?

12 **A** No, sir.

13 **Q** And when Breon was telling you all those
14 things, you're certain that Breon was giving you all
15 these facts about what happened?

16 **A** It came from his mouth, yes, sir.

17 **Q** Do you remember giving a statement to the same
18 detective on or about the 27th of October 2011?

19 **A** Yes, sir.

20 **Q** Does this look like your statement that you
21 gave that day?

22 **A** That is my statement.

23 **Q** Would you look at the first paragraph, last
24 sentence on the first paragraph?

25 **A** Yes, sir.

1 Q Did you tell the detective at that point in
2 time that Breon explained what was going on or what
3 is -- what is the word that you used? What is the
4 sentence that you used in describing how you learned
5 about this murder?

6 A Breon proceeded to tell me the story.

7 Q And he says that they proceeded to tell me
8 about their day?

9 A Yes, sir. Tyrome started to tell the story,
10 but Breon cut him off and wanted to tell the story.
11 So Breon proceeded to tell the story.

12 Q So Breon is going to come to see you who is
13 acknowledged the cousin, if you will, of Tyrome,
14 he's going to tell you all these things about
15 himself and you never -- you've never met the man
16 before?

17 A Never.

18 Q Now, I think you said that after this was --
19 what happened to the marijuana that you said was in
20 your house?

21 A They took it after that.

22 Q What was left in the house when they took the
23 marijuana?

24 A Just the pistol.

25 Q And that's the pistol you wanted to buy; is

- 1 that right?
- 2 **A** Yes, sir.
- 3 **Q** And you subsequently did not see them again, is
- 4 that right, until the next day?
- 5 **A** Correct.
- 6 **Q** And you saw both of them for two to three hours
- 7 the next day?
- 8 **A** Yes, sir, estimate.
- 9 **Q** Okay. And you did not see Breon again; is that
- 10 right?
- 11 **A** I saw him around, but never...
- 12 **Q** You never spoke to him?
- 13 **A** Nah, not spend a whole day with him.
- 14 **Q** Did you see your cousin again?
- 15 **A** Yes, sir.
- 16 **Q** When did you see your cousin?
- 17 **A** I couldn't be specific on that day, but some
- 18 time throughout the week.
- 19 **Q** When was this last time you saw your cousin?
- 20 **A** The day he turned himself in.
- 21 **Q** How many times did you see your cousin between
- 22 that time and the time in which he turned himself
- 23 in?
- 24 **A** I'd say two to three.
- 25 **Q** And what did you and your cousin talk about for

1 those two to three times?

2 A He kind of filled me in on the rest of the
3 story.

4 Q Your cousin filled you in about the rest of the
5 story?

6 A Yes, sir.

7 Q And you were the last person that your cousin
8 talked to before he was picked up, weren't you?

9 A Yes, sir. I convinced him to turn himself in.

10 Q Because you thought it was the right thing to
11 do?

12 A Yes, sir.

13 Q Now, have you been charged with anything?

14 A No, sir. With this case? No.

15 Q You seem surprised.

16 A Why would I be surprised?

17 Q Do you think you did anything wrong?

18 A Keeping the weapon, I definitely think that was
19 wrong. And I said that was pretty stupid on my
20 part.

21 Q Because you didn't call the police and let them
22 know that you had some sort of weapon on October the
23 21st, did you?

24 A No, sir.

25 Q And you didn't call the police on October the

1 22nd, did you?

2 A No, sir.

3 Q Or the 23rd?

4 A No, sir.

5 Q Matter of fact, the only way the police got
6 this weapon is because Tyrome gave the police
7 officer the message to tell you it was okay to give
8 the gun to the police officer?

9 A Correct.

10 Q Why would Tyrome set it up that way that it was
11 okay for you to give the police officer the weapon?

12 A Because I, I do believe that everybody knows
13 that Tyrome or any of the -- any of the other people
14 were involved with it. It was Breon's gun. Breon
15 shot the guy.

16 Q You don't know any of that?

17 A It came from Breon's mouth.

18 Q Why would Tyrome tell you it's okay to give the
19 gun to the police officer?

20 MR. SCOTT: Your Honor, I'm going to object
21 just based on the grounds that he's calling for
22 speculation on the part of Mr. Benjamin.

23 THE COURT: Sustained.

24 BY MR. WILLIAMS:

25 Q He clearly told you not to give it to anyone

1 unless he said it was okay, didn't he?

2 A I think it was said that just to leave it
3 there. I wasn't about to throw it in the ocean or
4 anything like that. I think that would have got
5 myself into more trouble if this would have had
6 happened.

7 Q Yes, sir. Now, you said you touched the gun.
8 Did you touch any of the bullets?

9 A No, sir.

10 Q And did you talk to Tyrome those two to three
11 times each time you talked to him about what
12 happened that day and about keeping the gun and when
13 you could turn it over and stuff like that?

14 A Can you repeat that question?

15 Q Every time you met with Tyrome for these two or
16 three times that you met with him, did you talk to
17 him about when you could turn the gun over or talk
18 to him about the facts of the case and things like
19 that?

20 A No, sir.

21 Q What all did you talk about?

22 A Well, I think it was kind of unsettled with him
23 and he just kind of kept going over it and he, he
24 felt pretty bad.

25 Q Until he was sure that you understood what went

1 on?

2 A I mean, I had all the details basically, but
3 his side was, you know, that they were supposed to
4 tussle with the guy, but since Breon went in first
5 and he said his first instinct was to kill, that was
6 all on Breon.

7 Q Now, this is Tyrome telling you this, isn't it?

8 A Breon and Tyrome.

9 Q Did you ever get any of the marijuana that had
10 been at the house?

11 A No, sir. No, sir.

12 Q How many times has Breon brought -- I mean,
13 Tyrome brought you marijuana?

14 A Not that often, he moved away. I was in the
15 process of actually slowing down because I had just
16 got that job.

17 Q Slowing down. Are you a drug dealer? Do you
18 sell marijuana for him?

19 A No, sir.

20 Q Well, is it normal for him to bring ounces of
21 marijuana to your house?

22 A No, sir.

23 Q How many times has he done that?

24 A Never.

25 MR. WILLIAMS: I don't have any other

CHRISTOPHER BENJAMIN - REDIRECT BY MR. SCOTT

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1 questions, Your Honor.

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. SCOTT:

5 Q Why didn't you call the police those seven days
6 before they met you? I mean, is there any other
7 reason besides stupidity? There's got to be a
8 better reason.

9 A I guess I didn't want to get anybody in trouble
10 really. That's -- I just -- I really didn't want to
11 be involved with it.

12 Q Why didn't you tell them they couldn't leave it
13 at your house?

14 A No answer, just stupidity on my part.
15 Honestly, I kind of had a feeling that they were
16 going to get caught and so I just kind of let it --
17 and that's why it was so easy for me to give them
18 the gun.

19 Q Give who the gun?

20 A The police officer.

21 Q Did you ever try to hide it from them that you
22 had that gun?

23 A No, sir.

24 Q Who told you not to give that gun to anyone?

25 A Breon.

1 Q Tyrome, you're talking about days leading up to
2 his arrest, y'all hung out some you said?

3 A Yes, sir.

4 Q How was he behaving those days?

5 A He was pretty jittery, kind of nervous. They
6 were getting -- excuse me -- getting information as
7 it was happening as the investigation was going on,
8 they were getting more and more information, so.

9 Q How was he acting the last time you saw him?

10 A Pretty nervous. We actually drunk before he
11 turned himself in.

12 Q How was Breon acting when he told you about
13 that story?

14 A He was pretty excited. He had his adrenaline
15 pumping. And he was just, Oh, yeah, I got my first
16 body, blasé -- or, excuse me.

17 Q Do you have a cell phone?

18 A Yes, sir.

19 Q Did you have one in October of last year?

20 A Yes, sir.

21 Q What was that number?

22 A 84 --

23 MR. WILLIAMS: Your Honor, I would object to
24 that. It's beyond cross.

25 THE COURT: Sustained.

1 BY MR. SCOTT:

2 Q You mentioned -- you mentioned somebody
3 contacting you. Did Mr. Williams ask you about
4 Tyrome contacting you?

5 A Who's Mr. Williams?

6 Q Oh, I'm sorry. That was the white-haired
7 gentleman that was talking to you a-minute ago.

8 A Okay.

9 Q And did he ask you about Tyrome contacting you
10 about -- or somebody contacting you about the gun?

11 A No, sir.

12 Q From the jail?

13 A No, sir.

14 Q How did law enforcement get in contact with
15 you?

16 A They called my cell phone.

17 Q Okay. What number did they call?

18 A (843) 206-9316.

19 Q You were talking about when you were with
20 Tyrome and Breon leading up to their arrest, I think
21 you said one of them was jittery and law enforcement
22 was gathering information. Who were they gathering
23 information on?

24 MR. WILLIAMS: Objection, speculation.

25 THE COURT: Sustained.

1 BY MR. SCOTT:

2 Q Why was Tyrome jittery?

3 MR. WILLIAMS: Speculation, Your Honor, same
4 objection.

5 THE COURT: Sustained.

6 BY MR. SCOTT:

7 Q Let me ask you, while you spent three hours on
8 October 21st with Breon and Tyrome, you spent, I
9 think you said, an hour to two hours the next day
10 with them, do you recall Breon having a phone?

11 A Yes, sir.

12 Q Do you recall him making phone calls?

13 MR. WILLIAMS: Objection, beyond cross.

14 THE COURT: Sustained.

15 MR. SCOTT: Nothing further, Your Honor.

16 MR. WILLIAMS: No questions on recross.

17 THE COURT: You can step down.

18 Next witness.

19 MR. SCOTT: Your Honor, the State calls Charles
20 Benjamin.

21 CHARLES MACK BENJAMIN,

22 having been duly sworn, testified as follows:

23 THE CLERK: Have a seat right up there. Once
24 you're seated, state your full name on the record,
25 spelling your last.

CHARLES MACK BENJAMIN - DIRECT BY MR. SCOTT

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1 **THE WITNESS:** My name is Charles Mack Benjamin,
2 B-e-n-j-a-m-i-n, Benjamin.

3 DIRECT EXAMINATION

4 BY MR. SCOTT:

5 **Q** Thank you. Mr. Benjamin, how old are you?

6 **A** Sixty-seven.

7 **Q** Do you work?

8 **A** I'm retired, but I -- I -- my family owns a
9 small business and I assist my children in the
10 business.

11 **Q** What kind of business is it?

12 **A** Painting, sir.

13 **Q** Is that the T-shirt you're wearing today,
14 Benjamin, I think it says, And Mitchell Painting?

15 **A** Yes, sir.

16 **Q** And where did you retire from? What line of
17 work were you in?

18 **A** I was a railroad engineer.

19 **Q** How many years?

20 **A** Thirty-two.

21 **Q** And where do you -- what side of town do you
22 live on nowadays?

23 **A** I live on Irmo -- in Irmo.

24 **Q** Do you have family that lives around Irmo?

25 **A** Sir?

- 1 Q Do you have family that lives in Irmo?
- 2 A Just my wife and children and grandchildren.
- 3 Q How many children do you have?
- 4 A I have four children.
- 5 Q And how many grandchildren?
- 6 A Four.
- 7 Q Do you have a grandchild named Chris Benjamin?
- 8 A Yes, sir.
- 9 Q Where does he work?
- 10 A He works with the Better Business Bureau in
- 11 Columbia, Columbia branch.
- 12 Q Does he have a car?
- 13 A No, sir.
- 14 Q How does he get to work?
- 15 A I takes him to work.
- 16 Q How does he get home from work?
- 17 A I picks him up.
- 18 Q Do you remember October 21st of last year?
- 19 A Yes, sir.
- 20 Q Did you take him to work then?
- 21 A Yes, sir.
- 22 Q What time does he start work?
- 23 A 9:00 a.m.
- 24 Q And on Fridays, what time does he get off?
- 25 A 3:00 p.m.

1 Q Did you take him home from work that day?

2 A Yes, sir.

3 Q And do you remember the address he was living
4 at October 21st, 2011?

5 A Not the house number, I remember the street.

6 Q What was the street?

7 A North Royal Tower.

8 Q Okay. What do you remember seeing when you
9 dropped him off that day?

10 A I saw a car and two -- two males in the yard,
11 two or three. I know it wasn't over -- I thought it
12 was just two, but someone said it was three. I just
13 can remember just two.

14 Q You remember two?

15 A Yes, sir.

16 Q Did you recognize either one of them?

17 A Yes, sir.

18 Q Describe -- who was the one you recognized?

19 A Tyrome.

20 Q Tyrome, what's his last name; do you know?

21 A No, sir.

22 Q How long has -- who is Tyrome?

23 A Tyrome is a young man who grew up in the
24 neighborhood that I was familiar with ever since he
25 was about ten years old.

1 Q You don't know his last name, though?

2 A No, sir.

3 Q Who's he friends with?

4 A He is friends with my grandson, Christopher.

5 Q Okay. I'm going to assume that -- well, what

6 is the -- what color is Tyrome? I'm just going to

7 ask you that.

8 A What color is he?

9 Q Yes, sir.

10 A He's brown. Are you saying black? You mean --

11 Q Is he African-American?

12 A Yeah, Afro-American.

13 Q What about the other boy or was it a boy?

14 A It was a boy, a young man.

15 Q Do you remember what color he was?

16 A He was black.

17 Q Did you recognize him?

18 A No, sir.

19 Q Could you give a description of him other than

20 his race?

21 A No, sir. I didn't pay him that much attention.

22 Q Why weren't you paying attention?

23 A Sir?

24 Q Why weren't you paying attention?

25 A Because it didn't seem unusual for Tyrome to be

WILLIAM FREUND - DIRECT BY MR. SCOTT

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1 in Christopher's yard. And the other gentleman, I
2 didn't have any reason to see anything unusual or
3 think anything unusual.

4 Q Okay. Do you recall the car? Do you recall
5 anything about that car you saw there that day?

6 A Did I do what now?

7 Q What do you remember about the car you saw?

8 A Not very much. Not very much.

9 MR. SCOTT: Okay. Thank you. Please answer
10 any questions Mr. Williams may have.

11 MR. WILLIAMS: No questions, Your Honor.

12 THE COURT: You can step down. Thank you.

13 MR. SCOTT: The State calls Bill Freund.

14 WILLIAM FREUND,

15 having been duly sworn, testified as follows:

16 THE CLERK: Have a seat, please, sir. Once
17 you're seated, state your name, spelling your last,
18 please.

19 THE WITNESS: My name is William Freund. Last
20 name is spelled F, as in Frank, -r-e-u-n-d.

21 DIRECT EXAMINATION

22 BY MR. SCOTT:

23 Q Where do you work, Mr. Freund?

24 A I work for the Lexington County Sheriff's
25 Department.

1 Q How long have you been there?

2 A Since November of 2008.

3 Q Do you have any prior law enforcement
4 experience?

5 A I do. I was a police officer in Arlington
6 County, Virginia, from July of 2006 until November
7 of 2008.

8 Q What are your current duties at Lexington
9 County?

10 A Since August of 2010, I have been a major
11 crimes investigator.

12 Q What does that mean? What is major crimes?

13 A Major crimes are any personal crimes. It would
14 be anything from criminal domestic violence to armed
15 robbery, assaults, homicide, any personal crimes.

16 Q And what does an investigator do?

17 A My job is basically to talk to people and to
18 try and identify if there was a crime committed and
19 if so, who it is that is responsible for it.

20 Q Okay. October 21st of last year, did you have
21 an occasion to become involved in an investigation
22 of a murder that occurred at Road in
23 Chapin?

24 A I did.

25 Q Is that in Lexington County?

WILLIAM FREUND - DIRECT BY MR. SCOTT

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1 **A** It is.

2 **Q** And when did you become involved in that case?

3 **A** A little bit after one o'clock in the
4 afternoon, on that day, the call came out and I
5 responded with another detective to the incident
6 location.

7 **Q** What was your involvement that day?

8 **A** I was one of the initial investigators on
9 scene. I talked to a couple of people that had
10 arrived on the scene and found Mr. Cannon. I took
11 statements from them and then proceeded in the
12 helping with the execution of the search warrant on
13 the residence that day.

14 **Q** What did you take from the residence that day?

15 **A** What did I take? I didn't take anything.

16 **Q** What other officers were in there with you?

17 **A** Detective Ellis was the other investigator.
18 Detective Derrenbacher came a little bit later. And
19 the CSIs, the crime scene investigators that were
20 there, were CSI David Day and CSI Renee Strickland.

21 **Q** On October 27th, 2011, had anyone been arrested
22 in connection with this crime?

23 **A** My understanding on that date, Mr. Caughman and
24 Tyrome, I'm forgetting his last name right now, had
25 both been arrested, but Jermaine and Tyrome were

1 their first names.

2 **Q** Were you able to interview any of these people
3 on October the 27th?

4 **A** I interviewed both of them, Jermaine and
5 Tyrome.

6 **Q** After speaking with Tyrome Brennan, what did
7 you do?

8 **A** Tyrome had given me a phone number of his
9 cousin, Christopher Benjamin, and I called
10 Christopher.

11 **Q** After calling Mr. Benjamin, what did you do?

12 **A** I made arrangements with him to pick him up
13 from his place of employment and drive him to his
14 residence to retrieve a handgun that he had.

15 **Q** Did you retrieve it?

16 **A** Yes, I did.

17 **Q** What was that piece of evidence?

18 **A** I was told through Christopher that that was --

19 **MR. WILLIAMS:** Objection to hearsay, Your
20 Honor.

21 **THE COURT:** Sustained.

22 **BY MR. SCOTT:**

23 **Q** Were you able to retrieve any evidence that
24 day?

25 **A** I was.

WILLIAM FREUND - DIRECT BY MR. SCOTT

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1 (State's Exhibit Numbers 18 and 19,
2 photographs, marked for identification purposes.)

3 Q I'm going to show you State's 18 and 19. Do
4 you recognize those?

5 A I do.

6 Q How are you able to do so?

7 A These are photographs that I took.

8 Q And does that -- where did you observe those?

9 A These photographs were taken in Christopher
10 Benjamin's bedroom at the house located at 649 North
11 Royal Tower Drive in Irmo.

12 Q What was the date those pictures were taken?

13 A It was the 27th of October last year.

14 Q Do those pictures fairly and accurately
15 represent what you observed?

16 A Yes, they do.

17 Q On October 27th, 2011?

18 A Yes, they do.

19 MR. SCOTT: State offers 18 and 19 for
20 admission into evidence.

21 MR. WILLIAMS: Without objection, Your Honor.

22 THE COURT: Admitted.

23 (State's Exhibit Numbers 18 and 19,
24 photographs, admitted into evidence.)

25 BY MR. SCOTT:

1 Q I also want to show you 13, 14, 15 and 16.

2 A (Witness reviewing photographs.)

3 Q What are those pictures of?

4 A This is pictures of the weapon that I recovered
5 that day from that residence.

6 Q Tell me the procedure you used to recover that
7 gun.

8 A First, I photographically documented where I
9 found that weapon. Then after I put gloves on, I
10 cleared any rounds that were in the chamber and made
11 sure the weapon was safe before photographing the
12 weapon and the magazine.

13 Q Why do you put gloves on?

14 A I don't want to spread my DNA to a potential
15 piece of evidence.

16 Q Okay. So you photographed it, you picked it up
17 with your gloves. What did you do next?

18 A After clearing the weapon, I once again removed
19 a magazine from the weapon, took photographs of the
20 cleared weapon and the magazine and then removed the
21 rounds that were in the magazine. There were three
22 9mm rounds found in that weapon. And then
23 photographed the rounds next to the magazine.

24 Q How did you -- did you store the gun in
25 anything?

WILLIAM FREUND - DIRECT BY MR. SCOTT

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1 **A** After taking all of the photographs, I placed
2 the gun in a brown paper bag and put it in the trunk
3 of my vehicle while I was collecting a statement
4 from Mr. Benjamin.

5 **Q** I apologize. Where did you -- you put it
6 where?

7 **A** The weapon, magazine and rounds I put into a
8 brown paper bag that I then placed in the trunk of
9 my vehicle while I continued speaking to
10 Mr. Benjamin and getting a statement from him.

11 **Q** After placing the magazine, rounds and -- what
12 kind of gun was it?

13 **A** It's a Hi-Point 9mm.

14 **Q** After -- after putting it in a paper bag and
15 putting it in the trunk of your car, where did you
16 take the gun?

17 **A** After I finished at that residence, I then
18 proceeded directly to the sheriff's department where
19 I entered the handgun and rounds and magazine into
20 evidence.

21 **Q** At Lexington County?

22 **A** Yes.

23 **Q** Who did you log the gun, rounds and magazine in
24 with?

25 **A** We are able to log it into the computer. It

1 was at about 7:45 in the evening, so there was no
2 evidence custodian there. So I placed the -- into
3 locker 14 and secured the locker and did the
4 paperwork showing that that's where I left the
5 evidence.

6 Q Did anyone -- did you come into contact with
7 anybody in between the North Royal Tower address and
8 the drop box at the sheriff's department?

9 A No.

10 Q Let me show you State's Number 17. Do you
11 recognize that?

12 A Yes, I do.

13 Q How are you able to do so?

14 A That's the weapon that I collected from North
15 Royal Tower Drive.

16 Q Do you recognize anything else in that bag?

17 A I do. There's another bag in here containing
18 the magazine and three rounds that I collected.

19 Q Okay. And you would have put all those in the
20 brown paper bag and carried them to the drop box?

21 A Yeah. They all were in the paper bag together.
22 When -- once I got to the place where we store
23 evidence, the handgun gets sealed in a bag separate
24 from the magazine and the rounds.

25 Q And who sealed it in the bag?

WILLIAM FREUND - DIRECT BY MR. SCOTT

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1 A I did.

2 Q Okay. Did you mark the bag in any way?

3 A I do. And it's still visible on the magazine
4 and the rounds, but I put evidence tape around it
5 and initial over it showing that I'm the person that
6 sealed it.

7 Q What about the gun, was it sealed in a similar
8 fashion?

9 A The gun was sealed in a similar fashion.

10 Q And what's the purpose of putting it -- do you
11 have a name for that kind of package?

12 A It's evidence.

13 Q Evidence package. And how is it unique from
14 any other plastic bag?

15 A This -- the bag that I sealed it in was just a
16 simple plastic bag. My understanding is when it
17 goes to get tested outside of the sheriff's
18 department, it gets put into different bags, but I
19 put it in just a simple plastic bag.

20 Q What do you seal that plastic bag with?

21 A The evidence tape.

22 Q What's the purpose of evidence tape?

23 A It documents who -- it starts a chain of
24 custody. It shows that the -- I'm the person that
25 sealed it in that bag. And the only way that the

1 next person can get to it is by breaking the seal.

2 Q And do you put your signature on the seal?

3 A I put my initials on it.

4 Q Do you still see your initials on there?

5 A On the -- yes, I do on the magazine and rounds.

6 Q Now, you identified a magazine and some rounds
7 that were in this bag. What is this?

8 A This is the bag that I placed them in. This is
9 the magazine.

10 Q And what identification -- what kind of marks
11 are on that bag to identify it?

12 A It's -- there's - I'm identifying that this is
13 bag 33, that there is a Hi-Point 9mm magazine. And
14 there are also three 9mm rounds.

15 Q And whose handwriting is that?

16 A That's my handwriting.

17 Q What is this bag?

18 A This is the bag, the plastic bag, that I put
19 the handgun into.

20 Q Okay. I see the seal has been broken. When
21 you turned it into the evidence locker, it was
22 sealed up?

23 A It was sealed and the evidence tape was there.
24 And my initials are here on the back of this bag.

25 Q Is the entire chain of custody on that bag?

1 A I'm not sure if the entire chain of custody is
2 on this bag.

3 Q But you do recognize the contents of State's
4 Number 17 as containing the 9mm you seized, the
5 magazine and rounds you seized and the original
6 packaging of the gun that you put your mark on and
7 sealed on October the 27th, 2011?

8 A That's correct.

9 Q All right. Christopher Benjamin provided you
10 with a statement?

11 A Yes, he did.

12 Q Did he hesitate to give you a statement?

13 A Not at all.

14 Q Did you meet with him after the 27th?

15 A I met with him on the morning of the 28th as
16 well.

17 Q Did -- what was the purpose of that meeting?

18 A I showed Christopher a photo lineup asking if
19 he could identify -- if he knew anybody in the
20 picture and asking him if he did know anybody in the
21 photo lineup, if he could explain to me how he knew
22 that person.

23 Q And was he able to make a selection?

24 A He was.

25 Q And did he show any hesitancy at all in making

1 this selection?

2 **A** No, he did not.

3 **Q** And who did he pick?

4 **A** He picked the defendant, Mr. Mayers.

5 **Q** Did he say the defendant's name when he picked?

6 **A** Yes, he did.

7 **MR. SCOTT:** Beg the Court's indulgence..

8 (Pause.)

9 **Q** Do you have your report with you today?

10 **A** I do.

11 **Q** Did you note the serial number of the 9mm that
12 you took that day?

13 **A** I did not put it on my -- it is noted on the
14 evidence log, the property voucher, but not in my
15 supplemental.

16 **Q** Okay. But you would have marked that as being
17 from the gun that -- did you have any other guns in
18 your trunk that day?

19 **A** I did not.

20 **Q** And did you stop anywhere after you left Chris
21 Benjamin's house and went to the evidence locker?

22 **A** I did not.

23 (State's Exhibit Number 20, evidence
24 voucher, marked for identification purposes.)

25 **Q** Let me show you State's I.D. Number 20. Do you

1 recognize that?

2 A I do.

3 Q What is that?

4 A This is the property and evidence voucher that
5 was completed when I entered these items into the
6 sheriff's department evidence lockers.

7 Q What information is on that?

8 A It describes what bag and what items are
9 entered in.

10 Q Okay. What items were entered in?

11 A There's a Hi-Point 9mm handgun, serial number
12 P1470806, that's --

13 MR. WILLIAMS: Your Honor, I would object to
14 that unless it's in evidence at this point in time.
15 I don't know that that document is in evidence.
16 He's publicizing a document which is not in
17 evidence.

18 THE COURT: Which document are you talking
19 about?

20 MR. SCOTT: It's State's 20, I believe, Your
21 Honor. It has not been entered into evidence. I
22 can continue a little bit more.

23 BY MR. SCOTT:

24 Q What -- what information is on that without --

25 THE COURT: You're, in essence, publishing it.

1 So if you can get it in, then you can talk about it,
2 but get it in first if you can.

3 BY MR. SCOTT:

4 Q Are you able to recognize that?

5 A I am.

6 Q How are you able to do so?

7 A This is a copy of the voucher that I printed
8 off after putting this into evidence.

9 Q Did you generate that document?

10 A Yes, I did.

11 Q Is that how it appeared the night you entered
12 that evidence into the locker room at Lexington
13 County?

14 A Yes, it is.

15 MR. SCOTT: Your Honor, the State would offer
16 State's Number 20 for admission into evidence.

17 MR. WILLIAMS: If I could look at it.

18 THE COURT: Sure.

19 (Pause.)

20 MR. WILLIAMS: Your Honor, we would object as
21 it being hearsay.

22 MR. SCOTT: Your Honor, I think he testified
23 that this is something he generated and he entered
24 this information in.

25 THE COURT: Let me see it.

WILLIAM FREUND - DIRECT BY MR. SCOTT

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1 **MR. SCOTT:** He is the declarant.

2 (Pause.)

3 **THE COURT:** All right. It can come in. It's
4 Number 20.

5 (State's Exhibit Number 20, evidence
6 voucher, admitted into evidence.)

7 BY MR. SCOTT:

8 **Q** What information is on that document?

9 **A** Information pertaining to the items that I
10 placed into evidence that day.

11 **Q** Okay. And what items are documented on the
12 voucher?

13 **A** The Hi-Point 9mm black in color bearing serial
14 number P1470806, the 9 -- I'm sorry -- the Hi-Point
15 9mm magazine and three 9mm rounds.

16 **Q** So how do we know that that's the gun that you
17 took from North Royal Tower on October 27th of last
18 year?

19 **A** It's documented photographically. It's the gun
20 that I put into a paper bag that went directly into
21 my trunk and then directly into the evidence locker.

22 **Q** So the serial number on that gun is the same as
23 the one that you entered on that property voucher?

24 **A** I can check, but, yes, it is.

25 **Q** You can check.

1 A It is the same.

2 MR. SCOTT: Thank you. Please answer any
3 questions Mr. Williams may have.

4 CROSS-EXAMINATION

5 BY MR. WILLIAMS:

6 Q Are you a detective, investigator or what do I
7 call you?

8 A Detective's fine, sir.

9 Q All right, Detective. Let me just ask you
10 about this last document. Now, I understand that
11 you -- you found a pistol at some location and you
12 got that information off the pistol and that you
13 took that pistol and you secured the pistol, that
14 you introduced it or put it into a locker where it
15 was going to be maintained until other, I guess,
16 scientific evidence could be done on that pistol?

17 A Yes, sir.

18 Q That's basically accurate, isn't it?

19 A Yes, sir.

20 Q Now, on this particular document which you
21 have, you have other information which you recorded
22 on this document, don't you?

23 A It --

24 Q Besides what I just said?

25 A Yes, sir.

1 Q You typed in here the owner of this pistol
2 being Breon Jacoby Mayers at 115 Sky Lark Lane,
3 Chapin, South Carolina, with a phone number of 920-
4 0 -- 06 -- 0969 and you got it seized from unknown?

5 A Yes, that's on there.

6 Q Okay. Why would your form have that
7 information on it? Why would it have my client's
8 name, his address, his telephone number, then
9 underneath there saying, Seized from unknown?

10 A I'm sure that I put Christopher Benjamin as
11 seized from, but sometimes the system doesn't pick
12 up.

13 Q Well, if it was seized from Christopher
14 Benjamin, why didn't you just type on the form that
15 you had this 9mm pis -- 9 -- can I say that three
16 times -- 9mm pistol which you seized from
17 Christopher Benjamin?

18 A It should have been there, sir.

19 Q Also, you have this magazine. You have the
20 same information on this form. And it says, Breon
21 Jacoby Mayers. You have Sky Lark Lane, Chapin.
22 You've got his zip code. You've got his phone
23 number, which is 929-0969. And you've got seized
24 from unknown. All that's on there, isn't it?

25 A Yes, it is.

1 Q And, again, you don't have a reason why that
2 would be on there?

3 A The owner got listed as him because Christopher
4 Benjamin said that the gun belonged to him. And the
5 seized from should have said Christopher Benjamin on
6 it.

7 Q So, essentially, this form incorporates what
8 some other person told you and that was how it was
9 transmitted on the form. You certainly don't know
10 whose gun it is or who it belongs to or anything
11 like that?

12 A That's correct.

13 Q Did you check to see if the gun was registered?

14 A I did not.

15 Q And, again, the same thing is listed on the
16 rounds of ammunition the same way, isn't it?

17 A Yes, it is.

18 Q Now, aside from what you did in reference to
19 the gun and the ammunition, you had other
20 involvement with this case also, didn't you?

21 A I did.

22 Q I think you've already indicated that the first
23 day, what, one o'clock in the afternoon, you were
24 out there and you were assisting in talking to, I
25 guess, every witness you could find in reference to

1 this shooting?

2 **A** That's correct.

3 **Q** Do you recall meeting the guy who had the --
4 who had been out hunting or had the hunting stand?

5 **A** Mr. Holley.

6 **Q** Well, not Mr. Holley. What about Michael
7 Bowers? Did you have a conversation with Michael
8 Bowers?

9 **A** I talked with Michael not on the 21st, but on
10 the morning of the 27th.

11 **Q** On the morning of the 27th? And for what
12 reason did you talk to Michael Bowers on the morning
13 of the 27th?

14 **A** I was told to go talk to Mr. Bowers concerning
15 a video that he may have had at his house.

16 **Q** Where was Mr. Bowers' house at?

17 **A** I have to refer to my report.

18 **Q** Sure.

19 **A** Road.

20 **Q** And how close is that to the area of the
21 incident where the person was shot?

22 **A** It's just a few houses down from it across the
23 street.

24 **Q** All right. And were you able to secure a video
25 camera and a tape showing the events that have been

1 testified to the last three days?

2 A I was given a tape.

3 Q And what happened to that tape that you were
4 given?

5 A When we tried to play it, there was nothing on
6 it.

7 Q Where is that tape now?

8 A It should be in evidence.

9 Q Did you also attempt to secure a revolver?

10 A I did not.

11 Q You were not involved in the securing of the
12 revolver?

13 A No, sir.

14 Q Who was involved in that?

15 A To my knowledge, it was Sergeant Mefford,
16 Sergeant Lint, Detective Ellis and a CSI
17 investigator, but I don't know, I was not involved
18 in it.

19 Q Did you speak to Jermaine in reference to this
20 revolver?

21 A I did.

22 Q And now this was a .38 caliber revolver that
23 you spoke to Jermaine about; is that correct?

24 A I don't know the caliber of the revolver.

25 Q But it was a revolver?

WILLIAM FREUND - CROSS BY MR. WILLIAMS

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- 1 A Yes, sir.
- 2 Q And were you told where the revolver was?
- 3 A By?
- 4 Q Jermaine.
- 5 A No, I was not.
- 6 Q Do you have your notes with you?
- 7 A I do.
- 8 Q Would you look on page 40 of your investigative
- 9 notes?
- 10 A (Witness complies.)
- 11 Q Maybe I'm -- and I may not be reading your
- 12 police jargon the right way --
- 13 A Okay.
- 14 Q -- but these are your notes from your activity
- 15 in the case, aren't they?
- 16 A Yes, they are.
- 17 Q All right. And in the, I guess, middle of the
- 18 page where there's a reference about Lint calling
- 19 you, you're the IO, aren't you?
- 20 A I am, investigator officer.
- 21 Q Would you read that photograph to yourself?
- 22 Don't publicize it, just read it to yourself.
- 23 A (Witness complies.)
- 24 Q Okay. So you spoke with Jermaine about the
- 25 revolver?

1 **A** Yes, I did.

2 **Q** All right. And as a result of your
3 conversation with Jermaine about the revolver, where
4 did you attempt to secure -- where did you tell
5 other police officers to go to find the revolver?

6 **A** I did not tell anybody to go anywhere.
7 Apparently, they had already found the revolver.

8 **Q** And where was the revolver found?

9 **A** It was found in a closet and I don't know the
10 address where it was found.

11 **Q** And that particular gun that was found that
12 would have been the gun that belonged to Tyrome; is
13 that correct?

14 **A** According to Jermaine, yes. You mean, the
15 revolver?

16 **Q** The revolver.

17 **A** The revolver, yes. According to Jermaine, it
18 belonged to Tyrome.

19 **Q** But Jermaine was hiding it for Tyrome?

20 **A** Correct. That's what Jermaine says, yes.

21 **Q** Did you have any other contact with this case
22 as far as you know?

23 **A** No, I didn't.

24 **MR. WILLIAMS:** Thank you. That's all the
25 questions I have.

WILLIAM FREUND - REDIRECT BY MR. SCOTT

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1 **THE COURT:** Any redirect?

2 **MR. SCOTT:** I just want to cover a couple
3 things.

4 REDIRECT EXAMINATION

5 **BY MR. SCOTT:**

6 **Q** As far as the video that was Michael Bowers --
7 is that what you said the name of --

8 **A** Correct, Michael Bowers.

9 **Q** I'm going to show you State's Number 2. And
10 are you -- are you able to recognize anything there?

11 **A** This is obviously the incident location here.
12 I believe this was Michael Bowers' house, 337
13 (indicating).

14 **Q** You believe or you're sure?

15 **A** That's 337. That's his. That's Michael
16 Bowers.

17 **Q** And where, approximately, was the video camera?

18 **A** He had a video camera just above his front
19 door.

20 **Q** Okay. Tell me about that video camera. Was it
21 functioning?

22 **A** It was not. According to Michael, he had a
23 lightening strike that had happened a couple weeks
24 prior to that and there was just gray static. It
25 was an old VHS recorder and it was just gray static

1 on it when we looked at it.

2 Q But you did take that video -- or you took a
3 cassette that was contained within the video camera?

4 A Yes, I did.

5 Q And did you watch it with David Day?

6 A Yes, I did.

7 Q And did you see anything on it?

8 A There was nothing on it. It was just gray
9 static.

10 MR. SCOTT: Thank you. Nothing further.

11 MR. WILLIAMS: No questions on recross.

12 THE COURT: Okay. You can step down.

13 All right. Folks, let's go ahead and take a
14 ten minute break so everybody can use the restroom.
15 Don't talk about the case or comment on any witness'
16 demeanor or anything. We'll see you back in about
17 ten minutes.

18 (The jury retires to the jury room.)

19 THE COURT: Okay. How is your afternoon
20 looking now?

21 MR. GRAHAM: If we can approach.

22 THE COURT: Sure.

23 (Whereupon, a bench conference was held off
24 the record.)

25 (Brief recess.)

JOSEPH CHAPPELL - DIRECT BY MR. SCOTT

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1 **THE COURT:** You got your witness ready?

2 **MR. SCOTT:** We do, Your Honor. We're ready.

3 **THE COURT:** All right. Bring the jury in.

4 (The jury returns to the courtroom.)

5 **THE COURT:** Okay. Folks, we're going to resume
6 with the State calling their next witness.

7 **MR. SCOTT:** Your Honor, the State calls Joe
8 Chappell.

9 JOSEPH CHAPPELL,
10 having been duly sworn, testified as follows:

11 **THE CLERK:** Have a seat, sir. Once you're
12 seated, state your full name, spelling your last on
13 the record, please.

14 **THE WITNESS:** My name is Joseph Chappell,
15 Chappell, C-h-a-p-p-e-l-l, crime scene investigator,
16 Lexington County Sheriff's Department.

17 DIRECT EXAMINATION

18 BY MR. SCOTT:

19 **Q** Thank you. How long have you been with crime
20 scene investigation with Lexington County?

21 **A** Been with the crime scene investigating unit
22 since January of this year. And before that, I was
23 with major crimes investigations for about a year
24 and a half.

25 **Q** So October of last year that would have been

1 major crimes?

2 A That's correct.

3 Q And, at that time, did you have occasion to
4 become involved with the investigation of a murder
5 at Road in Chapin?

6 A Yes, I did.

7 Q And how did you become involved?

8 A I assisted initially with a search warrant for
9 residence of Jermaine Caughman.

10 Q When was that?

11 A On October 27th, 2011.

12 Q What were you looking for?

13 A We had information from an interview. I was
14 told to type up a search warrant for a handgun that
15 was described as a .38 Special that was in Jermaine
16 Caughman's closet in his bedroom.

17 Q Okay. Did you respond to his home?

18 A I did once I typed the search warrant up, had
19 it signed and responded to his residence.

20 Q Did you execute that search warrant?

21 A I assisted in it. The other investigators,
22 including Sergeant Mefford, CSI Strickland served
23 the search warrant.

24 Q Did you observe any evidence?

25 A I observed one handgun removed from what was

1 described as Jermaine Caughman's closet.

2 Q Let me show you State's Exhibit Number 9. Do
3 you recognize that?

4 A I do. It was the handgun removed from the
5 closet.

6 Q Okay. Who collected that?

7 A CSI Renee Strickland.

8 Q Okay. What did she do with it; do you know?

9 A I believe she secured it and took it back to
10 headquarters as far as entering it into evidence
11 from that point on.

12 Q Did you have any further involvement with this
13 particular case?

14 A I did. On -- not until I moved into crime
15 scene that on June 4th of 2012, I took a buccal swab
16 from Christopher Benjamin.

17 Q Okay. And did you -- who did you meet with,
18 I'm sorry, to take a buccal swab?

19 A Christopher Benjamin. And we met at 220
20 Chadford Road in Irmo.

21 (State's Exhibit Number 21, buccal swab of
22 Christopher Benjamin, marked for identification
23 purposes.)

24 Q And are you able to take a buccal swab?

25 A I was.

1 Q What is a buccal swab?

2 A It's described -- it's a saliva sample taken
3 from inside the mouth that a DNA test will be
4 conducted on, but pretty much it's Q-tips or sticks
5 with cotton swabs that we rub, get saliva from
6 inside both cheeks, we seal up and a DNA screen is
7 done on them.

8 Q Okay. You did that to Christopher Benjamin on
9 June 4th?

10 A That's correct.

11 Q And what did you do with the samples?

12 A I sealed the samples and turned them into
13 evidence.

14 Q You have what's been marked as State's Number
15 21 there with you.

16 A Yes.

17 Q Do you recognize that?

18 A I do.

19 Q How are you able to do so?

20 A I recognize it from my handwriting on the
21 front. And I have a -- when I sealed the back, I
22 put my initials and the date that I sealed it.

23 Q And what did you do after you put it in that
24 sealed tamper-proof bag?

25 A Once I put it in this bag, I transported it

1 back to headquarters, conducted the -- we did the
2 voucher up to where we enter it into evidence, all
3 evidence we do a voucher up, and then I -- into
4 evidence, there's a gray box, a secure lock box in
5 evidence, which is where the envelope went.

6 Q Thank you.

7 MR. SCOTT: Your Honor, the State would offer
8 State's Number 21 for admission in evidence.

9 MR. WILLIAMS: Without objection, Your Honor.

10 THE COURT: Admitted.

11 (State's Exhibit Number 21, buccal swab of
12 Christopher Benjamin, admitted into evidence.)

13 MR. SCOTT: And, Your Honor, we understand that
14 the -- there's a stipulation to the chain of custody
15 on State's Number 21. The chain of custody is
16 stipulated to until it was tested.

17 MR. WILLIAMS: If you'll just say for the
18 record what that is, what item you're referring to.

19 MR. SCOTT: State's Number 21 that would be the
20 Chris Benjamin buccal swab.

21 MR. WILLIAMS: Without objection, Your Honor,
22 and stipulated to.

23 MR. SCOTT: Thank you. Nothing further from
24 this witness.

25 Please answer any questions Mr. Williams may

1 have.

2 THE COURT: Folks, a stipulation simply means
3 that the fact is not contested and it's deemed to be
4 admitted so they don't have to bring in somebody to
5 state who handed it to who, who handed it to who and
6 all that. So as to that particular piece of
7 evidence, they've stipulated to the chain. They
8 haven't stipulated to every piece of evidence since
9 you've been here from this point on just that last
10 one.

11 All right. Go ahead.

12 MR. WILLIAMS: No questions.

13 THE COURT: You can step down.

14 THE WITNESS: Thank you, Your Honor.

15 MR. GRAHAM: The State calls Marc Isphording.

16 MARC JEFFERY ISPHORDING,

17 having been duly sworn, testified as follows:

18 THE CLERK: Once you're seated, state your full
19 name, spelling your last on the record for me,
20 please.

21 THE WITNESS: Marc Jeffery Isphording. It's
22 I-s-p-h-o-r-d-i-n-g.

23 DIRECT EXAMINATION

24 BY MR. GRAHAM:

25 Q Is it Deputy Isphording?

MARC JEFFERY ISPHORDING - DIRECT BY MR. GRAHAM

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1 A Yes, it is.

2 Q Where are you employed, sir?

3 A Lexington County Sheriff's Department.

4 Q And how long?

5 A Eleven years.

6 Q And what do you do there?

7 A I'm a patrol deputy.

8 Q What does a patrol deputy do?

9 A We answer calls for service from the citizens

10 in the county.

11 Q Do you remember responding to

12 Road on October 21st of 2011?

13 A I do.

14 Q What was the nature of the call that you were

15 responding to?

16 A We had received a call for assistance from EMS,

17 said they had a man down inside the residence. They

18 believed he had a gunshot wound.

19 Q What time did you arrive on the scene?

20 A Approximately 12:30.

21 Q Were you the first officer there?

22 A I was.

23 Q When you got on the scene, what did you see?

24 A We got on the scene, we came up to the house,

25 the two EMS personnel were outside of the house at

1 the back door on the porch. They told us that there
2 was a gentleman inside they believed had been shot.

3 Q Did you go and take a look?

4 A Yes, we did.

5 Q And what did you see when you went?

6 A We came in through the back door on the porch.
7 Immediately to my right, I saw a white male laying
8 on the ground. There was a pool of blood underneath
9 his body, to the right side of his body. We did do
10 a protective sweep and there was nobody else inside
11 the residence that we found.

12 Q Let me show you State's Exhibit Number 6 and 7
13 and ask if you recognize those documents?

14 A Yes, sir.

15 Q Do those fairly and accurately depict what you
16 saw on the -- at, approximately, 12:30 or so on
17 October 21st?

18 A They do, sir.

19 Q Describe to the jury what we're looking at.

20 A That would be the washing machine that was
21 directly in front of me as I entered the residence
22 through the rear door and those are two casings from
23 a handgun round.

24 Q Did you touch or -- did you --

25 A I did not.

MARC JEFFERY ISPHORDING - DIRECT BY MR. GRAHAM

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1 Q -- touch the casings? Were you able to see any
2 injuries on the victim?

3 A I was able to see the blood underneath his
4 body. I did not see the gunshot wound to his chest.
5 His shirt was pulled up. The only thing that I
6 could see on him was one of the leads from the
7 paramedic's defibrillation device.

8 Q In doing your -- in looking in the door and
9 doing your sweep in determining no one else was
10 there, what, if any, conclusion did you reach as to
11 whether there was signs of struggle?

12 A I did not see anything that led me to believe
13 there was an actual sign of struggle.

14 Q What, if anything, did you do to look to see if
15 there was forced entry?

16 A Looked at the rear door to see if perhaps a
17 door frame had been cracked or if there was some
18 damage to the lock.

19 Q And what did you observe?

20 A I didn't see any.

21 Q Once you arrived on the scene and did your
22 protective sweep, what happened next?

23 A We immediately backed out of the residence and
24 I called in what I had found to dispatch and secured
25 the area with crime scene tape and awaited the

1 arrival of crime scene and investigations.

2 Q And who was the crime scene investigator that
3 ultimately arrived to process the scene?

4 A That would be David Day.

5 MR. GRAHAM: Thank you, Deputy. Please answer
6 any questions Mr. Williams has.

7 MR. WILLIAMS: Just a couple of questions.

8 CROSS-EXAMINATION

9 BY MR. WILLIAMS:

10 Q Were you involved in taking the pictures of the
11 footprints?

12 A No.

13 Q And did you secure any of the items, like you
14 said you saw the two shell casings, did you secure
15 the shell casings or did somebody else do that?

16 A Somebody else did that and I left them right
17 where I found them. I didn't touch them.

18 Q So, essentially, you just went there, took --
19 and saw the condition. You kept everybody off the
20 scene?

21 A Correct.

22 MR. WILLIAMS: That's all the questions I have,
23 Your Honor.

24 MR. GRAHAM: Nothing beyond redirect, Your
25 Honor.

DAVID DAY - DIRECT BY MR. GRAHAM

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1 **THE COURT:** You can step down.

2 **MR. GRAHAM:** State calls David Day.

3 DAVID DAY,

4 having been duly sworn, testified as follows:

5 **THE CLERK:** Have a seat, please, sir. Once
6 you're seated, state your full name, spelling your
7 last on the record.

8 **THE WITNESS:** David Day, D-a-y.

9 DIRECT EXAMINATION

10 BY MR. GRAHAM:

11 **Q** Is it crime scene investigator? Is that your
12 title, sir?

13 **A** Yes, sir.

14 **Q** How long have you been -- where are you
15 employed?

16 **A** Lexington County Sheriff's Department.

17 **Q** And how long have you been employed there?

18 **A** Total of 16 years.

19 **Q** How long have you been a crime scene
20 investigator?

21 **A** Five years this month.

22 **Q** In general terms, what does a crime scene
23 investigator do?

24 **A** Basically, what we do, we document the scene
25 using photography, written reports and sometimes

1 drawings. We also analyze and collect evidence.

2 Q When you arrive on a scene, explain to the
3 jury -- well, did you respond to a homicide call on
4 October 21st, 2011?

5 A I did.

6 Q And where did you respond to?

7 A Drive.

8 Q And is that in Lexington County, sir?

9 A Yes, sir.

10 Q When you arrived on the scene, what did you
11 see?

12 A When I got on the scene, there was numerous
13 police officers on the scene. There were detectives
14 on the scene. There was EMS on the scene. I
15 noticed that the house I was going to had crime
16 scene tape all the way around it and there was
17 several deputies holding the scene, basically
18 securing it, making sure that nobody goes inside.

19 Q So as a crime scene investigator, when you
20 arrived at this homicide scene, what did you do?

21 A First thing I did was I met with Detective
22 Ellis who basically gave me a little bit of
23 information. We didn't have a lot of information
24 when we got on the scene. He just basically told me
25 that they're in the process of getting a search

1 warrant. And he basically said that we got a
2 deceased male inside that EMS had noticed that had a
3 gunshot wound and that they had seen two spent shell
4 casings near the body.

5 Q Once you conferred with Detective Ellis, what
6 did you do then?

7 A I then went and found the EMS guy, I don't
8 remember his name, but I spoke with him to see if
9 maybe he saw a gun maybe -- possibly kind of rule
10 out early head that it might have been a suicide.
11 He stated that he didn't roll or touch the body, but
12 he didn't see a weapon.

13 So then, basically, I just left from him, went
14 and got my camera and just basically stayed outside
15 the tape and just started going around the residence
16 taking overall general photographs and basically
17 just kind of looking through the yard to make sure
18 there wasn't something on the ground.

19 Q Let me show you some photographs, Investigator
20 Day, and ask if you recognize those?

21 A I do.

22 Q Are those photographs that you took?

23 A Yes.

24 Q Do they fairly and accurately depict what you
25 saw and recorded that day?

1 **A** Yes.

2 **MR. GRAHAM:** Your Honor, I agree by stipulation
3 that these are admitted into evidence.

4 **MR. WILLIAMS:** Without objection, Your Honor.

5 **THE COURT:** Admitted.

6 (State's Exhibit Numbers 22 through 25,
7 photographs, were marked and admitted into
8 evidence.)

9 BY MR. GRAHAM:

10 **Q** Investigator Day, were these -- when you talked
11 about taking your camera and going around the
12 outside of the residence and taking photographs, is
13 that what these are?

14 **A** Yes.

15 **Q** Looking on the overhead projector at State's
16 Exhibit Number 22, what are we looking at?

17 **A** That's the front side of the house that's
18 parallel to the roadway.

19 **Q** State's Exhibit Number 23?

20 **A** That is showing the back side of the house.

21 **Q** What are we looking at there?

22 **A** The picture's kind of dark, but it -- can you
23 lighten it up any or -- it's the back side of the
24 house with the porch.

25 **Q** So this is the back side of the house?

- 1 A Yes.
- 2 Q And this right here is what?
- 3 A A porch.
- 4 Q What am I looking at over here?
- 5 A It's the steps leading up to the porch.
- 6 Q So if I -- where you're sitting at, if you were
- 7 looking at that photograph as you took it, that's
- 8 the back of the house?
- 9 A Yes.
- 10 Q And you -- so there are steps over on the
- 11 right-hand side?
- 12 A Yes. There are steps that go kind of up and
- 13 then back on down to the other side.
- 14 Q Looking at State's Exhibit Number 24.
- 15 A That is like -- it's the back side of the house
- 16 on the -- be like the right corner if you're looking
- 17 at the back side of the house.
- 18 Q And then State's Number 25, what does that show
- 19 us?
- 20 A It's the -- on the opposite side of the back
- 21 side of the house, the other corner.
- 22 Q So what am I looking at right there?
- 23 A Steps that lead up onto the porch.
- 24 Q So is it fair to say that there are steps on
- 25 both the left and the right side?

1 A Yes, sir.

2 Q Once you took the outside photographs, what's
3 the next step in you processing this crime scene?

4 A Well, basically, then we have to wait until the
5 search warrant's signed. Once the search warrant's
6 signed, then we then go ahead and don on the
7 appropriate gear, the gloves, the footwear, and then
8 go inside and then start doing a -- do an initial
9 walk-through. And then after doing the
10 walk-through, we start taking photographs.

11 Q You talked about gloves and footwear. What are
12 you talking about?

13 A Protective gloves, latex gloves, and then like
14 the booties that you wear over your shoes.

15 Q And what's the purpose of you doing the gloves
16 and the footwear?

17 A For several reasons, one, for any kind of
18 cross-contamination, and then, two, for protection
19 of us.

20 Q All right. After the search warrant was
21 secured and you -- you went into the house; is that
22 correct?

23 A Correct.

24 Q Had any other members of law enforcement gone
25 into the house once you arrived on the scene?

1 A My partner, she's a crime scene officer also,
2 Renee Strickland. We went in together as a team.

3 Q When you go into the house, what do you do?

4 A As I said, we basically start looking for
5 evidence. Like I said, we had very little knowledge
6 of what had happened. So we basically just do a
7 general walk-through, kind of develop a game plan
8 exactly where we need to start and what we need to
9 have.

10 And like I said, the biggest thing we needed to
11 also clarify, was this self-inflicted or was this a
12 homicide, and basically, you know, developed it was
13 a homicide because there was not a gun there and
14 then we saw the two shell casings that EMS had told
15 us about. As you first walk into the residence in
16 the back door, as soon as you walk in, there's two
17 washing machines kind of up against the wall and the
18 shell casings were down on the floor next to it
19 really close to where the victim was laying at.

20 Q Once you went into the residence, you saw the
21 shell casings immediately; is that correct?

22 A That is correct.

23 Q Do you collect them then or do you do something
24 else?

25 A No. Again, we still continue to just search

1 and kind of, like I said, get a game plan and then
2 once we get a game plan of where we're going to
3 start, who's going to do what, then we start
4 photographing. And we also have to work
5 hand-in-hand with the coroner's office, so we can't
6 just start walking in and moving stuff. We have to
7 have the coroner's office with us there also because
8 they're doing a parallel investigation also.

9 Q How do you decide what's important and what's
10 not?

11 A Basically, what we see on the scene and also
12 what we're learning from the detectives.

13 Q Based on what you saw and what you were told,
14 tell me generally what you did.

15 A The first thing that we noticed, of course,
16 that there was not a gun, you know, near the victim.
17 We went into the bedroom. We pretty much had to
18 step over the victim because he was laying on his
19 back mostly in the bedroom. His legs were kind of
20 out in the hallway and kind of bent in kind of like
21 at this angle (indicating). We stepped over him and
22 went into the bedroom.

23 And we noticed there were several coolers like
24 the small lunch-type coolers that you would take
25 lunch with going to work or something. There were

DAVID DAY - DIRECT BY MR. GRAHAM

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1 several on the bed. There were some on the floor.
2 The bedroom was small and it was kind of cluttered,
3 but this was definitely kind of odd the way the
4 coolers were sitting on the bed. And then there was
5 a wallet nearby.

6 When we started looking into the coolers, we
7 started noticing green plant material, which is
8 consistent with marijuana. And then as we further
9 kept investigating, in those coolers were Ziploc
10 bags with weights, I believe, in ounces and the word
11 weed written on it. So then that started, you know,
12 started focusing on maybe this could have been, you
13 know, a burglary for drugs or something. And we let
14 the detective know that.

15 Q Other than the bedroom that was on the right,
16 you said you had to go over Mr. Cannon's body to get
17 into it; is that correct?

18 A Correct.

19 Q Did anything out of the -- out of the rest of
20 the house appear out of the ordinary?

21 A No, sir. And I did go and, like I say,
22 photograph every room. And I went to every room and
23 it looked normal as what I could tell.

24 Q All right. So what's the next thing you do?

25 A Again, basically start, you know, relaying

1 information to the detectives on what we had. And
2 they were also developing the fact that there were
3 drugs in the house. And we were told about the
4 wallet to check his wallet to see if there was any
5 money in the wallet. There was supposed to have
6 been a large amount of money in the wallet and the
7 wallet was empty.

8 Q So what do you do at this point?

9 A Once we get to the point where we start
10 collecting, we start putting number -- number or
11 letter placards by the evidence that we feel is
12 important. And before we start collecting it, we
13 will have a detective, you know, come in and, you
14 know, we escort them in and say, This is what we're
15 looking at, have you come up with anything else, do
16 you see anything else that might be of importance?
17 And then once we all come to an agreement on what
18 we're going to take, then I will take more
19 photographs of the item with the placard and then
20 start collecting it.

21 Q Now, if I say dusting for prints, what does
22 that mean?

23 A Taking a brush, powder and dusting for prints,
24 just trying -- trying to find a fingerprint on
25 something.

1 Q Now, did you dust the house for prints?

2 A I did.

3 Q Did you do that before or after you collected
4 evidence out?

5 A Well, first, we wanted to get the evidence out.

6 And once the evidence was out -- and, also, if

7 there's items of evidence that were small enough

8 that I wanted to collect, I would collect it to take

9 back with me to process the fingerprint back in the

10 lab. And then anything big that I could not, then I

11 will print for latent prints and we did it after we

12 collected the items.

13 Q Let me show you a diagram and some photographs
14 and ask if you recognize these?

15 A I do.

16 Q The diagram is a diagram that you prepared?

17 A Yes.

18 Q And the photographs are photographs that you
19 took?

20 A Yes.

21 Q Would they assist you in explaining what you
22 did to the jury?

23 A Yes.

24 MR. GRAHAM: Your Honor, it's my understanding
25 that Mr. Williams has stipulated to the admission of

1 these as well.

2 **MR. WILLIAMS:** Without objection, Your Honor.

3 **THE COURT:** Admitted.

4 (State's Exhibit Number 26, diagram, and
5 State's Exhibit Numbers 27 through 38, photographs,
6 were marked and admitted into evidence.)

7 BY MR. GRAHAM:

8 **Q** Looking again at the overhead, Investigator
9 Day, what are we looking at?

10 **A** It's, basically, it's a not-to-scale drawing of
11 the residence and inside. And it's basically to
12 help -- when you take photographs, you can only get
13 as wide as the lens when you're taking a photograph.
14 The scale just kind of -- the drawing kind of helps
15 you see overall what was taken and where it was
16 located at.

17 **Q** So, in general terms, this is a diagram of the
18 layout of the house. For orientation, what is --

19 **A** That is the front of the house.

20 **Q** This -- the roadside?

21 **A** Correct.

22 **Q** On Road. This back here
23 (indicating)?

24 **A** Is the back side.

25 **Q** And what is this right here?

1 A Steps. And steps.

2 Q All right. When you say you come in the back
3 door, is that what we're talking about (indicating)?

4 A Yes.

5 Q Directly in the back door, what do you see?

6 A As soon as you walk in, the first thing that
7 catches your eye is item seven and eight, which were
8 the spent shell casings found on the floor.

9 Q And you denoted that by, in your diagram, item
10 seven and eight with the arrows showing down to it?

11 A Correct.

12 Q And then down here, although the jury can't
13 read it, what is that?

14 A It's a ledger to say what the items are.

15 Q So these are the items that were inside the
16 house that you determined to collect?

17 A Yes, sir.

18 Q What was -- right there, what is that a
19 depiction of?

20 A The victim.

21 Q Item one, what was it and where was it found?

22 A Item one is, I guess I'm pronouncing it right,
23 Olivet blue and black cooler and it was found on the
24 bed.

25 Q And what was item two and where was it found?

1 A It was a Coleman blue and black cooler and it
2 had three plastic Ziploc bags in it and it was found
3 on the bed.

4 Q Item number three?

5 A I called it it's a plastic tub drawer type
6 organizer that was also on the bed. And it had a
7 calculator and it had some green plant material in
8 it.

9 Q Item five?

10 A Was a USC cooler and it was found on the floor.

11 Q And then we already discussed, six is not on
12 here. Seven and eight we discussed. Nine and ten
13 are not on there. What's item 11?

14 A Is a projectile and it was found near the
15 refrigerator in the bedroom. He had a, like a
16 little refrigerator and a chest-type freezer in the
17 bedroom.

18 Q Looking at State's Exhibit Number 27 on the
19 overhead projector, what is that?

20 A That is that Olivet blue and black cooler.

21 Q And that's where you found it?

22 A Yes, sir.

23 Q And that was -- what's it sitting on?

24 A The bed.

25 Q Let me show you a box and ask if you recognize

1 this box?

2 **A** I do.

3 **Q** And how do you recognize the box?

4 **A** It's got my handwriting on it and my signature
5 on the evidence tape.

6 **Q** And what did you describe that as? What was
7 that box designed to hold?

8 **A** Blue/black Olivet cooler.

9 **Q** There's also tape across it. What's the tape
10 across there that we're looking at?

11 **A** It's evidence tape. It just lets somebody else
12 know if they have to do anything to it, to know that
13 it's not been opened. When I seal it and sign it,
14 if they get it and if they see the tape's broken,
15 they know that somebody else has been in it.

16 **Q** Do you recognize this box as being the box that
17 you put that cooler in?

18 **A** Yes, sir.

19 **Q** Would you open this box at this time?

20 **A** (Witness complies.)

21 May I step down?

22 **MR. GRAHAM:** Your Honor, may the witness step
23 down?

24 **THE COURT:** Sure.

25 (Witness leaves the witness stand.)

1 BY MR. GRAHAM:

2 Q That's the cooler in the picture of the cooler
3 you collected?

4 A Yes.

5 (Witness resumes the witness stand.)

6 MR. GRAHAM: Your Honor, the State would -- I
7 would offer it into evidence unless --

8 MR. WILLIAMS: Without objection, Your Honor.

9 MR. GRAHAM: I was going to say if Mr. Williams
10 will stipulate to the chain of custody from this
11 until it goes to be processed, I'll just mark it for
12 I.D., or do you care?

13 MR. WILLIAMS: We don't care, Your Honor.

14 MR. GRAHAM: Okay. I'll put it into evidence,
15 Your Honor.

16 THE COURT: All right. Thank you. It's
17 admitted.

18 (State's Exhibit Number 39, Olivet cooler,
19 marked and admitted into evidence.)

20 BY MR. GRAHAM:

21 Q Why did this cooler look important to you?

22 A Because it, like I said, some of them had green
23 plant material that was consistent to look like
24 marijuana and it was, you know, possibly could play
25 a role in the motive for the homicide.

1 Q Is the lid on that cooler open or closed in the
2 photograph?

3 A Open.

4 Q And that's how you found it?

5 A Yes.

6 Q There's another placard in the background, what
7 is that?

8 A Item number two. And that is the Coleman blue
9 and black cooler. And that's the one that had three
10 plastic Ziploc bags and it was found on the bed.

11 Q Looking at State's Exhibit Number 28, do you
12 recognize that photograph?

13 A Yes, sir. It's just a close-up photo of number
14 two.

15 Q And is that the cooler you're referring to?

16 A Yes, sir.

17 Q And that's the condition you found it?

18 A Yes.

19 Q You're talking about plastic bags, is that what
20 we're looking at right there?

21 A Yes. And it was found unzipped like that.

22 Q Let me show you another box and ask if you
23 recognize this?

24 A Yes. It's got my handwriting and my signature.

25 Q And what does your handwriting indicate that it

1 is?

2 A A blue and black Coleman cooler.

3 Q Would you go ahead and open that for me,
4 please?

5 A (Witness complies.)

6 It's the blue and black Coleman cooler.

7 MR. GRAHAM: Your Honor, the State would offer
8 this into evidence at this time.

9 MR. WILLIAMS: Without objection, Your Honor.

10 THE COURT: Admitted.

11 (State's Exhibit Number 40, Coleman cooler,
12 marked and admitted into evidence.)

13 BY MR. GRAHAM:

14 Q Item three is also in that photograph. What is
15 that?

16 A That is that plastic tub drawer that contained
17 an open box of sandwich bags, a base calculator and
18 green plant material that was found on the bed.

19 Q Looking at State's Number 29.

20 A It's just a close-up picture of the same.

21 Q State's 30, do you recognize that?

22 A It's just showing an even closer picture of the
23 inside.

24 Q As far as exhibits one and two, the coolers,
25 did you do anything to process those coolers?

1 A No, I did not.

2 Q Why is that?

3 A Because the material that it's made of is not
4 conducive for fingerprints as in the capability that
5 we have of using fingerprint powder. So it was
6 determined that DNA swabs would be taken. So it was
7 sent somewhere else.

8 Q As far as item three, the tub and its contents
9 there, what, if anything, did you do to process
10 those?

11 A As I said earlier, it was small enough for me
12 to take back. So I took it back to the lab and then
13 I separated everything out, put the green plant
14 material in its own bag to be sent to be tested,
15 confirmed that it was -- is or is it not marijuana.
16 And then I processed the tub and the top sheet of
17 that Ziploc bag for latent prints.

18 Q Well, let's talk about the green plant material
19 first. What was it?

20 A It was submitted to -- we're all certified to
21 test marijuana, but I had sent it to somebody within
22 the unit to have it tested and it came back positive
23 for THC.

24 Q It was marijuana?

25 A Yes, sir.

1 Q As far as you processing the tub, your item
2 three and the contents, tell me -- tell the jury
3 what you did to process that.

4 A We have a device that's called a fuming
5 chamber. And, basically, what that is is a
6 cyanoacrylate chamber. It's basically where you
7 heat super glue up and super glue turns into a fume
8 and that fume will adhere to any latent prints and
9 pretty much make a protective barrier over that
10 print. So I, the terms we use, I fumed it and then
11 I powdered it using black fingerprint powder.

12 Q What did you find?

13 A Nothing.

14 Q Did that surprise you?

15 A No.

16 Q State's Number 31 on the overhead, what is that
17 a photograph of?

18 A Of the victim's wallet.

19 Q And where was that located?

20 A On the bed.

21 Q Let me show you a bag and ask if you recognize
22 the bag and its contents?

23 A I do. It's my handwriting. It says, Carolina
24 Gamecock black wallet with S.C. I.D. of David Keith
25 Cannon and my signature on the evidence. It's the

1 wallet.

2 Q Would you go ahead and open that bag for me?

3 A (Witness complies.)

4 Q Is that the wallet that you collected?

5 A Yes.

6 Q Once you took that wallet and collected it,
7 what did you do with it?

8 A It was submitted into our evidence room. And
9 then later on, I had received a request to swab the
10 wallet for touch DNA and have the swab sent off to
11 SLED to be tested.

12 Q So, at some point after you finished processing
13 this crime scene, you turned it over to evidence
14 control?

15 A Yes.

16 Q What's evidence control?

17 A It's where we submit our evidence for storage.

18 Q Do you know who you turned that wallet over to?

19 A Beth Harmon is the one that signed it in.

20 Q That's the lady sitting back there that's been
21 handing me the evidence?

22 A Correct.

23 Q When you handed it to her, was it in that bag
24 and sealed up or a bag similar to that bag?

25 A It was that bag that I -- I put the wallet in

1 that bag.

2 Q Sealed up with tape and your initials on it?

3 A Yes.

4 Q At some point did you go and get the bag back
5 from her, I believe?

6 A I did.

7 Q When you got it back, was the seal still intact
8 just the way you left it?

9 A Yes.

10 Q Once you got it back from her, what did you do?
11 You talked about making swabs.

12 A Yes. I just took the wallet out of the bag,
13 took some sterile swabs, just basically like a
14 Q-tip. I moistened it with sterile water and just
15 swabbed the outside and just on the inside of the
16 wallet. And I made two swabs I believe.

17 Q Let me show you a bag and ask if you recognize
18 the bag and its contents?

19 A It has my name and signature on the outside of
20 the bag. In one of the envelopes in here, it has my
21 handwriting that says, Swabs from wallet, David
22 Cannon.

23 Q And there are two other envelopes inside that
24 plastic bag; is that correct?

25 A That's correct.

1 Q And what are the other folders?

2 A The one on the back is my handwriting and it's
3 swabs from the bottom of a shoe.

4 Q And the third one?

5 A It's a Richland County envelope that has some
6 sealed swabs in it.

7 Q So that package -- so there are three manila
8 envelopes inside a plastic bag?

9 A Yes.

10 Q And you've been fumbling with the plastic bag.
11 Why have you been fumbling with the plastic bag?

12 A Because it's sealed.

13 Q Do you recognize this plastic bag?

14 A Yes.

15 Q And its contents?

16 A Yes.

17 Q How do you recognize this plastic bag?

18 A Because it has my initials on it and my name on
19 the front of the bag.

20 Q Where are your initials at?

21 A Right up here on the heat seal.

22 Q So, at some point, you've got control of all of
23 these things and you took them where?

24 A To SLED.

25 Q So this bag -- explain how the process at SLED

1 goes to submit evidence.

2 **A** Basically, we just go to SLED with our
3 evidence. We have to log in at the front and then
4 when there's an open technician, they'll call us to
5 the back. We go to the back and whoever the
6 technician is they take the evidence and they seal
7 it in that heat sealed bag in front of us and have
8 us initial it.

9 **Q** And this is the bag that you took to SLED. Do
10 you remember what day you took it to SLED?

11 **A** June 5th, 2012.

12 **MR. GRAHAM:** Your Honor, at this time, the
13 State would mark the outside bag for identification.

14 (Pause.)

15 **MR. GRAHAM:** Your Honor, the State would ask
16 that the bag be marked for identification at this
17 time.

18 **THE COURT:** For identification or admission?

19 **MR. GRAHAM:** At this particular moment,
20 identification and then I'm going to go back to the
21 witness with it and ask him to open it.

22 **THE COURT:** Okay.

23 (State's Exhibit Number 41, evidence bag,
24 marked for identification purposes.)

25 **BY MR. GRAHAM:**

1 Q Looking at State's Exhibit Number 1 -- excuse
2 me -- 41 for identification, that bag is sealed at
3 this time; is that correct?

4 A That is correct.

5 Q Would you go ahead and cut that bag open on the
6 very bottom of the bag, please?

7 A (Witness complies.)

8 Q Removing the contents of the inside of the bag
9 now for me.

10 A (Witness complies.)

11 Q The one that you've created is that one; is
12 that correct?

13 A Correct.

14 Q The other two are items that you transferred
15 around. I guess you actually created that one as
16 well?

17 A I did. I created that one. I did not create
18 that one.

19 MR. GRAHAM: At this time, the other contents
20 of the bag, I'm going to mark individually for
21 identification as well.

22 THE COURT: All right.

23 (State's Exhibit Numbers 42 through 43,
24 swabs, and State's Exhibit Number 44, vials, marked
25 for identification purposes.)

1 BY MR. GRAHAM:

2 Q Investigator Day, we talked about three
3 envelopes, filled envelopes, inside there. There
4 was also something else inside that bag?

5 A Yes.

6 Q What are those?

7 A Some kind of plastic tubes, I guess, to deal
8 with DNA.

9 Q And that's State's 44 for identification?

10 A Yes.

11 Q Okay. Looking at the other envelope in front
12 of you, do you recognize that envelope?

13 A I do.

14 Q How do you recognize that?

15 A It has my handwriting. It has the case number
16 and it says, Swabs from David Cannon's wallet.

17 Q So when you're talking about swabbing David's
18 wallet, explain what you did.

19 A We take sterile cotton swabs. They're on a
20 long stick about this long. It's like a big, long
21 Q-tip. And you take it out of the package. You're
22 wearing latex gloves, of course. And then you
23 moisten the end of the swabs with sterile water and
24 then you just swab the wallet as you're -- you're
25 kind of moving the head of the Q-tip around to make

1 sure that all of the cotton goes all the way around
2 the wallet, and I did two, have envelopes. And you
3 have to let the Q-tips dry, air dry. And you take a
4 Q-tip down into the package and break the stick off.
5 And then I sealed each envelope with tape. And I
6 marked on here, Swabs from the inside and a swab
7 from the outside.

8 **Q** Now, there's handwriting on those. Do you
9 recognize the handwriting?

10 **A** They're my handwriting.

11 **Q** There's also red evidence tape on it. Do you
12 recognize that?

13 **A** Yes.

14 **Q** It looks to be that there's some handwriting in
15 green on both sides. Whose handwriting is that?

16 **A** I need to see it again.

17 Okay. The green writing is mine and it's my
18 initials.

19 **Q** So you swabbed this wallet, let it air dry, put
20 it in here and broke the swabs off and sealed it?

21 **A** Yes, sir.

22 **Q** So -- and you recognize these as containing the
23 swabs that you took from the wallet?

24 **A** Yes, sir.

25 **MR. GRAHAM:** Your Honor, at this time, the

1 State would offer the wallet and the bag the wallet
2 is in into evidence.

3 MR. WILLIAMS: Without objection, Your Honor.

4 THE COURT: Admitted.

5 (State's Exhibit Number 45, wallet with bag,
6 marked and admitted into evidence.)

7 MR. GRAHAM: In addition, at this time, Your
8 Honor, the State would offer the envelope, the gold
9 envelope, and the contents, which are the two swabs
10 that Investigator Day has testified to that he
11 created, into evidence.

12 MR. WILLIAMS: Without objection, Your Honor.

13 THE COURT: Admitted.

14 (State's Exhibit Number 46, swabs from
15 wallet, marked and admitted into evidence.)

16 MR. GRAHAM: For the record, at this time, so
17 I'm sure that I haven't forgotten anything, State's
18 Exhibit Number 39 was the -- 39 and 40 are the two
19 coolers. It's my understanding that Mr. Williams
20 will stipulate to the chain of custody on those
21 items until they are processed at the Richland
22 County Sheriff's Department.

23 MR. WILLIAMS: We will, Your Honor.

24 MR. GRAHAM: And it's my understanding that
25 item 46, which are the swabs from the wallet, that

1 he will stipulate on these to the chain of custody
2 from Investigator Day to the DNA expert at SLED.

3 MR. WILLIAMS: We will, Your Honor.

4 THE COURT: All right.

5 BY MR. GRAHAM:

6 Q Looking at State's Number 32, what are we
7 looking at?

8 A It's a USC cooler that was found on the floor.

9 Q What part of the room was that found in?

10 A It's kind of like when you're looking into the
11 room, kind of like the right-hand corner I guess
12 you'd say.

13 Q Where -- do you see it depicted on there?

14 A Yes. Item five with the line kind of -- like I
15 say, if you're looking into the room, kind of like
16 the right-hand corner.

17 Q Right there?

18 A Yes, sir.

19 Q So if you were coming down -- if you came to
20 the door, went to the right and looked straight down
21 the hallway, it will be over in that corner?

22 A Yes.

23 Q And what was item five?

24 A A USC cooler.

25 Q And why did you collect that?

1 A Because it was consistent with the other
2 coolers that we found on the bed.

3 Q Let me show you a box and ask if you recognize
4 this box.

5 A Yes. It has my handwriting, Carolina Gamecock
6 garnet and black cooler. And it's got my signature
7 and handwriting on the evidence tape.

8 Q And, at some point, you collected that, put it
9 in the box, sealed it and handed it over to evidence
10 control?

11 A Yes.

12 Q Does that appear to be the box that you created
13 and put that in?

14 A Yes.

15 Q Would you open it at this time, please?

16 A (Witness complies.)

17 Carolina cooler.

18 Q Is that the box in the photograph?

19 A Yes.

20 Q The one you collected?

21 A Yes, sir.

22 MR. GRAHAM: Your Honor, the State would offer
23 the box and the cooler in evidence at this time.

24 THE COURT: Any objection to the admission of
25 the box and the cooler?

1 **MR. GRAHAM:** It's the USC cooler and the box in
2 evidence.

3 **MR. WILLIAMS:** No objection, Your Honor.

4 **THE COURT:** Admitted.

5 (State's Exhibit Number 47, Gamecock cooler
6 and box, marked and admitted into evidence.)

7 **MR. GRAHAM:** That's State's Number 47, Your
8 Honor. And, again, for the record, it's my
9 understanding that Mr. Williams will stipulate on
10 the chain of custody from that to Robert Oates, the
11 Richland County Sheriff's Department, for
12 processing.

13 **MR. WILLIAMS:** That is correct, Your Honor.

14 BY MR. GRAHAM:

15 **Q** State's Exhibit Number 33 on the overhead, what
16 is that?

17 **A** It's a black LG cell phone.

18 **Q** And what, if anything, did you do with that?

19 **A** I collected it.

20 **Q** Did you determine whose phone it was?

21 **A** I did not. I don't know if the detectives did
22 or not, I did not.

23 **Q** Did you do any other processing on it other
24 than collecting it?

25 **A** No.

1 Q State's 34 on the overhead, what are we looking
2 at there?

3 A They are both the same, 9mm Luger spent
4 cartridge casings.

5 Q 9mm Luger casings?

6 A Cartridge casings, yes.

7 Q What is a cartridge casing? What does that
8 mean?

9 A That's basically what holds the gunpowder and
10 the primer and the actual projectile sits in the top
11 of it.

12 Q So is that what it looks like before it's fired
13 or after?

14 A After it's fired.

15 Q What is missing out of that?

16 A The bullet, the projectile.

17 Q Did you collect those items?

18 A Seven and eight, yes, I did.

19 Q You called them 9mm, what is that?

20 A That's just a type of the round, size of the
21 round.

22 Q And how did you identify these as being 9mm's?

23 A It's got a stamp on the bottom side where the
24 primer is located.

25 Q And you also said -- did you say 9mm what?

1 A Luger.

2 Q Luger?

3 A Luger, L-u-g-e-r.

4 Q What is that?

5 A It's just the name brand.

6 Q Let me show you another bag and its contents

7 and ask if you recognize that?

8 A There are several bags in here. One I can see

9 a -- I can see my signature and it has projectile

10 written on the bag. I can't get to the rest of

11 them.

12 Q Is that a bag -- the plastic outside -- there's

13 a plastic outside bag, correct?

14 A Correct.

15 Q And that's sealed where you can't get into it

16 at this moment?

17 A That's correct.

18 Q Inside there are several paper bags?

19 A As far as I can see, I can see two, maybe more.

20 Q Do you recognize your handwriting on the paper

21 bags inside?

22 A Yes.

23 MR. GRAHAM: Your Honor, at this time, I'd

24 first like to mark the plastic bag for

25 identification.

1 **THE COURT:** All right.

2 (State's Exhibit Number 48, evidence bag,
3 marked for identification purposes.)

4 **BY MR. GRAHAM:**

5 **Q** Investigator Day, looking at State's Number 48
6 for identification, would you go ahead and open that
7 and let's go into the contents of the bag? If you
8 will open it somewhere where there's not writing.

9 **A** Okay. I'm going to have to cut from the side.

10 **Q** How many bags are inside there?

11 **A** Two bags.

12 **Q** And do you recognize the bags?

13 **A** I do.

14 **Q** Do you recognize both bags?

15 **A** I do.

16 **Q** Looking at the bag you have in your hands, what
17 is that?

18 **A** It says, Two spent casings.

19 **Q** Now -- go ahead. I'm sorry.

20 **A** And it's got the case number and then a sticker
21 that has, Spent 9mm casing.

22 **Q** So looking at the picture on the overhead, you
23 said you collected two 9mm Luger casings from this
24 crime scene, correct?

25 **A** Correct.

1 Q When you collected them, how did you store
2 them?

3 A In, like, metal tin cans.

4 Q And then after you put them in there, what did
5 you do?

6 A Put them in a bag and sealed them.

7 Q And is that the bag that you put them in and
8 sealed?

9 A Yes.

10 Q Does that bag appear to be properly sealed?

11 A Yes.

12 Q If you would, open it at this time?

13 A (Witness complies.)

14 Q What was inside the bag?

15 A Two metal evidence cans.

16 Q And do you recognize those evidence cans?

17 A Yes.

18 Q And do they appear -- it looks like they have
19 tape on them as well?

20 A Correct.

21 Q And do you see your handwriting on there as
22 well?

23 A There's more evidence tape on here. I don't
24 see my initials on here -- okay. I do. It was just
25 covered up by some of the tape.

1 Q So when you first put it in there, you sealed
2 it. And since then, it's been analyzed by somebody
3 and resealed?

4 A Right. And then when they're done with it,
5 then they'll reseal it and they'll put seal -- and
6 with it being so small, it ended up going over my
7 seal.

8 Q Do you recognize those as the two metal
9 containers that you put these two casings in?

10 A Yes.

11 MR. GRAHAM: Your Honor, the State would offer
12 the bag, the two metal containers and the two
13 casings inside into evidence.

14 MR. WILLIAMS: No objection, Your Honor.

15 THE COURT: Admitted.

16 MR. GRAHAM: And it's my understanding that
17 Mr. Williams will stipulate on the chain of custody
18 on these items again to the Richland County
19 Sheriff's Department by the analyst and firearms, I
20 believe.

21 MR. WILLIAMS: That's correct.

22 (State's Exhibit Number 49, shell casings,
23 marked and admitted into evidence.)

24 BY MR. GRAHAM:

25 Q In addition, did you collect some things -- I'm

1 going to show you State's 35. Do you recognize
2 that?

3 A A cigarette butt.

4 Q Where was that found?

5 A On the back porch.

6 Q And why did you collect that?

7 A Because I saw no other cigarette butts around
8 like maybe somebody just smokes out back and
9 discards their cigarette butts there. It was just
10 there by itself.

11 Q Let me show you a bag and its contents and ask
12 if you recognize it?

13 A Yes. It has my signature on the seal, has the
14 case number, item number nine, and cigarette butt
15 written on the bag.

16 Q You're talking about the paper bag on the
17 inside?

18 A Correct.

19 Q That's also enclosed in a plastic bag; is that
20 correct?

21 A That is correct.

22 Q The plastic bag is Richland County Sheriff's
23 Department?

24 A Yes.

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

1 the outside bag marked for identification.

2 THE COURT: All right.

3 (State's Exhibit Number 50, evidence bag,
4 marked for identification purposes.)

5 BY MR. GRAHAM:

6 Q State's Number 50, the Richland County
7 Sheriff's Department evidence and property bag, does
8 that appear to be properly sealed?

9 A Yes.

10 Q If you would, cut into that bag at this time.

11 A (Witness complies.)

12 Q Removing the contents of State's I.D. 50, what
13 do you see inside?

14 A A brown bag has a case number, bag five,
15 cigarette butt and --

16 Q Do you recognize the handwriting?

17 A Yes, it's my handwriting.

18 Q And you were flipping it over and looking at
19 the security tape. Do you recognize the initials on
20 that?

21 A Yes, it's my initials.

22 Q Does that appear to be the bag that you used to
23 collect that cigarette butt on the overhead?

24 A Yes.

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

1 the bag and the contents of the cigarette butt into
2 evidence at this time.

3 MR. WILLIAMS: Without objection, Your Honor.

4 THE COURT: Admitted.

5 (State's Exhibit Number 51, cigarette butt,
6 marked and admitted into evidence.)

7 MR. GRAHAM: Again, Your Honor, it's my
8 understanding that Mr. Williams will stipulate the
9 chain of custody on the cigarette butt up to the
10 analyst for DNA.

11 MR. WILLIAMS: That's correct, Your Honor.

12 THE COURT: Thank you.

13 BY MR. GRAHAM:

14 Q State's Number 36?

15 A A Mountain Dew can that was found on the back
16 deck.

17 Q Why did you collect that?

18 A Again, it was near the cigarette butt. And
19 both of them are pretty near, close to the back
20 door. And, again, it was the only can around, not
21 like somebody just discarding their trash out. So I
22 took it for processing.

23 Q Now, you processed that one yourself?

24 A Yes.

25 Q What did you process -- or what process did you

1 use?

2 A The same as that other one where I used the
3 super glue method and used powder.

4 Q And what were the results of your processing
5 the Mountain Dew can?

6 A Negative, was nothing.

7 Q You weren't able to get any fingerprints off of
8 it?

9 A Nothing.

10 Q State's Number 37, what does that photograph
11 depict?

12 A That's a --

13 Q It's got a placard with item 11. What was item
14 11?

15 A Number 11 is a projectile found near the
16 refrigerator in the bedroom.

17 Q What's a projectile?

18 A It's basically what comes, when you pull the
19 trigger on the gun, it's what comes through the
20 barrel.

21 Q State's Number 38, what is that a photograph
22 of?

23 A A close-up shot of the projectile.

24 Q It looks like it's resting on something blue.
25 What is that?

1 A It is a gloved hand.

2 Q And that's the projectile that you found in
3 Dave Cannon's house?

4 A Correct.

5 Q You had previously opened a bag from the
6 Richland County Sheriff's Department, which was
7 State's 48 for identification, and removed two paper
8 bags that you recognized. Do you remember that?

9 A Yes.

10 Q The first one being the two projectile --
11 excuse me -- the two bullet casings, which were your
12 seven and eight. The other bag, do you recognize
13 the bag I'm hold -- handing you now as coming out of
14 that bag as well?

15 A Yes. My handwriting, bag four, has got
16 projectile written on it and my signature.

17 Q Security tape on the bag?

18 A Yes.

19 Q And what's inside that bag?

20 A Projectile.

21 Q That projectile?

22 A Yes.

23 MR. GRAHAM: Your Honor, the State would offer
24 the bag and its contents -- the container and the
25 projectile into evidence at this time.

1 **MR. WILLIAMS:** Without objection, Your Honor.

2 **THE COURT:** Admitted.

3 (State's Exhibit Number 52, projectile,
4 marked and admitted into evidence.)

5 **THE COURT:** Folks, I know this is kind of
6 riveting and if you want to stand up to circulate a
7 little blood, well, feel free. I know I'm sitting
8 here and my back's getting sore, but you can stand
9 up and stretch a minute while they're putting some
10 of this in.

11 **MR. GRAHAM:** It's my understanding, Your Honor,
12 that Mr. Williams will stipulate on the chain of
13 custody of this to both the DNA analyst and the
14 firearms expert at the Richland County Sheriff's
15 Department.

16 **MR. WILLIAMS:** That's correct, Your Honor.

17 **THE COURT:** Thank you.

18 BY MR. GRAHAM:

19 **Q** There were other items in the house that you
20 looked at that you didn't necessarily collect; is
21 that right?

22 **A** Correct.

23 **Q** Did you find -- basically, did you find trace
24 evidence of marijuana in that room?

25 **A** Yes.

1 Q Numerous places?

2 A Yes.

3 Q Was there anything else -- I think that there
4 were also -- the Coleman cooler, in the photograph
5 we looked on earlier, there were plastic bags in the
6 pocket of the cooler; do you remember that?

7 A Yes.

8 Q Did you process those for latent prints?

9 A I did.

10 Q Did you find anything?

11 A No.

12 Q So the items you collected they either went to
13 Richland County Sheriff's Department or SLED for DNA
14 analysis or you processed them yourself for latent
15 prints; is that correct?

16 A Correct.

17 Q Depending on the type of service and the object
18 itself?

19 A Correct.

20 Q You were unable to find any latent prints?

21 A Nothing.

22 Q Processing the house itself, other than the
23 items we've talked about, did you process the house?

24 A Yes.

25 Q What does that mean? What did you do?

1 **A** I basically went through the house and you
2 first try to think what would somebody touch and --
3 like a burglary, it's really easy because you see
4 drawers are open and everything like that. Well,
5 this, like I said, besides the bedroom, the rest of
6 the house looked normal. So I did obvious things,
7 doorknobs and windows. There was a sliding glass
8 door. I did both the outside and inside just to
9 make sure somebody didn't do the looking through to
10 see if somebody's home. I did the stuff in the
11 bedroom like the refrigerator, the freezer. There
12 was a microwave. I processed that, multiple items
13 in the house.

14 **Q** Did you find anything?

15 **A** I didn't find anything.

16 **Q** Well, people live there, don't they?

17 **A** That's correct.

18 **Q** So why didn't you find anything?

19 **A** It's very hard to find a fingerprint. Our job
20 got really hard when the CSI show started coming
21 out. It's very difficult to find a fingerprint. I
22 mean, you know, could they be wearing gloves. It
23 depends on how people sweat, are their hands dry,
24 are they not dry, how they pick stuff up, the
25 texture of the surface and how long the print's been

1 there. It's just -- it's an unlimited amount of
2 reasons why we don't find any than we do. It's hard
3 to find a fingerprint.

4 And if you do find a fingerprint, it's got to
5 be enough characteristics that you have to be able
6 to compare it to a known print. So even if you do
7 find what looks to be a fingerprint, when you look
8 at it under we call a lu -- like a magnifying glass,
9 it has to have enough points to be able to say 100
10 percent it's an identification, but in this house, I
11 didn't find anything.

12 Q Is it fair to say that your job in real life is
13 not like the crime scene investigators on T.V.?

14 A No.

15 Q After you were done processing the house and
16 collecting the evidence, your next involvement in
17 the case, did you attend the autopsy of David
18 Cannon?

19 A Yes.

20 Q What's the purpose of an autopsy?

21 A To collect any evidence at the autopsy.

22 Q And that's done by a forensic pathologist?

23 A Yes.

24 Q A doctor?

25 A Correct.

1 Q Where did you go for David Cannon's autopsy?

2 A To Newberry.

3 Q As part of the autopsy -- well, were you able
4 to observe any wounds on David Cannon?

5 A You mean at the autopsy?

6 Q Yes.

7 A Yes.

8 Q What did you observe?

9 A He had two gunshot wounds that was kind of on
10 the left side, kind of one just right up here above
11 the chest (indicating), and then one that's kind of
12 down around the abdomen on the left-hand side. And
13 then he had two exit wounds that was kind of more on
14 the right side of his body.

15 Q So two entrance wounds in the front and two
16 exit wounds in the back?

17 A Yes.

18 Q Were any bullet fragments or projectiles found
19 inside David Cannon's body?

20 A No.

21 Q As part of the autopsy process, do you take
22 possession of blood from David Cannon for DNA
23 purposes?

24 A Yes.

25 Q Now, when you collect it, it comes from the

1 pathologist's hands to yours; is that correct?

2 A Correct.

3 Q You see the blood being taken out and you see
4 it being sealed and handed to you?

5 A Yes.

6 Q The blood comes to you in a purple top tube; is
7 that right?

8 A Yes.

9 Q Now, the purpose of taking that is to develop
10 the DNA profile of Mr. Cannon, right?

11 A Correct.

12 Q And you're aware that that goes on to SLED and
13 that gets done. What comes back to the agency, they
14 don't maintain those vials, do they?

15 A No.

16 Q Do you know how they create that DNA profile?

17 A They put it on like a, like a card. It's got a
18 circle on it. And they dispense some blood on that
19 card.

20 Q So they pour blood out of the vial on a card
21 and let it dry?

22 A Yes.

23 Q And that's how they -- then they would take a
24 cutting from that and develop a DNA profile?

25 A Yes.

1 Q Do you recognize -- and there are numerous bags
2 in here -- do you recognize what I'm handing you?

3 A It's a SLED evidence bag that's got my name on
4 it, June 6, 2012. And the first thing that catches
5 my eye is that DNA card that I was telling you
6 about.

7 Q Do you recognize that as being the card that
8 contained the poured blood from the purple top tube
9 that you collected?

10 A Yes.

11 MR. GRAHAM: Your Honor, at this time, the
12 State would offer the bag and its contents into
13 evidence.

14 MR. WILLIAMS: Without objection, Your Honor.

15 THE COURT: Admitted.

16 (State's Exhibit Number 53, victim's blood,
17 marked and admitted into evidence.)

18 MR. GRAHAM: Your Honor, that's State's 53 into
19 evidence. And it's my understanding that
20 Mr. Williams will stipulate on the chain of custody
21 of that to the DNA analyst.

22 MR. WILLIAMS: That's correct, Your Honor.

23 THE COURT: Thank you.

24 BY MR. GRAHAM:

25 Q In addition to attending the autopsy and

1 collecting that DNA standard from Mr. Cannon, did
2 you also have the opportunity to collect DNA
3 profiles from each and every defendant in this case?

4 A Yes.

5 Q Let me hand you four bags and ask if you
6 recognize those bags and their contents?

7 A I do.

8 Q And do those bags -- what are those?

9 A They're buccal swabs.

10 Q What's a buccal swab?

11 A It's just basically a DNA collection. Like I
12 was saying earlier, it contains long swabs, like
13 Q-tips, that we use to swab both sides of the cheek
14 inside. When you get the kit, it's sealed. You
15 open it up. It has latex gloves, instructions, a
16 card that you write information on about who's
17 taking it and who you're -- who the subject is. And
18 then there's another envelope that you put the used
19 Q-tips once you swab it, you put it in an envelope.
20 And there's evidence tape in there and you tape it
21 in front of who you're doing it and sign it.

22 Q So when you collect, you're swabbing people's
23 mouths with Q-tips basically; is that right?

24 A Pretty much. They're sterile Q-tips.

25 Q Sterile, you used the word sterile. What's the

1 purpose of -- what does sterile mean?

2 A It's clean. It doesn't have any other --

3 Q What's the purpose of them being sterile?

4 A So you don't have any contamination on the
5 swab.

6 Q What, if anything, do you do when you're
7 collecting them or preserving them to make sure that
8 they don't get contaminated with anything else?

9 A Well, of course, I wear gloves and they're
10 provided in the kit. And then as you're swabbing
11 their mouths, you make sure you don't talk over or
12 cough on the swab or make sure that nobody else
13 coughs on the swab. You set it off to the side
14 somehow. Like, what I do is I hold it off and then
15 let it air dry and then put it in the package and
16 seal it.

17 Q Do you recognize those four bags as being the
18 four buccal swab DNA samples that you collected from
19 Breon Mayers and from the three co-defendants?

20 A Yes.

21 Q And all of those were done by consent; isn't
22 that correct?

23 A That is correct.

24 MR. GRAHAM: Your Honor, the State would offer
25 these bags and their contents into evidence.

1 **MR. WILLIAMS:** Without objection, Your Honor.

2 **THE COURT:** Admitted.

3 (State's Exhibit Numbers 54 through 57,
4 buccal swabs, marked and admitted into evidence.)

5 **MR. GRAHAM:** Your Honor, it's my understanding
6 that Mr. Williams will stipulate to the chain of
7 custody for those four buccal swabs of his client
8 and the three co-defendants, which are State's 54,
9 55, 56 and 57 that are in evidence, up to the DNA
10 analysis.

11 **MR. WILLIAMS:** That's correct, Your Honor.

12 **THE COURT:** Thank you.

13 BY MR. GRAHAM:

14 **Q** The projectile that you recovered and that you
15 collected, how easy was that to find?

16 **A** Very difficult.

17 **Q** Was it lodged in anything or loose or how did
18 you -- how did you find it?

19 **A** It just -- we started pulling up the rugs. We
20 had to move everything pretty much out of the room
21 and then pulling up the car -- not the carpet, but
22 rugs that were laying there and it just rolled out
23 from the carpet.

24 **Q** When you were processing the scene prior to the
25 autopsy, did you know how many times David Cannon

1 had been shot or it had appeared to your
2 understanding?

3 A It appeared to me twice.

4 Q Did you see both the entrance and the exit
5 wounds at the scene?

6 A We found a total of four wounds, two on the
7 front side, two on the back side.

8 Q Did that lead you to believe that you should
9 have found projectiles at the house?

10 A Yes.

11 Q How many were you expecting to find?

12 A Hoping to find at least two.

13 Q And how many did you find?

14 A Just one.

15 Q You said it was not lodged in anything. Again,
16 how did you all find it? How did you find that
17 projectile?

18 A Honestly, just luck. We literally searched
19 several times, kind of backed out, kind of trying to
20 look at maybe trajectory or something and then went
21 back in and just started moving stuff again. And it
22 just -- like I said, we were pulling up a rug and it
23 rolled out.

24 MR. GRAHAM: Thank you, Investigator Day.

25 Please answer any questions Mr. Williams has.

1 **MR. WILLIAMS:** May it please the Court.

2 **THE COURT:** Go ahead.

3 CROSS-EXAMINATION

4 **BY MR. WILLIAMS:**

5 **Q** Investigator or detective?

6 **A** It don't matter.

7 **Q** What do you prefer?

8 **A** Investigator's fine.

9 **Q** Okay. Investigator. I'm going to keep it
10 simple.

11 **A** Okay.

12 **Q** As I understand it, you were, I guess, like the
13 head CSI guy there for purposes of securing the
14 crime scene and finding whatever evidence was on the
15 scene so that it could be properly secured and
16 tested to find out who the perpetrators of the crime
17 were?

18 **A** Well, we kind of work as a partner.

19 **Q** Tell me who you work with.

20 **A** Well, it depends on who's there. It just
21 happens to be me and Renee Strickland were in the
22 office.

23 **Q** Okay. Now -- and maybe I'm not getting to
24 where I want to get. Richland County was involved
25 in a lot of testing, analysis, what have you, in

1 regards to this case, weren't they?

2 A Correct.

3 Q Now, what was their role in terms of solving
4 this murder or what have you? Did they just analyze
5 the items or did they have a CSI person out there
6 who was also securing evidence?

7 A No, nobody from Richland County was on the
8 scene with us.

9 Q So Lexington County was in charge of securing
10 all the evidence?

11 A Yes.

12 Q And once the evidence was secure, then you used
13 Richland County because they had the ability to test
14 the items and determine, you know, what it was?

15 A Yeah. We used Richland County because they
16 were able to get the results back faster. And since
17 we didn't know who did it with SLED testing
18 everybody in the state, Richland County can get a
19 result back to us a lot faster.

20 Q All right, sir. And when you secure these
21 items -- and just to break it down to its simplest
22 terms, you talk about DNA and you talk about
23 fingerprints. Fingerprints would lead you
24 specifically to an individual based on whether or
25 not you had a good print or not, right?

1 A Correct.

2 Q And when you talk about DNA, does DNA lead you
3 to a specific individual or does it narrow down a
4 group of individuals?

5 A I have no training in that part of it, so I
6 could not answer.

7 Q But you look for DNA when you can't find
8 fingerprints; is that right?

9 A It depends on circumstances, so.

10 Q Okay.

11 A Sometimes it's -- like the coolers,
12 fingerprints were just useless. They wouldn't -- so
13 that's why we went with trying to do touch DNA.

14 Q Whereas they might not leave ridges for you to
15 look at, they might leave particles of theirself,
16 which you could take the DNA and narrow down the
17 possible suspects who were involved?

18 A Correct.

19 Q Is that a pretty simplified way of looking at
20 it?

21 A Yes.

22 Q Now, when the DNA was secured and the, I guess,
23 the fingerprints were -- you essentially -- I'm sure
24 you checked every possible place where it might have
25 been touched, anything that looked suspicious you

1 took DNA off of like the cigarette butt that you
2 found out there. I assume you had that tested for
3 DNA?

4 A Yes, it was sent off to be tested.

5 Q And that's because you thought one of the
6 suspects might have been smoking the cigarette?

7 A Yeah, possibly, didn't know, yes.

8 Q And with the container, the soda container, you
9 had that checked for DNA also?

10 A No, fingerprints.

11 Q Fingerprints.

12 A Yes.

13 Q Could you not check that for DNA also?

14 A Yes. It was determined to just do fingerprints
15 on it because the can, it was dry. You know, if
16 there would have been wet contents inside or like it
17 was -- that one was kind of a shot in the dark. The
18 can, to me, in my experience, looked old, not as in
19 old, but there was no liquid inside. So, you know,
20 since it was near the cigarette butt, I collected it
21 and just processed it.

22 Q Now, you pointed out on the screen where the
23 projectiles were -- I'm sorry -- shell casings were
24 found inside the residence and you had it numbered.
25 And it -- clearly, it was inside the hou -- inside

1 the residence was where the shell casings were
2 found?

3 A Yes.

4 Q They were found not on the porch, but inside
5 the residence?

6 A Correct.

7 Q And how far inside the residence were the shell
8 casings found?

9 A I can only give you a guesstimation.

10 Q Okay.

11 A When you open the door, maybe a foot and a
12 half, two foot max.

13 Q So, clearly, the weapon had to be fired once
14 the gun was inside the residence?

15 A I can't answer that question.

16 Q Let me ask you this. When you -- when you
17 are -- you're not a ballistics expert?

18 A No, sir.

19 Q When you send your shell casings, you send off
20 your projectiles and your weapons to someone who is
21 trained in ballistics?

22 A Yes.

23 Q And they look at it and they see, I don't know,
24 whether or not the projectile came from the weapon
25 and they look to see whether or not the casings were

1 fired from a particular weapon. Is that an accurate
2 statement?

3 A Yeah. We try to see if the projectile, yes,
4 was fired from that weapon.

5 Q All of these items which we've talked about
6 today, you have assigned numbers to them, haven't
7 you?

8 A Yes.

9 Q And throughout this entire case, you actually
10 have a case number. You have -- let's see, is it
11 called an OCA file number?

12 A That would be something you'd have to speak
13 with the evidence technician. I don't know what --
14 the case number would be the 11 dash 031995.

15 Q Got you. 11 dash 03 dash --

16 A No.

17 Q 11-031995?

18 A Correct.

19 Q Now, you only did the CSI work on which
20 location?

21 A What do you mean which location?

22 Q Did you go to more than one location?

23 A No, sir.

24 Q Do you know where 218 Road is?

25 A No, sir.

1 Q Do you recognize that form as being a form
2 which is customarily kept at the sheriff's
3 department and with this -- and with this particular
4 case?

5 A Yes.

6 Q Do you know anything about other shell casings
7 or projectiles that were found?

8 A I'm sorry. Can you repeat?

9 Q Do you know anything about other shell casings
10 or projectiles that were found which are associated
11 with this homicide?

12 A No.

13 Q And who would be the person to know if there
14 were other 9mm shell casings that were found that
15 are associated with this homicide?

16 MR. GRAHAM: Your Honor, I'd object. He's
17 already answered that he doesn't know anything about
18 it, how can he identify the person?

19 BY MR. WILLIAMS:

20 Q Do you know?

21 A No.

22 Q Do you have a William E. Derrenbacher who works
23 at the Lexington County Sheriff's Department?

24 A He used to. He does not work with us. He
25 works -- he's director over Animal Control Services

1 now.

2 Q And what was his position with the Lexington
3 County Sheriff's Department on or about October the
4 25th of 2011?

5 A He was a detective.

6 Q And was he involved in this particular case?

7 A Yes.

8 Q Do you know an Andrew Kessler?

9 A The name does not sound familiar.

10 Q Now, the projectile that we still got showing
11 up here, do you know if this particular projectile
12 came from a -- is that a Hi-Point? Do they call
13 that a Hi-Point projectile?

14 A I'm not a ballistics expert. I can't answer
15 that.

16 Q You don't know anything about this projectile.
17 You don't know what kind of gun it goes to, do you?

18 A No.

19 Q You don't know if it goes to a .38 caliber?

20 A No.

21 Q And now the shell casings that you found, these
22 two shell casings that you found, that's showing
23 their location in the residence, the only thing you
24 know about those shell casings is that they are 9mm;
25 is that correct?

1 A Correct.

2 Q Are they Hi-Point 9mm?

3 A Again, I don't know. I wrote down what was
4 stamped on the bottom, which was just 9mm Luger.

5 Q Do you have them with you?

6 A I do not have them.

7 Q Are they in evidence?

8 A They should be over there.

9 Q Can I get you to open those up?

10 A (Witness complies.)

11 Q Just open one.

12 A Okay.

13 Q And what does that say on that shell casing?

14 A 9mm Luger.

15 Q All right, sir. Now, let me ask you, what has
16 been marked into evidence as State's Exhibit Number
17 17, which is a weapon and looks like some sort of
18 magazine, 9mm magazine, what is the listed name of
19 the 9mm magazine?

20 A I don't know who collected this. It's not my
21 handwriting, but it says Hi-Point 9mm magazine.

22 Q Hi-Point 9mm magazine?

23 A Yes.

24 Q And, of course, you don't know whether or not
25 Hi-Point 9mm magazine encompasses -- or do you?

1 A I do not know, no, sir.

2 Q The same as the cartridges which you found at
3 the location?

4 A Correct, I do not know.

5 Q Do you know what kind of weapon that is?

6 A Not without reading what's on the bag. I have
7 not seen the weapon.

8 Q What does it say on the bag?

9 A It's written, Hi-Point 9mm.

10 Q So it's written, Hi-Point 9mm, correct?

11 A That's what's written. I don't know what the
12 gun is without pulling it out and looking at it.

13 Q Now, all of the items then that were actually
14 seized from the location would have been sent to
15 Richland County and they did all the analysis,
16 except for the marijuana, which you tested, and
17 except for -- did you do the footprint analysis?

18 A I did.

19 Q Tell me about the footprint analysis. First,
20 where did you find it and what did you find out?

21 A I was notified by, I believe, it was the
22 coroner's office that were there before I got there.
23 They were already looking around. And he came
24 across some foot impressions along a -- looks like a
25 power line right of way that led to the residence

1 and they wanted me to go out and photograph. And
2 the ground was really hard clay mixed with some
3 grass and weeds. And I was able to locate two
4 footwear impressions that had enough detail to kind
5 of know, you know, what kind of tread pattern that
6 it had, so I photographed it.

7 Q Okay. And did you follow those footprints --
8 the footprints actually came from the, what, the
9 ground area and the cut through all the way back to
10 the house across the street, didn't it?

11 A No. The only -- the ones I could follow, there
12 was a side road that comes off of I
13 don't remember the name of it, it was going towards
14 the residence and then, like, going back.

15 Q All right. And when you say you took pictures
16 of them, did you measure them to see how big the
17 feet would have been?

18 A No. You don't measure. The scale -- you use a
19 roller when you photograph impressions so that way
20 if you find possible shoes to go back and do a
21 comparison on, you use that roller to make a true
22 actual size of it, but you don't, like, lay the
23 ruler down and say, the ruler says nine inches, it's
24 a nine inch shoe.

25 Q And did you make the actual size of the

1 footprints which you found at the scene?

2 **A** (No response.)

3 **Q** You said you don't use a ruler. You said you
4 do something to make the actual size, so I assume
5 you did something to compare it to?

6 **A** Well, one of them I -- the shoes I compared it
7 to, nothing matched it, so I don't know what size it
8 is.

9 **Q** So you compared it to shoes from which
10 individuals?

11 **A** I was asked to do a comparison on five pairs of
12 shoes. I had a pair of shoes from Jasmine Bowers, a
13 pair of shoes from Tyrome Brennan, a pair of shoes
14 from Breon Mayers and two pairs of shoes from
15 Jermaine Caughman.

16 **Q** And were you able to show that those footprints
17 matched up to anybody's shoes that you compared it
18 to?

19 **A** I was not able to make a positive
20 identification on any of them.

21 **Q** So aside from your analysis of the marijuana
22 and your dealing with the footprints, did you do any
23 analysis other than collect information?

24 **A** No.

25 **Q** And the only other persons that would be

1 involved in doing that would be SLED and Richland
2 County?

3 A Yes, sir.

4 Q Did you test a video camera and tape?

5 A Not a video camera. A tape was entered into
6 evidence and I was asked to make a copy of it. And
7 when I went to make a copy of it, I view it and
8 there was nothing on it. It was blank.

9 Q Were you able to use any type of -- could you
10 tell when the tape was used last?

11 A No, sir. I believe the detective that
12 collected it, the person he collected it from told
13 him it was a brand new tape, it's never been used
14 because the surveillance system didn't work anymore.
15 And, of course, I -- having the request to record
16 it, I had to check it and there was nothing on the
17 tape.

18 Q So the tape had never been used?

19 A From my knowledge, no.

20 MR. WILLIAMS: Thank you so much.

21 THE COURT: Redirect.

22 MR. GRAHAM: No questions, Your Honor.

23 THE COURT: You can step down.

24 All right. Folks, I think that's where we'll
25 break for today. We're going to put in a full day

1 tomorrow. We've got a bunch of, you know, chain of
2 custody issues and things like that that we've got
3 to just put a bunch of people on, so we'll hopefully
4 get through all of that tomorrow. Ending tomorrow
5 is still a possibility. We might go into Friday,
6 just depends on how these witnesses go.

7 But I just want to say, you know, we have been
8 knocking off around 5:00, but in order to get all
9 the evidence in tomorrow, if it looks like we're
10 going to need to go into Friday, let's just plan on
11 working a little bit later in order to get all the
12 evidence in so that Friday morning we could do
13 charging and arguing if that becomes necessary.

14 It's kind of hard to say exactly how these
15 things go, you know. You kind of do them and then
16 you just have to see how it flows, but everybody's
17 working behind the scenes to accomplish this, get it
18 done and get it done this week.

19 So I just want to alert you so that if you need
20 to make any kind of transportation plans or anything
21 for tomorrow, there's a possibility we might go just
22 a little bit later, you know, six o'clock or
23 thereabouts if we need to. And, again, if anybody
24 has any transportation kind of problems, just let us
25 know and we can get, you know, a sheriff's deputy to

1 take you home or something like that. But I know if
2 anybody has child care issues or something like that
3 and that's going to be a problem, let me know ahead
4 of time; otherwise, we're going to just kind of plow
5 on through tomorrow, maybe even take a short lunch.

6 I'll talk with the clerk's office about buying
7 y'all lunch tomorrow since you've been here all week
8 long. I've been letting you go out, but maybe if we
9 took a short lunch, we can get some food brought in
10 for you.

11 So, anyway, let's break for the day. If you
12 would, be in tomorrow morning at 9:30 and we should
13 get started right on time. I think they've been
14 doing a pretty good job of getting people here on
15 time and lined up, so we will try to get started
16 right at 9:30.

17 Again, remember not to talk with anybody about
18 the case, don't discuss it with anyone, don't talk
19 about it amongst yourselves, family members, please
20 avoid social media. I haven't noticed any media. I
21 don't know any of the newspaper reporters around
22 here, but we haven't had any T.V. cameras.

23 But if you, for some reason, somebody's been
24 covering it and you get the paper tomorrow and open
25 it up -- I hope that's the lights and not my blood

1 pressure -- but if you happen to open up a paper in
2 the morning and they've written anything about the
3 case, please just don't read the paper in the
4 morning then or avert your gaze from that article.
5 And we're doing real good about trying to keep all
6 those outside influences in or out.

7 So see you tomorrow morning at 9:30. Thank you
8 for your patience with us today.

9 (The jury was excused for the day.)

10 **THE COURT:** Okay. Mr. Mayers, let's chat a
11 second, just stand up.

12 All right. You're here with your lawyer and
13 we're getting down to the end of the trial. I
14 haven't required you, nor am I requiring you now, to
15 tell me whether or not you intend to put up a
16 defense or whether or not you want to testify, but
17 before the end of the day tomorrow, you're probably
18 going to have to make a decision as to whether or
19 not you want to call any witnesses on your behalf
20 and whether or not you want to take the witness
21 stand and tell the jury your side of the story.
22 That's a constitutional right you have to testify.
23 It is also a constitutional right you have to not
24 testify.

25 Again, you don't have to tell me now, but you

1 will have to make that decision. And I want to make
2 sure that you've had time to think about it. I know
3 you've talked about it with your lawyer and you may
4 have made up a decision, but whatever your decision
5 is, you can change your mind about it because you
6 don't have to tell me now, but I do want to make
7 sure that you do talk about it with your lawyer
8 tonight, in the morning, so that by this time
9 tomorrow, maybe even earlier, you will have to make
10 a decision as to whether or not you want to testify,
11 okay.

12 **DEFENDANT:** Yes, sir.

13 **THE COURT:** So you had a chance to talk with
14 your lawyer about that?

15 **DEFENDANT:** Yes, sir.

16 **THE COURT:** All right. Well, be sure you talk
17 about it tonight or first thing in the morning. If
18 you've got family members or something like that you
19 want to talk to about it, well, if you want to, then
20 you can do that, but it's your decision and your
21 decision alone, all right. You can get advice from
22 your lawyer, you can get input from your family if
23 you want to, but, ultimately, it's your decision.
24 You're on trial, all right.

25 So you're facing life in prison, you understand

1 that. He's told you what your penalty range is on
2 that. And if you get convicted, you've got a
3 minimum of 30 years, you could face the rest of your
4 life behind bars. So I want you to understand that
5 that's as serious as it gets. It's your decision
6 and you've got to make up your mind about that
7 tomorrow. So I want you to think about it and sleep
8 about it tonight, all right.

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** Okay. Are we on track then for
11 everything in the morning?

12 **MR. GRAHAM:** Yes, sir.

13 **THE COURT:** And how long -- you think we're
14 going to eat the whole day up with those things?

15 **MR. GRAHAM:** Yes, sir.

16 **THE COURT:** All right. Well, I guess we'll go
17 with the flow and see how many witnesses we get in.
18 And, again, I'll talk to the clerk about maybe
19 getting these folks in some lunch, so let's try to
20 keep lunch to maybe about an hour tomorrow. We've
21 been giving them an hour and a half so everybody can
22 travel around and get what they want, but let's try
23 to keep that in and so plan accordingly, okay. See
24 y'all in the morning.

25 (The proceedings were concluded for August

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1 8, 2012.)

2 (The following proceedings were held on
3 August 9, 2012.)

4 **THE COURT:** Y'all got your witness ready?

5 **MR. GRAHAM:** Yes, Your Honor.

6 **THE COURT:** Okay. Bring the jury in.

7 (The jury enters the courtroom at 9:30 a.m.)

8 **THE COURT:** All right. Folks, welcome back.

9 We are going to resume now with the State calling
10 their next witness.

11 **MR. GRAHAM:** The State calls Renee Strickland.

12 MARSHA RENEE STRICKLAND,

13 having been duly sworn, testified as follows:

14 **THE CLERK:** Once you're seated, state your full
15 name, spelling your last on the record, please,
16 ma'am.

17 **THE WITNESS:** My name is Marsha Renee
18 Strickland, S-t-r-i-c-k-l-a-n-d.

19 DIRECT EXAMINATION

20 BY MR. GRAHAM:

21 **Q** Ms. Strickland, ma'am, where are you employed?

22 **A** The Lexington County Sheriff's Department.

23 **Q** And what do you do there?

24 **A** I'm a crime scene investigator with the
25 sheriff's department.

1 Q As part of your job as a crime scene
2 investigator, are you involved with search warrants
3 and collecting evidence?

4 A I am, yes, sir.

5 Q And did you have an occasion to work on the
6 case involving the murder of David Cannon?

7 A I did, yes, sir.

8 Q Specifically, on October 27th of 2011, did you
9 assist in a search warrant at a residence that was
10 identified with Jermaine Caughman?

11 A I did, yes, sir.

12 Q And what was the location of that residence?

13 A It was

14 Q And what, specifically, as far as a weapon, did
15 you recover there?

16 A I recovered a Colt .38 Special Revolver that
17 had five unfired cartridges in the cylinder.

18 Q And did you record that, the recovery of that
19 weapon, photographically?

20 A I did, yes, sir.

21 Q Specifically, the location, do you remember
22 where you located that weapon?

23 A The weapon was located behind a speaker in a
24 closet in a bedroom that was identified as Jermaine
25 Caughman's bedroom.

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1 Q Let me show you a photograph and ask if you
2 recognize that?

3 A I do. That's the .38 Special revolver that was
4 recovered.

5 Q Does that fairly and accurately depict what you
6 photographed when you recovered that revolver?

7 A Yes, sir.

8 MR. GRAHAM: Your Honor, the State would offer
9 that into evidence at this time.

10 MR. WILLIAMS: Without objection, Your Honor.

11 THE COURT: Admitted.

12 (State's Exhibit Number 58, photograph,
13 marked and admitted into evidence.)

14 BY MR. GRAHAM:

15 Q Looking at State's Number 58 in evidence, would
16 you explain to the jury what we're looking at here?

17 A That's a picture of a .38, a Colt .38 Special
18 Revolver, with the cylinder rolled out to show
19 what's inside it. Those are five unfired cartridges
20 and there's obviously one missing.

21 Q That's the -- that would be the sixth one that
22 has nothing in it?

23 A Yes, sir.

24 MR. GRAHAM: Thank you, Ms. Strickland. Please
25 answer any questions that the defense has.

1 **MR. WILLIAMS:** No questions, Your Honor.

2 **THE COURT:** You can step down. Thank you.

3 Next witness.

4 **MR. GRAHAM:** State calls Robert Oates to the
5 stand.

6 And, Your Honor, after speaking with
7 Mr. Williams, it's my understanding that
8 Mr. Williams will stipulate to the chain of custody
9 from Investigator Freund. He's the officer -- or
10 the detective that recovered the weapon, the 9mm
11 Hi-Point, which was State's 17, as well as the
12 magazine and the rounds, the three unfired rounds
13 that I thought were marked separately, but I don't
14 see a sticker on it. I guess, those are included
15 with State's 17 as well.

16 **MR. WILLIAMS:** Up until they're analyzed is
17 what I think you meant to say.

18 **MR. GRAHAM:** At this point, it would be to --
19 right.

20 **MR. WILLIAMS:** Yes, sir, that's correct.

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

22 ROBERT OATES,
23 having been duly sworn, testified as follows:

24 **THE CLERK:** Have a seat, please, sir. Once
25 you're seated, state your full name, spelling your

ROBERT OATES - DIRECT BY MR. GRAHAM

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1 last on the record.

2 **THE WITNESS:** Robert Oates, O-a-t-e-s.

3 DIRECT EXAMINATION

4 BY MR. GRAHAM:

5 **Q** Mr. Oates, sir, where are you employed?

6 **A** The Richland County Sheriff's Department.

7 **Q** And what, specifically, do you do there?

8 **A** I'm a senior investigator within our crime
9 scene latent print division, crime scene
10 investigator.

11 **Q** And what do you do there?

12 **A** I respond to all crime scenes in Richland
13 County. When I'm on a crime scene, I collect
14 evidence, transport evidence. I process evidence
15 and objects with different powders, different
16 chemicals, also document crime scenes through
17 photographs, measuring devices. Also, I also do
18 analysis on crime scenes through crime scene
19 reconstruction. It can be blood pattern analysis or
20 trajectory analysis, attend autopsies and go to
21 court as far as federal, state and local courts to
22 testify.

23 **Q** Specifically, were you involved in assisting
24 with the Lexington County Sheriff's Department in a
25 murder case involving David Cannon that occurred in

1 October of 2011?

2 **A** Yes, I was.

3 **Q** Did you -- were you involved in processing some
4 coolers for -- actually swabbing for DNA?

5 **A** Yes, I did.

6 **Q** Would you explain in general terms how you did
7 that?

8 **A** Okay. I received the coolers through our
9 evidence room were already -- the coolers were
10 already entered into evidence. I received a request
11 form from one of our DNA techs in order to go down
12 and receive those coolers. I did, took those
13 coolers back up to our main laboratory. I then
14 processed them first for latent prints. I used a
15 chemical called Cyanoacrylate to try to develop any
16 prints on those coolers. After I did that, I then
17 used sterile cotton swabs to collect any DNA or skin
18 cells from those coolers.

19 **Q** How many coolers did you have in your custody?

20 **A** Three.

21 **Q** You said that you processed them for latent
22 prints. Were you able to develop anything?

23 **A** I was not.

24 **Q** Did that surprise you given the type of
25 material you were working with?

1 A It did not. As a matter of fact, I -- I
2 basically processed them for latent prints twice. I
3 basically left them in the Cyanoacrylate chamber
4 longer to see if I -- because of the vinyl type of
5 material, but I did not develop anything.

6 Q Let me show you State's 39 and ask if you
7 recognize this?

8 A Yes.

9 Q And is that one of the coolers that you
10 processed for latent prints and also collected a DNA
11 swab from?

12 A Yes, it is.

13 Q Let me show you State's Number 40 and ask if
14 you recognize this cooler?

15 A Yes. That is the Coleman cooler.

16 Q And is that another -- that's another cooler
17 that you processed?

18 A Yes.

19 Q And, finally, State's Number 47, do you
20 recognize this one?

21 A Yes.

22 Q And is that the third and final cooler that you
23 processed related to this case?

24 A Yes, sir, it is.

25 Q So there were no latent prints on any of those

1 coolers; is that correct?

2 A That's correct.

3 Q Explain the process for collecting DNA swabs
4 off of those coolers?

5 A It's very simple. You use a sterile cotton
6 swab and a cotton box {verbatim} and basically wet
7 the cotton tip with distilled water and then swab
8 the different areas. And then place them in a
9 carton box and place them into evidence. It's very
10 simple.

11 Q Let me show you an item and ask if you
12 recognize it?

13 A Yes. This is the evidence envelope that I use
14 basically.

15 Q And how do you recognize it?

16 A My signature and the date across.

17 Q So once you collected the swab from those
18 coolers, what do you do to protect them from
19 tampering to make sure that nobody messes with them
20 and that they are what they are?

21 A They're documented on an evidence form here.
22 They're placed in a six by nine envelope. I then
23 place evidence tape across the seal and seal it, the
24 envelope, with my initials and the date that I did
25 that. And then I place them back into my evidence

1 locker, which is -- I have the only key except for
2 my supervisor. I'm the on -- they're the only ones
3 that would have access to my locker.

4 Q And how do you recognize that bag?

5 A By, first of all, my signature at the bottom
6 here and also my initials on the evidence tape and
7 the date.

8 Q So once you collected them, put them in there,
9 you sealed it to make it tamper resistant; is that
10 correct?

11 A Right, yes.

12 Q Is that bag properly still sealed now?

13 A Yes, it is.

14 Q Could you open that bag for me and look at the
15 contents?

16 A Yes.

17 Q Do you recognize those as being the swabs that
18 you took from these coolers?

19 A Yes, I do.

20 MR. GRAHAM: Your Honor, the State would offer
21 the bag and its contents into evidence at this time.

22 MR. WILLIAMS: Without objection, Your Honor.

23 THE COURT: Admitted.

24 (State's Exhibit Number 59, swabs from
25 coolers, marked and admitted into evidence.)

1 **MR. GRAHAM:** Your Honor, referring to State's
2 59, the DNA swabs, it's my understanding that
3 Mr. Williams will stipulate to the chain of custody
4 from this witness to the DNA analyst that performed
5 the test on it.

6 **MR. WILLIAMS:** That's correct, Your Honor.

7 **THE COURT:** Thank you.

8 BY MR. GRAHAM:

9 **Q** In addition to processing the coolers for DNA,
10 did you also process a handgun, a magazine and three
11 live rounds?

12 **A** Yes, I did.

13 **Q** Let me show you State's Exhibit Number 17 and
14 ask if you recognize this?

15 **A** Yes.

16 **Q** And what is that?

17 **A** This is a Hi-Point 9mm auto handgun and one
18 Hi-Point magazine.

19 **Q** And what's in the magazine or what was in the
20 magazine?

21 **A** Three unfired, on the stamp, it was FC 9mm
22 Luger. Cartridges are unfired bullets.

23 **Q** What does FC stand for?

24 **A** Federal Corporation, to my knowledge.

25 **Q** Did you have an opportunity to process that

1 gun, the magazine and three rounds?

2 A Yes, I did.

3 Q And what -- how did you process it? What were
4 you looking for?

5 A I used the same procedures I did the coolers.
6 I used a Cyanoacrylate chemical to try to develop
7 fingerprints and follow that up with black powder,
8 also on the magazine and the three unused or unfired
9 cartridges.

10 Q Were you able to develop any latent prints off
11 of the gun, the magazine or the unfired rounds?

12 A I was not.

13 Q Did that surprise you?

14 A It did not considering transport, also in
15 plastic. So it did not -- was not, you know.

16 Q After you finished processing for latent
17 prints, what did you do?

18 A I then used sterile cotton swabs with distilled
19 water. And with the handgun, I swabbed the trigger,
20 the handle and the barrel of the slide with this
21 automatic weapon, placed that into a carton and then
22 the sides of all three of the unfired cartridges.

23 Q Let me show you another item and ask if you
24 recognize this item, State's Number 43, which is
25 currently, I think, for identification.

1 A Yes.

2 Q And what is that item?

3 A These are the two collected DNA swabs.

4 Q And how do you recognize them?

5 A My signature and my initials on the evidence
6 tape and the date.

7 Q Again, like the other items that we discussed
8 earlier, you labeled the front, you sign it, you
9 seal it, put evidence tape across it and initial
10 them; is that correct?

11 A Yes.

12 Q Does the bag look to be properly sealed at this
13 time?

14 A It does.

15 Q Would you go ahead and open it, please?

16 A Yes.

17 Q Looking at the inside of the contents, do you
18 recognize those?

19 A Yes.

20 Q And how do you recognize them?

21 A My signature, the case number and the date.

22 Q And what are those?

23 A The case number?

24 Q No. I'm sorry. What exactly -- you recognize
25 them. What are the contents of that envelope?

1 **A** Okay. I recognize them because of my
2 signature. Of course, my handwriting is not very
3 good. And these are the two cartons of collected
4 DNA.

5 **Q** From the swabs of the gun, the magazine and the
6 rounds?

7 **A** Yes, swabs, yes.

8 **MR. GRAHAM:** Your Honor, the State would offer
9 State's Number 43 for identification into evidence
10 at this time, the bag and its contents.

11 **MR. WILLIAMS:** Without objection, Your Honor.

12 **THE COURT:** Admitted.

13 (State's Exhibit Number 43, swabs from
14 pistol, admitted into evidence.)

15 BY MR. GRAHAM:

16 **Q** So both the DNA swabs from the coolers and from
17 the gun, when they left your possession, you
18 collected them, you sealed them and you passed them
19 on; is that correct?

20 **A** Yes.

21 **MR. GRAHAM:** Your Honor, it's my understanding
22 that Mr. Williams will stipulate to the chain of
23 custody on State's 43, which is the swabs from the
24 gun, the magazine and the rounds, to the DNA analyst
25 as well.

1 **MR. WILLIAMS:** That's correct, Your Honor.

2 THE COURT: Thank you.

3 MR. GRAHAM: And, finally, if I haven't said
4 it, Your Honor, State's 17, which is the 9mm
5 Hi-Point, the magazine and the three rounds, it's my
6 understanding that Mr. Williams will stipulate to
7 the chain of custody from Investigator Oates to
8 David Collins, who is the firearms examiner for the
9 Richland County Sheriff's Department.

10 **MR. WILLIAMS:** That's correct, Your Honor.

11 MR. GRAHAM: Thank you, Investigator Oates.

12 Please answer any questions Mr. Williams has.

13 **MR. WILLIAMS:** Just a couple of questions.

14 CROSS-EXAMINATION

15 BY MR. WILLIAMS:

16 Q You are -- are you with CSI with Richland
17 County?

18 **A** Yes. Yes, sir.

19 Q And are you also -- you're in a DNA analysis
20 section?

21 **A** We're next door to the DNA analysis section.
22 They're directly behind us, on the same floor, but a
23 different room.

24 Q So I guess what I'm asking, do you work with
25 both sections, meaning do you work with the firearm

1 and tool mark section and the DNA analysis section?

2 A No, sir, strictly crime scene latent prints.

3 Q And, essentially, what you've testified to is
4 that you checked everything for prints and you
5 checked everything for DNA and that on the spent
6 casings, one of the spent casings, you did exact
7 some DNA, did you not?

8 A To my knowledge, I did not process a spent
9 casing. They were unfired. All three that I
10 processed were unfired.

11 Q Unfired?

12 A Yes. They were still bullets, yes, unfired
13 cartridges.

14 Q Did you not -- did you not process the two
15 spent casings which were found on the scene?

16 A No, sir.

17 Q Who did that?

18 A I have no knowledge. I did not. I was not
19 instructed to process those items.

20 Q And you were not involved with the projectile
21 that was found on the scene or the bullet that was
22 found on the scene either?

23 A Correct, I was not.

24 Q So the only thing you actually processed was
25 the coolers and what else?

1 **A** Three unspent cartridges and a Hi-Point 9mm
2 handgun.

3 **Q** And you did no analysis in terms of whether or
4 not the -- any of the bullets were used in the
5 particular weapon that you seized or anything like
6 that, somebody else does that?

7 **A** Yes, sir, I have no knowledge, yes, sir.

8 **MR. WILLIAMS:** That's all I have, Your Honor.

9 **MR. GRAHAM:** No other questions, Your Honor.

10 **THE COURT:** You can step down. Thank you.

11 **MR. GRAHAM:** The State will call David Collins
12 to the stand.

13 DAVID JEFFERY COLLINS,
14 having been duly sworn, testified as follows:

15 **THE CLERK:** Have a seat, please, sir. Once
16 you're seated, state your full name, spelling your
17 last on the record.

18 **THE WITNESS:** David Jeffery Collins,
19 C-o-l-l-i-n-s.

20 DIRECT EXAMINATION

21 BY MR. GRAHAM:

22 **Q** Mr. Collins, where are you employed, sir?

23 **A** I'm employed by the Richland County Sheriff's
24 Department.

25 **Q** And what do you do there?

1 A I work in the forensics laboratory as a
2 firearms and tool marks examiner.

3 Q In general terms, what is a firearms and tool
4 marks examiner?

5 A Tool marks examiner is an individual whose
6 specialty involves the study of firearms or firearms
7 ammunition components or the examination of tool
8 marks. When we talk about what a firearms examiner
9 does, what most people are familiar with is from
10 what on T.V. is commonly referred to as a ballistics
11 examiner. However, we, in the industry, typically
12 do not like that term as it's kind of restrictive.

13 What a firearms examiner normally is called
14 upon to do is to examine fired bullets and cartridge
15 cases that may be submitted from a scene and to try
16 to determine if they come from a specific submitted
17 firearm or if no firearm is submitted, to determine
18 what type of firearm may have fired them.

19 The way that we can do this is that when a
20 firearm is manufactured, various machining processes
21 are employed that leave microscopic defects on
22 various parts of the firearm. When a cartridge is
23 fired in the gun, as the bullet travels down the
24 barrel, it is marked by these imperfections in a way
25 that may be unique to the particular firearm as much

1 the same way that a fingerprint is unique to a
2 person.

3 A process called rifling is used to impress
4 spiralling grooves or cut spiralling grooves into
5 the barrel of the firearm to cause the bullet to
6 spin when it leaves the barrel. This stabilizes the
7 bullet in flight. That process is one of the
8 processes that leaves behind these microscopic
9 imperfections. Other portions of the firearm, such
10 as the firing pin or the breech face, may leave
11 behind markings similarly that are -- on the
12 cartridge case that can also be used to identify
13 whether that cartridge case was fired in the gun.

14 Q How long have you been a firearm and tool mark
15 examiner?

16 A I began my training at SLED in 1990 and,
17 therefore, I've been doing this for about 22 years.

18 Q How many times have you been qualified as an
19 expert in firearms examination or identification?

20 A I've testified as an expert in firearms
21 identification or examination in excess of 200 times
22 in the circuit courts of South Carolina. I've also
23 been qualified in Georgia, North Carolina, the
24 federal court system and the military court system.

25 MR. GRAHAM: At this time, Your Honor, the

1 State would offer David Collins as an expert in
2 firearms examination and identification.

3 MR. WILLIAMS: Without objection, Your Honor.

4 THE COURT: All right. Folks, normally, I told
5 you, I think, at the beginning of the trial, when
6 somebody testifies, we brought them up and let us
7 have them tell us what they heard, they touched,
8 they felt, they smelled, they saw, that sort of
9 thing, we don't usually let people get up and
10 testify about their opinion about sort of -- about
11 anything really. But the law says we make an
12 exception when, because of training, education or
13 experience in some field, a person is deemed to be
14 an expert in that field. So we not only let them
15 come in and testify about their observations, but we
16 also allow them to testify about their opinion and
17 they can give you the basis for their opinion.

18 So this witness has now been qualified as an
19 expert in the field of firearm exams and
20 identification. And he will be allowed to give you
21 his testimony in the form of an opinion, as well as
22 his observations and give you the basis for his
23 opinion.

24 The fact that he has been qualified as an
25 expert, however, does not mean that you have to

1 necessarily give him any greater weight than you
2 give any other witness' testimony or any other
3 evidence that you will hear or see in this trial.
4 You determine, based on his testimony and all of the
5 evidence that you hear throughout the trial, how
6 much weight that you decide his testimony deserves.

7 All right. You may continue.

8 MR. GRAHAM: Thank you.

9 BY MR. GRAHAM:

10 Q Mr. Collins, did you have an opportunity to
11 examine a projectile, shell casings, a 9mm Hi-Point
12 handgun and a magazine and three live rounds that
13 were contained in the magazine that were related to
14 the murder case that we're prosecuting today?

15 A Yes, I did.

16 Q Generally describe, in general terms, what you
17 do and then what you did in this case.

18 A Anytime we receive evidence in a case, the
19 first thing that we do is we document it in notes.
20 We'll examine each thing visually. We look for --
21 in the case of ammunition, we'll determine what
22 caliber of ammunition we're dealing with, what brand
23 of ammunition we're dealing with, what type of
24 projectile we're examining. We'll take
25 measurements. We'll weigh the items as required.

1 And then in the case of firearms, we will do
2 the same thing. We'll take notes as to the
3 condition of the firearm when we received it. We
4 will test fire the firearm, which allows us to do
5 two things: It allows to determine if the firearm
6 is functioning properly. And it also allows us to
7 obtain test bullets and test cartridge cases that we
8 therefore know were fired by that gun that we can
9 use in our microscopic comparisons with evidence
10 bullets and cartridge cases at a later time.

11 The way we can do this is we fire the firearm
12 into a water tank. The water is sufficiently deep
13 to slow the bullet down gradually and cause the
14 least amount of damage to the bullet possible, which
15 allows us to obtain better condition specimens for
16 microscopic comparisons.

17 Once we've done all of this, we will place
18 whichever items are appropriate under what we call a
19 comparison microscope. This is a microscope that
20 has two stages and allows us to observe two items
21 side by side and to turn them independently of each
22 other. And we look for these microscopic marks that
23 I mentioned before to have been placed on them by
24 the firing process. We look for areas where they
25 might match or, in some cases, we look for other

1 factors that may exclude that bullet as having been
2 fired by a particular firearm.

3 Q And did you have an opportunity to do that
4 process in this case?

5 A I did.

6 Q Let me show you State's Exhibit Number 17 in
7 evidence and ask if you recognize what I'm handing
8 you?

9 A Yes. This is the 9mm caliber Hi-Point
10 semiautomatic pistol that I examined in this case
11 and it has markings on it that I placed on it in the
12 laboratory so that I can identify it later.

13 Q If there is a -- the bag that you're looking at
14 has been sealed. If you can go ahead and cut into
15 it at this time.

16 A Yes. This envelope contains a pistol magazine
17 assembly which would have been also received with
18 this firearm, one unfired 9mm Luger caliber
19 cartridge and the components of two fired
20 cartridges. When I received this, it was in the
21 form of three unfired cartridges. During the course
22 of my examination, I found it necessary to actually
23 fire two of the unfired cartridges in the gun to
24 obtain better test standards than what I was able to
25 produce with laboratory ammunition.

1 **MR. GRAHAM:** Your Honor, if I could ask the
2 witness to step down from the stand.

3 **THE COURT:** Sure.

4 **BY MR. GRAHAM:**

5 **Q** If you would bring -- Mr. Collins, if you would
6 bring the gun, the magazine and one of the -- the
7 only left unfired round and one of the casings and
8 the projectile that came out.

9 **A** (Witness leaves the witness stand.)

10 **Q** Have you stand and face the court reporter. If
11 you just want to have me hold some of that for you,
12 I can.

13 **A** Sure.

14 **Q** In general terms, you're holding the -- that's
15 the 9mm Hi-Point; is that correct?

16 **A** Yes. This is the 9mm Hi-Point brand pistol.
17 This pistol is a semiautomatic pistol. It's
18 designed to fire 9mm Luger caliber ammunition.

19 **Q** What is the difference between a semiautomatic
20 and a revolver?

21 **A** A semiautomatic pistol is designed to fire one
22 shot each time the trigger is depressed. When the
23 firearm is discharged or fired, the slide will come
24 to the rear, it will eject the fired cartridge
25 casing and it will automatically reload the next

1 cartridge and be ready to fire. It does this once
2 for each time the trigger is depressed.

3 A revolver, on the other hand, when fired,
4 retains the fired cartridge cases inside the firearm
5 until it is manually unloaded later by the shooter
6 or by another individual.

7 Q Showing you -- well, the gun you're holding, if
8 you would show that to everybody. There's a safety
9 cable on there. What's the purpose of that?

10 A Safety cable is designed to prevent the firearm
11 from being loaded, functioned or fired.

12 Q And that's coming through the bottom and what
13 goes into the bottom?

14 A This is this magazine well of the firearm and
15 this is where the magazine would be inserted into
16 the firearm to allow it to be loaded.

17 Q What's a slide?

18 A The slide is this portion of the firearm. This
19 precipitates back and forth or moves back and forth.
20 There is an ejection port here cut in the slide and
21 from that ejection port is where the cartridge case
22 would be ejected from the gun when it is fired.

23 Q So when -- go ahead.

24 A In the muzzle of the firearm, the bullet would
25 exit from is here at the end of the barrel. This is

1 the barrel of the firearm.

2 Q All right. So how does the slide work? Why
3 does it go back and why does it go forward?

4 A When a bullet is fired or a cartridge is fired
5 in a gun, there's a lot of mechanical forces and
6 physical forces in play. The bullet is expelled
7 forward by the expanding gases that are inside the
8 cartridge case. When it is fired, there's gunpowder
9 in the cartridge that is ignited that expands and it
10 forces the bullet out of the barrel. And as the
11 bullet is pushed forward out of the barrel, as we
12 all may remember from physics classes in high
13 school, for every action, there's equal an opposite
14 reaction. So the force of that going in the forward
15 direction is pressing the slide to the rear.

16 The slide has a spring which attempts to hold
17 it in place. The recoil forces are the force of --
18 coming back against the slide overcome that spring
19 and push the slide to the rear. Once it gets to the
20 rear and that force is expended, the spring then
21 brings the slide back forward which would strip the
22 top cartridge out of the magazine and into the
23 chamber of the gun making it ready to be fired
24 again. Also, when the slide comes to the rear, it
25 re-cocks the firearm and makes it ready to fire

1 again.

2 Q Let's talk about when the gun is fired, what
3 comes out of the gun. I'm going to hand you a small
4 copper item and ask you if you know what that is?

5 A This is a fired projectile. This is one that I
6 actually test fired in the gun using the submitted
7 ammunition. This is what would actually exit from
8 the muzzle of the gun.

9 This particular projectile is what we refer to
10 as a total metal jacket projectile. It was
11 manufactured and made of lead. And it has a
12 sheathing of a heavy copper plating over the lead.
13 The purpose of the sheathing is to prevent the lead
14 from building up in the barrel of the firearm.

15 A close examination of the fired bullet, you
16 can actually see impressions of the rifling grooves
17 on the surface of the bullet.

18 Q What is a rifling groove? What do you mean?

19 A When they manufacture handguns and rifles, they
20 cut or form these spiraling grooves called rifling
21 into the barrel which engage into the bullet. The
22 bullet is a tight fit into the rifling when it is
23 fired and that tight fit causes it to spin as it
24 leaves the barrel of the gun. The purpose of this
25 is to stabilize the bullet in flight in much the

1 same way that when a quarterback throws a pass, he
2 tries to put a tight spiral on the football to try
3 to make it fly a more accurate path and that is the
4 purpose of the rifling.

5 Q So inside the barrel, there is rifling, which
6 is a twisted metal stamp pattern?

7 A It's grooves that go from one end of the barrel
8 to the other. Each individual manufacturer may use
9 a set number of rifling grooves and they may twist
10 either to the left or to the right. And we can use
11 that information as a screening process at times to
12 determine what type of firearm may have fired a gun,
13 -- excuse me -- what type of firearm may have fired
14 a bullet if we don't have a firearm submitted.

15 Q And those rifling spirals inside the barrel,
16 what, if anything, does that do to the projectile as
17 it's fired?

18 A The microscopic imperfections that I mentioned
19 previously that are in the rifling grooves
20 themselves or in the raised areas, which are called
21 lands, any place that the bullet comes into contact
22 with the rifling when it is passing through the
23 barrel, it will tend to be scratched or marked by
24 these imperfections. And the pattern of these
25 scratch marks is what we look at microscopically to

1 determine whether that particular bullet was fired
2 by a particular firearm or not because the
3 particular pattern will be unique to the specific
4 firearm in which they were fired.

5 In some cases, if the bullet does not fit
6 tightly into the rifling or if the bullet is badly
7 damaged, we may not be able to come to a conclusion
8 as to whether that bullet was fired by that firearm
9 or any specific firearm. And in other cases, there
10 may be a complete lack of markings on a bullet due
11 to extreme damage and the bullet would be deemed
12 unsuitable for examination.

13 Q Let me hand you a shell casing, and that's the
14 one I believe that you said probably goes with that
15 projectile over the other one that you used in test
16 firing?

17 A Yes. This is also one of the cartridge cases
18 that I test fired in the gun using the submitted
19 ammunition. This is what will be ejected from the
20 ejection port of the firearm and left at the scene
21 unless otherwise retrieved.

22 This is, again, a 9mm Luger caliber cartridge
23 case. The hollow space that you see inside is where
24 the powder would have been. And the bullet would
25 have been seated into that hollow end of the

1 cartridge when it was manufactured.

2 On the back of the cartridge case, there is a
3 silver disk that is pressed into the back of it,
4 that is the primer. The primer is what the firing
5 pen actually strikes to cause the ignition of the
6 powder inside the cartridge case.

7 Q You had discussed earlier about microscopic
8 markings on the projectile that comes out that
9 allows you sometimes to use that for identification,
10 correct?

11 A Correct.

12 Q Are there also microscopic markings or any
13 indication on the shell casing that let's you use
14 those to compare against a particular firearm?

15 A Absolutely. When the firearm is manufactured,
16 there are, again, machining processes that are
17 involved that cut away the metal to form the various
18 parts. Two of the areas that we're specifically
19 interested in regarding cartridge cases are what we
20 call the breech face, which is the flat surface at
21 the back of the slide against which the flat portion
22 on the back of the cartridge case or the head will
23 rest when it is fired.

24 When that surface is machined or formed,
25 whatever imperfections are left there may be stamped

1 onto the cartridge case at the head or on the
2 primer. Usually, they're found on the primer. This
3 is because of the extreme pressures that are built
4 up in the chamber of the firearm that force this
5 very firmly back against that breech face and cause
6 that stamping to occur. Those markings and the
7 pattern of those markings may again be unique to a
8 specific firearm.

9 Likewise, sometimes we make identifications on
10 the firing pin where it strikes the primer or by --
11 many other metal surfaces inside the firearm that
12 come into contact with the cartridge during the
13 firing process. These can include the extractor,
14 the ejector, sometimes the magazine itself may mark
15 the cartridge in a way that we can identify.

16 Q Going back to the magazine, explain the purpose
17 of the magazine and how it works.

18 A The magazine is designed to hold ammunition in
19 the firearm ready to be fired. The ammunition would
20 be inserted in the magazine and it stacks up,
21 there's a spring loaded, what we call, follower that
22 forces each cartridge up against the magazine lips
23 and holds it in place ready for the slide to strip
24 it from the magazine into the chamber. The
25 cartridges would be essentially stacked in order

1 inside this cartridge -- excuse me -- inside this
2 magazine. The magazine is simply a reservoir to
3 hold unfired ammunition.

4 Q So did you have a chance -- you said you fired
5 that gun; is that correct?

6 A Yes, I did.

7 Q If I ask you if it was in proper working order,
8 what will be your answer?

9 A It was.

10 Q What does that mean?

11 A That means it -- when I test fired the gun,
12 that it functioned properly in the laboratory.

13 Q Explain to the jury then, Mr. Collins, if you
14 would, what steps have to be taken for that gun to
15 be -- the magazine to be loaded, the gun to be
16 loaded, the gun to be -- if there's a safety and
17 what it takes to have that gun in a firing position.

18 A The firearm -- well, first, the magazine would
19 be loaded. It is possible to individually load
20 cartridges into the chamber of the firearm and fire
21 them without a magazine in some cases. I would have
22 to refer to my notes to see if this gun has a
23 magazine safety that prevents it from being fired if
24 a magazine is not in the gun. (Pause.)

25 Yes. This firearm has what is referred to as a

1 magazine safety. The purpose of a magazine safety
2 is to prevent the gun from firing if the magazine is
3 removed from it. This is a common safety feature
4 that is found on some modern firearms so that you
5 can have the gun loaded with a round in the chamber
6 and remove the magazine from the gun and it cannot
7 be fired until the magazine is reinserted. Some
8 people like to separate the magazine from the gun in
9 the household for safety purposes.

10 The other safety feature on this gun is a small
11 lever here on the side that can be slid up or down.
12 If it's slid up usually with a thumb into the notch
13 on the slide, then the gun is safe at that point.
14 It cannot -- it also cannot be fired. If it's drawn
15 down and a magazine is in the gun, then the gun can
16 be fired.

17 Back to the functioning process of the gun.
18 When you first load the magazine, insert the
19 magazine into the magazine well until it locks in
20 place. You would then draw the slide to the rear
21 and release it. When you do that, when you draw the
22 slide to the rear, you cock the firearm mechanically
23 by -- just by means of that process. It's not
24 anything specifically separate you have to do to
25 cock it. Bring it to the rear and when you release

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1 it, it will strip the top cartridge from the
2 magazine and place it in the chamber of the gun.
3 The gun is now, at that point, ready to be fired.

4 You have the option of placing the safety on to
5 make it safe or to go ahead and fire the gun. To
6 fire the gun, you would simply pull the trigger.
7 You would press the trigger here (indicating) until
8 the gun discharges. And when it fires, the whole
9 process of the bullet will exit the firearm, the
10 cartridge case will be ejected from the gun, the
11 slide will cycle to the rear and back forward
12 cocking and reloading it and making it ready to fire
13 again.

14 Q If I use the term, what's a hair trigger? What
15 does that mean?

16 A A hair trigger is a somewhat arbitrary term
17 that is used to describe an unusually light trigger
18 pull of such a nature that a very light amount of
19 pressure would cause the gun to discharge.

20 Q What was the -- do you know what the pressure
21 pull for this gun was?

22 A I'd have to examine my notes. We don't test
23 the trigger pull on all firearms that are submitted
24 to the laboratory unless we note that it is
25 unusually light. So if I noted during my testing

1 process that the firearm was functioning properly
2 and that the trigger pull appeared to be normal, I
3 would not have tested the trigger pull on it.

4 (Pause.)

5 In this case, it was not tested which would
6 indicate to me that the firearm was functioning
7 properly. And I did not indicate -- or did not
8 perceive an unusually light trigger pull.

9 Q Can you give the jury an example of how much
10 pressure is necessary to fire a weapon?

11 A It can vary from model to model. In Hi-Point
12 firearms, it can be anywhere from probably four to
13 eight pounds of pressure in the trigger.

14 Q Can you explain in another term what that might
15 mean? What is four to eight pounds of pressure?

16 A Four to eight pounds of pressure would be an
17 amount of pressure that if you had your finger on
18 the trigger, it would be a noticeable amount of
19 pressure. A term that we have often used, it will
20 take a conscious effort to discharge the firearm.

21 Q If you'll take your seat again. Thank you.

22 A (Witness resumes the witness stand.)

23 Q Mr. Collins, looking then at the -- the gun was
24 in working order, correct?

25 A Yes.

1 Q Looking at the three rounds that came with it,
2 you fired two of them --

3 A I did.

4 Q -- for test purposes. The purpose of that was
5 what?

6 A The purpose of that was to obtain test
7 standards that I could use to compare with other
8 fired evidence items that were submitted to me.

9 Q The three rounds that you have, are they three
10 different types of rounds, are they similar? What
11 can you tell us about those?

12 A The three that were submitted to me are all
13 Federal brand 9mm Luger caliber cartridges. They're
14 each loaded with a 115 grain, what we refer to
15 commonly as a TMJ or total metal jacket style
16 projectile. And the headstamps reveals that these
17 are -- it's a rather unusual headstamp that we had
18 not seen much of at that time. It is a headstamp
19 that has two dots on either side of the FC, which
20 stand for Federal Cartridge, and that was something
21 that we had to actually research to see what the
22 source of that was.

23 And what has happened is that Federal is
24 sometimes outsourcing their cartridge case sourcing.
25 And that headstamp itself is actually rather unique

1 to this particular type of ammunition with this
2 total metal jacket bullet.

3 Q Does that tell you where it was manufactured?

4 A It was manufactured for Federal. As far as to
5 which factory it came from, I do not have that
6 information..

7 Q But that Federal headstamp is different -- it's
8 unique is that what I heard you say?

9 A It's rather unique to this type of Federal
10 ammunition. Federal makes a lot of ammunitions.
11 Federal actually, at one time, and I believe still
12 is, was responsible for manufacturing -- or
13 overseeing the manufacture of most of the small arms
14 ammunition for the military. So Federal is now
15 overseeing several different factories across the
16 country. I do not know which of those factories it
17 came from, but it is -- this particular headstamp is
18 specifically something that we're seeing with this
19 particular line of ammunition from Federal.

20 Q The three rounds that you got, the ones that
21 we've been talking about, are those the proper type
22 of 9mm rounds that can be used in that Hi-Point
23 firearm?

24 A This is the proper caliber of ammunition for
25 use in this Hi-Point firearm or any other firearm

1 that is designed to fire what is known as 9mm Luger
2 caliber ammunition.

3 Q In addition to that weapon, the magazine and
4 the three live rounds, did you also have other items
5 to compare?

6 A I did.

7 Q Let me show you State's 52 that is in evidence.
8 If the bag is not open, you can open it.

9 A (Witness complies.)

10 Q I'm going to show you what's also been marked
11 as State's Number 48 for identification and ask if
12 you recognize that?

13 A State's Exhibit 48 for identification is the
14 outer container in which I received some of these
15 items of evidence. State's Exhibit 52 is one of the
16 items that I examined. It was a fired bullet. It
17 was originally contained in this package.

18 Q So item 48 then is -- that was for I.D., what
19 is that?

20 A That's just the bag that it would have come to
21 the laboratory in.

22 Q And that's used, basically, to keep track of
23 what's in there and also to maintain the chain of
24 custody on it?

25 A That is correct.

1 Q When you received this bag, it was properly
2 sealed?

3 A It was.

4 Q And inside the bag was the projectile that we
5 discussed, which is State's Number 52?

6 A Yes.

7 Q In addition, were there also -- there was
8 another bag that was contained inside there that was
9 supposed to contain two spent casings?

10 A Yes. These two fired 9mm Luger caliber
11 cartridge casings were also contained in that same
12 package. This is State's Exhibit 49. And I have
13 examined both of these cartridge casings and the
14 fired projectile, State's 52.

15 Q Let's start with the projectile. What can you
16 tell me about the fired projectile that came to
17 analysis that was collected at the crime scene?

18 A The fired projectile was examined and found to
19 be consistent with 9mm Luger caliber ammunition. It
20 was a standard 115 grain. Again, it's a total metal
21 jacket style projectile. It bore nine rifling
22 impressions, meaning it came from a barrel that had
23 nine rifling grooves formed in it with a left twist.
24 This rifling is specifically found in 9mm Hi-Point
25 brand firearms.

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1 The -- other than that, it was -- I did compare
2 it with test fires from the 9mm Luger caliber
3 firearm, the Hi-Point that was submitted. And my
4 comparisons were inconclusive, which means I could
5 not determine if it was fired by this gun or by
6 another gun with similar rifling characteristics.
7 This gun also has nine left rifling similar to
8 Missions, but as do many other Hi-Point firearms.

9 Due to the fact that this bullet did not form
10 in the rifling as fully as we would liked to have
11 seen, it simply did not mark as well as we needed to
12 have to make an identification.

13 Q All right. So are you able then -- what's your
14 opinion as to whether it was fired from a Hi-Point
15 9mm firearm?

16 A It is my opinion that that bullet was fired
17 from a 9mm brand -- 9mm caliber Hi-Point brand
18 firearm. I was unable to determine if it was this
19 one.

20 Q And you said it was inconclusive as whether it
21 was fired from that 9mm Hi-Point. And, again, why
22 were your results inconclusive?

23 A Due to the lack of sufficient markings on the
24 surface of the bullet is what it comes down to.

25 Q In the years that you've been doing that, is

1 that a common or an uncommon thing?

2 **A** We render a lot of inconclusives due to the
3 fact that bullets are either damaged or are not
4 marked properly -- or not marked fully by the
5 firearm in which they're fired.

6 **Q** You said it was consistent with coming from a
7 9mm Hi-Point?

8 **A** Yes.

9 **Q** Are you aware of any other manufacturers of
10 guns other than Hi-Point that have the number of
11 ridges with that rifling left twist that you were
12 talking about?

13 **A** I'm not aware of any, no.

14 If I could clarify that. One of the things
15 that we do when we're trying to determine whether or
16 not what type of firearm a bullet was fired from is
17 we'll take the information that's given to us by
18 visually examining the projectile. We take the
19 number of rifling grooves. We take the direction of
20 twists. And also, in some cases, we'll take
21 microscopic measurements of the widths of those
22 actual impressions on the bullet. And we can put
23 all that information into a database program that
24 has data provided by the FBI and is updated annually
25 and that will provide for us a list of possible

1 brands of firearms that could have fired that
2 projectile.

3 In this particular case, no other brand of
4 firearm other than Hi-Point is shown as being in the
5 database as having nine left rifling.

6 Q The fired projectile that was submitted to you,
7 what, if any, opinion do you have as -- did you
8 compare the fired projectile that was submitted to
9 you from the crime scene with the fired round that
10 you fired and created your own projectile in the
11 water tank?

12 A The projectile that I examined, the evidence
13 projectile from the scene, was of the same caliber,
14 the same design as in total metal jacket, and the
15 same -- it's essentially the same type of projectile
16 as was found in the other ammunition.

17 Q Moving on to the shell casings, which is
18 State's Exhibit Number 49, do you recognize those
19 contents? Those were the two shell casings that
20 were found at the crime scene that were submitted to
21 you; is that your understanding?

22 A That is my understanding, yes.

23 Q When you compared those to the three rounds
24 that were live in the magazine when you received it,
25 what can you tell us about those five rounds

1 together?

2 **A** They were the same caliber and they were also
3 the same brand. They bore the same Federal
4 headstamp with the two dots indicating that it was
5 the same actual type of ammunition from Federal. It
6 was, essentially, the, you know, I would say that
7 they were from the same caliber brand and type of
8 ammunition.

9 **Q** So they're both -- all five of those rounds,
10 the two fired casings at the scene and the three
11 that came to you in the weapon, all of them are 9mm,
12 all of them are Luger type?

13 **A** All of them are 9mm Luger caliber ammunition.

14 **Q** They're all manufactured by?

15 **A** By Federal.

16 **Q** And they all have the unique two dot system
17 markings around the Federal logo?

18 **A** That is correct.

19 **Q** Did you notice any differences between them?

20 **A** No, I did not.

21 **Q** Were you able to render an opinion as to
22 whether the casings that were collected at the crime
23 scene and submitted to you for analysis were fired
24 from that 9mm Hi-Point weapon?

25 **A** Yes, I was.

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1 **Q** And how did you go about in forming that
2 opinion?

3 **A** I, again, test fired the firearm. In this
4 case, I used the -- I used a mixture of both
5 laboratory standard ammunition and I used the submit
6 -- two of the submitted unfired cartridges. And I
7 took those test fires and compared them
8 microscopically with the two cartridge casings that
9 were located at the scene.

10 During that examination, I found matching, what
11 we call, individual characteristics, which means I
12 found matching marks that would be considered unique
13 to a particular firearm and was able to conclude
14 that, in my opinion, both of these cartridge casings
15 were fired by this 9mm Hi-Point.

16 **Q** So the two casings, it's your opinion, as an
17 expert in the field of firearms identification and
18 examination, that the two casings that were
19 recovered from the crime scene were fired from that
20 9mm Hi-Point?

21 **A** That is my opinion, yes.

22 **MR. GRAHAM:** Thank you, Mr. Collins. Please
23 answer any questions Mr. Williams has.

24 **MR. WILLIAMS:** May it please the Court.

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

1 CROSS-EXAMINATION

2 BY MR. WILLIAMS:

3 Q I'm going to try to simplify again. As I
4 understand it in talking about what you tested, you
5 tested the bullet, which was found on the scene, the
6 two cartridges, which were allegedly found on the
7 scene, and three other, I don't know how to phrase
8 this, three other pieces of ammunition that you
9 ended up firing two of them that were with the
10 alleged gun -- which were with the gun?

11 A That is correct.

12 Q Now, having done that, it's my understanding
13 that the bullet or the projectile, which was found
14 at the scene, you cannot say that that projectile
15 comes from any -- came from the gun, number one?

16 A That's correct.

17 Q All you can say is that it came from a Hi-Point
18 9mm gun?

19 A That is my opinion, yes.

20 Q Could the bullet which you found or which you
21 tested have been fired in a Glock?

22 A No, not unless the Glock had an aftermarket
23 barrel that was produced by somebody else other than
24 Glock. Glock factory barrels and 9mm do not have
25 the same type of rifling and do not have the same

1 number of rifling grooves and rate of twists. There
2 are some manufacturers that make aftermarket barrels
3 for Glock firearms; however, I'm not aware of any of
4 them that have a nine left rifling.

5 Q Is there a difference between the Glocks and
6 the Hi-Point pistol, which you have, which has been
7 introduced into evidence?

8 A There is a -- somewhat of a visual difference
9 between the two, but they function virtually
10 identically with the exception of the safety
11 features.

12 Q What visually can you see on the Glock which is
13 different from the Hi-Point?

14 A Well, the Glock simply has a different shape
15 than the Hi-Point does on a closer examination.

16 Q So if someone identified a Glock, you easily
17 could tell that the Glock was different from a
18 Hi-Point?

19 A If you were close enough to it and knew
20 something about firearms, you could perhaps tell the
21 difference. For us, forensically, we tell the
22 difference mostly from what we examine in the way of
23 fired evidence such as fired bullets and cartridge
24 casings as Glocks mark them in a very -- also -- a
25 manner that's somewhat unique to Glocks.

1 Q And one of them is normally heavier than the
2 other one too, aren't they?

3 A They are different weights, yes.

4 Q And the Glock is, like, a whole lot more
5 expensive than the Hi-Point normally?

6 A Yes.

7 Q Substantially more expensive?

8 A Yes.

9 Q Like four to five times more?

10 A I wouldn't go -- I would not be -- I wouldn't
11 go that far, but it is more expensive.

12 Q Now, aside from what you have testified to
13 today, did you also test other 9mm ammunition that
14 was found in the area, at least on the same road or
15 street, where the homicide occurred?

16 A I examined a total of eight fired cartridge
17 casings which were recovered and submitted from a
18 different location, which is my understanding they
19 were recovered from a different location, and also a
20 fragmented projectile that was submitted from that
21 same location.

22 Q Now, you were aware, I assume, since you
23 examined that, that there was another Hi-Point
24 weapon which was reported stolen some time after
25 this homicide occurred, in close proximity to it?

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1 A I don't recall ever being informed of a stolen
2 firearm.

3 Q The -- you said you checked -- did you say you
4 checked the unfired cartridges and -- were they
5 fired or unfired what you examined from this other
6 separate location?

7 A There were eight fired cartridge casings.

8 Q And you examined them?

9 A I did.

10 Q And what could you say after you tested those
11 or examined those eight fired cartridges?

12 A First, the eight were all 9mm Luger caliber.
13 They were all manufactured by a company known as
14 CCI. And it was marketed as Blazer ammunition,
15 which means they have an aluminum cartridge case as
16 opposed to a standard brass cartridge case. I
17 compared them all microscopically with each other
18 and determined that they had all been fired in one
19 gun or the same gun.

20 I was also able to, by virtue of that
21 examination and comparison with test fires from the
22 Hi-Point which was submitted here, I was able to
23 determine that they were not fired by this Hi-Point.

24 Q Right. So you were able to determine that
25 those particular, I guess, spent cartridges were not

1 fired by this particular weapon, correct?

2 A That is correct.

3 Q Could you determine whether or not the weapon
4 which had fired these cartridges had fired the
5 bullet which you examined that came from the scene?

6 A I have no means of determining that, no.

7 Q So the bullet which was found at the scene
8 could have been fired from this other weapon?

9 A The bullet that was found at the scene could
10 have been fired from, theoretically, any Hi-Point
11 brand 9mm firearm with nine left rifling..

12 Q To include this other, if it was indeed stolen
13 or missing, this other Hi-Point pistol?

14 A Possibly, if that firearm had nine left
15 rifling.

16 Q And it's your testimony that Hi-Point 9mm
17 weapons all contain the same markings on the inside
18 of the barrel, correct?

19 A Over time Hi-Point has periodically changed the
20 rifling techniques, not all 9mm Hi-Points will have
21 nine left rifling. There could be some older models
22 that have, for instance, like a six right rifling or
23 something to that effect. I would have to research
24 it, but not all of them have always had nine left
25 rifling.

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1 Q But at least the ones that you examined could
2 have been -- the same weapon could have been used to
3 fire those and the same bullet which is found on the
4 scene of the deceased?

5 A Theoretically, possibly, yes.

6 Q Did you do any other comparisons in this case?

7 A There was a fired, again, a fired fragmented
8 projectile that was recovered from the scene where
9 the eight fired cartridge casings were submitted and
10 I did examine that. And I also compared it with
11 test fires from this firearm. And I was, again,
12 inconclusive due to its damaged condition as to
13 whether it was fired by this gun or by any other
14 nine left firearm. It, again, had the same nine
15 left characteristics which would be consistent with
16 a 9mm caliber Hi-Point, but I was unable to
17 determine which firearm fired it.

18 Q So, essentially, any 9mm Hi-Point pistol can
19 fire lots of different types of ammunition?

20 A Lots of different types of 9mm Luger caliber
21 ammunition.

22 MR. WILLIAMS: Thank you.

23 That's all I have, Your Honor.

24 MR. GRAHAM: Nothing, Your Honor.

25 THE COURT: You may step down. Thank you.

RACHEL WILEY GRANT -- DIRECT BY MR. SCOTT

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1 Next witness.

2 MR. SCOTT: Your Honor, the State calls Rachel
3 Grant.

4 RACHEL WILEY GRANT,
5 having been duly sworn, testified as follows:

6 THE CLERK: Have a seat, please, ma'am. Once
7 you're seated, speak up loud and clear stating your
8 full name, spelling your last on the record.

9 THE WITNESS: Rachel Wiley Grant, G-r-a-n-t.

10 MR. SCOTT: Beg the Court's indulgence.

11 (Pause.)

12 DIRECT EXAMINATION

13 BY MR. SCOTT:

14 Q Ms. Grant, where are you employed?

15 A At the Richland County Sheriff's Department.

16 Q And how long have you been with Richland
17 County?

18 A A little bit over four and a half years.

19 Q What are your duties there?

20 A I am a DNA analyst in the forensic laboratory.

21 Q Do you have any prior professional experience
22 working in laboratories?

23 A Not with -- well, in college, I did work for a
24 research laboratory, but started my career at
25 Richland County back in March of 2008.

RACHEL WILEY GRANT - DIRECT BY MR. SCOTT

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1 Q What specialized training have you had in the
2 field of forensics?

3 A Well, I have -- to be a DNA analyst, the FBI
4 guidelines, you have to have a bachelor's degree in
5 a science. I have a bachelor's degree in biology
6 with a chemistry minor from Winthrop University.
7 And I also have a master's degree from forensic
8 serology and DNA from the University of Florida.

9 And since starting my career at Richland
10 County, I've undergone extensive forensic DNA and
11 serology training. I attend conferences yearly for
12 continuing education. And I have also completed
13 competency set forth by the FBI and the DNA Advisory
14 Board.

15 Q And have you been qualified as an expert in the
16 field of forensic serology and DNA analysis before?

17 A I have.

18 Q How many times?

19 A About seven.

20 Q In South Carolina?

21 A Yes.

22 Q In general sessions court?

23 A Uh-huh, correct.

24 MR. SCOTT: Your Honor, the State would offer
25 Rachel Grant as an expert in the field of serology

1 and DNA analysis.

2 MR. WILLIAMS: Without objection, Your Honor.

3 THE COURT: All right. Folks, this witness has
4 now been qualified in the field of serology as an
5 expert. The same instructions that I gave you about
6 expert witnesses earlier applies to this witness as
7 well and you're to decide how much weight to give
8 her testimony based on all of the evidence that
9 you'll hear throughout the trial.

10 Okay. You may continue.

11 BY MR. SCOTT:

12 Q What is DNA?

13 A DNA is the genetic material that codes for our
14 development. It is present in any nucleated cell.
15 If you remember from biology class, you have regular
16 -- you have cells. And then inside that nucleus, if
17 it has a nucleus, there's a material called DNA. It
18 codes for who we are. We get half from our mom,
19 half from our dad. And everyone's DNA profile is
20 unique with the exception of identical twins.

21 Q What is forensic serology?

22 A Forensic serology is the identification of body
23 fluids. So if investigators go out to a crime scene
24 and they come across something that they believe
25 might be blood, saliva or semen, they sometimes have

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1 the capabilities of screening that particular fluid,
2 and if they can't screen it, then they'll send it to
3 our laboratory. So we basically identify that body
4 fluid.

5 Q Well, is the -- are the different body fluids
6 from one particular individual is the DNA extracted
7 from, say, saliva the same as the DNA from blood?

8 A Correct, yes, it is.

9 Q Did you receive evidence from Lexington County
10 for examination in the case of State versus Breon
11 Mayers?

12 A I did.

13 Q And what evidence did you receive?

14 A I received: Item one, which is a spent casing;
15 item two was a spent casing; item three was a
16 cigarette butt; item seven was a projectile; item
17 eight was a purple top vial tube of blood from David
18 Cannon; number nine was a swab from a blue, black,
19 gray Olivet cooler; item ten was a swab from a black
20 Carolina Gamecocks cooler; and swab 11 was a -- I'm
21 sorry -- item 11 was a swab from a blue and black
22 Coleman cooler.

23 Q When was it submitted to you?

24 A I need to refer to my chain of custody.

25 I received items one, two, three and seven on

1 October 25th of 2011. I also received item eight on
2 that same date. And then I received items nine, ten
3 and 11 on the 26th.

4 Q Would you actually state the description of
5 those items with the numbers? Would you just
6 describe when you received them again?

7 A Yes. Item one and two were the two spent
8 casings. Items one and two, I got those on the
9 25th. Item three was a cigarette butt. I received
10 those on the 25th. Item seven was a projectile. I
11 received those on the 25th. I also received item
12 eight, which is the purple top vial of blood from
13 David Cannon, on the 25th. And then on the 26th, I
14 got item nine, which was the swab from the blue,
15 black, gray Olivet cooler. Swab ten was a swab from
16 a black Carolina Gamecocks cooler. And swab 11 was
17 from a blue and black Coleman cooler on the 26th as
18 well.

19 Q I'm going to show you State's -- what's marked
20 State's I.D. as Number 50. Do you recognize that?

21 A I do.

22 Q How are you able to recognize that?

23 A Because my initials are on this.

24 Q And when did you receive that?

25 A On the 25th I believe. I did, on the 25th.

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1 Q And what would you have noted when you received
2 that?

3 A When we typically receive evidence, we will
4 examine the packaging making sure that the correct
5 case numbers and information. And then upon the
6 approval of the packaging, will open it up and start
7 the analysis.

8 Q Was the bag open when you received it?

9 A No, it was not.

10 Q Do you always check for that?

11 A Yes. Yes.

12 Q Would you have tested it if it had been open?

13 A No. Huh-huh.

14 Q I want to show you State's Number 48 and 49.

15 Do you recognize that?

16 A I do. My initials, I can tell, were right here
17 and they're also here, but it's been cut off, but
18 that wasn't that way when I had them. But, yes, I
19 do recognize that.

20 Q And what is that?

21 A These are items one, two and seven.

22 Q Those would be the two spent casings and the
23 projectile?

24 A Yes.

25 Q State's 52, do you recognize that?

- 1 A I do.
- 2 Q And what is that?
- 3 A This is item number seven -- actually, this
- 4 must belong in this as well. Yeah, this is item
- 5 seven. These are items one and two here.
- 6 Q That would be the projectile?
- 7 A Yes.
- 8 Q This is State's 41 and 42. Are you able to
- 9 recognize that?
- 10 A No, these are not -- no, sir, I don't believe I
- 11 did analysis on...
- 12 Q I apologize.
- 13 A That's okay.
- 14 Q Okay. I'm going to show you State's 59.
- 15 A Yes, I do recognize these.
- 16 Q What are those?
- 17 A These are swabs nine, ten and 11, which are
- 18 from the coolers.
- 19 Q Okay. And how are you able to recognize those
- 20 again?
- 21 A Because they have my initials on them.
- 22 Q Okay. And those would have been sealed when
- 23 you received them?
- 24 A Yes.
- 25 Q Finally, State's 53.

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1 **A** Yes, I recognize this, too.

2 **Q** What is that?

3 **A** This is the blood standard from David Cannon.

4 **Q** How would you have received that?

5 **A** I received this as a blood sample that was in a
6 purple top tube. Our protocol within the laboratory
7 is to take that blood and pour it onto a piece of
8 white filter paper to allow it to dry and then we
9 can make a cutting from that paper to run for DNA
10 analysis. So even though I received it as a tube,
11 it's in this package as on white paper.

12 **Q** Who submitted those items to you?

13 **A** Just this one particular -- all of these or
14 just this particular item?

15 **Q** All of them.

16 **A** Items one, two, three and seven I received from
17 Tena Goff.

18 **Q** Those would be the two spent casings and the
19 projectile?

20 **A** And the cigarette butt. And then I received
21 item eight, which is the tube of blood from David
22 Cannon, from Anthony Branham. And then I received
23 items nine, ten and 11, which were the three swabs
24 from the coolers, from Tena Goff as well.

25 **Q** What was the purpose of these items being

1 submitted to you?

2 A In our attempt to develop any type of DNA
3 profile from those particular items of evidence.

4 Q Were you able to do so?

5 A I was not.

6 Q Were you able to extract DNA from any of those
7 items?

8 A I was.

9 Q And why not all of them?

10 A In DNA analysis, it's not uncommon for us to
11 not be able to develop a profile. In this
12 particular case, I was able to develop one profile
13 that did come back to the victim. But depending on
14 how much DNA biological evidence is left behind is
15 going to depict how well we can develop a profile.
16 So body fluids are an excellent source of DNA. So
17 if we hear that there's saliva, semen or blood, we
18 know that we're going to get a good DNA profile from
19 that particular item.

20 However, if it's something like touch DNA where
21 someone has just touched an item, depending on how
22 long they've touched it, how they've touched it,
23 whether that person is a shedder or not, will depict
24 how much DNA is left on that sample and that will
25 actually just play a role into whether we get one or

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1 not. It's not uncommon for us to, specifically
2 touch DNA samples, not to obtain any profiles.

3 Q Is that what you were looking for -- for
4 instance, the spent casing, was there any evidence
5 of blood or saliva or anything like that on there?

6 A No.

7 Q Was touch DNA what you were seeking?

8 A It was. Our attempt was just to swab that
9 particular item to see if any DNA was there.

10 Q And were you able to find any DNA on the
11 casings?

12 A From the spent casing number one, DNA was
13 extracted, but there was no DNA profile developed,
14 which is not uncommon from touched samples. And
15 then the spent casing from item two, no DNA was
16 extracted at all. So that means that there was none
17 present on that particular item.

18 Q Well, explain why would it be that you would
19 extract DNA, but not be able to develop a profile.

20 A In the process to develop a profile, we use
21 what's called PCR, which is Polymerase Chain
22 Reaction. And, basically, inside of a tube, you've
23 got these reactions that are making copies of these
24 regions of DNA. Depending on how much is there,
25 even though if I do my first step and it says, okay,

1 I might have a little bit of DNA, that second
2 reaction to make the copies may not work as well.
3 It's not uncommon, it's just it's kind of the
4 science.

5 Also, if a DNA sample is degraded, meaning that
6 it's broken up into little pieces, it's hard for
7 those copies to be made. And then also there's
8 inhibitors in certain samples such as bacteria,
9 soil, some type of dyes off clothing will also
10 inhibit the DNA analysis as well.

11 So even though it may say -- in some samples,
12 you know, we may say, okay, we have a little bit of
13 DNA, but in order to do the next step to develop it,
14 we may not necessarily get anything that allows us
15 to be -- allows us to interpret that profile. And
16 even if we sometimes get a profile, it might be too
17 weak for us to reliably interpret based on our
18 thresholds and our mechanisms that we use in the lab
19 to make comparisons.

20 Q Out of blood, saliva, out of all the body
21 fluids, which do you find that you are able to
22 develop a profile from the best or where would touch
23 DNA fall in that range?

24 A Any type of body fluid is going to be about the
25 same when it comes to develop a profile if it is --

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1 if it's been packaged correctly, if it's been
2 collected correctly, if it's in good shape, if it
3 hasn't been left out to certain elements such as
4 heat, moisture. So in regards to body fluids, those
5 are an excellent source. There's no one body fluid
6 that's better than the other with the exception of
7 how much is maybe left, in other cases where you may
8 have semen but the male may not be able to produce
9 spermatozoa. In that case, you wouldn't be able to
10 have -- you wouldn't really necessarily get a DNA
11 profile from that because you're obtaining the sperm
12 -- the DNA from the sperm cells.

13 And touch DNA, basically, is the epithelial
14 cells that you are leaving on the surface of
15 something. So if I'm going to touch this counter
16 and you were to come behind me and swab this, most
17 likely you would find my DNA because I've rubbed it
18 pretty hard. But there's other factors, sweat, as
19 well. If I'm sweating a lot and I touch something,
20 then chances of you obtaining a DNA profile from
21 that are more likely than me not sweating.

22 So body fluids are better than touch DNA, but
23 it just kind of depends. It depends on the surface
24 that's being touched, how it's being touched and if
25 that person leaves their DNA behind.

1 Q Well, what would be some of the factors that
2 would cause touch DNA to degrade?

3 A Heat, moisture, exposed to the elements, if
4 somebody's, you know, if we're trying to obtain a
5 profile from someone's car that's been left out in
6 the rain for a few days or the heat, things like
7 that. Bacteria will break it down as well. So
8 things that have been left outside in the elements
9 and moisture. If it hasn't been properly collected
10 and packaged, if there's any moisture, that will
11 cause mold to grow, that will also inhibit it as
12 well.

13 Q Were you surprised that you were unable to
14 develop a DNA profile from the two spent casings?

15 A No, I'm not.

16 Q Why is that?

17 A It's not unlikely. In personal experience from
18 other cases as well, that's -- it's kind of -- the
19 majority of the time, we're not able to.

20 Q On casings?

21 A Correct.

22 Q Even though somebody would have obviously
23 touched it to load it into a gun?

24 A Correct, yes.

25 Q Okay. Item three you stated was a cigarette

1 butt. Were you able to develop a DNA profile from
2 that?

3 A I was not.

4 Q And was that particularly surprising to you?

5 A It was a little bit because it is a cigarette
6 butt and that is something that someone has put in
7 their mouth, so you would expect to see some saliva
8 in that case.

9 Q Wonder why you didn't get a DNA profile from
10 something like that?

11 A Unfortunately, sometimes it does happen, maybe
12 that person didn't salivate as much on that
13 particular item, maybe it was left outside and it's
14 been in the heat, if moisture had been a
15 contributing factor to it. There are several
16 reasons why. I mean, we do have particular items
17 that we do expect to get DNA profiles from, but
18 sometimes it does happen.

19 Q Okay. What about the swabs -- there's a swab
20 from a Olivet cooler, a Gamecock cooler and a blue
21 and black Coleman cooler. Were you able to obtain
22 any DNA profile from any one of those three?

23 A No. No DNA was extracted from those three
24 samples.

25 Q What did you do with item eight you list as a

1 blood sample from David Cannon, the victim?

2 A That was a tube of blood that I dried on white
3 filter paper. Once it dried, I made a cutting and
4 cut that to run for analysis as well.

5 Q Okay. What did you determine -- is that what
6 you used as your known sample?

7 A Yes.

8 Q So you have that and you know that that's the
9 DNA of David Cannon, correct?

10 A Correct, yes.

11 Q And, finally, item seven was the projectile
12 that was collected in evidence. Were you able to
13 develop a DNA profile from that?

14 A I was.

15 Q And what, if any, conclusion did you make?

16 A No DNA unlike that of the victim found on item
17 11.

18 Q Does that mean that item 11, the projectile,
19 had DNA from the victim on it?

20 A It does.

21 MR. SCOTT: Your Honor, the State would offer
22 State's 53 -- Your Honor, at this time, the State
23 would offer State's Number 50 -- I'm sorry, let me
24 withdraw that.

25 Your Honor, the State would, I guess, reoffer

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1 the profile of the blood, which would be State's 53,
2 for admission into evidence. And it's our
3 understanding that Mr. Williams will stipulate to
4 the chain until it gets to the next DNA.

5 MR. WILLIAMS: Without objection, Your Honor.

6 THE COURT: All right.

7 (COURT REPORTER'S NOTE: State's Exhibit
8 Number 53 has previously been admitted into
9 evidence.)

10 MR. SCOTT: Nothing further. Please answer any
11 questions Mr. Williams may have.

12 MR. WILLIAMS: Briefly.

13 CROSS-EXAMINATION

14 BY MR. WILLIAMS:

15 Q As a curiosity factor, are there 16 genetic
16 loci, the DNA, that you look at?

17 A Yes, there's 16 that our laboratory uses,
18 correct.

19 Q Do you know why is the question? Are there
20 more than 16 loci, 16 genetic loci, that you ever
21 use or there's just 16, aren't there?

22 A There are 16. There other amplification kits
23 that are -- that will allow us to develop more than
24 other loci. There's another kit called Power Plus
25 16 that's manufactured by a company called Promega.

1 And they have an additional two loci that we can
2 look at as well.

3 Q All right. So how many -- you said loci. I
4 guess I was using the Latin. How many loci are
5 there that you can look at total?

6 A In this particular analysis, there were 16.

7 Q You say there is another program that will
8 allow you to go as far as 18?

9 A Well, in forensics, but there are loci all over
10 the genetic material. So there's thousands,
11 millions, billions. But the ones that we look at
12 for forensic purposes, there are 16 with this
13 particular -- with this particular test. But in
14 most forensic laboratories, the other kit will allow
15 us to look at an additional two as well.

16 Q And for the jury's edification, what you're
17 talking about is you're talking about locations on
18 the DNA material?

19 A Correct.

20 Q And the loci would be the location on the DNA
21 material?

22 A Yes, correct.

23 Q In your report, you indicated that you found
24 DNA on one of the shell casings, but you were unable
25 to develop that profile. Do your notes reveal

1 whether or not your inability to provide that was
2 because you didn't have enough loci, that it matched
3 up to anything or that it was degraded or did it --
4 do you have a reason that is stated in your, I
5 guess, in your notes as to why you were unable to do
6 that profile of that DNA which you found on the
7 shell casing?

8 **A** Well, in this particular case with item one, no
9 DNA profile was developed at all. So, basically,
10 what that means is we go through the first step and
11 if there's any DNA at all, as little as just a tiny
12 bit amount, we're going to attempt to develop that
13 profile from that point.

14 Now, when developing a profile, we look at
15 those 16 loci. And depending on what our
16 instrumentation gives us back, we can make a
17 comparison on what we get. In this particular case,
18 there were no alleles present, meaning those are the
19 artifacts that we are looking for, the genotypes to
20 make a comparison. And, in this case, there was
21 absolutely nothing. It was -- it's basically flat
22 lined.

23 **Q** So you could tell it was DNA material, but you
24 had nothing to compare it to?

25 **A** I know it was DNA material that was -- because

1 I got a number, it was extracted. But in developing
2 a profile, just those copies being made and it
3 coming across the instrument, there was nothing
4 there.

5 Q And you went through a list of things that
6 could have caused that, talking about age, how long
7 it had been outside and stuff like that?

8 A Correct.

9 Q So, obviously, if it was collected shortly
10 after an event -- a lot of times I'm sure you deal
11 with homicides where evidence is found three or four
12 days later?

13 A Correct.

14 Q And then sometimes you develop evidence which
15 is found immediately after a homicide?

16 A Correct.

17 Q And, normally, it's better for you if you get
18 that evidence that's immediate after the homicide
19 because you're more likely than not to find
20 something?

21 A We attempt. We try.

22 MR. WILLIAMS: That's all I have, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. SCOTT:

25 Q But you did say heat was one of the factors

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1 that degrades touch DNA samples?

2 A Yes.

3 Q And you tested shell casings before?

4 A Yes.

5 Q For DNA, touch DNA?

6 A Yes.

7 Q And do you often find DNA samples from those
8 spent casings?

9 A It has been done, but it's unlikely. And on a
10 routine basis, it's not very likely.

11 MR. SCOTT: Thank you.

12 MR. WILLIAMS: No questions on recross.

13 THE COURT: Okay. You can step down.

14 All right. Folks, let's go ahead and take our
15 morning break. Let's take about 10, 15 minutes and
16 we will come back and hear from the State's next
17 witness. Again, don't comment or deliberate on any
18 of the witnesses that you've heard.

19 (The jury retires to the jury room.)

20 THE COURT: See y'all back at 11:15.

21 (Brief Recess.)

22 THE COURT: Are y'all ready with the next
23 witness?

24 MR. GRAHAM: Yes, Your Honor, the State's
25 ready.

1 **THE COURT:** Bring the jury in.

2 (The jury returns to the courtroom.)

3 **THE COURT:** Okay. Call your next witness.

4 **MR. SCOTT:** Thank you, Your Honor. The State
5 calls Catherine Leisy.

6 CATHERINE LEISY,
7 having been duly sworn, testified as follows:

8 **THE CLERK:** Have a seat, please, ma'am. Once
9 you're seated, state your full name, spelling your
10 last on the record, please.

11 **THE WITNESS:** Catherine Leisy, L-e-i-s-y.

12 DIRECT EXAMINATION

13 BY MR. SCOTT:

14 **Q** Ms. Leisy, where are you employed?

15 **A** I work for the South Carolina Law Enforcement
16 Division, also known as SLED.

17 **Q** How long have you been with SLED?

18 **A** For six years.

19 **Q** What are your duties with that agency?

20 **A** I am a forensic scientist assigned to the DNA
21 and serology unit. My responsibilities include
22 processing forensic cases, generating reports based
23 on the results and conclusions drawn and testifying
24 to those reports as necessary. I'm also involved
25 with assisting in the training of newly hired

1 analysts.

2 Q Is SLED accredited for DNA testing?

3 A SLED is accredited by the American Society of
4 Crime Laboratory Directors/Laboratory Accreditation
5 Board.

6 Q And what is your educational background?

7 A I have a Bachelor of Science degree in genetic
8 engineering from Cedar Crest College in Allentown,
9 Pennsylvania.

10 Q And before you came to SLED, did you have any
11 prior experience working in laboratories?

12 A I did. Prior to my time with SLED, I spent
13 approximately four years working as a forensic DNA
14 analyst at a private testing facility known as
15 Orchid Cellmark in Germantown, Maryland. I had
16 basically the same job description there as I do
17 here at SLED. I also spent approximately two years
18 working as a research analyst at a gene cloning
19 laboratory where I performed the same types of
20 laboratory procedures that I do today.

21 Q Have you been qualified before as an expert in
22 the fields of serology and DNA analysis?

23 A Yes, I have.

24 Q Approximately, how many times?

25 A I've been qualified in DNA analysis,

1 approximately, 40 times in various jurisdictions
2 throughout South Carolina, California,
3 Massachusetts, New Jersey, Florida, the District of
4 Columbia and United States District Court.

5 **MR. SCOTT:** Your Honor, the State would offer
6 Catherine Leisy as an expert in the fields of
7 serology and DNA analysis.

8 **MR. WILLIAMS:** Without objection, Your Honor.

9 **THE COURT:** All right. Folks, this witness is
10 now qualified as an expert in the field of serology
11 and DNA analysis. And the same instructions I've
12 given you concerning expert witnesses apply to this
13 witness as well and you determine how much weight to
14 give her testimony based on all of the evidence that
15 you'll hear throughout the trial.

16 You may resume.

17 BY MR. SCOTT:

18 **Q** Ms. Leisy, what is DNA?

19 **A** DNA stands for deoxyribonucleic acid. It's the
20 genetic material found in all of our body cells with
21 the exception of our red blood cells. DNA is
22 packaged into structures called chromosomes which
23 contain our genes. And genes are simply strands of
24 DNA that are code for our physical characteristics
25 such as our height or our eye color. We receive

1 half of our DNA from our mother and half from our
2 father and, therefore, we have two copies of every
3 gene.

4 Now, approximately, 99.9 percent of an
5 individual's DNA is identical to that of everyone
6 else's and it's the variation of that remaining
7 point one percent that allows us to tell different
8 people apart. So, essentially, with the exception
9 of identical twins, we all have a unique set of DNA.

10 Q And where do you -- where do you acquire DNA
11 from a person?

12 A DNA can be developed basically from any part of
13 the human body, our skin cells, from our blood,
14 saliva, semen, any type of bodily tissue or fluid
15 will contain DNA.

16 Q And would the DNA from one particular person,
17 if you had a sample of their saliva and you had a
18 sample of their skin cells, would that DNA be the
19 same?

20 A It would. A DNA profile will be the same in
21 any tissue or fluid within the same body.

22 Q And, generally, what are you trying to
23 determine through DNA identity testing in a criminal
24 case?

25 A What we're trying to do is develop a DNA

1 profile from an unknown biological material that's
2 been left at a crime scene or on an item of evidence
3 and compare it to the DNA profile of a known
4 individual to try and determine whether or not that
5 individual could have been the contributor of the
6 DNA involved in the criminal proceedings.

7 Q Is PCR/STR testing performed in your lab?

8 A Yes.

9 Q And what is that?

10 A PCR stands for Polymerase Chain Reaction. It's
11 a technique that allows us to make copies of the
12 specific locations in DNA that we're interested in
13 testing. Those locations are called STRs, which
14 stands for Short Tandem Repeat. An STR is simply a
15 location in our DNA where a short core unit of DNA
16 repeats a certain number of times. And the number
17 of times this unit repeats varies from person to
18 person. And these are the differences that we're
19 looking for in DNA testing to tell different people
20 apart.

21 Q At SLED, when you receive an item of evidence
22 or a sample of DNA, what safeguards are in place to
23 ensure the integrity of those samples?

24 A Each sample that's brought in is assigned a
25 specific case and item number specific to that

1 particular item. The item's placed within a
2 heat-sealed plastic pouch. When the plastic pouch
3 is sealed, the initials of the individual who sealed
4 it are placed on the seal, as well as the date, so
5 that once an item is transferred to me, I can tell
6 that nothing has been tampered with because the
7 pouch is still sealed and I'll be able to tell if
8 anyone else has been in it.

9 In between every sample that I process, I clean
10 the work space. I wear plastic gloves much like you
11 would see at a doctor's office that I change
12 regularly. We go to great pains to prevent any type
13 of contamination. And we run what we call reagent
14 blanks and standards along with the items to ensure
15 that the test has worked properly and that none of
16 the chemicals that we use contain a contaminate DNA
17 that's been introduced to the sample.

18 Q The sealed bag you just referenced, what would
19 you do if an unsealed bag came to you for testing?

20 A The first thing I would do would be to contact
21 the last individual that our chain of custody had
22 shown to have possession of the item to make sure
23 that it wasn't just an oversight on their part to
24 forget to initial it. But, basically, those items
25 would not be tested as we can't properly maintain a

1 chain of custody to ensure that the item hasn't been
2 tampered with.

3 Q What is a DNA profile?

4 A A DNA profile is a collection of information
5 collected from STR locations that we test. With
6 this particular case, I tested some items at eight
7 STR locations and other items at 15. Once I've made
8 copies of the STR locations that I'm interested in
9 testing, I count the number of repeat units at each
10 STR location.

11 So, for example, for my DNA profile, at one STR
12 location, if the copy of DNA I inherited from my
13 mother had eight repeat units and the copy I
14 inherited from my father had ten, my DNA types at
15 that location would be eight and ten. The type
16 simply corresponds to the number of repeat units.

17 A DNA profile is the overall collection of DNA
18 types at all of the STR locations tested for that
19 item, in addition to a gender marker which tells us
20 whether the DNA is from a male or a female.

21 Q Can you develop partial DNA profiles?

22 A Yes, that is possible.

23 Q Are some of the profiles mixtures?

24 A Yes. A mixture would be any item that gives us
25 an indication that there's DNA from more than one

1 individual present on that particular item.

2 Q What's an example -- how can that happen?

3 A Really, anytime two people contribute DNA to a
4 particular item, you can have a mixture, say, at an
5 office building, anyone who walks in and grabs a
6 door handle will have left some of their DNA on that
7 door handle. So if you took a swab of it, you would
8 expect to see a mixture. You would see a collection
9 of DNA from individuals who have been in contact
10 with that item.

11 Q What effect would that have on a known sample?
12 In other words, if you had a known sample of my DNA
13 and you were to test this doorknob and you were to
14 find a mixture, what effect would that have on any
15 DNA profile you were able to obtain?

16 A Typically, when we do a comparison with a
17 mixture, we're just looking to see if it's possible
18 that a known individual could have contributed. I
19 would compare the DNA types at each STR location for
20 the known individual to all of the DNA types that
21 were found at that location on the item of evidence.

22 Usually, the best we're ever going to be able
23 to do with a mixture is say either, no, this
24 individual cannot be excluded as a possible
25 contributor if there is consistency between their

1 profile and the mixture profile, or I can say, yes,
2 they are excluded. If there aren't enough of their
3 DNA types present in the mixture, I can exclude them
4 as a possible contributor.

5 Q Well, what can you do as far as the probability
6 of definitively saying that I indeed touched that
7 doorknob from that sample? What would that do to
8 your probability?

9 A Generally with mixture statistics that we
10 perform, we're looking to see, you know, what is the
11 probability that an unrelated, randomly selected
12 individual could not be excluded from that item.
13 You're generally not going to see very large numbers
14 with a mixture statistic just because there are so
15 many types of DNA present. It's usually a very low
16 number.

17 Q Did you receive evidence in the case of State
18 versus Breon Mayers?

19 A Yes, I did.

20 Q And what evidence was submitted to you?

21 A I received swabs from a 9mm Hi-Point pistol --

22 Q Let me ask you actually, did you receive a
23 buccal swab from Christopher Benjamin?

24 A Yes, I did.

25 Q And did you receive a buccal swab from Jasmine

1 Bowers?

2 A I did.

3 Q And did you receive a buccal swab from Jermaine
4 Caughman?

5 A Yes, I did.

6 Q Did you receive a buccal swab from Breon
7 Mayers?

8 A Yes.

9 Q Did you receive a buccal swab from Tyrome
10 Brennan?

11 A I did.

12 Q I want to show you what's been marked -- what's
13 in evidence as State's 21, State's 54, State's 55,
14 State's 56, State's 57. And do you recognize those?

15 A Yes, I do.

16 Q And what are those?

17 A Do you want me to go through each item
18 individually?

19 Q Sure.

20 A What's entered as State's Exhibit 57 is a
21 buccal swab from Tyrome Brennan. I recognize the
22 SLED case number, item number and my initials on the
23 envelope. State's Exhibit 56 is a buccal swab from
24 Jermaine Caughman. Again, the case number and item
25 number are on the envelope. State's Exhibit 54 is a

1 buccal swab from Breon Mayers. State's Exhibit 21
2 is a buccal swab from Christopher Benjamin. And
3 State's Exhibit 55 is a buccal swab from Jasmine
4 Bowers.

5 Q Okay. And what is a buccal swab?

6 A Buccal swab basically is a sterile cotton swab
7 very similar to a Q-tip. It's rubbed against the
8 inside of an individual's cheek to collect DNA that
9 is used to develop a known DNA standard from that
10 person.

11 Q Have I been saying buccal swab? Have I been
12 saying it incorrectly this whole time?

13 A Either is correct.

14 Q Okay. And I think you said the reason those
15 are submitted, those are the known DNA samples that
16 you're going to test an unknown against?

17 A Correct. I would develop a DNA profile from a
18 buccal swab to compare it to the profile developed
19 from an item of evidence.

20 Q Okay. When you received those samples, those
21 bags were sealed?

22 A They were.

23 Q Did you receive a blood standard from the
24 victim in this case, David Cannon?

25 A Yes, I did.

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1 Q And would that have also been, like the buccal
2 swabs, would that have been a known sample?

3 A That's correct.

4 Q State's 53, do you recognize that?

5 A I do. This is the blood standard that was
6 submitted for David Cannon.

7 Q Okay. And that -- again, would that have been
8 in a sealed bag when you received it?

9 A That's correct.

10 Q Did you receive swabs from the exterior sides
11 of a slide grip trigger -- trigger guard and
12 magazine of a Hi-Point 9mm?

13 A Yes, I did.

14 Q Let me show you State's 43. Are you able to
15 recognize that?

16 A State's 43 contains two swab boxes. One is
17 identified as swabs from the exterior of the 9mm
18 Hi-Point that was identified as SLED item 5.1.

19 Q Okay. And did you test that item?

20 A Yes, I did.

21 Q And was that sealed when you received it?

22 A It was.

23 Q Did you receive swabs from a, what's described
24 as a black Carolina Gamecock wallet?

25 A Yes, I did.

1 Q I'm going to show you State's 46. Do you
2 recognize that?

3 A State's 46 contains swabs taken from both the
4 outside and inside of the black Carolina Gamecock
5 wallet.

6 Q Were you able to test that?

7 A Yes, I was.

8 Q And, again, I'm referring to State's 43. Is
9 there also a swab from three 9mm cartridges?

10 A Yes. That was submitted in the same coin
11 envelope as the swab from the exterior of the
12 Hi-Point.

13 Q Okay. Tell me about -- let's just start with
14 the wallet. Were you able to test those, those
15 swabs from the wallet?

16 A Yes, I was.

17 Q And what determination did you make regarding
18 those swabs?

19 A The DNA profile developed from the swabs from
20 the outside of the wallet matches the DNA profile of
21 David Cannon. The probability of randomly selecting
22 an unrelated individual having a DNA profile
23 matching this item is approximately one in one point
24 two trillion.

25 Q Okay. So you can pretty much say without a

1 doubt that David Cannon had touched that wallet or
2 his DNA was on that wallet?

3 A I can say within a reasonable degree of
4 scientific certainty that Mr. Cannon is the
5 contributor of the DNA profile I developed from that
6 wallet.

7 Q Tell me about the swabs from the bullets.

8 A No human DNA was detected on the swabs from the
9 9mm cartridges.

10 Q Was that surprising to you?

11 A Not really. With cartridges and bullets,
12 things like that, what you're really testing for is
13 touch DNA, that's just skin cells that would be
14 transferred to the item when it's held or handled.
15 And, typically, with fragments of guns or
16 cartridges, we're not going to get a very good
17 profile. There's not enough DNA transferred to the
18 item as it's held.

19 Q Okay. So just because I might touch an item,
20 that doesn't necessarily mean I would leave DNA on
21 it?

22 A It means that there might not be enough there
23 to test. Anytime you come in contact with an item,
24 there will be some level of transfer. It just may
25 not be enough for us to detect it.

1 Q And, again, when you test the wallet, you test
2 those bullets, you're comparing them to the known
3 DNA, which are coming from Christopher Benjamin,
4 Jasmine Bowers, Jermaine Caughman, Tyrome Brennan,
5 David Cannon and Breon Mayers?

6 A That's correct.

7 Q And so the wallet, out of all them, you can
8 exclude everybody, but you can say that you can
9 definitely see David Cannon's DNA on there; is that
10 correct?

11 A That's correct. Mr. Cannon is a match and all
12 of the other individuals would be excluded as
13 possible contributors to the wallet.

14 Q All right. The swab from the 9mm Hi-Point gun,
15 it looks like the gun itself was swabbed and the
16 magazine of the gun was swabbed; is that your
17 understanding?

18 A Those swabs were taken prior to the item being
19 sent to SLED, but the description I received were
20 that the swab was taken from the exterior surfaces
21 of the gun.

22 Q And were you able to develop a DNA profile from
23 those swabs, from the gun?

24 A I was.

25 Q And what was your conclusion?

1 **A** The DNA profile developed from the swabs from
2 the exterior of the Hi-Point is a mixture of at
3 least three individuals. Breon Mayers cannot be
4 excluded as a possible contributor to this mixture.
5 The probability of randomly selecting an unrelated
6 individual who could have contributed to this
7 mixture is approximately one in five.

8 David Cannon, Christopher Benjamin, Jermaine-
9 Caughman and Tyrome Brennan are excluded as possible
10 contributors. And no conclusive statement can be
11 made regarding the inclusion or exclusion of Jasmine
12 Bowers as a possible contributor.

13 **Q** So you can say that you didn't find any DNA
14 that would match David Cannon or Tyrome Brennan or
15 Jermaine Caughman; is that accurate?

16 **A** Based on the profile I developed from the gun,
17 there's not enough consistency with their profiles
18 for me to say that they are possible contributors;
19 therefore, I excluded them as possibly having
20 contributed to this mixture.

21 **Q** And tell me about Jasmine Bowers.

22 **A** My conclusion for that was basically that I
23 can't determine definitively whether she should be
24 included or excluded. Sometimes we just don't have
25 enough complete information to make a definitive

1 statement. So there is no conclusion -- no
2 conclusive statement for Ms. Bowers.

3 Q But based on the profile you developed, you
4 cannot exclude Breon Mayers as having contributed to
5 that mixture; is that accurate?

6 A Correct. At each of the STR locations tested,
7 it is possible that Mr. Mayers was a contributor to
8 the mixture developed from the Hi-Point.

9 Q Now, you said it was a mixture of at least
10 three individuals?

11 A Correct.

12 Q Can you tell how many could have touched it?
13 Is there any way to determine that?

14 A There's no way to tell exactly how many
15 individuals have held an item when you have a
16 mixture. I can give you, again, it's a minimum of
17 at least three, there may be more, but based on the
18 DNA types present at the STR locations I tested,
19 there are at least three contributors.

20 Q Could it have been as many as five?

21 A It could.

22 Q More than that?

23 A Possibly, yes, sir.

24 Q And tell me, again, the effect of DNA mixtures.
25 What effect does that have on your final results and

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1 probabilities that you can say with any -- without
2 hesitancy, I guess?

3 A I can't make a strong statement with a mixture
4 as I could with, say, the DNA profile developed from
5 the wallet. The profile from the wallet was a
6 single source profile and a perfect match to
7 Mr. Cannon. When comparing to a mixture, the best I
8 can say, again, is when comparing Mr. Mayers'
9 profile, he cannot be excluded as a possible
10 contributor at any of the STR locations tested. And
11 approximately one out of every five randomly
12 selected individuals could be a possible contributor
13 to this item.

14 Q Okay. But your conclusions, you do exclude
15 Jermaine Caughman, you do exclude Tyrone Brennan,
16 you do exclude Chris Benjamin and you do exclude
17 Dave Cannon?

18 A That's correct.

19 Q But you don't have a conclusion on Jasmine
20 Bowers?

21 A That's correct. I feel it's a little too
22 incomplete to make a definitive statement.

23 MR. SCOTT: Thank you, Ms. Leisy. Please
24 answer any questions Mr. Williams may have.

25 THE WITNESS: Yes, sir.

1 **THE COURT:** Cross.

2 **MR. WILLIAMS:** Thank you, Your Honor.

3 CROSS-EXAMINATION

4 **BY MR. WILLIAMS:**

5 **Q** Ma'am, I guess, for my edification, do you -- I
6 assume that since you're testing DNA and you're
7 tasked with coming up with probabilities, that you
8 have a strong background in math to determine
9 probabilities and statistics and things like that;
10 is that correct?

11 **A** Correct. I've received in-house training from
12 other court qualified analysts, as well as having
13 attended seminars specific to the use of probability
14 and statistics in the type of testing I perform.

15 **Q** How many people are currently residing in the
16 State of South Carolina?

17 **A** I believe between three and four million.

18 **Q** How many people are in the United States?

19 **A** I believe approximately three hundred million
20 currently.

21 **Q** Now, attached to your report you had a
22 breakdown of showing the genetic, you call them,
23 identifiers or loci on the various individuals that
24 you tested. And you marked 16 areas as being areas
25 that you would test; is that essentially correct?

1 A Ideally we try to test at least 15 STR
2 locations in addition to the gender marker, which is
3 known as amelogenin.

4 Q So when you're testifying as to probabilities
5 that some person may or may not have touched
6 something, what you're saying is that whatever DNA
7 sample that you test reveals some loci pre -- at the
8 same location on the item you tested as the
9 individual that you tested -- a shared location on
10 the DNA strand?

11 A It would be a common DNA type at a specific
12 location.

13 Q Okay. So when we talk about -- and you don't
14 test for more than 15 locations on the DNA strand,
15 do you?

16 A The maximum number that we would test would be
17 15.

18 Q So every juror in this jury box would have, if
19 you were testing them, would have those 15 locations
20 on their DNA that you would test?

21 A Correct.

22 Q And when you determined, what, probability?

23 A Yes.

24 Q You determine -- do you input race, sex,
25 heritage or what have you or do you just take a

1 large number of persons and then determine that
2 probability based on that?

3 A When we develop probabilities, we use a
4 database that's maintained by the federal
5 government. It includes four different population
6 databases. It includes Caucasian, Southeastern
7 Hispanic, Southwestern Hispanic and
8 African-American. The probability is generated for
9 all four of those databases and we report what is
10 considered to be the most conservative, meaning the
11 smallest number of those four.

12 Q So there are data -- there are persons who are
13 excluded from this general group of database because
14 obviously there -- they're persons of -- you
15 included Oriental, I know?

16 A No, not in the group of four databases, they
17 are not.

18 Q So which databases did you include?

19 A It includes Caucasian, African-American,
20 Southeastern Hispanic and Southwestern Hispanic.

21 Q So when you make your determination as to
22 probabilities, you're not even considering any of
23 the other races or individuals that may or may not
24 match up to that DNA that you're testing, do you?

25 A The databases were designed to represent the

1 most common nationalities present in the population.
2 It's just an estimate. It gives us a general idea
3 of how common or rare this particular profile may
4 be. We don't specifically pick various
5 nationalities outside of the four databases that are
6 commonly used.

7 Q And when you say that there is a one in five
8 possibility that an individual may have touched
9 something, if we were -- if we have 12 jurors, then
10 are you saying that two persons in the jury may have
11 touched this weapon?

12 A It means, mathematically, approximately two
13 people would not potentially be excluded as
14 contributors, that's correct.

15 Q But, clearly, when you say that something is
16 one in 1.2 trill -- how many zeros is that?

17 A Trillion would be -- one trillion would be a
18 one with 12 zeros behind it.

19 Q Then, clearly, you're quite capable of
20 testifying with a very, I don't know, it wouldn't be
21 reasonable, it would be over a reasonable degree of
22 scientific certainty as to the presence of or at
23 least the common shared DNA with what you're testing
24 with another sample, if you're going that far,
25 aren't you?

1 A When you have, again, a single source profile,
2 meaning a profile from one individual on an item of
3 evidence that's a perfect match to the profile of an
4 individual, I'm very comfortable making that
5 conclusion.

6 Q And, from your determinations, you determined
7 that, insofar as the wallet was concerned, that
8 those individuals were excluded as contributors in
9 terms of touching the wallet?

10 A With the exception of Mr. Cannon, all the
11 individuals I tested were excluded as being
12 contributors to the DNA obtained from the wallet.

13 Q And those items that you tested, I think you
14 would say 7-1, 7-2, 7-3, right sneaker, right
15 sneaker, left sneaker, do you know where those
16 sneakers came from, who allegedly had those sneakers
17 on?

18 A As I recall, there was no information in the
19 submission paperwork that I received indicating who
20 those sneakers belonged to.

21 Q But on number eight which you tested was the
22 right toe area of Jasmine Bowers. That would be the
23 right toe area of her sneaker?

24 A I'm not sure if it was the right toe area of
25 her sneaker or if it was actually a swab taken

1 directly from her toe.

2 Q Did you have anything on a buccal swab to
3 indicate that the DNA came off of any other part of
4 the body other than a swab from inside the mouth?

5 A There's no way to tell. A buccal swab
6 typically, again, is taken from the inside of the
7 mouth.

8 Q Well, whoever the collector was, in his report,
9 he would note where he took the DNA sample from,
10 wouldn't he?

11 A That I'm not sure. We typically don't receive
12 that level of detail.

13 Q And you say that there was no DNA whatsoever on
14 the cartridges that you tested?

15 A There was none detected. It's possible there
16 was some present, just not enough for our test to
17 detect.

18 Q And the cartridges are made out of metal; is
19 that correct?

20 A I believe so, yes, sir.

21 Q Do you know what the weapon was made out of?

22 A I do not.

23 Q Because all you test is DNA and the analysis of
24 DNA. You're not charged with determining metals and
25 the composition of those things?

1 **A** That's correct.

2 **MR. WILLIAMS:** That's all the questions I have,
3 Your Honor.

4 **MR. SCOTT:** Nothing further, Your Honor.

5 **THE COURT:** You may step down. Thank you.

6 **THE WITNESS:** Thank you, Your Honor.

7 **THE COURT:** Next witness.

8 **MR. SCOTT:** Your Honor, the State calls Dr.
9 Kelly Rose.

10 KELLY ROSE,

11 having been duly sworn, testified as follows:

12 **THE CLERK:** Once you're seated, Doctor, please
13 state your full name, spelling your last on the
14 record.

15 **THE WITNESS:** Kelly Rose, R-o-s-e.

16 DIRECT EXAMINATION

17 BY MR. SCOTT:

18 **Q** Ms. Rose, what is your occupation?

19 **A** I am a forensic pathologist.

20 **Q** How long have you been -- how long have you
21 made that your practice?

22 **A** It's been about three years now since I
23 graduated residency and training.

24 **Q** Are you currently practicing?

25 **A** I'm not currently practicing forensic

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1 pathology.

2 Q And why not?

3 A I had some health issues come up and I've had
4 to take a leave of absence.

5 Q Well, in October of last year, were you
6 practicing as a forensic pathologist?

7 A Yes.

8 Q And what is your educational background?

9 A I went to college and got my degree in biology
10 and then I went to medical school. After medical
11 school, I trained in pathology. And then I did a
12 subspecialty year in forensic pathology.

13 Q Where did you receive your training in
14 pathology?

15 A Emory University.

16 Q What exactly is pathology?

17 A Pathology is the study of disease. And so any
18 type of medical procedure that someone would have
19 where they needed to know a diagnosis, be it blood
20 work, be it you get a mold removed and you need to
21 know what it is, they'll send it to the pathologist
22 and then we will say whether, you know, it's cancer,
23 whether it's not, this person's, you know, blood is
24 showing signs of this disease. So we basically
25 diagnose disease.

1 Q Well, then what is forensic pathology?

2 A Pathologists also do autopsies to determine the
3 cause of death. And a forensic pathologist does
4 forensic autopsies to determine cause and manner of
5 death in certain situations; if there's been an
6 injury, if something's suspicious and cause and
7 manner of death need to be determined, then they'll
8 send the decedent or the body to the pathologist and
9 we will conduct a forensic autopsy.

10 Q How many autopsies have you performed?

11 A Approximately 1,000.

12 Q In all of those 1,000 autopsies, have you had
13 an occasion to examine someone suspected of dying of
14 a gunshot wound?

15 A Multiple. I trained in Atlanta and I -- a lot
16 of my cases are gunshot, have been gunshot.

17 Q You mean your pathology training, that was in
18 Atlanta?

19 A My forensic training at Emory was in Atlanta.

20 Q And have you testified as an expert in the
21 field of forensic pathology before?

22 A Yes.

23 Q How many times?

24 A Three.

25 Q How many in South Carolina?

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1 **A** Two.

2 **Q** What was the other one?

3 **A** In Georgia.

4 **MR. SCOTT:** Your Honor, the State offers Dr.
5 Kelly Rose as an expert in the field of forensic
6 pathology.

7 **MR. WILLIAMS:** Without objection, Your Honor.

8 **THE COURT:** All right. Folks, this witness has
9 now been qualified as an expert in the field of
10 forensic pathology. And the same instructions that
11 I've given you earlier today about experts applies
12 to her as well. And you determine how much weight
13 to give her testimony based on all of the evidence
14 that you'll hear throughout the trial.

15 You may continue.

16 **BY MR. SCOTT:**

17 **Q** Dr. Rose, where were you working in October of
18 last year?

19 **A** Newberry Pathology Associates in Newberry,
20 South Carolina.

21 **Q** Did you perform an autopsy on David Cannon on
22 October 22nd, 2011?

23 **A** Yes.

24 **Q** And when was your reported date of death?

25 **A** October 21st.

1 Q So you examined him the next day?

2 A Yes.

3 Q Did you first do an external exam?

4 A Yes. Every forensic autopsy you go through
5 certain procedures and you begin with an external
6 exam which includes photographing the body as it was
7 received. And much like you get a physical at your
8 doctor's appointment, we do the same thing with the
9 body, you know, looking at the head in different
10 regions. And we pay particular attention to any
11 injuries, documenting them on diagrams and
12 photographing. And that was the external
13 examination.

14 Q What did you note about Mr. Cannon in your
15 external examination?

16 A General characteristics, height, weight, hair
17 color, and then he had two gunshot wounds.

18 Q Okay. What else did you note about him as far
19 as your external? Did you do things like build --

20 A Okay. I can run through all that. Yeah, we
21 measure the body. We get an approximate weight. We
22 note hair color, eye color.

23 Q How tall was he?

24 A Sixty-three inches. And it's -- it's length.
25 And so when bodies are -- when you measure them,

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1 length, while they're laying down, it doesn't
2 exactly translate to when you're standing up.

3 Q Okay. So that's about five three, correct --

4 A 'ish.

5 Q -- somewhere in there?

6 A Yes, five three.

7 Q And what did you note -- do you weigh the
8 person?

9 A They do not have a scale at Newberry Pathology,
10 so it was more of a weight guesstimate. He was
11 thin. He was a -- thin.

12 Q Okay. What else did you note about him?

13 A As far as just general characteristics, he --

14 Q Do you have your report with you?

15 A I do. Any specifics or do you just want me to
16 run through what I noted on his external? He had
17 dark --

18 Q I'm sorry, one second.

19 (State's Exhibit Numbers 60 and 61, autopsy
20 diagrams, marked for identification purposes.)

21 Q I'm going to show you State's Number 61.

22 A Yes.

23 Q Do you recognize that?

24 A I do. This is a body diagram that I used
25 during the autopsy.

1 Q And you sketched that out I guess?

2 A Yes.

3 MR. SCOTT: Your Honor, the State would offer
4 State's 61 for admission into evidence.

5 MR. WILLIAMS: Without objection, Your Honor.

6 THE COURT: It's admitted.

7 (State's Exhibit Number 61, autopsy diagram,
8 admitted into evidence.)

9 MR. SCOTT: Permission to publish to the jury.

10 THE COURT: You may.

11 (Pause.)

12 BY MR. SCOTT:

13 Q You can go ahead while we're waiting for it to
14 turn on.

15 A Okay. During every autopsy, we have body
16 diagrams, that will be projected shortly, and we use
17 them as things to help us remember and document our
18 external exam. And in this case -- we use a lot of
19 abbreviations, just part of the trade. And I noted,
20 you know, I looked at his eyes and his head. And I
21 noted his hair color, his eye color. His teeth were
22 absent. You always look at their teeth. You're
23 looking for any sign of natural disease or injury.

24 Q And what did you note about -- what is
25 scaphoid?

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1 **A** Scaphoid is the medical term for sunken. It
2 means shaped like a boat. So his abdomen was
3 scaphoid and that is the medical term for when
4 someone is thin, when it actually gives an -- what
5 most of us wish we had.

6 **Q** Would you describe him as underweight?

7 **A** He was underweight, yes. He was thin.

8 **Q** Okay. You've marked his arms. You have arrows
9 pointed to his arms and you diagram his arms. What
10 did you notice about his arms?

11 **A** On the right upper arm, he had some fentanyl
12 patches adherent, which is a pain killer that's
13 absorbed through your skin, the patches. And on the
14 left, he had some patch residue that would be
15 consistent with having another patch at some point
16 in time.

17 **Q** Okay. I note that State's 61 does not have any
18 diagram of any injuries. Why is that?

19 **A** In cases where injury is the cause of death, I
20 like to do a separate diagram that has only the
21 injuries and so I will use a separate body diagram
22 for the injuries.

23 **Q** And did you do that in this case?

24 **A** Yes, I did.

25 **Q** State's 60, do you recognize this?

1 **A** Yes.

2 **Q** And did you generate this?

3 **A** Yes, I did.

4 **MR. SCOTT:** Your Honor, the State would offer
5 State's 60 for admission into evidence.

6 **MR. WILLIAMS:** Without objection, Your Honor.

7 **THE COURT:** It's admitted.

8 (State's Exhibit Number 60, autopsy diagram,
9 admitted into evidence.)

10 **MR. SCOTT:** And permission to publish.

11 BY **MR. SCOTT:**

12 **Q** What are we seeing in State's 60 here that you
13 made?

14 **A** In this case, since the injuries were localized
15 to his torso, I used the torso diagram so I could
16 have a closer image of the injuries. And I
17 diagrammed in shorthand the entrance and exit
18 gunshot wounds, their measurements as far as the
19 actual size of the wound, their location. We
20 measured from top of head. So, for instance, one of
21 the gunshot wounds was 13 and a half inches from the
22 top of the head. We'll say whether or not it was
23 right or left of midline.

24 And this is all done in what's termed
25 anatomically correct position, which is with the

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1 body standing as you see in that diagram. If you
2 were to stand like this, which in real life nobody
3 stands like this, but we do that so that in court,
4 we have a reference as to where the wounds were, a
5 standardized reference.

6 So, in this case, I've diagrammed the entrance
7 and exit wounds, their size, their location on the
8 body, their direction, the travel.

9 Q Okay. Let me first point, what is this?

10 A That is an entrance gunshot wound.

11 Q And what did you note about that particular
12 wound?

13 A I noted the size. It was point six by point
14 three inches. There was an abrasion border that was
15 eccentric, meaning that there was a -- when a bullet
16 goes in the body, it will actually scrape some skin
17 with it. And if it goes in exactly perpendicular,
18 the amount of skin scraped will be circular. If it
19 goes in at an angle, you'll have more of an abrasion
20 on one of the sides. And so I noted that there was
21 an eccentric abrasion.

22 Q That means that, in your opinion, it went in at
23 an angle?

24 A Yes.

25 Q And anything else you note about that

1 particular wound? That's labeled as number one
2 entrance on your diagram?

3 A And that doesn't mean that's the order in which
4 he sustained the gunshot wounds. It's just to help
5 match up entrance and exit.

6 Q Tell me about this. This is the back of
7 Mr. Cannon?

8 A Yes. And I use an X for -- to signify an exit
9 wound. And so that is the exit wound to --
10 corresponding to the entrance wound labeled number
11 one.

12 Q Okay. Tell me -- you were mentioning you noted
13 the -- from the top of the head and from the
14 midline, you make notations of where in relation of
15 those two points. Tell me about the entrance.

16 A Okay. The entrance wound was located -- I'm
17 just going to glance here at my sheet -- 13 --
18 number one, this one that you see (indicating), was
19 located 13 and a half inches from the top of his
20 head, measured from the top of his head. It was two
21 and three-fourths inches left of midline. So just
22 drawing a line down the middle of the body, it was
23 to the left of midline. And then I have that it was
24 about three and a half inches above the left nipple.

25 Q Okay. And what about the exit wound?

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1 **A** The exit wound was 21 inches from the top of
2 the head and seven inches right of midline. So it
3 was -- it traveled across the body and down.

4 **Q** Okay. Is that noteworthy to you in any way?

5 **A** It is, especially when you have multiple
6 gunshot wounds, you really need to try to match up
7 entrance with exit and you can follow the wound
8 tract through the body and see exactly what bullet
9 did what damage. And, in this case, this bullet
10 traveled from left to right and down across the
11 midline and it also traveled in what we call a front
12 to back direction. And it went through the left
13 lung, the heart, the right lung before exiting the
14 body.

15 **Q** Okay. Tell me about number two entrance right
16 here (indicating).

17 **A** Okay. Number two, that was another entrance
18 wound on the body. And that was located 21 and a
19 fourth inches from the top of the head, so lower
20 than the first entrance gunshot wound, and three and
21 five-eighths inch left of midline.

22 **Q** Okay. And the exit?

23 **A** The exit wound was located 24 and a half inches
24 from the top of the head. So it went down
25 approximately three inches. And it was two inches

1 left of midline.

2 Q Okay. So that one had less of a drop?

3 A It had less, yes, less of a drop. It also
4 traveled left to right, but less. It dropped less
5 and traveled less, left to right.

6 Q And what would that projectile -- what would it
7 have passed through?

8 A It passed through his abdominal cavity through
9 his intestines and out of his back after exiting the
10 muscles that you have that run along your spine.

11 Q Okay. Did you x-ray?

12 A We x-ray every gunshot wound victim to make
13 sure there's no bullet fragments left in the body.
14 Sometimes we'll find loose casings or bullets on the
15 body in their clothes so we x-ray them as is. And
16 so we performed x-rays on this gentleman and no
17 projectiles. We say radiopaque, nothing showed up
18 on x-ray.

19 Q Okay. Is that consistent with you finding two
20 entrance wounds and two exit wounds?

21 A Yes.

22 Q So based on all of this, your findings, have
23 you formed an expert opinion on the cause of death
24 of Mr. Cannon?

25 A I did.

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1 Q And what was that cause of death?

2 A Perforation of heart due to gunshot wound of
3 chest.

4 Q Okay. So your opinion is he died from shot --
5 what's listed as shot number one?

6 A Yes, that projectile went through his heart.
7 The other gunshot wound I listed as contributory,
8 meaning it contributed to his death, but it was
9 separate and distinct from the gunshot that went
10 through his heart.

11 Q Do you have an opinion on how long it took him
12 to die from these wounds?

13 A I put seconds in this case because there was a
14 lot of blood in his chest cavity and there was
15 actually blood -- you have a -- your heart rests in
16 its sack, kind of covers it and has some fluid so
17 that when it's pumping, it's protected. There was
18 about a hundred CCs of blood around his heart, so
19 that means that his heart was able to pump enough,
20 even with the hole through it, that blood was able
21 to escape into that sack.

22 It's very similar to what happened to the
23 Crocodile Hunter, that's how he died. He got
24 perforated in the heart by a stingray and then blood
25 filled up around. And, usually, those are not

1 instantaneous, that's why I have it as seconds.

2 MR. SCOTT: Dr. Rose, please answer any
3 questions Mr. Williams may have.

4 MR. WILLIAMS: No questions, Your Honor.

5 THE COURT: You may step down.

6 Next witness.

7 MR. SCOTT: Your Honor, the State calls Robbie
8 Lint.

9 MR. GRAHAM: Your Honor, if Mr. Williams and I
10 can approach for scheduling.

11 THE COURT: Yes.

12 (Whereupon, a bench conference was held off
13 the record, in the presence of the jury, but out of
14 the hearing of the jury.)

15 CHARLES ROBERT LINT, JR.,
16 having been duly sworn, testified as follows:

17 THE CLERK: Have a seat, please. Once you're
18 seated, state your full name, spelling your last on
19 the record, please.

20 THE WITNESS: It's Charles Robert Lint, Jr.
21 Last name is spelled L-i-n-t.

22 DIRECT EXAMINATION

23 BY MR. SCOTT:

24 Q Where are you employed, Mr. Lint?

25 A I work at the Lexington County Sheriff's

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1 Department.

2 Q How long have you been there?

3 A I've been there since May of 2003.

4 Q Where were you before that?

5 A I worked for the state at the Probation, Parole
6 and Pardon Services since October of '97.

7 Q What are your current duties with Lexington
8 County?

9 A I am a sergeant over the major crimes unit.

10 Q Were you working in major crimes last October?

11 A Yes, sir.

12 Q Do you recall becoming involved in an
13 investigation of a murder at Road in
14 Chapin?

15 A I do.

16 Q And do you recall meeting a Breon Mayers?

17 A Yes, sir.

18 Q What were the circumstances?

19 A It was to conduct an interview with Mr. Mayers
20 in reference to this incident.

21 Q Did you go out and arrest him?

22 A No, sir.

23 Q Where did you meet him?

24 A He came to the Lexington County Sheriff's
25 Department.

1 Q When was that?

2 A On October 27th, 2011.

3 Q Do you know what time he turned himself in?

4 A 9:00 p.m. that evening, somewhere around about

5 that timeframe.

6 Q And where was he taken?

7 A To an interview room.

8 Q Describe that interview room.

9 A Our interview rooms are secluded away from the

10 investigation unit. They're a room with a window.

11 There's a table inside with four chairs in it, a

12 door that we can shut to have privacy.

13 Q Is it like the T.V. shows where you hold a

14 bright light over the person you're talking to and

15 shine it in their eyes?

16 A No, sir.

17 Q It's not like that?

18 A No, sir.

19 Q Well, who all was in the room with him?

20 A It was Mr. Mayers, myself and Investigator

21 Derrenbacher.

22 Q Now, was Mr. Mayers under arrest at this time?

23 A Yes, sir.

24 Q And was he told of the charges he was arrested

25 for?

CHARLES ROBERT LINT, JR. - DIRECT BY MR. SCOTT

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1 A Yes, sir.

2 Q And did he understand those charges?

3 A Yes, sir.

4 Q Did he appear to be under the influence of any
5 drugs or alcohol or anything like that?

6 A No, sir.

7 Q Did he appear to have any physical or mental
8 disability?

9 A No, sir.

10 Q Was he advised of his rights pursuant to
11 Miranda?

12 A Correct, yes, sir.

13 Q Who advised him of his rights?

14 A Investigator Derrenbacher.

15 Q And did you hear them being read to Mr. Mayers?

16 A I did, yes, sir.

17 Q Was he given an advisement of rights form?

18 A He was.

19 Q Did he appear to have any trouble understanding
20 his rights?

21 A No, sir.

22 Q I'm going to show you what's already been
23 marked for I.D. purposes as State's Number 1. What
24 is that?

25 A This is a statement form that we use at the

1 sheriff's department. It is a statement form with
2 Mr. Mayers' information on it and the Miranda
3 warnings on it.

4 Q Okay. It has -- would you read the Miranda
5 warnings in it?

6 A Yes, sir. It states, number one, I have the
7 right to remain silent, with the initials B.J.M.
8 beside them. Number two is, Anything I say can and
9 will be used against you {verbatim} in a court of
10 law, with the initials B.J.M. beside it. I have the
11 right to talk to a lawyer for advice before asked
12 any questions and to have him or her present with me
13 during any questioning, with the initials B.J.M.

14 Number four is, If I have no money for lawyer
15 fees, the court will appoint one to represent me
16 without cost to me if I wish, the initials B.J.M.
17 If I decide to answer any questions now without a
18 lawyer present, I will still have the right to stop
19 answering any questions at any time. I will also
20 have the right to stop answering any questions at
21 any time until I talk with that lawyer, with the
22 initials B.J.M.

23 And then the last line says, I have read this
24 statement of my rights and understand what my rights
25 are, with the initials B.J.M.

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1 Q Who is B.J.M.?

2 A Breon Mayers.

3 Q And did -- who signed those initials?

4 A Breon Mayers.

5 Q Did you observe him sign those initials to that
6 paper?

7 A Yes, sir.

8 Q What other kind of information is listed on
9 that sheet?

10 A At the top of the statement form, it's got the
11 date of October 27th, 2011, the place being
12 Lexington County Sheriff's Department, the time
13 started is 2145, which is 9:45 p.m.

14 It says, I understand, Breon Mayers, am 20
15 years of age. My date and place of birth being the
16 20th day of April 1991 at Greenwood, South Carolina.
17 My present address is Road.

18 I completed the 11th grade in school and can read
19 and write, with the initials B.J.M. It has a
20 contact number of (803) -7323. An alternate
21 contact name of Larry E. Mayers, phone number
22 (803) -4878.

23 It also states, Before answering any question
24 or make any statements, Derrenbacher slash Lint, a
25 person who identified him or herself as a detective

1 with the Lexington County Sheriff's Department, duly
2 sworn and advised of that.

3 Q And that personal information at the top, did
4 he write that down himself or did he verbally say
5 that and somebody else wrote it?

6 A He verbally gave that information and it was
7 written.

8 Q And did you hear him make those statements as
9 to where he lived and how old he was and his date of
10 birth and all that?

11 A Yes, sir.

12 Q Now, at anytime while you and Derrenbacher had
13 him in this interview room, did you make any threats
14 or coerce him in any way to give a statement?

15 A No, sir.

16 Q Did you offer him any promise or hope of
17 reward?

18 A No, sir.

19 Q What was he told?

20 A He was advised of the arrest warrants that were
21 out for his arrest. They were read to him. He was
22 explained what he's being charged with. And, at
23 that point, he was asked if he understood what he
24 was being charged with. He stated he did. And then
25 he was asked if he wanted to tell us about it.

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1 Q Okay. Had any of -- had Jasmine Bowers,
2 Jermaine Caughman or Tyrome Brennan been arrested at
3 this time?

4 A Yes, sir.

5 Q And had he been told anything about them?

6 A Yes, sir.

7 Q And what was he told?

8 A He was told they were under arrest for the
9 murder of Mr. Cannon.

10 Q Okay. Did you tell him any evidence, if any,
11 that you had that you thought would make him a
12 suspect?

13 A Yes, sir.

14 Q And what did he do?

15 A He denied knowing Ms. Bowers, Mr. Brennan and
16 Mr. Caughman.

17 Q He said he didn't know Tyrome Brennan, he
18 didn't know Jermaine Caughman and he didn't know
19 Jasmine Bowers?

20 A Yes, sir.

21 Q Did he say where he had been at the time of the
22 incident?

23 A Said he was at home until 2:00 p.m. that
24 afternoon.

25 Q Did he make any other verbal statements?

1 **A** He did. He said he had nothing to do with this
2 situation, why -- he didn't understand why he was
3 here, he doesn't know Mr. Cannon, doesn't know where
4 Road is, never been to Road,
5 doesn't understand why these other individuals are
6 lying on him, and that he didn't do anything.

7 **Q** Okay. And the best of your knowledge, were
8 these statements freely and voluntarily given by
9 Mr. Mayers?

10 **A** Yes.

11 **Q** And you didn't threaten him, you didn't deny
12 him any food or water or bathroom breaks or anything
13 like that?

14 **A** No, sir.

15 **MR. SCOTT:** Please answer any questions
16 Mr. Williams may have for you.

17 **MR. WILLIAMS:** May it please the Court.

18 CROSS-EXAMINATION

19 BY MR. WILLIAMS:

20 **Q** Investigator Robbie or are you a sergeant?

21 **A** Sergeant.

22 **Q** Sergeant Lint, when you were talking about the
23 statements that were made by my client, you said
24 initially when he came in and you started asking
25 about his involvement, he was shaking his head no,

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1 indicating he had no involvement; is that correct?

2 A Correct.

3 Q And then when you were reading out the
4 sentences in regards to what he actually said, you
5 said that, in reference to where he was, you said
6 that -- you stated, Breon stated that he was at his
7 house all day until two o'clock, right?

8 A Correct.

9 Q And then there was one follow-up question that
10 you asked him. You remember you asked him the
11 follow-up question? What did he say about
12 confirmation?

13 A I asked him if there's anybody that can confirm
14 that he was at home and he said, no.

15 Q So he said he was there by himself, which is
16 the rest of the statements that he gave?

17 A Yes, sir. Correct.

18 Q Now, in terms of your involvement with this
19 case, your involvement was basically -- you were
20 initially involved on October the 21st?

21 A Yes, sir.

22 Q And you met with, I guess, Ms. Bowers and you
23 determined that there were two other individuals
24 that you thought were possible suspects in this?

25 A Yes, sir.

1 Q And you also were involved in retrieving a
2 firearm from, is it, Jerome's house?

3 A Yes, sir.

4 Q And aside from that, the only other thing, I
5 guess, that you were involved in was you were
6 present when Tyrome Brennan gave his statement?

7 A When Tyrome?

8 Q Yeah. Were you present when he gave his
9 statement?

10 A No, sir.

11 Q Oh, okay. You were present when Chris Benjamin
12 gave his statement?

13 A Correct.

14 Q But not Tyrome?

15 A No, sir.

16 Q Do you know who was present when Tyrome Brennan
17 gave his statement?

18 A I do not.

19 Q Okay. Fair enough.

20 MR. WILLIAMS: That's all the questions I have,
21 Your Honor.

22 MR. SCOTT: Nothing further from the State,
23 Your Honor.

24 THE COURT: You can step down.

25 Next witness.

WILLIAM EDWARD DERRENBACHER - DIRECT BY MR. SCOTT

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1 **MR. SCOTT:** Your Honor, the State calls Billy
2 Derrenbacher.

3 WILLIAM EDWARD DERRENBACHER,
4 having been duly sworn, testified as follows:

5 **THE CLERK:** Once you're seated, state your full
6 name, spelling your last on the record, sir.

7 **THE WITNESS:** Yes, ma'am. My name is William
8 Edward Derrenbacher. Derrenbacher is spelled
9 D-e-r-r-e-n-b-a-c-h-e-r.

10 DIRECT EXAMINATION

11 BY MR. SCOTT:

12 **Q** Mr. Derrenbacher, where are you employed
13 currently?

14 **A** Currently, I'm the director of Lexington County
15 Animal Services.

16 **Q** How long have you held that position?

17 **A** For about five months.

18 **Q** And where were you prior to that?

19 **A** Major crimes investigator at Lexington County
20 Sheriff's Office.

21 **Q** So in October of last year, late October of
22 last year, you would have been in major crimes at
23 Lexington County Sheriff's Department?

24 **A** That's correct.

25 **Q** And were you working the day of October 27th,

1 2011?

2 A I was.

3 Q And do you recall meeting Breon Mayers?

4 A I do.

5 Q And what were the circumstances?

6 A He was surrendering himself into the Lexington
7 County Sheriff's Department pursuant to active
8 arrest warrants.

9 Q So he turned himself in to the sheriff's
10 department?

11 A He did.

12 Q And do you remember about what time it was?

13 A I believe it was around 9:30, ten o'clock.

14 Q And where was he taken when he got to the
15 sheriff's department?

16 A Interview room number one inside the sheriff's
17 department.

18 Q And who was present in interview room one?

19 A Sergeant Lint with the Lexington County
20 Sheriff's Office.

21 Q Were you there?

22 A I was.

23 Q So you, Sergeant Lint and Breon Mayers were in
24 the room?

25 A That's correct.

WILLIAM EDWARD DERRENBACHER - DIRECT BY MR. SCOTT

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1 Q Was he told -- was he under arrest at that
2 time?

3 A He was.

4 Q Was he told of his charges?

5 A He was.

6 Q Did he seem to understand them?

7 A He did.

8 Q Who told him about his charges?

9 A Sergeant Lint advised him of his charges and
10 read the affidavits for him. He was of an
11 understanding of his charges.

12 Q Was he advised of his rights pursuant to
13 Miranda prior to any questioning by you or Sergeant
14 Lint?

15 A He was by me.

16 Q And how did you advise him of these rights?

17 A Typically, we have a statement form that's
18 specifically manufactured for persons under arrest.
19 That statement form has an area at the top of it
20 with personal contact information and information of
21 the person under arrest. Beneath that it has the
22 Miranda rights individually written and an area
23 available for the suspect, defendant or person under
24 arrest to initial that they understand those rights.
25 Then below that is provided an area for them to

1 write a statement.

2 Q And did you provide Mr. Mayers with one of
3 these statement forms on October 27th?

4 A I did. Typically, I will take two. One I will
5 lay in front of myself so that I can read it. One I
6 will lay in front of the suspect. In this
7 particular case, I had a form laid out for
8 Mr. Mayers and a form laid out in front of me. Each
9 one of the rights were read to him.

10 Q You don't just memorize the Miranda rights and
11 go off your memory, you actually read them?

12 A That's correct, we read them.

13 Q I'm going to show you State's I.D. Number 1.
14 Do you recognize that?

15 A I do.

16 Q And how are you able to do so?

17 A This is the form that was presented to
18 Mr. Mayers on October 27th, 2011, approximately 9:45
19 p.m.

20 Q Whose writing appears on that form?

21 A Two sets of writing, mine appears at the very
22 top where I input the information as far as the
23 date, the location, his personal contact
24 information, his information, alternate contact
25 information for him, who was present in the meeting,

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1 and then his signature at the bottom and his
2 initials on the appropriated areas.

3 Q How do you know that's his handwriting?

4 A Because I watched him sign it.

5 MR. SCOTT: Your Honor, the State would offer
6 State's 1 for admission into evidence.

7 MR. WILLIAMS: No objection, Your Honor.

8 THE COURT: It's admitted.

9 (State's Exhibit Number 1, statement form,
10 admitted into evidence.)

11 BY MR. SCOTT:

12 Q You stated that you were reading his Miranda
13 warnings to him. I think you said he had his
14 statement form and he was reading along?

15 A That's correct.

16 Q And when you would get to the end of one set of
17 rights, how would he indicate that he understood?

18 A By initialling beside that individual right.

19 Q And did he do that on each and every one of his
20 Miranda rights?

21 A He did.

22 Q Did he appear to have any trouble understanding
23 his rights?

24 A He did not.

25 Q Now, the personal information on the top, how

1 did you say you got that information?

2 A I asked him the questions verbally and he
3 responded verbally.

4 Q You don't just take his driver's license or
5 anything like that and fill it out?

6 A Not in this particular case, no.

7 Q Okay. Well, who questioned Mr. Mayers in the
8 interview room?

9 A I questioned him and Sergeant Lint questioned
10 him.

11 Q Well, what did you say to him?

12 A After advising him of his rights, I went back
13 through again with the charges against him. I asked
14 him if he understood those -- understood the charges
15 that were against him again. He indicated that he
16 had.

17 Then I then began to question him as far as his
18 involvement in this incident from statements that we
19 received from co-defendants and other evidence
20 collected from the scene as far as his involvement.
21 He indicated, at that point in time, nonverbally
22 with a head nod, shaking his head left to right in
23 the manner of stating no, that he was not involved
24 in this, that he didn't know what we were talking
25 about basically.

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1 Q Okay. Did you ask him anything?

2 A I did. I asked him if he was involved with it,
3 if he was present in it. He stated, no. I asked
4 him if he knew the co-defendants that provided
5 statements to us. He indicated that he did not. He
6 stated that he doesn't hang out in that area. He
7 wasn't in the area of

8 I asked him if -- he was asked if he had a gun
9 or has ever possessed a gun, a firearm, and -- or
10 had asked anyone to hold a firearm for him. And he
11 indicated, no, that he had no firearm, never owned a
12 firearm and did not ever ask anyone to hold a
13 firearm for him.

14 Q Where did he say he was on October 21st, 2011?

15 A He said he was at home in bed until
16 approximately 2:00 p.m..

17 Q Okay. So he said he didn't know his
18 co-defendants?

19 A He did not know his co-defendants is what he
20 stated.

21 Q He said he doesn't hang out on Road?

22 A That's correct.

23 Q Doesn't have a gun?

24 A Correct.

25 Q Slept till 2:00 that day?

1 A That's correct.

2 Q Did anybody threaten -- well, did anyone, to
3 your knowledge, threaten or coerce him into giving
4 these statements?

5 A They did not.

6 Q Was there any promise or hope of reward offered
7 to him in exchange for his statement?

8 A There was not.

9 Q Did -- did you ask him -- what about a phone?
10 Did you ask him about a phone?

11 A I asked him during the initial interview when
12 we were provided information on the statement form,
13 if he had a phone. He indicated that he did not.

14 There's a portion on the form that actually has
15 a spot for two alternate contacts. Generally, in
16 the cases of investigation, we don't really require
17 two alternate contacts. I would like to have an
18 original contact number for that defendant if they
19 have one available and then an alternate contact
20 number for them should I not be able to make contact
21 with them, I can contact someone else.

22 In this particular case -- generally, I always
23 ask if they have contact information. And I scratch
24 out alternate on the first line and then I input
25 their contact information whether it be home, cell

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1 phone or work number. And then below that, I will
2 put an alternate contact number for them,
3 potentially a family member that I can reach should
4 I not be able to reach them.

5 In this particular case, he indicated he did
6 not have a number and he provided me with his
7 father's number, Larry Eugene Mayers, as a contact
8 number for him.

9 Q What is that number?

10 A That number is (803) -4878.

11 Q Did you list any other phone numbers?

12 A There's also a number up above that listed
13 under contact numbers, home, as (803) -7323.

14 Q And what was his present address?

15 A His present address that he provided was

16

17 Q Did he sign this statement?

18 A He did.

19 Q Did you watch him sign it?

20 A I did.

21 Q To the best of your knowledge, was Mr. Mayers'
22 statement freely and voluntarily given?

23 A It was.

24 MR. SCOTT: Thank you. Please answer any
25 questions Mr. Williams has.

1 THE WITNESS: Yes, sir.

2 MR. WILLIAMS: May it please the Court.

3 THE COURT: Cross.

4 CROSS-EXAMINATION

5 BY MR. WILLIAMS:

6 Q Investigator Derrenbacher, when this case was
7 originally assigned, were you the -- in charge of
8 the investigation?

9 A In the onset, I was not the first responding
10 investigator, no.

11 Q Were you in charge of the case at any point in
12 time?

13 A I was, yes.

14 Q All right. When did you become in charge of
15 the case?

16 A On the 21st, that morning after the incident
17 occurred, approximately two, three hours.

18 Q So you were assigned the case immediately after
19 the case happened. And how long did the case remain
20 your obligation, I guess, as a supervising person
21 over this case?

22 A Until its entirety.

23 Q So you're still the supervising officer?

24 A Well, through the entirety of the
25 investigations up to and including the arrests.

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1 Q All right. Up and including the arrests and
2 then you ceased to be the person in charge of the
3 case?

4 A Well, however you're going to look at it on
5 that point in time as far as the -- fully
6 investigating it, any follow-ups are conducted by
7 myself. But, yeah, I believe that I will continue
8 as far as being lead on that investigation. I'm not
9 exactly a hundred percent sure what you're asking.

10 Q What I'm asking is obviously we have another
11 officer who's in charge of the case now?

12 A That's correct.

13 Q And that's because you work at a different
14 place than where you did work. You used to work for
15 the sheriff's department and now you're in charge of
16 animal control?

17 A That's correct.

18 Q So would it be safe to say that your duties
19 changed once you changed employment?

20 A They did.

21 Q And when did you change employment?

22 A March the 19th of this year.

23 Q So when March rolls around this year, since
24 you're in a different employment area, then the
25 sheriff's department has to have somebody else in

1 charge of the case to take over the case?

2 A That's correct.

3 Q Okay. Just a couple of questions. Were you
4 involved or were you present at the time that Tyrome
5 Brennan gave his statement?

6 A I was.

7 Q And you're aware that Tyrome Brennan said that
8 there were two Glocks that were used?

9 A Two what? I'm sorry.

10 Q Glocks.

11 A Glocks?

12 Q Glocks.

13 A As in firearms?

14 Q Yes.

15 A Okay. Yes, sir.

16 Q Not Hi-Points, but two Glocks?

17 A I do recall him indicating a Glock-like gun, I
18 believe, is what he indicated.

19 Q Let me ask you if this will refresh your
20 memory?

21 A Yes, sir.

22 Q Okay. He didn't say Glock-like, did he?

23 A He said some kind of blue -- that word I'm
24 having a hard time reading on it, but there's the
25 word that appears to be Glock behind it both.

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1 Q You clearly read the word Glock, don't you?

2 A Yeah. I can make out Glock.

3 Q And you can make out black Glock, can't you?

4 A That word, actually, I'm having a hard time
5 reading.

6 Q Now, aside from that, you also I believe -- as
7 you know, this whole case kind of changed about
8 October the 26th of 2011; isn't that correct?

9 A Yes, sir.

10 Q And isn't the reason why it changed was there
11 was an anonymous call which was actually received by
12 the Newberry County Sheriff's Office?

13 A There was an anonymous tip received from the
14 Newberry County Sheriff's Office, yes, sir.

15 Q And what individuals were indicated in the
16 anonymous tip to the Newberry County Sheriff's
17 Department?

18 A Documented in the incident report, Jasmine
19 Bowers --

20 MR. SCOTT: Your Honor --

21 THE WITNESS: Jermaine Caughman --

22 MR. SCOTT: Your Honor, I'm going to -- I'm
23 sorry -- I'm going object to the hearsay testimony.

24 MR. WILLIAMS: Your Honor, I think they
25 testified yesterday about the anonymous call. And

1 there was --

2 **THE COURT:** He did. He said he didn't know who
3 it was. What do you want to ask him? If he knows
4 who it was?

5 **MR. WILLIAMS:** No. I just want to know -- they
6 testified yesterday as to the anonymous call and as
7 to whose names were placed in the anonymous call.
8 All I want to know is based on his review of his
9 records, whose names were placed in the -- by the
10 anonymous call.

11 **THE COURT:** Okay. That's fine. The door's
12 already been open.

13 **BY MR. WILLIAMS:**

14 **Q** Whose names were placed?

15 **A** It's important that the court understand that
16 there was two anonymous calls, but the anonymous
17 call from the Newberry County Sheriff's Office from
18 what I've documented indicates Jasmine Bowers,
19 Jermaine Caughman and an unknown black male.

20 **Q** All right. Three individuals?

21 **A** The report indicates three individuals.

22 **Q** Well, you didn't exactly -- it said an unknown
23 black male with a descriptive about the unknown
24 black male, didn't it?

25 **A** I stated an unknown black male, which is what

1 is indicated in the report.

2 Q It indicates where that unknown black male was
3 staying, doesn't it?

4 A An unknown black male that was residing with
5 Christopher Davis in the Chapin area, as it
6 describes further under that first initial
7 complaint -- or anonymous call.

8 Q Okay. And one last area, did you investigate a
9 report of a stolen Hi-Point weapon?

10 A We received a phone call to the sheriff's
11 office in reference to a stolen Hi-Point -- or a
12 stolen pistol. I can't verify, at that particular
13 time, that it's a Hi-Point without that report. I
14 never took that report, a patrol deputy did.

15 Q (Mr. Williams hands document to the witness.)

16 Let me know when you're ready.

17 A Yes, sir.

18 Q Okay. You had a report shortly after the
19 homicide indicating the theft of a 9mm Hi-Point?

20 A A nickel plated 9mm Hi-Point, yes, sir.

21 Q And as part of the investigation as the head of
22 the case, y'all actually investigated that and
23 determined who owned the weapon and where it came
24 from, didn't you?

25 A Yes, because he was the one complaining that it

1 was stolen.

2 Q And it was actually allegedly stolen before the
3 shooting, but it was just reported after the
4 shooting?

5 A According to the report.

6 Q And where did the individual live that reported
7 that?

8 A 218 Road, Little Mountain, South
9 Carolina.

10 Q So it's the same road as to where the shooting
11 occurred?

12 A It is.

13 Q So the weapon that was reported stolen was not
14 this weapon that's placed into evidence, but another
15 9mm Hi-Point?

16 A As per documented by the report.

17 MR. WILLIAMS: That's all I have, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. SCOTT:

20 Q You were talking about an anonymous tip that
21 came into Newberry and then Newberry relayed that to
22 somebody else at Lexington County; is that right?

23 A That's correct.

24 Q And are you aware if there was any other
25 anonymous tips given?

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1 A There was another anonymous tip. It came in
2 directly to the sheriff's office.

3 Q And do you know who was -- who that tip was in
4 regards to?

5 A That tip was indicating three individuals in
6 addition to an unknown black male that resided with
7 Mr. Christopher Davis, Jr. That was all parties
8 here as far as the charge.

9 Q To include Mr. Breon Mayers?

10 A Breon Mayers, Jasmine Bowers, Caughman.

11 Q Okay. And, briefly, you are with -- you're the
12 director of animal control now?

13 A That's correct.

14 Q Do you have a badge?

15 A I carry a Lexington County Sheriff's Office
16 badge because they maintain my commission as a law
17 enforcement officer.

18 Q So you're still commissioned as a deputy of
19 Lexington County?

20 A I am.

21 Q And you have continued to assist with the
22 development of this file since leaving the Lexington
23 County Sheriff's Department, have you not?

24 A Yes, sir.

25 Q Last thing, this gun, 9mm Hi-Point, you said

1 you didn't even do this report?

2 A No, sir.

3 Q And Mr. Williams showed you the report. Would
4 you agree that this was reported four days after
5 this murder?

6 A Yes, sir.

7 Q Looks like it was Andrew Kessler who filed the
8 report?

9 A Yes, sir.

10 Q And you said a nickel plated 9mm Hi-Point.
11 What does that mean, a chrome stainless steel gun?

12 A Silver in color. In the layman's terms, it
13 would be chrome, polished. It's bright,
14 silvery-gray color.

15 Q The pistol we have introduced into evidence is
16 State's Number 17. Is this a stainless steel or a
17 nickel plated gun?

18 A It is not. That will be black.

19 Q Did this report Mr. Williams show you have a
20 serial number associated with the stolen gun?

21 A It did.

22 Q Would you see if you see a serial number on
23 State's Number 17?

24 A I'm having a hard time reading it, but I do see
25 a number on it, yes.

1 Q And do you see a serial number...

2 MR. WILLIAMS: Your Honor, I'll stipulate that
3 those are not the same serial numbers.

4 MR. SCOTT: Okay.

5 BY MR. SCOTT:

6 Q Now, let me ask you one other thing. What's
7 the difference -- what is a Glock? Is that a name
8 brand?

9 A It is.

10 Q And what's a Hi-Point? Is that a name brand?

11 A It is.

12 Q Is that like a Ford and a Chevy?

13 A More like a Geo Metro and a Chevy.

14 Q Okay. Well, do different name brands make
15 products that are similar in some ways?

16 A They do.

17 Q How many years in law enforcement did you
18 spend?

19 A Thirteen.

20 Q And if I was to, from some distance away, hold
21 this up, would you even be confused whether it would
22 be a Glock or a Hi-Point?

23 A It looks very, very, very similar to a Glock.

24 Q And both Glock -- does Glock make a 9mm?

25 A They do.

1 **MR. SCOTT:** Nothing further.

2 **MR. WILLIAMS:** No questions on recross, Your
3 Honor.

4 **THE COURT:** You can step down.

5 **THE WITNESS:** Thank you, Your Honor.

6 **THE COURT:** Next witness.

7 **MR. GRAHAM:** The State calls Ralph Ford.

8 RALPH WATSON FORD,

9 having been duly sworn, testified as follows:

10 **THE CLERK:** Once you're seated, state your full
11 name on the record, spelling your last.

12 **THE WITNESS:** Ralph Watson Ford, F-o-r-d.

13 DIRECT EXAMINATION.

14 BY MR. GRAHAM:

15 **Q** Mr. Ford, where are you employed, sir?

16 **A** Lexington County Department of Planning and
17 GIS.

18 **Q** What does the Department of Planning and GIS do
19 for Lexington County?

20 **A** We're responsible for mapping the county,
21 maintaining all the maps on the web site. We assign
22 addresses for the county and do the database
23 functions for the 9-1-1 system.

24 **Q** How do you all collect that information?

25 **A** Well, addresses we actually assign ourselves.

RALPH WATSON FORD - DIRECT BY MR. GRAHAM

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1 The county also, from time to time, flies aerial
2 photography. When people buy property or subdivide
3 property, deeds and plats are generated so that we
4 can edit the property lines. When developers build
5 new roads or the department of transportation
6 changes roads, they give us plans and plats for
7 things like that.

8 Q How long have you worked for Planning and GIS?

9 A Planning and GIS is a fairly new department,
10 but between that department and its earlier planning
11 and development department, I've worked for the
12 county for 31 years and ten months and three days,
13 sir.

14 Q During those 31 years, ten months and three
15 days, how much of your time has been involved with
16 maps?

17 A That's what I do.

18 Q Did you have an opportunity to speak with a
19 lady named Karen Milbrodt?

20 A Yes, I have.

21 Q She's a employee of Verizon Wireless; is that
22 your understanding?

23 A Yes, sir.

24 Q Did you also receive some records from Verizon
25 Wireless?

1 **A** Yes, we did receive records from Verizon.

2 **Q** Based on my request and your conversations with
3 Ms. Milbrodt and the records you received, did you
4 produce some maps of Lexington County that combined
5 information that you, as a map maker for GIS and
6 Lexington County, that it included information from
7 Verizon Wireless?

8 **A** Yes, we've made those maps.

9 **Q** Let me show you two maps. We'll do it one at a
10 time.

11 **MR. GRAHAM:** And I'm going to have both of them
12 marked for identification at this time, Your Honor.

13 (State's Exhibit Numbers 62 and 63, maps,
14 marked for identification purposes.)

15 **BY MR. GRAHAM:**

16 **Q** All right. Mr. Ford, specifically, looking at
17 State's Number 63 for identification, do you
18 recognize that?

19 **A** Yes, I do.

20 **Q** And did you assist in making that map?

21 **A** Yes, I did.

22 **Q** As far as the map itself, the streets'
23 addresses, the roads, the interstates, the label of
24 Lexington County, Lake Murray rivers and things like
25 that, Richland County, is that a fair and accurate

1 representation of a map of that area that its asked
2 to portray?

3 A Yes, sir.

4 Q In addition to that, were you asked to label a
5 specific label and a place at 649 North Royal Tower
6 Road, Christopher Benjamin's residence?

7 A Yes, sir.

8 Q And you assisted in putting that label on
9 there?

10 A Yes, sir.

11 Q There is a push pin associated with that label.
12 What is that push pin supposed to represent?

13 A The point at the bottom of the push pin symbol
14 is the point on the map that that address is
15 located.

16 Q In addition to that push pin, there are
17 numerous other push pins in green that also have
18 labels, do you recognize those?

19 A Yes, sir. Those are the locations of the
20 cellular towers in the Dutch Fork area.

21 Q And that information, did you plot it
22 accurately based on information you received from
23 Verizon Wireless?

24 A Yes, sir. And we checked against aerial
25 photography and made sure that there is indeed a

1 cell tower at each one of those locations.

2 Q And you were provided a physical address for
3 each of those; is that correct?

4 A Yes, sir.

5 Q As well as GPS coordinates?

6 A That's correct.

7 Q Verizon gave you a number for those, like, for
8 instance, cell tower number 75, with a physical
9 address and GPS coordinates; is that correct?

10 A Yes, sir.

11 Q And did you label those, as well as locate, as
12 best as humanly possible with all the information
13 you have, of where they're at in Lexington County or
14 Richland County on this map?

15 A Yes, sir.

16 Q And you repeated that for that location and the
17 labeling for each of the towers that you were
18 requested to?

19 A Yes, sir.

20 Q This map is as accurate as it can be?

21 A Yes, sir.

22 Q Did you review this map with Karen Milbrodt
23 from Verizon Wireless?

24 A Yes, sir, we did.

25 Q Showing you State's Exhibit Number 62 for

RALPH WATSON FORD - DIRECT BY MR. GRAHAM

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1 identification, do you recognize this map as well?

2 A Yes, sir.

3 Q Again, does this map accurately reflect, to the
4 best of human and technology, the accuracy of the
5 area it depicts in Lexington and Newberry Counties?

6 A Yes, sir.

7 Q Including road names, road locations, street
8 addresses?

9 A Yes, sir.

10 Q Differentiating between the area in Lexington
11 County -- the county line between Lexington and
12 Newberry?

13 A Yes, sir.

14 Q And the actual parcel locations for individual
15 pieces of property in Lexington County?

16 A That's correct, yes, sir.

17 Q In addition, were you asked to provide a label
18 and a physical location for
19 Road labeled for Breon Mayers' residence?

20 A Yes, sir.

21 Q And you did that?

22 A Yes, sir.

23 Q There is a push pin and a label on -- or
24 pointing to a particular parcel, what does that
25 mean?

1 A The point at the bottom of the push pin symbol
2 is the location of the address that we were given.

3 Q Did you also repeat that as far as labeling and
4 locating a push pin for the parcels belonging to
5 identified as Jermaine Caughman's
6 residence?

7 A Yes, sir.

8 Q For Drive, Tyrone Brennan's
9 residence?

10 A Yes, sir.

11 Q And also for Road, David
12 Cannon's residence?

13 A Yes, sir.

14 Q In addition to that, a specific cell tower,
15 were you given information from Verizon Wireless as
16 to the physical address and the GPS coordinates of
17 Verizon cell tower 457?

18 A Yes, we were.

19 Q And is this map labeled according to the
20 information you were provided?

21 A Yes, sir.

22 Q And is the location of that tower with both
23 physical address and GPS coordinates located as best
24 as technology allows?

25 A Yes, sir.

RALPH WATSON FORD - DIRECT BY MR. GRAHAM

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1 Q In addition to that with information from
2 Verizon Wireless, did you draw a four-mile radius
3 from that cell tower GPS location?

4 A Yes, sir.

5 Q And that's represented accurately on this map
6 as well?

7 A Yes, it is.

8 Q In addition from Verizon Wireless, did you
9 receive what's called sector information and degree
10 information to allow you to map three different
11 ports -- three different lines dividing this circle
12 into three different distinct pieces of the pie?

13 A Yes, we did.

14 Q And you did that based on information provided
15 by Verizon Wireless?

16 A Yes.

17 Q Is this information dividing the sectors and
18 the labeling of the sectors accurate with the
19 information that you provided?

20 A Yes, it is.

21 Q And did you review that information in this --
22 did you review this diagram with Ms. Milbrodt?

23 A Yes. Yes, we did.

24 Q So those maps -- is it fair to say that those
25 maps are accurate with the information that you know

1 from your 30 years with Lexington County combined
2 with the information that you were provided by
3 Verizon Wireless?

4 **A** Yes, sir.

5 **MR. GRAHAM:** Thank you, Mr. Ford. Please
6 answer any questions Mr. Williams has.

7 **MR. WILLIAMS:** No questions, Your Honor.

8 **THE COURT:** You may step down.

9 Well, folks, we'll go ahead and then break for
10 lunch. They have lunch for you. Let's plan on
11 meeting back at two o'clock, that'll give you a
12 chance to have your lunch and if you need to go
13 downstairs and stretch your legs a little bit.

14 Again, while you're together, please don't talk
15 about the case amongst yourselves or with anyone
16 else, don't discuss witness demeanor or anything.
17 But do enjoy your lunch and we'll see you back at
18 two o'clock.

19 (The jury was excused for lunch.)

20 **THE COURT:** See y'all at 2:00.

21 (Whereupon, there was a luncheon recess.)

22 (The jury returns to the courtroom.)

23 **THE COURT:** All right. Folks, welcome back.

24 We are going to resume with the State calling their
25 next witness.

JASSIEL MARIAH KIRKLAND - DIRECT BY MR. GRAHAM

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1 **MR. GRAHAM:** State calls Jassiel Kirkland.

2 JASSIEL MARIAH KIRKLAND,

3 having been duly sworn, testified as follows:

4 **THE CLERK:** Once you're seated, speak up loud
5 and clear stating your full name, spelling your last
6 on the record, please.

7 **THE WITNESS:** Jassiel Mariah Kirkland,
8 K-i-r-k-l-a-n-d.

9 DIRECT EXAMINATION

10 BY MR. GRAHAM:

11 **Q** Ms. Kirkland, how old are you, ma'am?

12 **A** Eighteen.

13 **Q** Where do you live?

14 **A** 312 Middlefield Court.

15 **Q** Could you sit closer to the microphone? And
16 he's going to help you put the microphone closer to
17 your mouth.

18 **A** (Witness complies.)

19 **Q** Where do you live, ma'am?

20 **A** 312 Middlefield Court.

21 **Q** Where is that at? Is that in Lexington County?

22 **A** Little Mountain.

23 **Q** Over in Little Mountain. That's right there in
24 Newberry/Lexington line?

25 **A** Uh-huh.

1 Q Not too far away from
2 A Uh-huh.
3 Q Breon Mayers, you know him, don't you?
4 A Yes.
5 Q How do you know him?
6 A He's my boyfriend.
7 Q He's your boyfriend. Y'all have a baby
8 together, don't you?
9 A Yes.
10 Q A newborn?
11 A Yeah.
12 Q Back in October of 2001, Mr. Mayers was your
13 boyfriend at that time?
14 A 2001?
15 Q I'm sorry. 2011, October of 2011?
16 A Yeah.
17 Q Did you have -- I'm going to show you some
18 photographs and ask if you recognize these. Do you
19 recognize those photographs?
20 A Yes.
21 Q And do they -- they're pictures off your phone,
22 aren't they?
23 A Yeah.
24 Q And do they fairly and accurately depict your
25 phone and a phone number that was on your phone?

JASSIEL MARIAH KIRKLAND - DIRECT BY MR. GRAHAM

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1 **A** Yeah.

2 **MR. GRAHAM:** Your Honor, the State would offer
3 these in evidence at this time.

4 (Pause.)

5 **MR. WILLIAMS:** Your Honor, we would object at
6 this time in regards to the foundation for this
7 because there's been no establishment of date and
8 time.

9 **THE COURT:** Is it a picture of the phone or
10 pictures of pictures that were on the phone? I'm
11 not clear from the way that got stated.

12 (Whereupon, a bench conference was held off
13 the record, in the presence of the jury, but out of
14 the hearing of the jury.)

15 **BY MR. GRAHAM:**

16 **Q** Ms. Kirkland, the photographs I showed you were
17 not taken back in October of 2011, were they?

18 **A** Yeah, I believe.

19 **Q** This is the phone that you had in 2011 though,
20 isn't it?

21 **A** Yeah.

22 **Q** And that phone number that was on there was a
23 phone number that you had in October of 2011 as
24 well, isn't it?

25 **A** Uh-huh.

1 **MR. GRAHAM:** Your Honor, the State would offer
2 these in evidence now.

3 **MR. WILLIAMS:** I still haven't heard that
4 question about to that date, Your Honor, with the
5 month or the year -- month and year together, I
6 guess, is what I mean.

7 **THE COURT:** Are those pictures of what your
8 phone looked like in October of 2011?

9 **THE WITNESS:** Yes.

10 **MR. WILLIAMS:** Then no objection, Your Honor.

11 **THE COURT:** All right. They're admitted.

12 (State's Exhibit Numbers 64 through 66,
13 photographs, marked and admitted into evidence.)

14 BY MR. GRAHAM:

15 **Q** Ms. Kirkland, looking on the overhead projector
16 over here, State's Number 66, do you recognize that
17 picture as being a photograph of the front of your
18 phone?

19 **A** Yes.

20 **Q** What kind of phone did you have? What kind of
21 phone is this?

22 **A** I really don't know.

23 **Q** You don't know?

24 **A** No.

25 **Q** Okay. State's Number 65, do you recognize that

JASSIEL MARIAH KIRKLAND - DIRECT BY MR. GRAHAM

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1 as being the back of your phone?

2 A Yes.

3 Q State's Number 64 was a number that was
4 retrieved off of your phone. Do you recognize that?

5 A Yes.

6 Q The number (803) -4481 was a contact in your
7 phone?

8 A Yes.

9 Q Who was that contact for?

10 A Whenever I need to reach Breon sometimes.

11 Q I'm sorry?

12 A Whenever Bre called me, that's the number.

13 Q That's the number that Breon called you from?

14 A Sometimes.

15 Q I can't hear you?

16 A Sometimes.

17 Q Sometimes he called you from that number. Your
18 cell phone number, ma'am, do you remember what your
19 cell phone number is?

20 A Yes.

21 Q What is it, please?

22 A (352) -9633.

23 Q Do you remember the day that David Cannon was
24 murdered?

25 A No, not really.

1 Q Do you remember when your boyfriend, Breon
2 Mayers, was arrested?

3 A No.

4 Q You don't remember?

5 A (No response.)

6 Q You don't remember him being arrested?

7 A No.

8 Q No?

9 A (No response.)

10 MR. GRAHAM: Thank you, ma'am. Please answer
11 any questions Mr. Williams has.

12 CROSS-EXAMINATION

13 BY MR. WILLIAMS:

14 Q Ma'am, you said sometimes Breon used that phone
15 number to reach you. Did anybody else use that
16 phone number to talk to you?

17 A No.

18 Q All right. You said sometimes Breon used that,
19 why didn't he just use that number all the time?

20 A Because it wasn't his phone. It was his
21 homeboy or something, somebody's phone.

22 MR. WILLIAMS: That's all the questions I have,
23 Your Honor.

24 *****

25 *****

JASSIEL MARIAH KIRKLAND - REDIRECT BY MR. GRAHAM

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6
REDIRECT EXAMINATION

1

2 BY MR. GRAHAM:

3 Q Whose phone was it, ma'am?

4 A I don't know.

5 Q How do you know that it wasn't his?

6 A He never told me.

7 Q I'm sorry?

8 A He never told me.

9 Q He never told you that it was or wasn't his.
10 You just know that he called you from that number,
11 correct?

12 A Sometimes, yeah.

13 Q Sometimes. And sometimes he may have called
14 you from his grandma's house phone, right?

15 A Yeah.

16 MR. GRAHAM: Okay. Thank you.

17 RECROSS-EXAMINATION

18 BY MR. WILLIAMS:

19 Q I'm sorry, ma'am. You said on
20 cross-examination that -- something about it being
21 his homeboy's phone. You said homey?

22 A Yes.

23 Q What is a homey or a homeboy?

24 A One of his -- somebody -- I don't know whose
25 phone it was.

1 Q Some friend?

2 A Yeah, maybe.

3 MR. WILLIAMS: Thank you.

4 THE COURT: You can step down.

5 Next witness.

6 MR. GRAHAM: State calls Suzette Meggett.

7 SUZETTE MEGGETT,

8 having been duly sworn, testified as follows:

9 THE CLERK: Once you're seated, speak up loud
10 and clear stating your full name, spelling your last
11 on the record, please.

12 THE WITNESS: Suzette Meggett, M-e-g-g-e-t-t.

13 DIRECT EXAMINATION

14 BY MR. GRAHAM:

15 Q Ms. Meggett, where do you live, ma'am?

16 A Road.

17 Q Over in the Little Mountain area of Lexington
18 County?

19 A Yes, sir.

20 Q Breon Mayers, you know him, don't you?

21 A Yes, sir.

22 Q How long have you known him?

23 A Since about sixth grade.

24 Q How would you describe your relationship with
25 him?

- 1 A He's like a brother to me.
- 2 Q Tyrome Brennan, do you know him?
- 3 A I do not.
- 4 Q Jasmine Bowers?
- 5 A I do.
- 6 Q How do you know Jasmine?
- 7 A We grew up together.
- 8 Q How long have you known her?
- 9 A She always stayed down the street from me.
- 10 Q Ever since you remember?
- 11 A Uh-huh.
- 12 Q How about Jermaine Caughman?
- 13 A Known him from school.
- 14 Q Breon's from the Little Mountain area, too?
- 15 A Yes, sir.
- 16 Q Do you remember -- you knew Dave Cannon, too,
- 17 because he lived on right?
- 18 A Yes, sir.
- 19 Q What did you know about Dave?
- 20 A Me and Jasmine pretty much was up there with
- 21 him and Sharon all the time when we was younger.
- 22 Q What did you know about his health in October
- 23 of 2011?
- 24 A Last I checked, they said he was in his death
- 25 bed. He was very sick.

- 1 Q Do you remember the day that he was killed?
- 2 A Yes.
- 3 Q Did you talk with Breon Mayers that day?
- 4 A I did.
- 5 Q Numerous times?
- 6 A Yes.
- 7 Q Do you remember his cell phone number?
- 8 A I do not.
- 9 Q But he did have a phone, didn't he?
- 10 A I'm not sure if it was his, but that's the way
- 11 that I got in touch with him.
- 12 Q Was through his cell phone?
- 13 A And his house phone.
- 14 Q And his house phone. If I said the number
- 15 (803) -4481, do you recognize that number?
- 16 A I do not.
- 17 Q If I said the number (803) -1894, whose
- 18 number is that?
- 19 A That was my cell phone number.
- 20 Q Back on October 21st of 2011?
- 21 A Yes.
- 22 Q You don't want to be here today, do you, ma'am?
- 23 A I do not.
- 24 MR. GRAHAM: Thank you very much.
- 25 THE WITNESS: You're welcome.

SUZETTE MEGGETT - CROSS BY MR. WILLIAMS

865

1 **THE COURT:** Cross.

2 CROSS-EXAMINATION

3 BY MR. WILLIAMS:

4 **Q** Did you see Breon on October 21st, 2011?

5 **A** I did not.

6 **Q** Did you see Jasmine on October 21st, 2011?

7 **A** I did.

8 **MR. WILLIAMS:** That's all the questions I have,
9 Your Honor.

10 **THE COURT:** Redirect.

11 **MR. GRAHAM:** Nothing else, Your Honor.

12 **THE COURT:** You can step down.

13 Next witness.

14 **MR. GRAHAM:** Your Honor, at this time, it's my
15 understanding by stipulation that Mr. Williams will
16 stipulate to an employment application of his client
17 from Amick Farms here in Lexington County. It's
18 dated August 22nd, 2011. It's a two-page document.

19 **MR. WILLIAMS:** We will, Your Honor.

20 **THE COURT:** All right. It's admitted then.

21 (State's Exhibit Number 67, defendant's
22 employment application, marked and admitted into
23 evidence.)

24 **MR. GRAHAM:** And, Your Honor, if I can publish
25 this to the jury.

1 THE COURT: You may.

MR. GRAHAM: It's an application from August
22nd, 2011, for Breon Jacoby Mayers showing that he
lives at _____ in Little
Mountain, South Carolina, and has a phone number up
there of (803) ____-7323.

7 Down on the bottom, it lists references and
8 emergency contact numbers, the first number being
9 Linda Patricia Mayers with a relationship of
10 grandmother with a phone number of (803) -7323
11 with -- 7323, which matches the phone number up top.
12 Also, the next one is Trandy Mayers listed as an
13 uncle with (803) -5718. And, finally, Larry
14 Eugene Mayers, relationship, dad, (803) -4878.

15 That's all from this document, Your Honor.

16 **THE COURT:** All right.

17 **MR. GRAHAM:** We're ready for our next witness.

18 THE COURT: Okay.

19 **MR. SCOTT:** Your Honor, the State calls Lynn
20 Gunter.

21 LYNN H. GUNTER,

22 having been duly sworn, testified as follows:

23 **THE CLERK:** Once you're seated, speak up loud
24 and clear, state your full name, spelling your last
25 on the record.

LYNN H. GUNTER - DIRECT BY MR. SCOTT

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1 **THE WITNESS:** Lynn H. Gunter, G-u-n-t-e-r.

2 **MR. SCOTT:** Your Honor, may we approach before
3 we conduct direct examination?

4 (Whereupon, a bench conference was held off
5 the record, in the presence of the jury, but out of
6 the hearing of the jury.)

7 DIRECT EXAMINATION

8 **BY MR. SCOTT:**

9 **Q** Where are you employed, Ms. Gunter?

10 **A** At the Lexington County Detention Center.

11 **Q** How long have you been with that agency?

12 **A** Twenty-two years.

13 **Q** And what kinds of records are maintained at the
14 detention center?

15 **A** What kinds of records?

16 **Q** Yes, ma'am.

17 **A** We have our inmate booking records, inmate file
18 visitation records, incident reports.

19 **Q** Well, when somebody is accused of a crime and
20 they are arrested, are they booked in at the jail?

21 **A** If they are arrested and brought to our
22 facility, yes, sir, they are booked in.

23 **Q** And do they provide information at the time of
24 their arrest that you maintain during the regular
25 course of your business there at the detention

1 center?

2 A Yes, sir.

3 Q And is one of the records that you maintain a
4 visitation list? If somebody's at the jail and they
5 want to have people cleared to visit them, do you
6 maintain those lists?

7 A Yes, sir, we do.

8 Q Okay. Did Breon Mayers fill out a visitation
9 request list?

10 A Yes, sir.

11 Q And did you bring it with you today?

12 A Yes, sir, I do have it.

13 Q And is the maintenance of that record a
14 regularly conducted business activity at the
15 detention center?

16 A Yes, sir.

17 Q Okay. And once an arrestee has requested
18 visitors, what kind of information do you seek about
19 those visitors?

20 A They have a visitation request form that they
21 can place up to 14 individuals on that request. On
22 that, they have to -- they give their name, their
23 relationship, age and an address.

24 Q Okay. Did you bring Mr. Mayers' visitation
25 list he filled out with you today?

1 A Yes, sir.

2 Q Did he request a Terrell Counts?

3 A Yes, sir.

4 Q And did you pull information on Terrell Counts?

5 A Yes, sir.

6 Q What is his listed relation to Mr. Mayers?

7 A His cousin.

8 Q Are you able to find a phone number for
9 Mr. Counts?

10 A Yes, sir. We have area (803) -5756.

11 Q What about a Shyesha Daniqua {phonetic}
12 Chandler?

13 A Yes, sir.

14 Q And what is the relationship he has listed with
15 Ms. Chandler?

16 A His sister.

17 Q And were you able to collect a phone number of
18 Ms. Chandler?

19 A Yes, sir. It's (803) -5792.

20 MR. SCOTT: Thank you. Please answer any
21 questions Mr. Williams may have for you.

22 CROSS-EXAMINATION

23 BY MR. WILLIAMS:

24 Q And what was the area code on those numbers?

25 A Area 803.

1 Q On both numbers?

2 A Yes, sir, that's what we have listed.

3 Q And you're speaking from your records. You
4 obviously didn't watch whoever filled out the form
5 or anything like that, right?

6 A No, sir.

7 Q You're not with them when they fill it out, are
8 you?

9 A No, sir.

10 Q And you are -- what relationship with the jail
11 are you? What do you do at the jail?

12 A I'm a lieutenant. I'm the booking manager and
13 a records custodian.

14 Q Got ya. And somebody else would actually sit
15 with the inmate when these numbers are filled out?

16 A When the inmate fills them out, they request a
17 form from their housing officer and then they fill
18 that out and turn it in.

19 Q So no one is sitting with them when these
20 numbers are filled out, they just, subsequently,
21 just hand it up or something?

22 A No, sir, not necessarily.

23 MR. WILLIAMS: That's all the questions I have,
24 Your Honor.

25 THE COURT: Redirect.

KAREN MILBRODT - DIRECT BY MR. GRAHAM

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1 **MR. SCOTT:** None, Your Honor.

2 **THE COURT:** You can step down.

3 Next witness.

4 **MR. GRAHAM:** State calls Karen Milbrodt.

5 KAREN MILBRODT,

6 having been duly sworn, testified as follows:

7 **THE CLERK:** Once you're seated, speak up loud
8 and clear, state your full name, spelling your last
9 on the record, please.

10 **THE WITNESS:** My name is Karen Milbrodt. And
11 my last name is M-i-l-b-r-o-d-t.

12 DIRECT EXAMINATION

13 BY MR. GRAHAM:

14 **Q** Ms. Milbrodt, where are you employed, ma'am?

15 **A** With Verizon Wireless.

16 **Q** And how long have you worked with Verizon
17 Wireless?

18 **A** Just over 13 years.

19 **Q** And what is your job with Verizon Wireless?

20 **A** My title is an analyst with our executive
21 relations office. And in one of those functions,
22 I'm one of our records custodians or custodian of
23 records.

24 **Q** So is it fair to say that you travel all over
25 the southeast providing information regarding

1 Verizon's records regarding Verizon telephone
2 numbers?

3 A Yes, sir.

4 Q And you were subpoenaed to be here today on
5 this case?

6 A I was, yes.

7 Q And did you bring some Verizon documents for
8 the telephone number (803) -4481?

9 A Yes, I did.

10 Q Specifically, do you have a two-page document
11 that details the cell site numbers' physical
12 addresses, GPS coordinates, the degrees of the
13 sectors and the switch names and market I.D. numbers
14 for the cell towers used during the time period that
15 you were requested to provide information for that
16 telephone number?

17 A Yes, sir.

18 Q Additionally, do you have a call detailed
19 record, an eight-page document, that details the
20 individual calls that were made showing a calling
21 number, the receiving number, the duration of the
22 call, the time and date of the call, the cell tower
23 that was used and the cell space that was used?

24 A Yes, I do.

25 Q And that's an eight-page document?

KAREN MILBRODT - DIRECT BY MR. GRAHAM

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1 A Yes, sir.

2 Q That document has collected and provided
3 information on that telephone number, (803)

4 -4481. When does the report begin? What's the
5 date and time of the first call?

6 A I have October 20th, 2011, at 1419, that's
7 military time.

8 Q And does the report run through several days
9 worth of phone calls?

10 A Yes, sir, it does.

11 Q Including October 21st of 2011?

12 A Yes, sir, I have records for October 21.

13 Q In addition, do you have a one-page document
14 that is titled, An Explanation Form for Historical
15 Records?

16 A I do.

17 Q What's the purpose of that form?

18 A This is a ledger that we send along to courts
19 or investigators so that they can understand our
20 records without someone being present. It's just a
21 ledger or a log.

22 Q It basically helps interpret what the titles
23 are and what the information contained in there is?

24 A Exactly.

25 Q And then, finally, do you have a one-page

1 document that's on a legal size that depicts the
2 subscriber information, or lack of, for (803)
3 -4481?

4 A I do have that. I believe I left it in the
5 waiting area.

6 Q Let me show you a document and ask if you
7 recognize that document?

8 A Yes, that is our subscriber information.

9 Q All of those records are maintained by Verizon
10 Wireless?

11 A Yes.

12 Q They are collected by people and computers as
13 the calls are being made?

14 A Yes.

15 Q And they're kept in the regular course of your
16 business?

17 A Yes.

18 MR. GRAHAM: Your Honor, the State would offer
19 those items into evidence at this time.

20 (Pause.)

21 MR. WILLIAMS: No objection, Your Honor.

22 THE COURT: Admitted.

23 (State's Exhibit Number 68, cell tower
24 records, marked and admitted into evidence.)

25 BY MR. GRAHAM:

KAREN MILBRODT - DIRECT BY MR. GRAHAM

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1 **Q** I'm going to hand you back State's 68 that's in
2 evidence. The subscriber information, in response
3 to the search warrant related to that telephone
4 number, what can you, as a Verizon custodian, tell
5 me about the subscriber information?

6 **A** This particular phone number is what we call
7 leased to a reseller, which is a company that
8 operates or does wireless business, but they do not
9 own the infrastructure, such as the towers or the
10 network. And they would be similar to signing up to
11 like a Boost Mobile or another carrier that has
12 business as a wireless carrier, but doesn't have the
13 infrastructure and then we lease our towers to their
14 customers.

15 **Q** Would Straight Talk be one of those type of
16 companies?

17 **A** Yes, sir.

18 **Q** So Verizon towers are leased to another
19 company, like Straight Talk, and then they sell
20 service. And, basically, the people who buy service
21 from them use your towers?

22 **A** Yes, sir, that's exactly right.

23 **Q** But you don't know who that number belongs to?

24 **A** No, we would not know that.

25 **Q** Can you tell me when -- do you have the ability

1 on your records to tell me when service on that
2 number began?

3 A The service says May 31st, 2011.

4 Q Switching over to the records themselves, I'm
5 going to put on the overhead and ask you to help me
6 understand this if we can. There are multiple
7 columns going down. Do you see the one in the
8 middle of the screen labeled 457?

9 A Yes, I do.

10 Q Explain what these first five columns are.

11 A Sure. The first column is what we call a
12 market SID. That is just used internally for us to
13 know what the market is. And the second column is
14 what's called a switch number. Again, that's
15 internal for us to know what switch is routing
16 calls. So the market is 189, switch number out of
17 101, switch name is the Columbia MTX. Again, that's
18 the switching station that routes a call.

19 Q And the next one has cell number and there's
20 actually one, two, three, they're all labeled 457.
21 What does the 457 stand for?

22 A Cell number 457 is the cell tower that is in
23 communication with the Columbia MTX switch. So that
24 is what we use to denote that that's the cell number
25 -- cell site number.

KAREN MILBRODT - DIRECT BY MR. GRAHAM

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1 Q Going across there is a number with a decimal
2 point and a lot of numbers after it, what is that?

3 A That is the actual address and longitude and
4 latitude of where that particular cell site is
5 located.

6 Q That number would be the latitude. And then if
7 we move it over, there's a negative 81 number?

8 A That's the longitude. So that would be used
9 for, like, mapping or GPS, locating it by latitude
10 and longitude.

11 Q The next one says 701 Mountain Road. What is
12 that?

13 A That's the actual physical address of where the
14 cell tower is located.

15 Q And the next one says Little Mountain?

16 A City of Little Mountain.

17 Q Is that the city?

18 A Yes, sir.

19 Q South Carolina would be the state?

20 A Yes, sir.

21 Q And then we're going over to the zip code?

22 A Zip code would be 29075.

23 Q Now, there were three that went down there
24 where it says 29075 that are on the same line as
25 cell tower 457, those three there. There's a D-1, a

1 D-2 and a D-3. What is that?

2 A Those are the sectors or otherwise known as an
3 antenna. Our cell sites have three sectors, and so
4 that would give you the antenna that was used. So
5 the address would cor -- let me re-speak. It's an
6 antenna, three cell sites. Each sector is coded
7 one, two or three.

8 Q And then, finally, over here there's a --
9 talking about cell tower 457 -- there's a zero, a
10 140 and a 240. What do those mean?

11 A That is the -- what we call the azimuth or that
12 is actually where on the tower, as far as a 360
13 angle, of where the antenna is positioned. So
14 something that is zero azimuth would be true north.

15 Q Well, tell me about a cell tower in general and
16 specifically 457. Why are there three numbers?
17 What does that mean?

18 A Well, the cell tower would have a range of 360.
19 So if you're looking like a bird's eye view, it's --
20 and then we have cell sites that are cell sectors
21 that are then provisioned on each tower and we angle
22 them in such a way that it covers the most amount of
23 customers or geographical area.

24 Q So the physical tower is a tower --

25 A It's like a tri -- right.

KAREN MILBRODT - DIRECT BY MR. GRAHAM

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1 Q What's at the top of the tower?

2 A We have cell sites or sectors, so on top. And
3 then they have antennas and we have three. And they
4 should try to cover a 360 degree circular area.

5 Q So on a physical tower, there'll be three
6 separate cell sites that cover the 360 degrees?

7 A Yes, sir.

8 Q And the D-1, D-2, D-3, with those numbers,
9 explain how they're laid out?

10 A Is going to tell our engineers how -- where
11 that sector is pointing and then it has a range of
12 what that particular sector can carry a call in.

13 Q For cell tower 457, do you know what the
14 approximate radius of that coverage is?

15 A 360.

16 Q Distance-wise, how many miles does that one
17 cover?

18 A Oh, forgive me. It's a range of up to four
19 miles.

20 Q Now, this document has cell tower 457, but it
21 also has numerous other towers, correct?

22 A Yes, sir.

23 Q Those other towers, are those the towers that
24 were used in the eight-page document that actually
25 list the details?

1 A Yes, sir.

2 Q So is it fair to say that if we went through
3 the details, you can see which tower was used and
4 you can go over to this document and see where the
5 tower is located?

6 A Yes, sir.

7 Q Switching over to that document, the call
8 detail document, if you switch over to, let's say,
9 on the first page down on line 49, do you see line
10 49?

11 A (Witness reviewing document.)

12 Q It says, Detail 49, on page one of eight.

13 A Yes, I'm here.

14 Q The first one says, the column is labeled,
15 Network element name. What is in there and what
16 does that mean?

17 A That is the switch that decided how to route
18 the call.

19 Q The Columbia MTX switch that was on the other
20 sheet?

21 A Yes, sir.

22 Q The next column over on 49 says, Mobile
23 Directory Number. What does that mean?

24 A That's the target number. So that would be the
25 subscriber's phone number that the records were

- 1 asked for.
- 2 **Q** The next one has (803) -9102 and says,
- 3 Dialed Digit Number, what does that mean?
- 4 **A** That is the number that the -- that was entered
- 5 in to make the phone call. So that's the number
- 6 that was dialed.
- 7 **Q** Are you able to determine from your records who
- 8 and whether the call was an incoming or outgoing?
- 9 **A** Yes, we can.
- 10 **Q** How do you do that?
- 11 **A** If -- there's several columns that can help you
- 12 with that. Dial Direction is the next column after
- 13 the Dial Digit Number. Col -- ones would indicate
- 14 that it was an outbound call.
- 15 **Q** What are the other numbers that it could be and
- 16 what do they mean?
- 17 **A** Zero, six would be an incoming call. Ones and
- 18 threes are outgoing calls.
- 19 **Q** What about a five?
- 20 **A** A five is routing, so that would not be a call,
- 21 that's just internal data that we use for routing.
- 22 So five is not relevant.
- 23 **Q** Could it be a voicemail call?
- 24 **A** No, that would be forwarded. An F would be --
- 25 **Q** Call forwarding?

1 A Yes.

2 Q Now, if there's an F in that column, what does
3 that mean?

4 A It's a forwarded call. And, typically, it
5 means it was forwarded to a voice mailbox.

6 Q The next column over shows -- what is the next
7 column?

8 A Seizure Date and Time.

9 Q So for number 49 where my finger is, what date
10 does that represent?

11 A October 21, 2011.

12 Q And the time?

13 A Is 804.

14 Q Does Verizon use a.m. or p.m. or do you all use
15 military time?

16 A We use military.

17 Q That's the 24-hour clock?

18 A Yes, sir.

19 Q The next column over says, Seizure Duration,
20 and there's a one. What does that mean?

21 A That's how long the call lasted on our network.
22 And, in this case, one would be one second.

23 Q The next one says, First Serving Cell Site.
24 What does that mean?

25 A That is the cell site that was used to initiate

1 the call.

2 Q The cell tower?

3 A Yeah. So at the beginning of the call, the
4 telephone was connected to cell site 457.

5 Q The next one says, First Serving Cell Face.
6 What does that mean?

7 A That is going to correlate to your sector. So
8 that was in sector number one. So at the beginning
9 of that call, the phone was in sector one's range.

10 Q So does that match up to the sectors on the
11 other, that two-page document, the D-1, D-2, D-3?

12 A Yes, sir, exactly.

13 Q So one is D-1, two is D-2, three is D-3?

14 A Correct.

15 Q The next one says, Last Serving Cell Site, and
16 then it has a 457. What does that say?

17 A 457 would be the cell tower that the call ended
18 on. And sector one would be when the call ended,
19 they were on that cell site still in the range of
20 sector one.

21 Q And then the next one says, Last Serving Cell
22 Face?

23 A Correct. That, again, is the sector that when
24 the call ended, that that's the range that the
25 call -- the phone was at.

1 Q And then the final one says, Calling Party
2 Number, and it has (803) -4481. What does that
3 say?

4 A That is the telephone number of the person
5 making the call.

6 Q So if I do that, I go back and look at a one,
7 then I know that it was an outgoing call from that
8 telephone number?

9 A Correct.

10 Q And then the other document that you had is the
11 explanation form for historical records?

12 A Correct.

13 Q What's the purpose of this document again,
14 ma'am?

15 A These are sent along with the call detail
16 records that just help explain what each column
17 reads, how to interpret each column. So they would
18 correspond with this record here.

19 Q Let me show you some items that have been
20 marked for identification and ask if you recognize
21 them. The first one is going to be State's Number
22 62 that's marked for I.D. Do you recognize that?

23 A I do.

24 Q And was that information made with information
25 that Verizon and you, as a custodian, supplied to

1 the Lexington County GIS Department?

2 A Yes, it was.

3 Q And it details -- assuming from what you're --
4 assuming that the map and the location of streets
5 and boundaries and things like that are correct, the
6 information you supplied specifically about cell
7 tower 457, does this match with the information that
8 you provided?

9 A Yes, it does.

10 Q And have you had an opportunity to review that
11 information showing the location, GPS numbers being
12 correct of cell tower 457, the sectors as we've
13 discussed labeled as sector one or D-1, sector two,
14 D-2, sector three, D-3, as well as the location of
15 those lines?

16 A Yes, sir.

17 Q And does that match your information?

18 A Yes, it does.

19 Q And it's accurate to Verizon's information that
20 was provided?

21 A Yes, it is.

22 MR. GRAHAM: Your Honor, at this time, the
23 State would offer State's Number 62 into evidence.

24 MR. WILLIAMS: Without objection, Your Honor.

25 THE COURT: Admitted.

1 (State's Exhibit Number 62, map, admitted
2 into evidence.)

3 BY MR. GRAHAM:

4 Q Ms. Milbrodt, if I can get you to bring your
5 information down with you.

6 A (Witness leaves the witness stand.)

7 Q This is a map of cell tower 457; is that
8 correct?

9 A Yes, it is.

10 Q All right. Looking at your records, would you
11 tell me the first phone call on October 21st, 2011,
12 beginning at 8:02 a.m.? And I believe that's going
13 to be 47.

14 A Forgive me. The time I'm looking for?

15 Q The time I'm looking for is 10/21/2011 at 8:02
16 a.m.

17 A The first call on this cell site on that date,
18 on cell site 457?

19 Q Yes, ma'am.

20 A Yes.

21 Q Okay. Tell me about that phone -- that's the
22 first phone call -- the previous phone call is
23 recorded at 2:15 a.m. earlier that morning; is that
24 correct?

25 A Yes, sir.

1 Q So beginning at 8:02 a.m., what's the first
2 phone call that you see for (803) -4481?

3 A It is an outbound call from --

4 Q I'm sorry. The court reporter can't hear you,
5 if you'll switch with me.

6 A It is an outbound call. The dialed number that
7 was called was (843) -8182.

8 Q The duration of that call?

9 A It lasted four seconds.

10 Q The tower that was used?

11 A 457.

12 Q The first serving cell face?

13 A Was cell face one, sector one.

14 Q The ending tower?

15 A Sector one again.

16 Q So that phone call was made up in this
17 (indicating) sector; is that right?

18 A That is correct.

19 Q If that phone call had been made at another
20 tower, would it show another location? It wouldn't
21 show 457, would it?

22 A It would not have that -- it wouldn't have this
23 location.

24 Q If it was made in sector two, it wouldn't show
25 that it was in sector one, would it?

KAREN MILBRODT - DIRECT BY MR. GRAHAM

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1 A No, it would not.

2 Q Going down that morning, at what point does it
3 switch over -- when do the calls show the next call
4 that is not in sector one on tower 457?

5 A 8:53 a.m.

6 Q Which column? I'm sorry, ma'am.

7 A It was column 56.

8 Q Tell me about column 56.

9 A It, again, is another outbound call. The
10 telephone number dialed is 1-803- -8869. The time
11 was at 8:54 -- at 8:54 in the morning. And this was
12 on sector two.

13 Q Still on tower 457 down on sector two?

14 A Yes, sir. And ended on -- it was a 35 second
15 call and ended in sector two as well.

16 Q Now, there are two more phone calls that are
17 made and ended in sector two after that; is that
18 correct?

19 A I see --

20 Q I'm sorry, one more.

21 A I see one more.

22 Q There's one more. All right. The next call
23 that you see changes towers, correct?

24 A Yes, sir.

25 Q It's at tower number two?

KAREN MILBRODT - DIRECT BY MR. GRAHAM

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1 A Yes, sir.

2 Q Let me show you State's Number 63 for
3 identification, another map. Do you recognize that
4 map?

5 A I do.

6 Q Does that also contain information that was
7 provided by yourself and Verizon Wireless to
8 Lexington County's mapping department?

9 A Yes, it was.

10 Q Showing the locations of other cell towers?

11 A Yes.

12 Q And that's accurate from the information that
13 you provided?

14 A Yes, sir.

15 MR. GRAHAM: Your Honor, the State would offer
16 State's 63 into evidence.

17 MR. WILLIAMS: Without objection, Your Honor.

18 THE COURT: It's admitted.

19 (State's Exhibit Number 63, map, admitted
20 into evidence.)

21 BY MR. GRAHAM:

22 Q Ms. Milbrodt, looking at State's Number 63 for
23 a minute, the call that we have just identified in
24 the next cell tower you said was cell tower two,
25 what was the time of that call?

KAREN MILBRODT - DIRECT BY MR. GRAHAM

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1 A 9:37 a.m.

2 Q And what was the tower?

3 A Cell tower number two.

4 Q Looking at this chart where I have -- is that
5 the location of cell tower two?

6 A Yes, sir.

7 Q And that's listed as 1631 Lake Murray
8 Boulevard, correct?

9 A Yes, sir.

10 Q And that's consistent with the information that
11 you provided Lexington County GIS?

12 A Yes, it is.

13 Q The next call, going down, that morning at 9:38
14 a.m., what tower does that show?

15 A The call started and ended on cell tower number
16 92.

17 Q Looking at State's 63 again where I have the
18 dot, that's cell tower number 92?

19 A Yes, sir.

20 Q And that's 419 Western Lane?

21 A Yes.

22 Q Continuing on, again, down to 9:45, this is
23 call detail number 60, what tower are we on now?

24 A The call began and ended on cell tower number
25 two.

KAREN MILBRODT - DIRECT BY MR. GRAHAM

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1 Q Again, back over here at the 1631 Lake Murray
2 Boulevard address?

3 A Yes, sir.

4 Q So, basically, what we're doing is when a phone
5 is used, you're recording where it's at? Verizon
6 keeps track of which cell tower it's actually coming
7 off of?

8 A Absolutely.

9 Q So we're tracking the movement of this phone as
10 it's making phone calls; is that right?

11 A Yes.

12 Q The next call, the bottom on page one, what
13 time is that one at?

14 A 10:39.

15 Q And is that an in going or an outgoing call?

16 A That's an outgoing call.

17 Q And so -4481 is calling what number?

18 A (803) -8258 -- 56.

19 Q And how long does that call last?

20 A That is a 50 second call.

21 Q Okay. What tower are we on now?

22 A The call begins and ends on tower 457 sector
23 two.

24 Q So looking back at State's Number 62, we're
25 back on cell tower 457 over in the Little Mountain

KAREN MILBRODT - DIRECT BY MR. GRAHAM

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1 area of the county. What sector are we in now?

2 A Two.

3 Q In sector two down here in the bottom right.

4 And the time on that call?

5 A 10:39 a.m.

6 Q Flipping over to page two, the next call, there

7 are numerous calls that come through there. The

8 next one, two, three, four, five, six calls, do you

9 see those?

10 A Yes, I do.

11 Q What time do those calls begin? What are the

12 times of those six calls?

13 A 10:52, 10:57, 11:21, 11:22, 11:23 and 11:24.

14 Q What cell tower do those calls use?

15 A They begin and end on cell tower 457.

16 Q And what sector?

17 A Sector two.

18 Q Down here in the bottom right?

19 A Yes, sir.

20 Q Not in sector one?

21 A No, sir.

22 Q Not in sector three?

23 A No, sir.

24 Q The next call it has a cell site of zero. What

25 does that mean?

KAREN MILBRODT - DIRECT BY MR. GRAHAM

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1 A This was a forwarded call. So there would be
2 no cell site information attached to a forwarding to
3 voice mail.

4 Q Is that an incoming call or an outgoing call?

5 A Forwarded would be --

6 Q Or can you tell?

7 A Can't really tell, it's just forwarded to voice
8 mail. So there's no actual calling party. It's
9 just that this was routed to a voice mail.

10 Q It's just routed directly to a voice mail. The
11 phone could be --

12 A Subscriber's --

13 Q -- turned off at that moment?

14 A Turned off.

15 Q The next call that you see is at what time?

16 A 11:31.

17 Q All right. That call, what tower -- it's 11:31
18 on October 21st, 2011, correct?

19 A Yes, sir.

20 Q What cell tower are we on?

21 A We're on 457.

22 Q And what site, what sector does the call begin
23 and end in?

24 A Two.

25 Q Back down here in the bottom right. There are

1 several more calls that are again continuing in
2 sector two, beginning and ending in sector two, at
3 457, correct?

4 A Yes, there are.

5 Q Could you give me how many calls there are and
6 the times on those calls?

7 A There were six calls.

8 Q And what are the times of those calls?

9 A 11:31, 11:33, 11:38, 11:50, 11:50, 11:52.

10 Q And where do those -- what tower do those calls
11 use?

12 A 457.

13 Q And what sector?

14 A Sector two.

15 Q So all those calls, up until the last one, was
16 at 11:52?

17 A Yes, sir.

18 Q All the calls up then from those last six, I
19 believe, or five were in sector two of cell tower
20 457?

21 A Yes, they were.

22 Q The next call is at 11:55; is that correct?

23 A Yes, it is.

24 Q Where is the location -- what tower are we on
25 at that time?

KAREN MILBRODT - DIRECT BY MR. GRAHAM

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1 A We're still on 457.

2 Q What sector have we moved into now?

3 A Sector one.

4 Q So the call at 11:55 is back up here in sector

5 one?

6 A Yes.

7 Q The next several calls until 12:42, they're

8 either forwarded calls or they're calls -- let's

9 back up. At 12 -- the next several calls are either

10 forwarded or they're maintained in sector one; is

11 that correct?

12 A Yes, until 12:28.

13 Q And that takes us till 12:26, correct?

14 A 12:26 is a forwarded call.

15 Q At 12:28, the next call, there's a call made,

16 correct?

17 A Yes, there is.

18 Q What tower are we on and what sector are we in

19 then?

20 A We're still in 457. We're now in sector two.

21 Q Back down in sector two?

22 A Yes.

23 Q The next phone call what cell tower are we on,

24 what sector and what time is it at?

25 A The call was at 12:36. We're on cell tower

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1 457, sector one.

2 Q Back up in sector one. At that point, does it
3 appear that the towers are changing and it's going
4 off of tower 457 and going to -- the phone is
5 traveling?

6 A On the last call we spoke of?

7 Q I'm sorry?

8 A Could you re-ask your question? I'm not sure.

9 Q Well, we went back down to sector two and maybe
10 I skipped and that's why I just confused you. Back
11 at 12:36, there's a phone call at 12:36, 12:41,
12 12:42, those phone calls are all made from what
13 tower and what sector?

14 A 12:36 -- or 12:26, I don't have a 12:36.

15 Q 12:36, 12:41 and 12:42.

16 A Those are all in cell tower 457, section one.

17 Q And then the next numerous phone calls, would
18 you just read the different cell towers because
19 we're now leaving cell tower 457, correct?

20 A Yes.

21 Q What other cell towers are we hitting?

22 A 545.

23 Q 545 is on State's 63 at Mt. Vernon Church Road,
24 correct?

25 A Yes.

KAREN MILBRODT - DIRECT BY MR. GRAHAM

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1 Q And the next one?

2 A 75.

3 Q Up at Columbia Avenue?

4 A Yes. 38.

5 Q Which is not on this map?

6 A 511.

7 Q Down here at 147 Drafts Wood Road at the

8 bottom.

9 A Cell tower two.

10 Q It's the one on Western Lane.

11 A 503.

12 Q Salem Church Road. So the phone is moving

13 around now; is that correct?

14 A Yes.

15 Q Now, you have no idea who is using the phone,

16 right?

17 A No, I do not.

18 Q Let's skip over to page three of eight.

19 A Yes.

20 Q Around, I guess, call detail 128, which is at

21 1529 hours, which is 3:29 p.m., on 10/21, do you see

22 that phone call, ma'am?

23 A I do.

24 Q What number is calling what number?

25 A The subscriber, (803) -4481, made the call.

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1 And the number that was dialed is 1-803- -8869.

2 Q And the cell tower that was used?

3 A Cell tower number two.

4 Q Looking on the chart, that's the one here on
5 Western Lane -- I'm sorry -- it's the one down here
6 on Lake Murray Boulevard at cell tower two?

7 A Yes.

8 Q The blue pin that's near there, what is the
9 address on there?

10 A 649 North Royal Tower Road.

11 Q And that's labeled as Christopher Benjamin's
12 residence on the map?

13 A It is.

14 Q And the time of that call is what, ma'am?

15 A 1529, which correlates to 3:29 in the
16 afternoon.

17 Q 3:29 p.m.?

18 A Yes.

19 Q Now, the phone isn't used for over two hours;
20 is that correct?

21 A Yes, just over two hours.

22 Q So the next phone call is at what time?

23 A 1733, which is 5:33 p.m.

24 Q And the phone is traveling again?

25 A Yes, it's on another cell tower.

KAREN MILBRODT - CROSS BY MR. WILLIAMS

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- 1 Q All right, ma'am. You can have a seat.
- 2 A (Witness resumes the witness stand.)
- 3 Q Basically, Ms. Milbrodt, is it fair to say that
- 4 using the records that you have provided to us that
- 5 are in evidence, that the jury can look and if the
- 6 cell tower number's on here, they can tell where
- 7 it's at. And then, specifically, on cell tower 457,
- 8 they can look to see whether the call -- who's
- 9 calling who and what numbers are calling what
- 10 numbers?
- 11 A Right.
- 12 Q And that it's on cell tower 457 and what sector
- 13 it's in?
- 14 A Yes.
- 15 MR. GRAHAM: Thank you, ma'am. Please answer
- 16 any questions that Mr. Williams has.
- 17 THE COURT: Mr. Williams.
- 18 CROSS-EXAMINATION
- 19 BY MR. WILLIAMS:
- 20 Q Hi. I'm Theo Williams. It's nice to meet you.
- 21 A Nice to meet you as well.
- 22 Q I like Verizon.
- 23 A That's good to hear.
- 24 Q Can I see your documents right there?
- 25 A (Witness complies.)

1 Q You had some more.

2 A They may be at the desk.

3 Q The single sheet of paper which I think you
4 were identifying earlier, what is that document
5 which you brought to court?

6 A This is a document that we produce when we are
7 subpoenaed for subscriber information. So it would
8 be name of the customer and anything else that would
9 be relevant, address.

10 Q All right. And who is the subscriber for what
11 number?

12 A Well, I have two telephone numbers on here.
13 Telephone number ending 4481, we do not have a
14 subscriber name.

15 Q All right. What's the other number?

16 A (803) -2742.

17 Q All right.

18 A The name of the subscriber is Christopher
19 Davis.

20 Q Why would you have Christopher Davis' name on
21 that document?

22 A We were sent two subpoenas for two separate
23 numbers.

24 Q So that document doesn't necessarily tie in
25 with the phone number of 4481?

KAREN MILBRODT - CROSS BY MR. WILLIAMS

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1 A The phone number 2742 for Mr. Davis doesn't
2 necessarily tie in.

3 Q Are you telling me that Mr. Davis, at one point
4 in time, may have had that phone number?

5 A No, sir.

6 Q You don't know who had that phone number?

7 A No, sir.

8 Q Now, who owns those phone numbers?

9 A These are our phone numbers, Verizon Wireless
10 phone numbers.

11 Q You own those phone numbers?

12 A We do.

13 Q And if I wanted to take my Verizon number and
14 go to, I don't know, and I'd hate to say it, say
15 Alltel or something --

16 A Correct.

17 Q -- I could take my Verizon number with me to
18 Alltel?

19 A You can.

20 Q Do you know whether or not that number, which
21 is 4481, is in operation now?

22 A I do not know.

23 Q So it could be in operation?

24 A Could be, yes, sir.

25 Q And if that number was in operation right now,

KAREN MILBRODT - CROSS BY MR. WILLIAMS

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1 would that mean that it could be the same person
2 using the phone?

3 A Yes, could be.

4 Q Don't you think you ought to check that?
5 Wouldn't that be helpful? Can you check it here?
6 Can you just dial the number and see if anybody
7 picks up?

8 A You sure could, yes. Are you asking me to dial
9 the number and see if anybody answers?

10 Q Sure. You know how to use -- that's not a
11 Verizon phone.

12 A (Witness complies.)

13 The number rings and then three -- a tone. So
14 I don't know if it's active or --

15 Q How can you check it?

16 A By these records, I cannot.

17 Q So you can't tell whether or not the number is
18 shut off or not, right?

19 A Not with our records that are produced, no.

20 Q So somebody could be using that phone right now
21 and be the same person that was using the phone back
22 on October the 21st of 2011?

23 A It's possible.

24 Q Is there any way you can check that to see if
25 it is in operation?

KAREN MILBRODT - CROSS BY MR. WILLIAMS

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1 A Yes, we could check that. Personally, on the
2 stand, no, I could not.

3 Q I got you, but it's something you could do?

4 A Yes.

5 Q But you weren't asked to check it before you
6 came to court today?

7 A No, sir.

8 Q Now, just -- I hate to make you stand down, but
9 I don't know how to do it without asking you to come
10 back over here.

11 A I'm good.

12 Q Okay.

13 A (Witness leaves the witness stand.)

14 Q These sectors, which are revealed sector one,
15 sector two and sector three, looks like a bulls eye
16 on that map, doesn't it?

17 A Yes.

18 Q All right. Can you tell -- I think you've
19 already testified that the distance that a tower
20 works is four miles; is that right?

21 A This particular tower's capacity is four miles.

22 Q Do the towers differ in regards to how far
23 they'll pick up?

24 A Yes.

25 Q Now, these other towers that are referenced

1 down here, are they all the same type of towers?

2 A They are.

3 Q So does every tower down here pick up for four.
4 miles?

5 A There are ranges between two and four.

6 Q All right. Well, it -- do you know what the
7 distance is from, I guess, your tower to the end of
8 your circle?

9 A I would assume that it was the four mile radius
10 that was instructed to the mapping people.

11 Q All right. So you would assume that this
12 distance is four miles?

13 A Yes, sir.

14 Q But you don't know that?

15 A I don't know that.

16 Q Well, looking at all these cell phone towers
17 down here, would it be your testimony that you
18 believe that there's four miles between each and
19 every one of those cell phones?

20 A No, sir. They could have different distances.

21 Q Why would you have different distances if you
22 have cell phone towers that work for -- you're not
23 in the business to put up cell phone towers I know
24 because it costs money to do that.

25 A Right.

KAREN MILBRODT - CROSS BY MR. WILLIAMS

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1 Q So you want to get by with as few a cell phone
2 towers as you can?

3 A Correct.

4 Q So what is the reason why you would have all
5 these cell phone towers down here?

6 A There's various factors of why we put a tower
7 at a certain spot. One is population that it would
8 cover. So if there's more -- greater population
9 pulling off the towers, they need to be closer
10 together. Another would be topography, if there's a
11 wooded area, the cell distance is going to shrink.
12 Or if there's geography, if you've got a mountain or
13 hill in the way, that's going to change the range of
14 a cell tower. So you're putting them in a position
15 that covers the biggest population possible.

16 Q So cell towers don't necessarily draw four
17 miles, sometimes they draw more and sometimes they
18 draw less?

19 A Yes, sir.

20 Q So, actually, the sectors which have been drawn
21 off, doesn't necessarily represent that this cell
22 tower will only pick up four miles or will even pick
23 up four miles, it was what it was designed for,
24 correct?

25 A It was designed for four, yes, sir.

1 Q So it might actually pick up six miles?

2 A It's possible.

3 Q Now, the sectors that we've talked about, when
4 you talk about sectors, what you're talking about is
5 -- obviously, I'm a little older than you are, so I
6 remember the antennas that used to sit on top of
7 T.V.s.

8 A Certainly, yes.

9 Q Before we had cable and everything. And you
10 would turn your little antenna if you weren't
11 getting good reception. Is that what we're talking
12 about here, we've got -- this is our T.V. and we've
13 got our little antennas and we're sitting it up on
14 top of the T.V. so that we can draw the best
15 reception?

16 A Comparable, yes.

17 Q And when you draw the best reception, does it
18 necessarily -- meaning if I was sitting on my T.V.
19 and I was picking up a T.V. signal, I might pick up
20 that T.V. signal from here or I might pick up that
21 T.V. signal from here (indicating). I'd get it
22 clearer from here, but I might get it also from
23 here, or is there something to prevent that from
24 happening?

25 A Could you re-ask your question? I'm trying to

KAREN MILBRODT - CROSS BY MR. WILLIAMS

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J

1 follow what you're saying.

2 Q Okay. You've indicated that your tower can
3 designate where the call is coming from based on it
4 being divided into three sections?

5 A Right.

6 Q Now, you're saying that there are three
7 separate antennas on top of the tower; is that
8 right?

9 A Yes.

10 Q And you make that designation in regards to
11 which sector it's coming from based on which antenna
12 on the cell tower is being activated?

13 A Right.

14 Q Is it possible to activate, I guess, two
15 antennas at one time and you work off of whichever
16 one is stronger or can you only activate one
17 antenna?

18 A When you're making a call, you're activating
19 one antenna.

20 Q Okay.

21 A And our network decides which one is going to
22 be best able to handle that traffic. So you're only
23 on one antenna at a time.

24 Q So your network is telling you which antenna it
25 wants to use?

1 A Right.

2 Q But it actually could be drawing -- the other
3 antenna could be drawing the information also?

4 A It wouldn't be recorded.

5 Q It wouldn't be recorded because your system is
6 telling you to pick up the strongest one?

7 A Yes, pick up the one that's going to be able to
8 transmit the call.

9 Q All right. Now -- and we were talking about
10 longitude and latitude.

11 A Yes.

12 Q I'll never get that right. The minus stuff is
13 the latitude, right?

14 A I'd have to look on my records.

15 Q Would you please go check on that?

16 A Yes, sir. (Pause.)

17 I think you have them possibly.

18 Q I'm sorry. I took your stuff. That's not
19 right, is it?

20 A Yeah, the minus would be the longitude.

21 Q Okay. So when you use a description, you'd
22 normally say latitude and longitude and that way you
23 remember that the miles would be the longitude. Is
24 that a good way to remember it?

25 A Yes.

KAREN MILBRODT - CROSS BY MR. WILLIAMS

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1 Q Okay. You can have your seat. Just a few more
2 questions.

3 A (Witness resumes the witness stand.)

4 Q Now, if Verizon owns the number, how is it you
5 don't know who's paying for that number?

6 A Well, this number is under -- is what's called
7 a reseller. So, again, it's another carrier that
8 does not have infrastructure and they'll lease
9 network and numbers from us. When it's a reseller,
10 it's not our customer, so we have no reason to keep
11 any subscriber information as far as name and
12 billing information.

13 Q All right. Well, wouldn't that person who is
14 using your number, the subscriber or the whoever you
15 are allowing to use that number, wouldn't they know
16 who they sold that number to?

17 A Are you asking would the reseller know?

18 Q Reseller, yes.

19 A It's possible. I don't know their business, so
20 I'm not...

21 Q Well, with Verizon, when you hand out a phone
22 and a number, you know who's buying it from you,
23 don't you?

24 A We know the reseller who has purchased it.

25 Q Well, what if I went to your store and got a

1 phone from you, wouldn't you write down my
2 information, where I live and how much I was -- how
3 much you were charging me if I went to Verizon to do
4 that?

5 A If you got a postpaid account where you're
6 getting a bill, you would absolutely leave us your
7 name and your address.

8 Q That's right because you wouldn't just let me
9 use your number without knowing where your phone was
10 and how I was using it, right?

11 A If you were a postpaid, but if you were
12 prepaid, you wouldn't -- we don't need your name or
13 your address because we're not sending you a bill.
14 So it's a different type of subscriber.

15 Q All right. And have you consulted with
16 whoever you -- do you know who you gave this number
17 out to, which retailer or reseller you gave this
18 number out to?

19 A No.

20 Q Could you give it out more than once?

21 A No. It's only active -- we could give it out
22 multiple times, yes, because if this phone number
23 ever was cancelled, it would, what we call,
24 snapback, come back into our inventory. And we can
25 either resell it or we can activate it in our own

KAREN MILBRODT - CROSS BY MR. WILLIAMS

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1 systems.

2 Q Okay. So -- so this number, which you're
3 selling to somebody else to use, that is assigned by
4 Verizon, that number is assigned by Verizon? If you
5 give it to Wal-Mart and they sell the phone out,
6 that number is assigned to you so you know that
7 Wal-Mart sold it to Joe Blow, right? You couldn't
8 do it twice?

9 A I'm sorry?

10 Q You couldn't use the number twice though, could
11 you, at the same time?

12 A Not at the same time, no.

13 Q But any number of people may have the phone or
14 have the same number during a time period?

15 A (No response.)

16 Q Just like you tried it a while ago, you can't
17 tell me if it's on or not, can you?

18 A Correct, no, I cannot.

19 Q What would you have said if somebody had picked
20 up that phone?

21 A I would have said, hello, I've been asked to
22 call this number.

23 Q Okay. If somebody didn't have that number,
24 then why would it even ring?

25 A I can't speak for why it would ring or not

1 ring.

2 Q It was ringing, wasn't it?

3 A Yes, it was.

4 Q Is there anything that affects reception other
5 than what you've talked about, the topography, the
6 cell tower, that would reduce or increase the range
7 which the cell tower would work?

8 A The number of people drawing on a cell phone --
9 on the tower, so.

10 Q Are you saying that if you had a lot of people
11 using a particular cell tower, that your system
12 would say, hey, look, we've got too many people on
13 this tower, we're going to make you -- we're going
14 to make you use this tower over here?

15 A It's possible, yes.

16 Q So I could be in this location right here in
17 downtown Lexington and if the tower was across the
18 street and we had too many people using that tower
19 and I was standing here in the courtroom using it, I
20 might draw off another cell tower over to the right
21 because that's the way it keeps the system from
22 getting too much on it?

23 A Yes.

24 Q And I wouldn't be moved at all, would I, I'd be
25 in the same spot?

KAREN MILBRODT - CROSS BY MR. WILLIAMS

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1 **A** Correct.

2 **MR. WILLIAMS:** That's all the questions I have.

3 **THE COURT:** Redirect.

4 **MR. GRAHAM:** No, Your Honor.

5 Thank you, Ms. Milbrodt.

6 **THE COURT:** You may step down.

7 **MR. GRAHAM:** Your Honor, if we could about a

8 15-minute recess or break at this time?

9 **THE COURT:** Okay. Folks, let's take our
10 afternoon break. Don't begin deliberations or
11 discussions or comment about anything that's
12 occurred. And we'll see you back in about 15
13 minutes.

14 (The jury retires to the jury room.)

15 (Brief Recess.)

16 **THE COURT:** Are y'all ready?

17 **MR. GRAHAM:** Yes, Your Honor.

18 **THE COURT:** Bring the jury back in.

19 (The jury returns to the courtroom.)

20 **THE COURT:** Okay. Folks, we are going to
21 resume with the State calling their next witness.

22 **MR. GRAHAM:** Thank you, Your Honor. The State
23 calls Investigator Doug Novak to the stand.

24 ****

25 ****

DOUGLAS NOVAK - DIRECT BY MR. GRAHAM

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1 DOUGLAS NOVAK,
2 having been duly sworn, testified as follows:

3 THE CLERK: Once you're seated, state your
4 name, spelling your last on the record, please.

5 THE WITNESS: Douglas Novak, N-o-v-a-k.

6 DIRECT EXAMINATION

7 BY MR. GRAHAM:

8 Q Investigator Novak, where are you employed,
9 sir?

10 A Lexington County Sheriff's Department.

11 Q And what do you do there?

12 A I'm a major crimes investigator.

13 Q And what does that mean?

14 A I investigate crimes against a person which can
15 include homicides, rapes, anything involving a
16 person, armed robberies, criminal sexual conducts,
17 rapes.

18 Q Billy Derrenbacher, you know him and worked
19 with him?

20 A Yes.

21 Q After he left the sheriff's department and went
22 over to head up animal control, what, if any,
23 responsibility did you take for the case involving
24 the murder of David Cannon where Breon Mayers is the
25 accused?

DOUGLAS NOVAK - DIRECT BY MR. GRAHAM

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1 **A** I was instructed and appointed to take over the
2 case for Investigator Derrenbacher.

3 **Q** Let me show you State's Exhibit Number 8. Do
4 you recognize that photograph?

5 **A** Yes, I do.

6 **Q** Did you take it?

7 **A** Yes, I did.

8 **Q** What's the address of that house?

9 **A** 2908 Holy Trinity Church Road.

10 **Q** Let me show you a mailbox --

11 **A** Road.

12 **MR. GRAHAM:** Your Honor, the State would offer
13 the photograph of the mailbox in evidence.

14 **MR. WILLIAMS:** Relevance, Your Honor. I object
15 to relevance.

16 **MR. GRAHAM:** He was identifying this mailbox
17 went with this house and showing the address of
18 2906.

19 **MR. WILLIAMS:** Objection to relevance. It
20 could be my house. So that's the objection, Your
21 Honor.

22 **THE COURT:** Well, it's -- that doesn't make it
23 not relevant. It might make it true or not, but if
24 he's using it for the purposes of showing that that
25 is the address of that house, it's relevant. So

DOUGLAS NOVAK - DIRECT BY MR. GRAHAM

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1 overruled.

2 (State's Exhibit Number 69, photograph,
3 marked and admitted into evidence.)

4 BY MR. GRAHAM:

5 Q So again, Detective Novak, the address of that
6 house right there is what?

7 A Road.

8 Q Looking at State's Number 67 into evidence,
9 that's an employment application of Mr. Mayers, do
10 you recognize that?

11 A Yes, I do.

12 Q What address did Mr. Mayers put on there as his
13 home address?

14 A Road, Little Mountain,
15 South Carolina.

16 Q That's the same address of the -- that
17 photograph of the house you took?

18 A Yes, sir.

19 Q Now, you've been sitting here throughout the
20 entire trial; is that correct?

21 A Yes, sir.

22 Q And you've heard numerous people testify as to
23 what their cell phone numbers or their home numbers
24 were, haven't you?

25 A Yes, sir.

DOUGLAS NOVAK - DIRECT BY MR. GRAHAM

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1 Q Did you keep track of those?

2 A Yes, sir.

3 Q Were you also present when Ms. Milbrodt with
4 Verizon Wireless came with detailed call records for
5 the telephone number (803) -4481?

6 A Yes, sir.

7 Q Specifically, on the date of October 21st,
8 2011, did you take the information out of the
9 Verizon records, which was State's Number 68 -- let
10 me show you State's 68 and ask if you recognize
11 that?

12 A Yes, sir.

13 Q Did you take information for October 21st,
14 2011, for (803) -4481 and create a summary chart
15 to assist the jury?

16 A Yes, sir.

17 Q Did you mirror those numbers with numbers that
18 we heard through testimony or on documents?

19 A Yes, sir.

20 Q The information provided by Lieutenant Gunter
21 from the sheriff's department, the Amicks Farm
22 application of Mr. Mayers and the testimony of
23 various witnesses?

24 A Yes, sir.

25 Q Let me show you a two-page document and ask if

1 this is a document that you assisted in preparing
2 based on that information?

3 A Yes, sir.

4 MR. GRAHAM: Your Honor, at this time, the
5 State would ask to use this as demonstrative to
6 assist the jury in understanding the testimony
7 they've heard.

8 THE COURT: All right. Folks, this is a
9 demonstrative aid. It's not evidence. It's not
10 going to go back to the jury room with you. It's
11 compiled by the State. And it takes information
12 that you have heard from other sources throughout
13 this trial, the lady from Verizon for instance, with
14 people saying these phone numbers belong to this,
15 and puts it together in a chart, all right. And it
16 will show you that information.

17 But I want you to understand, it's not evidence
18 because it's not something that these folks went out
19 and found. They created it, all right. So it's to
20 -- demonstrative means, it's to demonstrate to you
21 something and it's an aid. In other words, it's to
22 help you understand the evidence that you've seen
23 and put it together in a form, but it's not
24 admissible as such because it's created for use at
25 the trial to aid you in demonstrating a point. But

DOUGLAS NOVAK - DIRECT BY MR. GRAHAM

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1 it won't go back with you to the jury room. It's
2 just for you to show and to understand today how
3 some of that information comes together, okay.

4 Go ahead.

5 **MR. GRAHAM:** Thank you, Your Honor.

6 **BY MR. GRAHAM:**

7 **Q** All right. Investigator Novak, at the title at
8 the top, it is says, Summary of Testimony for
9 activity of phone 4481 from October 21st, 2011,
10 at 802, which military time is 8:02 a.m., correct?

11 **A** Yes, sir. Can I get a copy of that?

12 **Q** Yes, you can. So this is a summary from what
13 time to what time?

14 **A** Phone number, it started at 802 in the morning
15 on 10/21/2011 through 1159 on October 22nd, 2011.

16 **Q** Let's explain to the jury what the columns are
17 here. The detail number right there where it says
18 47 on the first line, that's the detail that came
19 from the Verizon records; is that correct?

20 **A** Yes, sir.

21 **Q** The next column, it says, Number Initiating
22 Call. What does that mean?

23 **A** That's the phone number that initiated the
24 phone call.

25 **Q** The next column it says, Dialed Number. What

1 does that mean?

2 A That's the number that was dialed.

3 Q By the initiating number?

4 A Initiating number, the number dialed.

5 Q The next one says, Date and Time. What does
6 that reflect?

7 A That's the date the phone numbers were called
8 and the time it was done.

9 Q The number of seconds, what does that mean?

10 A The length of the call.

11 Q The tower number?

12 A Cell tower number.

13 Q The sector number?

14 A The sector the phone was hitting off of.

15 Q All that information right there was taken
16 directly from the information provided by Verizon
17 Wireless; is that correct?

18 A Yes, sir.

19 Q The next two columns, the first one says, The
20 number belongs to. What's the purpose of that
21 column?

22 A That's identifying the cell phone number that
23 was rather testified or was brought into court.

24 Q So the number -- the names that go in that
25 column, those come from people or documents here in

DOUGLAS NOVAK - DIRECT BY MR. GRAHAM

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1 the courtroom that the jury's heard?

2 A Yes, sir.

3 Q And then the next one says, Relationship.
4 What's the purpose of that call?

5 A That shows the relationship of the number
6 that's been identified.

7 Q If they're blank, that means that there was no
8 testimony as to what those numbers -- or who those
9 numbers belong to; is that correct?

10 A Correct.

11 Q So the first call the morning of the 21st of
12 October 2011 by 4481 was at 8:02 a.m.; is that
13 correct?

14 A Yes, sir.

15 Q And we don't know -- that number called that
16 number, talked for four seconds, but we don't know
17 who got called, correct?

18 A Correct.

19 Q We're in what cell tower, though?

20 A 457.

21 Q That's the tower that we testified earlier
22 that's in Little Mountain?

23 A Yes, sir.

24 Q That covers the area of Mr. Cannon's house?

25 A Yes, sir.

1 Q And also covers the address associated with
2 Mr. Breon Mayers on Holy Trinity Church Road that
3 you took a picture of; is that correct?

4 A Yes, sir.

5 Q Sector one, do you remember which sector that
6 is?

7 A Not without looking at it.

8 Q Looking at State's Exhibit Number 62, do you
9 see sector one on there?

10 A Yes, sir.

11 Q Okay. Does sector one contain or not contain
12 Breon Mayers' address at
13 Road?

14 A Contains.

15 Q As we're going down to 48, 49, 50, 51, all the
16 way down to 55, what tower are we on and what sector
17 do we stay on?

18 A On tower 457, sector one.

19 Q There is a phone call that it was identified on
20 detail 51, the number 960-5126, who testified that
21 that was their number?

22 A Christopher Davis, Sr.

23 Q Calls 55, 56 and 57, the number 4481 is
24 exchanging telephone calls with what number?

25 A I'm sorry?

DOUGLAS NOVAK - DIRECT BY MR. GRAHAM

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- 1 Q Call detail 55, 56 and 57, do you see those?
- 2 A Yes, sir.
- 3 Q -4481 is exchanging incoming and outgoing
- 4 calls with what number?
- 5 A (803) -8869.
- 6 Q Through testimony, what person identified that
- 7 as their number? Whose number was that?
- 8 A Tyrome Brennan.
- 9 Q And that would be Mr. Mayers' co-defendant,
- 10 correct?
- 11 A Yes, sir.
- 12 Q And where -- we start on sector one on tower
- 13 457 on 55. On 56 and 57, where do we move to?
- 14 A Sector two.
- 15 Q Looking back at the map on State's Number 62
- 16 again, sector two is where?
- 17 A It's located in the lower right corner.
- 18 Q The lower right corner here where I'm pointing?
- 19 A Yes, sir.
- 20 Q Okay. Whose residences have been testified to
- 21 that are in that sector?
- 22 A Tyrome Brennan's and Jermaine Caughman's.
- 23 Q And how about Mr. Cannon's?
- 24 A Yes.
- 25 Q Where did Jasmine Bowers live? How close was

DOUGLAS NOVAK - DIRECT BY MR. GRAHAM

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1 she to Mr. Cannon's residence?

2 A A couple houses down.

3 Q And would that also be contained in sector two?

4 A Yes, sir.

5 Q Moving down the line there are a couple of
6 other phone calls at 9:37, 9:38 and 9:45 a.m. that
7 are unidentified, correct?

8 A Correct.

9 Q However at 10:39 a.m., the telephone number
10 -4481 calls what number?

11 A (803) -8256.

12 Q And who has that number been identified as?

13 A Linda Marsh.

14 Q And what relationship is she to Jermaine?

15 A Jermaine's mentor.

16 Q The next telephone call line 62, -4481 is
17 calling who?

18 A Calls --

19 Q Calling what number?

20 A (803) -9371.

21 Q What tower are we on?

22 A 457.

23 Q What sector is it in?

24 A Two.

25 Q And who does that number belong to through

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1 previous testimony?

2 A Jasmine Bowers.

3 Q Continuing down the next several calls, detail
4 62, 63, 64 and 65, what tower do those calls -- what
5 tower are those calls on?

6 A 457.

7 Q And what sector?

8 A Two.

9 Q The next identified call is 66. Again,
10 4481 is calling 8256. Do you see that
11 number?

12 A Yes, sir.

13 Q How long does that phone call last?

14 A Forty-four seconds.

15 Q What tower is it on?

16 A 457.

17 Q What sector?

18 A Two.

19 Q And who's being called?

20 A Linda Marsh.

21 Q Again, the next phone call, line 67, -4481
22 is calling who?

23 A (803) -9371, which is Jasmine Bowers' phone
24 number.

25 Q Skipping down to 11:33, the next identified

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1 call, that's going to be call detail 70, do you see
2 that one?

3 A Yes, sir.

4 Q -4481 is calling who?

5 A (803) -8256.

6 Q How long does that call last?

7 A Fifty-five seconds.

8 Q What sector -- what tower is it on?

9 A 457.

10 Q What sector is it in?

11 A Two.

12 Q Who's being called?

13 A Linda Marsh.

14 Q Call detail 73 at 11:50 a.m., -4481 is
15 calling who? What number?

16 A (352) -9633.

17 Q And that number has been identified as who?

18 A Jassiel Kirkland.

19 Q Jassiel Kirkland?

20 A Yes.

21 Q And who is Jassiel Kirkland to Mr. Mayers?

22 A Breon Mayers' girlfriend.

23 Q The mother of his child?

24 A Yes, sir.

25 Q And the next one down, detail 74, -4481 is

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1 calling what number?

2 A (803) -1894.

3 Q How long is that phone call?

4 A A hundred and fifteen seconds.

5 Q How many minutes is that approximately?

6 A Approximately two minutes.

7 Q What tower is that on?

8 A 457.

9 Q What sector is the call made?

10 A Two.

11 Q And who is that number identified with?

12 A Suzette Meggett, a friend of Breon's.

13 Q Detail 75, there is an incoming call to

14 -4481. What is the number associating with that?

15 A (803) -7323.

16 Q And who is that telephone number identified

17 with?

18 A Patricia Mayers, Breon's grandmother.

19 Q The next two phone calls at 11:57 and 11:59,

20 call detail 76 and 77, there is incoming and

21 outgoing phone calls from -4481 to -8869.

22 Again, who does that number belong to?

23 A Tyrome Brennan.

24 Q Call detail 78, 79 and 80, they're outgoing

25 calls from 4481 to what number?

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1 A (803) -2209.

2 Q And that number was identified with who?

3 A Cedric Mayers.

4 Q Call detail 82, 83, 84, those calls back and
5 forth between those numbers, who do those numbers
6 belong to?

7 A Tyrome Brennan.

8 Q Again, call detail number 84, (803) -1894 is
9 calling 4481. Who is that?

10 A Suzette Meggett.

11 Q The next phone call at 12:13 is to what number
12 to -- or from what number?

13 A Line 85?

14 Q Yes, sir.

15 A Is to Tyrome Brennan.

16 Q Who is the number associated with the next
17 call?

18 A To Jassiel Kirkland.

19 Q Jassiel Kirkland?

20 A Yes.

21 Q The next one at 12:26, who does that belong to?

22 A Tyrome Brennan.

23 Q The next one at 12:28, who does that belong to?

24 A Tyrome Brennan.

25 Q The next one at 12:36?

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- 1 A Suzette Meggett.
- 2 Q At 12:41?
- 3 A Jasmine Bowers.
- 4 Q There are then two unidentified phone calls at
- 5 12:44, which is detail number 93. The individual
- 6 associated with the number involved in that call?
- 7 A The number's (803) -8256 which belongs to
- 8 Linda Marsh.
- 9 Q Moving on to 94, the number that dials this
- 10 call is who? What is the number that initiates this
- 11 call?
- 12 A The initiating phone number was (803) -4878.
- 13 Q Calling -4481; is that correct?
- 14 A Yes, sir.
- 15 Q The time of that call?
- 16 A 12:51.
- 17 Q The duration of that call?
- 18 A Four hundred and ninety-six seconds.
- 19 Q Approximately, how many minutes is that?
- 20 A Eight and a half minutes.
- 21 Q An eight and a half minute phone call. And who
- 22 is identified with that number?
- 23 A Larry Mayers, Breon's father.
- 24 Q And what was the tower on that again?
- 25 A Tower 36.

1 Q Looking at State's Exhibit Number 63, do you
2 see where tower 36 is located?

3 A Yes, sir.

4 Q What's the address of that cell tower?

5 A 1004 Marina Drive.

6 Q Moving down 95 and 96 are blank. 97 and 98,
7 there's an incoming and outgoing phone call between
8 4481 and 201-5756. Who is the individuals
9 associated with those -- that number, the 201-5756
10 number?

11 A Terrell Counts.

12 Q And what relationship is he to Breon?

13 A Cousin.

14 Q The next line 99, a phone call initiated from
15 4481 to (352) -9633, 44 second phone call,
16 who is the number identified with that 352 area code
17 number?

18 A Jassiel Kirkland.

19 Q There are multiple unidentified calls, skipping
20 down to 108. We're now at 1333, which is 1:31
21 {verbatim} p.m. in the afternoon; is that correct?

22 A Yes, sir.

23 Q Detail 108, 4481 again calls what number?

24 A (352) -9633, which is Jassiel Kirkland.

25 Q There are multiple calls here in a row, 112,

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1 113, 114 and 115. They're all initiating from what

2 number? Who's dialing the number?

3 A (803) -4481.

4 Q And what number is being called?

5 A (803) -8256.

6 Q And that number is associated with who?

7 A Linda Marsh.

8 Q And who is Linda Marsh?

9 A Jermaine's mentor.

10 Q 117, do you see the call detail related to that
11 on the second page?

12 A I'm sorry?

13 Q The call detail, we're on the second page now,
14 detail 117?

15 A Yes, sir.

16 Q Who is initiating this phone call?

17 A (803) -5792.

18 Q What time is the call?

19 A 1:48 p.m.

20 Q And what individual has been associated with
21 that number?

22 A Shyesha Chandler.

23 Q The next call below that, 118, is also a phone
24 call between 4481 and who?

25 A Shyesha Chandler.

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1 Q The next one down at 1355, which is 1:55 p.m.,
2 call detail 119, there's 147 second phone call. Who
3 is that phone call from?

4 A Larry Mayers.

5 Q 1355, there are two phone calls that are both
6 incoming calls to 4481. The number that's
7 associated with that belongs to who?

8 A Shyesha Chandler, Breon's sister.

9 Q At 2:06 p.m., call detail 122, there's a 51
10 second phone call. The 1894 was the dialed
11 number. Who does that number belong to?

12 A Suzette Meggett.

13 Q There are then two phone calls in a row at 2:06
14 p.m. and 2:07 p.m. -4878 is calling into
15 4481. Do you see that?

16 A Yes, sir.

17 Q Who is that number associated with?

18 A Larry Mayers, Breon's father.

19 Q The next call at 2:30 p.m., 4481 is calling
20 201-5756. What number is associated with that?

21 A Terrell Counts, Breon's cousin.

22 Q 2:39 p.m. the next call, (352) 4481 is
23 calling 80 -- excuse me -- (352) 9633 is calling
24 into the number. Do you see that one?

25 A Yes.

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- 1 Q Who is the number associated with that?
- 2 A Jassiel Kirkland, Breon's girlfriend.
- 3 Q Skipping the blank one, the next call
- 4 identified is at 3:29 p.m., that's call 128. Do you
- 5 see that one?
- 6 A Yes, sir.
- 7 Q Who is the number associated with that phone?
- 8 A Tyrome Brennan.
- 9 Q The next one, skipping to 5:33 p.m., detail
- 10 129, who does that number belong to?
- 11 A Suzette Meggett.
- 12 Q The next call at 5:52 p.m. on the 21st belongs
- 13 to who?
- 14 A Terrell Counts.
- 15 Q Skipping the two blank ones down to 7:54 p.m.,
- 16 call detail 133, who is the party associated with
- 17 this call?
- 18 A Jassiel Kirkland.
- 19 Q The next two calls at 7:54 and 55, 4481
- 20 calls what number associated to what person?
- 21 A Shyesha Chandler.
- 22 Q And who is that?
- 23 A Breon's sister.
- 24 Q Skipping the three blank ones down to call
- 25 detail 139 at 8:33 p.m., the number -- the person

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1 associated with the number involved in this
2 conversation is who?

3 A Jassiel Kirkland, Breon's girlfriend.

4 Q Three phone calls in a row at 8:41 p.m., 8:44
5 p.m. and 9:05 p.m., the number -- the individual
6 associated with the number involved in that call is
7 who?

8 A Terrell Counts, Breon's cousin.

9 Q The next one, two, three, four, five phone
10 calls at 9:47, 9:47, 9:54, 9:56 and 9:59 p.m. on the
11 day David Cannon was murdered, the individual
12 associated with the number 261-8869 is who?

13 A Tyrome Brennan.

14 Q Call detail 143 at 10:43 p.m., the number --
15 the individual associated with the number involving
16 that call is who?

17 A Terrell Counts.

18 Q How is that person related to Mr. Mayers?

19 A His cousin.

20 Q The next three calls at 10:54, 11:09 and 11:33,
21 the person identified with that number involved in
22 the call with 4481 is who? This is going to be
23 149, 150 and 151.

24 A Tyrome Brennan.

25 Q The next line at 11:33 p.m. belongs to who?

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- 1 **A** Terrell Counts.
- 2 **Q** The next two lines at 11:40 and 11:40, the
3 numbers involved in that belong to what individual?
- 4 **A** Jassiel Kirkland.
- 5 **Q** How long -- call 154, how many seconds is that
6 call?
- 7 **A** One thousand five hundred and five.
- 8 **Q** Approximately, how many minutes is that?
- 9 **A** Twenty-five.
- 10 **Q** The next two calls at 12:05 a.m., now switching
11 over to 10/22, and 12:06 a.m. in the morning, the
12 individual identified with the number involved in
13 that call is who?
- 14 **A** Tyrome Brennan.
- 15 **Q** The next call at 10/22 at 12:12 a.m., the
16 number identified with that call belongs to who?
- 17 **A** Larry Mayers.
- 18 **Q** 12:40 and 12:47 a.m. on the 22nd, the
19 individual associated with those numbers are who?
- 20 **A** Tyrome Brennan.
- 21 **Q** 12:51 a.m., 1:08 a.m., 1:09 a.m., 1:10 a.m.,
22 there are four phone calls in a row. What
23 individual is involved with the number associated
24 with that call?
- 25 **A** Shyesha Chandler.

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1 Q And who is Shyesha Chandler to Mr. Mayers?

2 A His sister.

3 Q At 1:16 a.m. and 1:27 a.m., there are two phone
4 calls. What individual is associated with that
5 number?

6 A Tyrome Brennan.

7 Q The next one, two, three, four, five numbers,
8 taking us down to 170, do you see those?

9 A Yes, sir.

10 Q The individual associated with those phone
11 calls are who?

12 A Shyesha Chandler.

13 Q At 2:56 a.m., 2:59 a.m. and 3:28 a.m. on
14 10/22/2011, there are three calls associated with an
15 individual, who is that?

16 A Tyrome Brennan.

17 Q The next one is blank, skipping that. The call
18 at 3:49 a.m. on 10/22/2011, the number associated
19 with the call to 4481, an incoming call, is who?

20 A Larry Mayers.

21 Q Skipping the two blank calls, going down to
22 4:35 a.m. in the morning, the individual associated
23 with that dialed call is who?

24 A Shyesha Chandler.

25 Q Skipping down to 182 and 183, we've now

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1 switched over to the morning of the -- near noon on
2 the 22nd at 11:54 a.m. The number associated there
3 is 738-5718. Do you see those?

4 A Yes, sir.

5 Q Who's the individual that's associated with
6 those phone calls?

7 A Trandy Mayers.

8 Q And who is Trandy Mayers?

9 A Breon's uncle.

10 MR. GRAHAM: Thank you, Detective Novak.
11 Please answer any questions that Mr. Williams has
12 for you.

13 CROSS-EXAMINATION

14 BY MR. WILLIAMS:

15 Q Detective Novak, just a couple of questions.
16 One question, which I should know the answer to,
17 when you look at these numbers that we were just
18 talking about, talking about the phone records and
19 the times that they're reflected, I know we've
20 already established that it is military time.

21 A Yes, sir.

22 Q Only because I don't know, does military time
23 differ depending on if you're on the east coast, the
24 middle of the United States or on the west coast?

25 A I don't know the answer to that.

1 Q Such as eastern standard time or what have you,
2 or does it just work on a 24-hour clock?

3 A I don't know.

4 Q Now, as I understand it, you don't possess any
5 record which shows that my client, Breon, purchased
6 a phone which has that phone number assigned to him,
7 do you?

8 A No, sir.

9 Q And you're basing your testimony, I guess, for
10 this document based on some record that indicates
11 some -- a phone number was used and that a person
12 was called at that particular number; is that
13 correct?

14 A Yes, sir.

15 Q Or that particular number called that phone
16 number of whatever that is?

17 A Vice ver -- could be either way.

18 Q Vice versa. And you don't know whether or not
19 that phone number of 4481 is still being used
20 today?

21 A No, I don't.

22 Q But you could check on that and you could let
23 us know, couldn't you? I mean, it's possible to
24 check on it?

25 A It's possible.

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1 Q Now, let me ask you about what you've shown in
2 these items. Obviously, there's some numbers which
3 you don't have names for, you don't know who that
4 person is that the phone number was assigned to or
5 went to, do you?

6 A Correct.

7 Q And you know, as a result of the investigation
8 that you've done, that other persons used a phone
9 number other than Breon Mayers that was 4481.
10 You know that somebody else actually used that
11 phone, don't you?

12 A No, I do not.

13 Q Well, you know Jermaine used that phone, don't
14 you?

15 A Who did?

16 Q Jermaine.

17 A Yes.

18 Q So then you do know somebody used that phone?

19 A Yes.

20 Q So what you can show, if you look at that, is
21 you can show a phone number, you can show who the
22 phone number was connected to and you can show the
23 amount of time that was involved?

24 A Yes, sir.

25 Q Well, on your record up there, you showed voice

1 mail on a couple of those inserts that you used.

2 How did you determine that it was voice mail?

3 A You're referring to line 68 and 69?

4 Q That's good.

5 A Off the original records that came back from
6 Verizon.

7 Q Did the original records that came back from
8 Verizon indicate that it was voice mail? Was it
9 typed in there voice mail?

10 A No, sir.

11 Q Who added that in there to say that it was
12 voice mail?

13 A We added that in there.

14 Q So why did you add that in there to say that it
15 was voice mail?

16 A That's what I believed it was to be, voice
17 mail.

18 Q Okay. And why did you put in there that it was
19 voice mail? Because you're saying you typed that in
20 there. This didn't come from the telephone company
21 like that.

22 A No, sir.

23 Q Why do you call it voice mail?

24 A I believed he was checking the voice mail.

25 Q But what is your basis to believe that?

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1 A I don't have a basis on that one right now.

2 Q So you just typed it in there?

3 A Yes, sir.

4 Q Now, you've listed off lots of peoples names.

5 Let's see: Chris Davis, Sr., Tyromè Brennan, Linda

6 Marsh, Jasmine Bowers and the only -- there's a

7 question coming, but it's a long list -- Jassiel

8 Kirkland, Suzette Meggett, Patricia Mayers, Tyrome

9 Brennan, Cedric Mayers, Larry Mayers, Terrell

10 Counts, Shasheka {verbatim} Chandler, Trandy Mayers.

11 So you've got these phone numbers and you list all

12 these people on this sheet of paper, right?

13 A Yes, sir.

14 Q So if this information is important, then

15 wouldn't each and every one of these people be a

16 potential witness to use to prove your case to find

17 out if indeed that phone call was made from Breon

18 Mayers, if they picked up the phone and if the

19 person that they talked to was Breon Mayers?

20 Because you've got the phone numbers and you know

21 who the people are. Would --

22 A Yes.

23 Q Could you prove it by that?

24 A I'm sorry?

25 Q Couldn't you prove that they actually talked to

DOUGLAS NOVAK - REDIRECT BY MR. GRAHAM

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1 Breon at those times, at those numbers, at those
2 locations?

3 A Can I actually prove that he --

4 Q If you called them to the stand, put them on
5 the stand and talked to them and asked them the
6 question, wouldn't that prove it instead of
7 speculating who talked to who?

8 A It could prove it, yes.

9 Q Couldn't you also prove what the discussion was
10 about?

11 A It could prove it, yes.

12 Q But you haven't done that, have you?

13 A Calling people to the stand, I don't -- that's
14 not my position or my job.

15 MR. WILLIAMS: That's all I have, Your Honor.

16 THE COURT: Redirect.

17 REDIRECT EXAMINATION

18 BY MR. GRAHAM:

19 Q Larry Mayers is who?

20 A (No response.)

21 Q Larry Mayers, one of the names you had on
22 there?

23 A Breon's father.

24 Q Did you try to talk with him?

25 A Yes, I did.

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1 Q Did he remember his phone number?

2 A No, he did not.

3 Q Did he remember a 4481 number?

4 A No, he did not.

5 Q Did you ask him any questions about whether he
6 talked with his son on his cell phone that day?

7 A I believe I did. I need to look at his
8 statement to...

9 Q What was his attitude when he spoke with you?

10 A He was very open with me. And he told me -- he
11 was open and said he was not going to lie for his
12 son.

13 Q Did he want to testify against his son?

14 A No. (Pause.)

15 I did ask him if he called his son and he said
16 he could not remember if he did or did not.

17 MR. GRAHAM: Thank you, Detective.

18 THE COURT: Recross.

19 RECROSS-EXAMINATION

20 BY MR. WILLIAMS:

21 Q Did you call Terrell Counts?

22 A I'm sorry?

23 Q Did you talk to Terrell Counts?

24 A No, sir.

25 Q He was one of the people listed, wasn't he?

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1 **A** Yes, sir.

2 **MR. WILLIAMS:** That's all I have, Your Honor.

3 **THE COURT:** You can step down.

4 Next witness.

5 **MR. GRAHAM:** Your Honor, that's the State's
6 case in chief and with that, we will rest.

7 **THE COURT:** All right. Well, folks, let me
8 send you back to the jury room right now. We've got
9 to take up a couple of legal matters and plan out
10 the remainder of the case. So you've heard all of
11 the State's evidence now, but it's still improper to
12 begin deliberations or discussions about the case.
13 So go on back to the jury room for a few minutes and
14 we'll figure out where we're going to go for the
15 rest of the case. I'll have you back in about 10,
16 15 minutes max probably.

17 (The jury retires to the jury room.)

18 **THE COURT:** All right. Well, Mr. Mayers, will
19 you stand up.

20 You know, yesterday about this same time we
21 were finishing up, we talked a little bit about
22 whether or not you were going to put up a defense,
23 whether or not you were going to get up and testify
24 and tell your side of the story to the jury. I just
25 want to tell you that, you know, now's the time you

1 have to make a decision. I know you've consulted
2 with your lawyer, but, ultimately, it's your
3 decision.

4 If you decide you want to put up evidence, well
5 you and your lawyer will now begin to call any
6 witnesses you want, including yourself if you want
7 to testify. If you want to call witnesses and not
8 testify, that is also an option. And I will
9 instruct the jury that they're not to hold that
10 against you in any way when they are deliberating,
11 they're not to discuss that in any way at all.

12 You also cannot put up any witnesses and not
13 testify, in other words, rest at this point. And,
14 again, if you do not testify, I will tell the jury
15 they're not to hold that against you while they're
16 deliberating.

17 Do you understand what I've told you so far?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** Okay. Have you had enough time to
20 talk to your lawyer about this?

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** All right. Have you made a
23 decision as to what you want to do?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** And what did you guys decide?

1 **DEFENDANT:** I'm not going to testify.

2 **THE COURT:** Okay. Mr. Williams, are y'all
3 going to call any witnesses?

4 **MR. WILLIAMS:** We are not, Your Honor.

5 **THE COURT:** Okay. So you have rested as well
6 then I take it?

7 **MR. WILLIAMS:** Your Honor, I would like the
8 record to note that I didn't make directed verdict
9 motions.

10 **THE COURT:** Well, I'm going to let you make
11 that. I just wanted to talk to him about that
12 because that was on my brain, all right.

13 All right. You can have a seat, Mr. Mayers.

14 All right. Mr. Williams, your turn to make a
15 motion.

16 **MR. WILLIAMS:** Your Honor, I would simply move
17 for a directed verdict in regards to all indictments
18 and that based on the sufficiency of the evidence
19 taken in the light most favorable to the State, it's
20 insufficient as a matter of law for the jury to
21 return a verdict of guilty as to each and every one
22 of the indictments.

23 **THE COURT:** Well, I welcome the State's
24 argument on this, but, in my opinion, there is ample
25 direct evidence, as well as circumstantial evidence

1 to get all of the indictments, indicted charges, to
2 the jury. So I will deny your motion as well.

3 MR. WILLIAMS: Thank you, Your Honor.

4 THE COURT: All right. Now, let's plan out
5 here. We're at 4:30 and I tend to not charge after
6 4:00. I've given you charges. And let's talk about
7 if you guys have -- have you had an opportunity, I
8 know we gave it to you early, haven't had an
9 opportunity --

10 MR. WILLIAMS: No, sir.

11 THE COURT: -- so I'm inclined to say take the
12 evening. If you've got anything that you want to
13 send to me, I gave you my e-mail address earlier in
14 the week, send it to me tonight. I can have it on,
15 you know, I'll have it -- I can look at it and we
16 can get together and have a little charge conference
17 first thing in the morning and do that. Does that
18 work for everybody?

19 MR. GRAHAM: Yes, Your Honor.

20 MR. WILLIAMS: Yes, Your Honor.

21 THE COURT: Okay. How long do you think you'll
22 need?

23 MR. GRAHAM: Thirty minutes maybe.

24 THE COURT: All right. Mr. Williams, how long
25 do you think you'll need?

1 **MR. WILLIAMS:** Judge, I think it's a 30 minute
2 -- at least 30 minutes.

3 **THE COURT:** All right. Very well. Let me
4 bring the jury in then. I'll tell them that we will
5 resume tomorrow morning at 9:30. Why don't we
6 reconvene at 9:00, have our charge conference, all
7 right. And if there's anything that we need to take
8 up at that time, we can. Otherwise, we'll start
9 charging and arguing at 9:30.

10 All right. Let's bring the jury.

11 I will ask you on the record if you want to
12 call any witnesses, all right.

13 **MR. WILLIAMS:** That's fine, Your Honor. I hate
14 to --

15 **THE COURT:** Or I can just tell them --

16 **MR. WILLIAMS:** That's fine, Your Honor. I was
17 just saying, I hate to be stupid, but I have lost
18 your address.

19 **THE COURT:** Okay. Well, that doesn't make you
20 stupid, that just makes you a little absentminded.
21 And I'm a lot absentminded. I'll write it down for
22 you again.

23 **MR. WILLIAMS:** Thank you, Your Honor.

24 Your Honor, it turns out the Solicitor has lost
25 his, also.

1 (The jury returns to the courtroom.)

2 **THE COURT:** All right. Folks, you heard the
3 State has rested. I have inquired as to the defense
4 about their plans and they have indicated to me that
5 they also rest and they do not intend to call any
6 witnesses nor is Mr. Mayers going to testify. I
7 will instruct you again today and when we have a
8 charge conference, again you are not to hold it
9 against him in any way, shape or form during your
10 deliberations that he has not testified nor has he
11 desired to call any witnesses on his behalf. That
12 is a constitutional right that he has.

13 Now, what we're going to do is we are going to
14 have what we call a charge conference to go over the
15 law to make sure that we're all on the same page as
16 far as to what I charge you on the law is, one of
17 those formalities that we have. And since that will
18 probably take us about 30 minutes and then we'd have
19 closing arguments, that would get us on into a
20 little bit late. And plus, realistically, by the
21 time you started deliberating, it would probably be
22 close to seven o'clock.

23 So what we're going to do is send you home this
24 evening and we will ask you to return at 9:30
25 tomorrow morning. We're going to continue to work

1 and have -- take care of what we need to and get it
2 ready so that at 9:30, we can have closing
3 arguments, I'll charge you on the law and then you
4 will retire and consider what your verdict will be.

5 Now, let me stress, while you have heard all of
6 the evidence that you're going to hear in this case,
7 it is still improper for you to begin any
8 deliberations that you will conduct either with any
9 member of the jury panel and, of course, anyone
10 else. It's totally improper.

11 But even amongst yourselves, you're not to
12 begin any kind of deliberations or discussions about
13 the evidence about your feelings about witnesses'
14 demeanor, credibility, anything like that. Again, I
15 haven't told you what the law is on any of these
16 charges, so you really couldn't begin to make an
17 informed deliberation.

18 So while I'm sending you home tonight, again
19 this is the last night that you'll have these orders
20 about not talking about the case, not going on
21 social media, not going on -- looking in the
22 newspapers, the Internet, anything like that, after
23 you come back with a verdict tomorrow, you can talk
24 to anybody you want to about the case.

25 So just bear with us a little bit. I know it's

1 been a long week, but we'll finish this case up in
2 the morning and get it to you pretty expeditiously
3 in the morning because the lawyers, I don't think,
4 will take too long to wrap this up, but we'll have
5 final arguments, I'll charge you on the law.

6 Let's be back in the jury room a little before
7 9:30 so that we can begin promptly at 9:30. Thank
8 you so much for your patience and we will see you in
9 the morning.

10 (The jury was excused for the day.)

11 **THE COURT:** Okay. Folks, nine o'clock in the
12 morning then, all right. Thank you.

13 (The proceedings were concluded for August
14 9, 2012.)

15 (The following proceedings were held on
16 August 10, 2012.)

17 **THE COURT:** Okay. Got your e-mails last night
18 and had a chance to think about it, so -- I'm still
19 not clear on the need for the felony murder. Hand
20 of one hand of all I could see for the charges,
21 other than the murder charge.

22 **MR. GRAHAM:** Your Honor, with the hand of one
23 hand of all, I don't think we need the felony murder
24 either.

25 **THE COURT:** Oh, you don't want it?

1 **MR. GRAHAM:** No, not with -- as long as the
2 hand of one hand of all is in there, I think that's
3 fine. /

4 **THE COURT:** Okay. Because that's what I was
5 thinking about, that would apply to charges other
6 than the murder charge because I was just kind of
7 focused in on that one.

8 And then the implied malice by use of a weapon,
9 well, what do you say to that, Mr. Williams? That's
10 a tough nut to crack when you have the evidence in
11 this case to say, how do you find any kind of
12 reducing the charge or anything?

13 **MR. WILLIAMS:** You're right. You're right, it
14 is --

15 **THE COURT:** That is my favorite thing for a
16 lawyer to say. I don't get it very often.

17 **MR. WILLIAMS:** Well, you're right. When you're
18 right, you're right, Judge. I'm not going to --

19 **THE COURT:** Well, thank you.

20 All right. So we got that. And I added the
21 expert charge -- actually, my law clerk's credit,
22 she already had that implied malice in earlier in
23 the week. And I just -- I tell you since Belcher
24 came out, I never had a case that you didn't have
25 something you could argue, well, there's some sort

1 of justification or something, but, you know, here's
2 where we're at. So we'll leave that in.

3 We've got the hand of one hand of all, leave
4 out felony murder. I put in expert witness.

5 Take a second and look through that. That's
6 really only the changes -- the hand of one hand of
7 all, there's not a whole heck of a lot of difference
8 between that and Ralph King. It's the one out of
9 our hand, you know, our charges from Court
10 Administration. I've kind of gotten away from using
11 Ralph King's just because I found -- well, like I
12 said, he's a little more verbose than I am and I can
13 talk a lot, but I've also seen his tend to repeat
14 themselves from time to time as well..

15 So is there anything else from the State or do
16 you want a couple more minutes?

17 **MR. GRAHAM:** Not as far as the jury charge,
18 Your Honor.

19 **THE COURT:** Okay. How about the defense?

20 **MR. WILLIAMS:** No, Your Honor. We're satisfied
21 that that's the law.

22 **THE COURT:** All right. Well, let's do this.
23 Why don't we use this next 25 minutes to make sure
24 we've got all the evidence in order so that when we
25 -- you guys take out what you need I guess, but

1 those things that you don't plan to use, let's get
2 them so that when we get ready to send it to the
3 jury, we know we've got everything there, we don't
4 take 15 minutes to send the evidence back to them.
5 So Stacy started on that, so why don't y'all take
6 advantage of that.

7 **MR. GRAHAM:** Your Honor, I do have a matter
8 that I would like to address. I think I discussed
9 earlier to amend the burglary and the armed robbery
10 indictments to conform to the evidence. I believe
11 that they both just mention U.S. currency and I
12 think it would be appropriate to add and/or handgun
13 or whatever we want to do for the .357 gun that was
14 stolen, as well as and/or marijuana.

15 And I have the code section that allows for
16 amendment of the indictments, as well as a case law
17 that allows for the addition of contraband, such as
18 marijuana.

19 **MR. WILLIAMS:** I'm concerned about it being
20 brought at this time after the case has closed.

21 **THE COURT:** I can see your argument on armed
22 robbery. I'm just looking at their indictment for
23 burglary. What do you want to change? You got --
24 armed with a deadly weapon and/or caused physical
25 injury to a person not a participant. So what did

1 you want to add on the burglary indictment?

2 **MR. GRAHAM:** I thought that -- did I not have
3 in there -- may I look at the indictment, Your
4 Honor?

5 **THE COURT:** Here, take a look at these two and
6 tell me what it is that you want to change on
7 burglary.

8 **MR. GRAHAM:** I don't need anything on the
9 burglary, you're correct, Your Honor, just on the
10 armed robbery.

11 (Pause.)

12 **THE COURT:** Tell me what you got on amending an
13 indictment this late in the game.

14 **MR. GRAHAM:** Code section 17-19-100, Your
15 Honor.

16 **THE COURT:** Let's take a look at that.

17 (Pause.)

18 **THE COURT:** The court before the trial shall be
19 had or may amend the indictment.

20 **MR. GRAHAM:** I'm sorry, Your Honor, I didn't
21 hear.

22 **THE COURT:** Well, the statute, as I'm reading
23 it, says, if at the last minute before we started
24 the trial, you wanted to amend the indictment as
25 long as there's not a surprise to the defendant, you

1 could change it. But I don't see where you can
2 amend the indictment at the end of the trial because
3 it says, If, (a), there's any defect in form of
4 indictments -- that doesn't apply -- Or, (b), so if,
5 on the trial of any case, there shall be any
6 variance between the allegations of the indictment
7 and the evidence offered in proof thereof, the court
8 before --

9 (Pause.)

10 **THE COURT:** I'm still trying to figure out if
11 you didn't have to bring that change before the
12 trial started.

13 **MR. GRAHAM:** I know that in the --

14 **THE COURT:** We do it in civil court all the
15 time.

16 **MR. GRAHAM:** I know that the quotes in the
17 notes afterwards, Your Honor -- and I don't know
18 whether you have it in what I handed you -- that
19 talks about State versus Rush. It says, After all
20 the evidence was in, the court under section 17 --

21 **THE COURT:** Well, it says you strike out the
22 one you got highlighted...

23 **MR. GRAHAM:** Your Honor, on page two at the
24 bottom, I know it's discussing about State versus
25 Riddle. And it says that --

1 **THE COURT:** Yeah, that's the one I was looking
2 at. That does seem to -- as long as it doesn't add
3 the greater charge on, I guess. This is still the
4 same charge, it's just a different element. And
5 you're not wanting to substitute in, you're just
6 wanting to add another one in. It doesn't change
7 the nature of the grade of the offense charged, so.

8 What's your thoughts on that other than you
9 don't want it, Mr. Williams?

10 **MR. WILLIAMS:** My only thoughts are that it's
11 improper at this time. I'm not sure that he can
12 bring it at this time after we've already had our
13 motions and, at least, the directed verdict motion.

14 **THE COURT:** Well, it's to conform to the
15 evidence that was at trial, which it doesn't sound
16 like any of that surprised you.

17 **MR. WILLIAMS:** I'm not really sure it's needed.

18 **THE COURT:** By means -- goods or money being
19 described as followed: U.S. currency. And you want
20 to say U.S. currency and what?

21 **MR. GRAHAM:** And/or a .357 handgun and/or
22 marijuana.

23 **THE COURT:** Yeah, it doesn't change the charge
24 at all because both of those will still be personal
25 property. All right. Well, I'll allow that as to

1 the armed robbery.

2 Okay. So it'll now read next to the last
3 sentence, U.S. currency. And I put a little star
4 beside it and wrote down beneath that, And/or a .357
5 handgun and/or marijuana.

6 All right. One other thing I did want to bring
7 up, and I thought about this and I'm probably just
8 overthinking it, but just out of an abundance of
9 caution, I noticed a couple of times during the
10 trial, you asked co-defendants when they were
11 testifying, are you guilty of murder, are you guilty
12 of these various charges, and they said, yes, yes,
13 yes. You may comment that they all admitted their
14 guilt, but I think it would be an improper argument
15 about the defendant's failure to testify if you in
16 any way suggested, well, they all stood up and said
17 they were guilty, but --

18 MR. GRAHAM: I agree.

19 THE COURT: The inference would be and he's
20 just sitting there doing nothing. So if you want to
21 go there, be very, very careful about that.

22 MR. GRAHAM: Yes, sir.

23 THE COURT: All right. Anything else?

24 MR. WILLIAMS: There is one matter, Your Honor.

25 THE COURT: And you go first, you go last.

1 **MR. WILLIAMS:** Yes, sir. There is one matter.
2 And out of an abundance of caution, there was no
3 evidence presented on behalf of the defendant. And,
4 obviously, when you make a motion for a directed
5 verdict at the end of the State's case, then there's
6 a rule which says you would normally make a motion
7 for a directed verdict at the end of the defense
8 case based on all the evidence, one being in the
9 light most favorable to the State, one being after
10 the close of all the evidence.

11 I'd ask the Court to note that I did indeed
12 made {verbatim} a motion for a directed verdict
13 along the same lines that were made at the end of
14 the State's case. Even though I think it may be a
15 silly rule, Judge, I don't know that our Supreme
16 Court or anyone has --

17 **THE COURT:** That's never stopped us before.
18 Well, I know this will come as no great shock, but
19 they are denied again, okay.

20 **MR. WILLIAMS:** Thank you, Your Honor.

21 **THE COURT:** All right. Let's work on getting
22 that evidence all together and hopefully everybody
23 will show up on time and we can get started.

24 (Brief Recess.)

25 **THE COURT:** Okay. We've got the jurors here.

1 Are y'all ready?

2 MR. GRAHAM: The State's ready, Your Honor.

3 MR. WILLIAMS: Defense is ready, Your Honor.

4 THE COURT: Okay. Bring the jury in.

5 (The jury enters the courtroom at 9:30 a.m.)

6 THE COURT: Welcome back, folks. We're to the
7 last part of the trial now where we're going to have
8 the closing arguments and then I'll charge you on
9 the law and then you'll retire to consider what your
10 verdict will be. As we've talked about, we've got
11 these procedures that we go through different ways
12 of doing things in a certain order and so the State,
13 again, having the burden of proof, will argue first
14 and then the defense will argue last.

15 Now, I want to remind you of what I'd talked
16 about the very first day and that this is arguments
17 by the lawyers. These are not evidence. The
18 lawyers weren't witnesses. They didn't testify.
19 And so what they are getting ready to do right now
20 is argue on behalf of their client, give you a
21 preview of the law in an attempt to persuade you to
22 render a verdict on their client's behalf. Do not
23 consider whatever they say to be evidence. They
24 will be discussing the evidence and giving you
25 argument about that evidence.

1 So we won't take a long time on me talking
2 anymore. I'm just going to turn it over to the
3 State right now.

4 So, Mr. Solicitor, if you're ready, you may
5 begin.

6 **MR. GRAHAM:** Thank you, Your Honor.

7 CLOSING ARGUMENT

8 **MR. GRAHAM:** On October 21st, 2011, David
9 Cannon was a sick man. He was a dying man. But
10 early that morning, he became a dead man walking,
11 not because of disease, not because of sickness, but
12 because of that man there (indicating), Breon Jacoby
13 Mayers, an evil man, a man who decided that it was
14 David Cannon's day to die. Because he was a racist
15 and because he wouldn't sell marijuana to him, David
16 Cannon was going to die. Jasmine Bowers didn't want
17 him dead. Tyrome Brennan didn't want him dead.
18 Jermaine Caughman. None of them had motives, none
19 of them had a reason, but he did.

20 Credibility of witnesses, you'll hear the Judge
21 charge you about that. Everybody you heard has a
22 reason to lie. Everybody lies for
23 self-preservation. All three of those people
24 started off with the police that they didn't know
25 anything. All three of them came into this

1 courtroom and sat in that chair and told you they
2 were telling you the truth.

3 And it's your job to sift through the testimony
4 you heard and determine what you believe is the
5 truth and what you believe is not, looking at
6 reasons for telling the truth and looking for
7 reasons for lying. The common sense of each and
8 every one of you, and as a jury as a whole, will
9 determine what you believe to be the truth.

10 Remember when you prosecute a thief, when you
11 prosecute a murderer, when you prosecute evil, your
12 witnesses are not going to be angels because that's
13 not who murderers and thieves run with.

14 Let's go through and talk about some of the
15 witnesses. Cedric Mayers was a relative, a cousin,
16 I believe, of Breon Mayers. And who really knows
17 what involvement he had, who knows whether he told
18 the whole truth or just a piece, who knows whether
19 he was trying to just protect himself and telling
20 just enough to stay out of trouble, because you're
21 never going to know the whole story. But just
22 because you don't know the whole story doesn't give
23 you reasonable doubt.

24 Cedric Mayers told you that he was out at
25 Jackie Boyd's house visiting with her that morning,

1 said that he drove by and he saw Breon's car at
2 Jasmine's house and saw Jasmine outside. That's
3 what Jasmine said, that's what Jermaine said and
4 that's what Tyrone said.

5 He comes down to the house, the car comes down
6 to the house. Cedric Mayers tells you that he sees
7 all three boys. He doesn't know one of them. He
8 doesn't know Tyrone. He knows Jermaine from the
9 neighborhood. He knows Breon, he's family. He asks
10 them what they're going to do. We're going to go
11 and rob Dave. Why would Cedric Mayers come in and
12 tell you that if it wasn't true? Why would he make
13 it up against his own family? He didn't want to be
14 here.

15 He said he saw them running back. Did he get
16 marijuana? I don't know. Tyrone said he did, said
17 that Breon called and said, Give him some free, give
18 him some marijuana for free. Did he do it to
19 impress Cedric? I don't know. We'll never know.

20 Jackie Boyd, the lady who lived in that house
21 who clearly did not want to be here, relative of
22 Breon Mayers. And you heard her say that she saw
23 Breon before. Breon came in the house and then said
24 he was going outside. And she wanted to get up on
25 the stand and say that she had never seen him again

1 that day. She wasn't sure whether she had seen his
2 car or not, but that is not what she told the
3 police. What she told the police at the time of the
4 murder was that she saw Breon, Jermaine and an
5 unknown male running back this way after she thought
6 that Dave Cannon was killed. She sure didn't want
7 to say it on the stand.

8 And I don't know whether you noticed or not,
9 but did any of you remember where she went to go sit
10 when she was done testifying? Did she leave the
11 courtroom? Did she sit on this side? She sat over
12 with Breon Mayers' family, her family. Sift through
13 the truth and the lies and the reasons.

14 Jasmine Bowers. David Cannon's wife, Sharon,
15 Aunt Sharon, Uncle Dave. How despicable, how
16 horrible for her to set up her own uncle to get
17 robbed and murdered. But it wasn't the first time
18 she'd stolen from him. Mr. Williams got her to
19 admit that she had stolen either money or drugs from
20 him before. So did she really need to kill him? Is
21 she the mastermind? Is she the one that pulled the
22 trigger? She could have gone in and stole from him
23 at any time.

24 What was she going to do that day? What did
25 she tell you she was going to do that day? She had

1 a job interview. Did she have a plan? Did she come
2 up with this plan to go rob Dave and recruit all
3 these people? Is that the way the story unfolds?
4 Or is it that Breon Mayers decides that he's going
5 to rob him and informs everybody that day? Think
6 about who's the leader and who's the follower.
7 Jasmine Bowers wasn't a leader. She had a job
8 interview that day. It wasn't on her list I'm going
9 to go rob and kill Uncle Dave, but she got drawn in
10 by evil.

11 Jermaine Caughman, a leader or a follower? The
12 testimony was that Jermaine Caughman had called his
13 mentor, Linda Marsh, the lady that was trying to
14 help him out, three weeks before and said, Get me
15 out of here, I'm going to get in trouble. And she
16 didn't get him out and he got in trouble.

17 Whose car was being driven? Breon Mayers. Who
18 got out of the car at Jasmine's house and knocked on
19 the door? Did Breon do it or did his follower,
20 Jermaine, do it? Jermaine testified he got out and
21 knocked on the door and got Jasmine out for Breon.
22 Who's in charge? Who's leading? Who's following?

23 Tyrone Brennan, the outsider, the one that
24 nobody knows. He said he didn't know Dave Cannon.
25 He's from the Irmo area. He's just been there six

1 weeks. He didn't know Jasmine Bowers when he went
2 over to her house. It wasn't his idea. They were
3 going to do something else that day and all of a
4 sudden the plan changed. And he said, Breon Mayers
5 said we got to go over here, and they go.

6 But when Breon Mayers started talking about
7 getting money, Tyrome Brennan said, Yeah, I need
8 some money. I can do that. I'm down with that.
9 Let's do that.

10 But what was the plan going to be, Jermaine,
11 Jasmine, Tyrome? Their plan was we're going to go
12 in and grab Dave. We're going to take our guns
13 because you never go rob without guns because you
14 never know what's going to happen, but we're going
15 to rough him up.

16 Does a dying man need to be shot? Does a dying
17 man need to be murdered? 110, 120 pounds, hospice
18 care. They didn't need to shoot him. They wanted
19 to rob him, all of them wanted the money, all of
20 them wanted the marijuana, but Breon Mayers wanted
21 him dead.

22 Let's think about if people are going to lie,
23 what's the best story they can come up with? Is it
24 to blame somebody they've known all their life,
25 somebody from their neighborhood? Or is it blame

1 the outsider? Wouldn't it make more sense for
2 Jasmine Bowers to get up and said Tyrome Brennan was
3 the shooter, it was his idea, he's the head bad guy,
4 he's the leader? But she didn't say that. And ask
5 yourself why, because it's the truth.

6 Are the details going to be different? If
7 everybody got up and said the exact same thing,
8 would you believe them? People see different
9 things. They remember different things. They lie
10 about things, but the truth is in there.

11 Jermaine Caughman, if he's going to blame
12 somebody, who would he blame? Is he going to blame
13 Breon Mayers, his friend from the neighborhood, or
14 do you blame the outsider no one cares about?
15 You're going to bring the heat down on yourself for
16 no reason or for the truth?

17 Let's talk a little bit about evidence,
18 physical evidence. A lot of people watch T.V., a
19 lot of people watch crime shows, a lot of people
20 watch CSI type shows. T.V. is not real life.

21 You've heard multiple crime scene people tell
22 you about what they do and they did a good job.
23 They tried to collect everything they could. They
24 collected these coolers. They tried to fingerprint
25 them, didn't get anything. They tried to get DNA

1 swabs off of them to see who touched it because the
2 marijuana was in there. It was on his bed.

3 They tried the wallet. They found Dave
4 Cannon's DNA on the wallet. It was his wallet. It
5 had his driver's license in it left on the bed with
6 no money. Jasmine Bowers told you there were two
7 wallets there and she took the wallet that had a
8 thousand dollars in it. She got the money. Breon
9 Mayers got the drugs.

10 They processed the plastic tub, the plastic
11 bags, the Mountain Dew can for fingerprints,
12 couldn't find fingerprints. And it seems amazing,
13 they didn't even find Sharon's or David's
14 fingerprints in their own house in the areas where
15 they thought they would, but they tried. If they
16 would have found Jasmine Bowers', you would have
17 heard about it. If they would have found Jermaine
18 Caughman's, you would have heard about it. If you
19 {verbatim} would have found Tyrome Brennan's, you
20 would have heard about it. They found none.

21 So they go to DNA. They tried a cigarette butt
22 that doesn't look like it's in the right place.
23 They don't get anything they can use. They tried
24 the wallet to see if anybody touched it. They tried
25 the coolers, shell casings, projectile. Projectile,

1 should have been two, they found one. Dave Cannon
2 was shot twice in cold blood, no signs of a
3 struggle, no signs of forced entry in his house.

4 Was he drug dealer? Yeah, he was a drug
5 dealer. I'm not going to make any excuses about it.
6 Do you invite problems on you when you deal drugs
7 and do illegal things? Of course, you do. But do
8 you deserve to die? Do you deserve to be murdered?
9 Do you deserve to be killed in cold blood in your
10 own house? The answer's no.

11 What did the DNA tell us? You know this gun,
12 according to Chris Benjamin, was recovered at his
13 house, said that Breon Mayers gave it to him, that
14 Breon Mayers bragged about killing David Cannon,
15 talked about getting his body. When Chris Benjamin
16 looked at Tyrome, he could tell that Tyrome was not
17 happy. Tyrome wasn't bragging. Evil is proud of
18 what it does. Evil brags about its wicked deeds.
19 Breon Mayers got his body and he was hyped.

20 People get arrested. Chris Benjamin's
21 contacted, said, Yes, I do have a gun. The police
22 come and get it. He said, I touched it. Chris
23 Benjamin's DNA wasn't on this gun and he said he
24 touched it.

25 Who else can be excluded, though? Jasmine

1 Bowers, it was inconclusive, but did she have a
2 motive or did anybody say that she did it? No. The
3 two other boys, Jermaine Caughman excluded, no DNA
4 related to him on this weapon. Tyrome Brennan, no
5 DNA related to him. He is excluded.

6 You have the revolver that was recovered from
7 Jermaine's house. Jermaine said it was his. He
8 said he gave it to Tyrome. Tyrome admitted that he
9 had this gun. Tyrome, in his first statement to the
10 police, lied and he told you he lied. He said that
11 everybody had guns. I had the revolver and they had
12 Glocks. That's part of that self-protection. He
13 didn't want to look worse than anybody else.

14 Jermaine's gun, Tyrome used it. Notice that
15 when it was found, that it has six-shot revolver.
16 There are five live rounds in there and there's one
17 that's missing. That's consistent with the
18 testimony that Tyrome Brennan didn't even know how
19 to use this gun, he couldn't decock it. So once he
20 had cocked it, because he was ready to use it, and
21 he told you that, he fired it because he didn't know
22 what else to do. And there was a round missing,
23 that's consistent.

24 One in five. There were three, maybe five,
25 maybe more people that had DNA on this weapon.

1 Because of the high numbers, the DNA analyst told
2 you that the numbers weren't going to be very good.
3 It's not like a blood standard, like David Cannon
4 matching his wallet, which is one in a trillion,
5 it's one in five. So two of you, two and a half of
6 you, three of you could be included in the profile
7 that was found on this weapon. A number of people
8 out here, a number of people in Lexington County, it
9 just gets bigger and bigger as the number gets
10 bigger, one in five.

11 But the question you have to ask yourself was
12 who was excluded? The other people that were
13 identified and that confessed to being involved in
14 this case.

15 The person that's included that's identified,
16 Breon Mayers, three people are pointing the finger
17 at him and saying that it was his idea, he had the
18 motive, he was the killer, that he killed Dave
19 Cannon, that he wanted to rob Dave Cannon that day,
20 that it was his idea.

21 One in five. He's the person that has family
22 members saying they saw him there earlier in the
23 morning and saw him running by their trailer after
24 Dave Cannon was shot. He's the one that had a phone
25 with the phone records showing that he was there at

1 the time of the murder.

2 Chris Benjamin told you he got it from Breon
3 Mayers, that he confessed to Breon Mayers. You can
4 convict Breon Mayers based on Chris Benjamin alone.
5 You can convict him on Jasmine alone. You can
6 convict him on Tyrome Brennan alone. Jermaine
7 Caughman alone. Cedric Mayers. Jackie Boyd.

8 Let's talk about the phone a little bit. I
9 wish I had a phone to show you, but we don't.
10 People involved with crimes hide evidence, phones
11 get thrown away, phones get handed off.

12 What Tyrome Brennan told you was that he
13 activated that line in May of 2011. And if you look
14 on the sheet from Verizon Wireless, it'll tell you
15 that that telephone number was active in May of
16 2011. He told you that he gave that phone -- he
17 stopped using service on it because he got a phone
18 from his mom and he gave that phone to his friend,
19 Breon. Breon couldn't activate it, he needed help
20 activating it. So he went and paid the \$48 and
21 activated it.

22 Tyrome said, I don't know whose name the
23 account was going to be in. And we don't know. We
24 don't know whether it's his grandparents' name, or
25 when service ends and people stop paying and you get

1 a new number, is it a whole new account?

2 And then we heard Jermaine or Tyrome talk about
3 Straight Talk. And we heard the lady from Verizon
4 talk about Boost and other kinds of places where you
5 can just go pay cash and you don't give them your
6 name, you don't give them your address, they don't
7 know who owns the phone. People who commit crimes
8 want that anonymity. They don't want it traced back
9 to them. So would it be any surprise that a thief
10 and a murderer and an evil man would have a
11 pay-as-you-go phone?

12 Records, records, records. People lie, records
13 don't lie. They have no reason to lie. The data
14 gets recorded as it's happening.

15 So what do we know about phone records? You'll
16 have these back there. You'll have this back there.
17 In the beginning of the morning on October 21st,
18 2011, this phone is used, 4481, and it starts in
19 sector one. Who lives in sector one? Does Tyrome
20 Caughman -- excuse me -- Jermaine Caughman live in
21 sector one? Does Tyrome Brennan -- does Tyrome
22 Brennan really have two phones? Is he so smart that
23 he went out and set all this up days before and had
24 two phones and is calling himself? Or is it Breon
25 Mayers' phone?

1 Tyrome Brennan lived down here (indicating).

2 Jermaine Caughman lives down here in sector two.

3 Jasmine Bowers lives over here on in

4 sector two. But the phone wakes up in sector one.

5 At the time of the murder -- before the murder,

6 it comes down into sector two. And you'll see that

7 on here. 10:39, I think, is when it comes down.

8 The phone stays down here till around noon.

9 The phone leaves. The phone comes back. The

10 phone travels over to Irmo to Friarsgate to North

11 Royal Tower Road to Harbison. Isn't that consistent

12 with what you heard from Tyrome Brennan describing

13 their day? That they get their money -- they get

14 their weed. Jasmine takes the money. They go sell

15 the marijuana and they get money for it and each of

16 them has cash. The blood of Dave Cannon is spilled

17 for marijuana and money.

18 And what do they do? They're going to go to a

19 Halloween party. Breon Mayers buys Chris Benjamin's

20 speakers. That's how upset he is. Evil. What's he

21 want to do? Speaker wire, I need speaker wire for

22 my new speakers, let's go to Best Buy.

23 Track the phone during the day. You can do it

24 with the records.

25 We're going to go to a party. Let's go

1 shopping. Let's get some new clothes. Let's get a
2 new hat. Let's get a new suit. Is that malice? Is
3 that evil? Is that Breon Mayers?

4 Is it Jasmine's phone? It's not Jasmine's
5 phone. And how do we know that? Well, let's try to
6 figure out whose phone it is. Through the testimony
7 that you heard from this witness stand, all of these
8 people were identified as having numbers that are on
9 those phone records either through documents or
10 through testimony.

11 Breon Mayers' job application, applied for a
12 job at Amicks Farm August of 2011. His grandmother,
13 Linda Patricia Mayers, well, she's there. The
14 number's 7323. Those are on those records. Why
15 would Tyrome be calling grandma? Why would
16 Jermaine? Why would Jasmine?

17 Trandy Mayers, Breon Mayers' uncle. Any reason
18 for Jermaine, Jasmine, Tyrome to call Breon's uncle?

19 Larry Eugene Mayers, Breon's dad. There's long
20 phone calls in there. And if y'all remember, Tyrome
21 Brennan said, As we were driving over to Irmo, his
22 daddy called and Breon denied he had anything to do
23 with it. The word was already out in the street
24 that Breon had something to do with it. His daddy
25 was calling to ask him, You didn't have anything to

1 do with this, did you? And Breon was like, No, no,
2 I didn't. That call's on there and it matches with
3 what Tyrome said.

4 Why would Larry Mayers be calling anybody else
5 other than his son when the anonymous tip had the
6 word on the street that it was Jasmine, Jermaine,
7 somebody living with Chris Davis and Breon Mayers
8 before anyone was interviewed? They were all
9 suspects.

10 So why did -- did it really happen where
11 Jermaine got arrested and he came up with a story
12 that made no sense and he picked Breon Mayers out of
13 the air? Did the police tell him what to say?
14 Jasmine, Tyrome, did the police just tell them what
15 to say and they just went along with it or did they
16 tell it because it was the truth?

17 Who else was on the phone? Jasmine Bowers.
18 Just like she described, Breon came over to her
19 house, got her phone number. There were a couple of
20 phone calls back and forth as they were out around
21 circling like vultures, like wolves David Cannon's
22 house. Did she have two phones and make two calls
23 to herself? If you believe that, then Breon Mayers
24 is not guilty.

25 Jermaine Caughman used that phone. He didn't

1 have one. Several people testified to that. He
2 called his mentor, Linda Marsh. She confirmed that.
3 Those records are on there, too. You see Linda
4 Marsh's number on there in the morning.
5 Cold-blooded Jermaine says that he called while he
6 was standing, I think, on the deck either right
7 before or right after David Cannon was shot and
8 killed. But he's not the leader. He's not the one
9 who pulled the trigger. And he's not calling
10 himself.

11 So who's calling Linda Marsh when he's with
12 Linda Marsh in the afternoon, because Jermaine
13 doesn't stay with him all day? After the shooting,
14 he goes back, meets Linda Marsh and they're gone for
15 the rest of the day. Well, it's either got to be
16 Tyrone or Breon Mayers. The number's in the phone
17 that belonged to Breon Mayers.

18 And how do we know the phone belonged to Breon
19 Mayers besides this, besides all these people?
20 Co-defendant, co-defendant, co-defendant, dad,
21 grandmother, sister, uncle, cousin, cousin,
22 girlfriend, long calls to his girlfriend, friend.

23 Besides that that identifies who that phone
24 belongs to, what else do we know? Suzette Meggett
25 says that he had a phone. She talked to him that

1 day. She identified her number, but said she
2 couldn't remember his. Isn't that convenient?

3 Jassiel Kirkland, his girlfriend, said that she
4 talked to him -- she showed us pictures of her
5 phone. And she had this on her phone. That's the
6 number that goes with these records. And she even
7 said that she talked to Breon Mayers on that phone
8 sometimes. She didn't want to say she talked to him
9 that day, but somebody was talking to Breon's
10 friends and family and it wasn't Tyrome and it
11 wasn't Jermaine and it wasn't Jasmine.

12 Chris Davis, that's where Tyrome Brennan was
13 staying. You heard Chris Davis, Sr., he and
14 Tyrome's mom are not together anymore. They were
15 just having fun. I can't remember what he said, but
16 they're not together anymore, so think about what
17 motive they had to lie. They put all three boys
18 together the night before, him and his son both,
19 playing cards at his house. But that's an area that
20 Breon Mayers doesn't hang out, that's what he told
21 the police.

22 C.J., his son, had his phone. And what does he
23 have in his phone? He's got a new phone, but this
24 is the information that he had transferred over.
25 He's got a contact listing for Breon because

1 Jermaine used that phone to talk with Breon. And
2 it's got the number 4481.

3 So Chris Davis, Jr., C.J., what motive does he
4 have to lie? What dog does he have in this fight?
5 What did he do wrong? He didn't do anything wrong
6 except maybe have bad friends. So why is he making
7 up that number? Because if you want to believe he's
8 a liar, then he had to go program that number in
9 after the fact, label it with Breon's name and show
10 the police when they came. And if you think he's
11 lying about that, then Breon Mayers is not guilty
12 and y'all should let him go home.

13 What did Breon Mayers tell the police? He
14 turned himself in. He said that he lived at
15 Road, which is up here in sector
16 one. He said that his contact number was 7323.

17 Well, if we look on the job application, that's
18 going to be his grandmother's number. And it's also
19 listed as his number up here at the top of the job
20 application, that's a home number.

21 And there's a place for his cell phone that's
22 blank. Breon Mayers said he didn't have a cell
23 phone, but we know that's a lie. People who didn't
24 want to be on the stand even said that he had a cell
25 phone. His girlfriend had a number for him.

1 Suzette Meggett, his friend, said that she talked to
2 him that day. Breon Mayers didn't want that phone
3 found because he knew that would show who he was
4 talking to, where he was and what he was doing.

5 What else did he tell the police? I don't know
6 those people. How many witnesses do you need to say
7 that that's a lie? Chris Davis, C.J., Suzette,
8 Jermaine, Tyrone, Jasmine, Cedric Mayers, Jackie
9 Boyd.

10 I don't hang out in that area. His own family
11 puts him by that trailer on that road that day, not
12 counting the co-defendants.

13 I don't know David Cannon. Sharon Bowers told
14 you that she knew him from a boy. This is his home.
15 This is where he was raised. These are his people,
16 but he doesn't know David Cannon and he doesn't know
17 Jasmine Bowers, he doesn't know Jermaine Caughman or
18 Tyrone Brennan, but the testimony and the phone
19 records say otherwise.

20 He said he was home sleeping until two o'clock,
21 but that phone sure wasn't. Said he never had a
22 gun. Chris Benjamin says otherwise.

23 Were the stories all the same? No. Would you
24 expect them to be? No. The truth is in there.
25 There are smoke screens. There's bad weather with

1 road flares. There's rabbit holes. There's red
2 herrings, things that Mr. Williams will want you all
3 to follow down and get lost in the path. Use your
4 common sense, focus and find the truth.

5 If you think that Tyrone Brennan or any of
6 these people were smart enough to create this phone
7 the day before, mastermind this whole thing, to get
8 everybody to lie, then find Breon Mayers not guilty.

9 But if you're going to come up with a story,
10 blame the outsider, that's the better story. So
11 then the question is, what's the truth? Because the
12 truth isn't always the best story.

13 If you think he didn't do it, then like Chris
14 Benjamin said, give him his baby and let Breon
15 Mayers go free.

16 On October 21st, 2011, David Cannon was robbed
17 and murdered, a dying man who didn't need to die
18 that day. Breon Mayers got his body and he was
19 proud and he bragged. Today he's going to get
20 justice and it's your job to give him justice. He
21 got what he wanted on October 21st, 2011. Today
22 he's going to get what he deserves.

23 Breon Mayers is a thief and he's a murderer.
24 Evil lives in this world and it walks on the streets
25 and it's sitting in this courtroom right there.

1 Breon Mayers is guilty of murder, burglary first,
2 armed robbery, possession of a weapon during a
3 violent crime. Let your verdict speak the truth.
4 Thank you.

5 **THE COURT:** All right. Mr. Williams.

6 **MR. WILLIAMS:** May it please the Court.

7 Evil lives in this courtroom. How dramatic is
8 that? How dramatic is that? You know, in opening
9 argument, we saw the Solicitor walk over here and he
10 would pound at one thing, pound it there
11 (indicating), pound it there. Dramatics, that's all
12 it is. Calling people names, dramatics.

13 It's not a personal front to Shawn. I mean, I
14 like him. He's a nice guy and all that, but he is a
15 Solicitor and he is performing, if you will, a job.
16 He's prosecuting my client, that's his job. It's
17 his job to get all this information and somehow try
18 to convince you that my client is guilty. But if
19 you don't have the information, if you don't possess
20 it, then what you do is you arrange the facts so
21 that somehow you'll be convinced.

22 You know, there's a reason why we have 12
23 jurors and an alternate is because we figured you
24 might convince one guy or some guy might be asleep,
25 but somebody's going to be awake out of the 12 of

1 y'all. Y'all got -- and you've been paying
2 attention. It's hard to remember -- this thing has
3 been going on for five days, I know, and I know
4 you're worn out because I'm tired. And I actually
5 know -- I've got stuff that's written down telling
6 me what somebody's going to say or not say. So
7 you've had to keep all this stuff in your mind, but
8 I don't want you to gloss over any of their
9 testimony.

10 I want you to remember -- and for that reason,
11 I don't normally do this, obviously I've been
12 practicing law for a while, I normally like to stand
13 up here and just kind of tell you a story, tell you
14 what my viewpoint is, but this thing's been going on
15 for five days, so I'm going to kind of pull out
16 these witnesses for you a little bit. I don't know
17 if you remember what they say or not remember what
18 they say, but, see, it's -- unfortunately, it's your
19 job to remember what they say and it's your job to
20 determine what the truth is.

21 The Judge has got -- well, his job I wouldn't
22 say it's easy because he has to put up with us, but
23 he tells you what the law is and you have to accept
24 it, but you have to determine what the facts are,
25 what the truth is in the facts.

1 I want you to remember that this is not -- it's
2 not a screenplay. You know, if we were doing a
3 screenplay, we can write up things and we can do
4 cell phones and make you all feel like Sherlock
5 Holmes. And then you -- it's like looking for Elmo
6 and you can say you have the answer. But the law is
7 that the State has to prove my client guilty beyond
8 a reasonable doubt. That's it. You're not to say,
9 well, you know, you know, you look kind of guilty to
10 me, or, I don't know, there's something here that
11 could indicate you're guilty.

12 You heard the Solicitor say, well, if you
13 believe one person, you can find him guilty. How
14 can you take one person's testimony alone,
15 particularly looking at this case?

16 Now, the Judge will tell you that you take --
17 you determine, by looking at each and every
18 witnesses, determining what you believe and what you
19 don't believe, but I would suggest, in this case,
20 it's pretty screwy.

21 But remember what you decide today is so
22 important. You can't call me up, I don't know, 10
23 or 20 years from now and say, I changed my mind.
24 You can't do that. And, for that reason, regardless
25 of what your verdict is, and this is actually a

1 sincere request, this isn't just me being
2 theatrical, I truly want to thank you for making
3 this decision and making this call because it's a
4 hard call.

5 Well, this is my client. This is Breon Mayers.
6 He's not some mannequin. That's his family back
7 there. He's a real person.

8 And when you make this call, let's look at who
9 testified. I'm just going to run through briefly,
10 then, hopefully, I will show you why the Solicitor
11 hasn't proven his case. And it's actually pretty
12 easy. It's not as hard as you think it is.

13 Sharon Bowers, obviously, she is the wife,
14 basically admits that her husband sold marijuana.
15 They lived together. One of the interesting things
16 she talks about is the fact that they had had
17 break-ins before and that jewelry had been stolen
18 before and that money had been stolen before.
19 That's important for more than one reason:

20 Number one, it tells you that, and we find out
21 later on, that Jasmine has broken into the house
22 before and that Jasmine has gotten the ten-year-old
23 to steal before. But that's not the only reason.

24 Do you remember that one of the investigators
25 stated that early on they had two potential suspects

1 in the case? Do you remember that in all this four
2 days of testimony that there were two potential
3 suspects in the case? And did you ever hear him say
4 what happened to those suspects or why they were
5 excluded as suspects?

6 Because you could run with that. I mean,
7 that's what we're doing here. We're making -- we're
8 making a plot. We're making a play to go along with
9 some facts to say it must be this, this, this.
10 Well, you can take those two suspects, have been
11 broken in before, wonder why they're not here,
12 wonder why they haven't been talked about? Why
13 wasn't that answered?

14 Well, next witness that talks about is Chris
15 Davis. And I did this on purpose. I don't know if
16 you thought I was being a jerk or not, but I did it
17 on purpose. When Chris Davis was talking or
18 testifying, he talked about how they were out in the
19 back and they were playing cards. And I, on
20 purpose, cross-examined him. I said, Did you see
21 him playing cards? How can you prove he was playing
22 cards?

23 I didn't say all that just to, I don't know,
24 mess with him. I did that so that you'll remember
25 that when you're making decisions, you can't assume

1 things. And that's what has happened here. You
2 remember Jackie Boyd? Jackie Boyd assumed that he
3 was out there, but you can't.

4 Chris Davis, Jr., they call him C.J., remember
5 he didn't know what Breon's number was. He's the
6 one that said Jermaine told him to put this number
7 in as Breon's number, but when Jermaine was on the
8 stand, he said he never told anyone to put the
9 number in as Breon's number. The whole case is like
10 that. It's absolutely contradictory the whole way.

11 Cedric Mayers. Cedric says that he never saw
12 Breon over at David Cannon's house. He never saw
13 Breon's car.

14 See, the car to me is kind of important because
15 you got all these people saying that Breon's car is
16 gray or silver, then you got somebody saying it's
17 champagne. Now, if I were prosecuting this case,
18 the simplest thing to handle that situation is to
19 get the registration, go take a picture, bring the
20 information in here and show you what color that car
21 is.

22 You say, well, why is that important,
23 Mr. Williams? You're an idiot. Why is that
24 important? Silver sometimes looks like gray. It's
25 important because part of the theory the Solicitor

1 has is that my client had the car. He had the
2 wherewithal. He had the transportation.

3 But do you remember Tyrome Brennan saying that
4 he borrowed his mama's car to go to the party that
5 night after supposedly this had happened? Would it
6 change your opinion if her car was silver? Why
7 didn't we call his mother up here to testify whether
8 or not she had actually given him the car there that
9 day or not, whether or not the car was silver or
10 not?

11 See, these are the loose ends that need to be
12 cleared up, not speculation with cell phone, alleged
13 cell phone records as to what somebody did because
14 you got some number that may or may not have been in
15 that location.

16 You know, the thing that kills me in this case,
17 this case is built on cell phones. It's built on
18 cell phones with this phone number and that's what
19 it's built on. It's not built on scientific
20 evidence. It's not built on anything but that.

21 If that's true, why, why do you not have the
22 Verizon woman testify that that cell phone has been
23 turned off? Do you remember when I gave her my
24 phone on the stand and it rang?

25 You know, I don't pretend to understand

1 telephones, how you can have more than one number.
2 I know this, the first time I went to New York, I
3 had to -- my phone wouldn't work, so I had to talk
4 to somebody at the stupid telephone place so my
5 phone would work because people steal phones and
6 stuff like that, they hijack numbers.

7 You know, it's not up to me to prove what
8 happened to that number, but the simplest way to
9 handle this situation is to go ahead and have her
10 testify that the phone number's been shut off. They
11 want to introduce some piece of paper with Chris'
12 Davis' name on it also to say that the account was
13 opened up on May of 2011 and say, well, that fits
14 with the testimony, that number, that fits with the
15 testimony. Does it ever say it was shut off?

16 I'm sorry.

17 Cedric says he doesn't see anything. Jackie
18 Boyd, Jackie Boyd assumes stuff -- I don't know
19 where Jackie is -- but she assumes stuff. But on
20 the stand, she says, you know, I never saw him after
21 he initially came in.

22 We got to make the decision in closing argument
23 is whether or not all these people were telling the
24 truth when they were interviewed by the police and
25 lying now or whether or not they were lying when

1 they was talking to the police and telling the truth
2 now. Can you have it both ways?

3 Clifton Holler {verbatim}, he's the guy who was
4 the hunter. Now, what's important about him? I
5 tell you what's important about him. You know what
6 he didn't say, he didn't say he heard three shots,
7 he heard two shots.

8 Barry Kinard, he's the first guy to show up.
9 The important part about him other than the fact
10 that he's a friend and that he showed up to check on
11 his buddy when he called at 11:45, because that's
12 important because that gives you a time when you
13 know that something's wrong, he says, When I got
14 there, there was ice that hadn't melted. So that
15 gives you some idea in regards to time.

16 Why is that going to be important? Because
17 three days later when we get to the DNA and we have
18 to come up with some excuse about why we can't have
19 DNA and why the DNA has all been degraded, one of
20 these excuses that we use is, well, you know, if it
21 sits outside for an extended period of time, then it
22 degrades and we're not able to get DNA. Well, we
23 know it didn't do that. You had ice there. See,
24 somehow you have to simulate all these things and
25 put them together.

1 The next person that testified was, basically,
2 Schlegel. And why is he important? He got there
3 about 12 o'clock. The reason he's important, now
4 think about this, he gets there about 12 o'clock.
5 He keeps people from going on the scene. There are
6 25 people there. We're talking about Friday at 12
7 o'clock. Where do these people come from?

8 The only reason that's important is I don't
9 know who was there of those 25 people. I don't know
10 what they saw. I don't know where they went. I
11 don't know what they did. It's unusual you got 25
12 people at 12 o'clock on a Friday and somebody's not
13 at work, but that's why he's important.

14 You've got the 9-1-1 person who calls. Why is
15 that important? Well, that's important because it
16 proves that Cedric was lying. He just lied. Cedric
17 said he made the call. Sorry, Cedric, wherever you
18 are. He says the first call that came in was from
19 Mr. Kinard, nobody else called.

20 Roy Mefford testifies about the anonymous tip.
21 I don't know. We're here to seek the truth, aren't
22 we? Aren't we here to find out whether or not my
23 client is guilty or not? Did he do something or
24 not?

25 You got a phone number, you know who the person

1 is that's giving you the anonymous tip, instead of
2 us having to rely on people who have lied to the
3 police four and five times. We know that. We know
4 all those people have lied before. The Solicitor
5 didn't say they didn't lie before. Every one of
6 them has lied before when they talked to the police.
7 Why not bring the anonymous tip person in? How do
8 they know what happened? But, no, can't give that
9 up. No, we would rather you 12 jurors speculate on
10 the guilt or innocence of my client than to give up
11 somebody who performed the tip.

12 Jermaine Caughman, main actor. He talks about
13 that he woke up about 11 o'clock or -- I'm sorry --
14 he says that my client gets there about 11 o'clock.
15 And he comes outside. And then somehow Tyrome is in
16 the car. They go to Jasmine's house. They go to
17 Jackie Boyd's house.

18 The reason why this is kind of important is
19 that if you believe Jermaine, then you obviously
20 cannot believe what the other witnesses say about
21 all these other places that they went, talking about
22 Tyrome, when Tyrome went to Irmo, went and got a
23 blunt from his brother, smoked that marijuana, went
24 to his father's house, wherever he went. I mean, he
25 was just a traveling man. Why not bring the brother

1 here?

2 Let me tell you why that's important. You know
3 these little cell phone records that we're building
4 our case on, 10:39, 10:39, Linda Marsh is called
5 from this cell phone. You know, I don't know, I
6 don't know how that fits in. I can't figure that
7 one out at all. Did he even say he called Linda
8 Marsh until after he was at the scene? Well, I
9 don't know, maybe Breon knows Linda Marsh, maybe
10 he's being mentored also.

11 That's another thing that bothers me. You
12 notice how this thing was put on and you got poor,
13 poor Jermaine. You know, he is just so sad. He was
14 going to get caught up into all of this. And Linda
15 Marsh didn't get there in time. Why is this brought
16 up like this? To create sympathy for him so that
17 you think, well, they're not such bad guys.

18 So Linda Marsh gets on the stand, maybe you
19 thought I was mean to Linda Marsh -- well, I was a
20 little bit -- but why get up there and say, well,
21 he's a follower. Bless his heart, I know he's a
22 murderer, I know he robs people, but he's a
23 follower. It's so sad.

24 Well, the rest of the story is just about phone
25 calls and about calling here, calling there, calling

1 Linda. One section of his testimony just jumped out
2 at me. From the porch, listen to this, from the
3 porch, two gunshots, then a third one from a .38.
4 Then I call my mentor again to ask her where she was
5 at, then we entered the house.

6 She's got the transcript. If you don't believe
7 me, have her play it back.

8 When they go in, Jermaine went to the left.
9 Tyrome went straight ahead. That's not what anybody
10 else says. Jasmine says you got the two of them go
11 in together.

12 You know, who has -- who has the motive? You
13 know, you can't be too simplistic, you know. You
14 hear it on T.V. all the time, motive, opportunity
15 and means, you know, that's some catch word. I
16 don't know why they want to do that to your mama,
17 but, you know, m-o-m.

18 Who had the motive? According to -- according
19 to the State, they would say that Breon's motive is
20 because he's a racist. That's what he says. He's a
21 racist because David Cannon won't sell marijuana to
22 black individuals, that's his motive. Well, I'm
23 sorry, I thought I heard David Cannon's wife slash
24 girlfriend say sold to Jasmine, sold it to Jackie
25 Boyd, maybe I'm missing something.

1 You got to come up with a motive here. Who had
2 the motive? Well, I don't know. Jasmine might have
3 had a motive because she couldn't go over there
4 anymore. Jermaine might have had a motive because
5 he was assaulted before by the guy. Mr. Boyd might
6 have -- what's his name -- Tyrome might have had a
7 motive because he needed money. And remember
8 Jermaine doesn't count statements unless they're
9 written down, remember that.

10 One of the other important things that he said
11 was that Jasmine gave Breon a bag of weed and a
12 .357. That's not what Jasmine said. Jasmine
13 basically indicated she came in when all this was
14 going on and snatched the wallet and zipped out.
15 That's her story. Is it wrong to just simply say
16 that none of these people have their stories
17 straight? And, remember, she had -- he had the
18 inconsistent statements because one time he said
19 that he never -- that he didn't deny that he told
20 police that Tyrome wasn't there on the 21st.

21 Jasmine Bowers, what is she doing walking up
22 and down the road? If you believe what she has
23 said, she has this conversation with three
24 individuals and she smokes a cigarette and she goes
25 down behind a house and she has all this discussion.

1 She comes back and she gets a cigarette from
2 somebody else in the middle of the road. Who is
3 that? Who did she get the cigarette from there?

4 Then you listen to her talk about, well, you
5 know, I was out in the street when I heard the
6 shots. And when I heard the shots, I tried to tell
7 Cedric -- that's interesting, isn't it -- tried to
8 yell at Cedric, let somebody know that there were
9 shots. And then I ran around and I saw somebody
10 standing in the doorway, didn't know who he was.

11 Why is just all of that just wrong? If you
12 believe the forensic evidence, there were two shell
13 casings found inside the trailer about three feet
14 in. I don't know, you know, there's a time problem,
15 there's a location problem. The gun was fired
16 inside, had to be fired inside the residence because
17 the gun casings are like -- shells are like here
18 (indicating). I don't know, unless he turns --
19 remember they exchanged on the right hand -- maybe
20 he turns the gun like this (indicating) and it's
21 fired and it goes out the side.

22 Well, remember her story about Tyrome coming
23 down the hallway with rifles in his arms. You know,
24 whatever happened to those rifles? Nobody took
25 those.

1 Who is the one who goes around hiding
2 everywhere? Jasmine. You finally get Jasmine
3 hiding in Orangeburg.

4 She consist -- I'll give her this. She
5 consistently says that her testimony is because
6 she's hoping for leniency. She admits that she
7 tried to outfox the police, but now they have her,
8 you know, she's going to do what she has to do to
9 make sure that she gets a leniency. But, you know,
10 you can't say that -- she can't say that Breon shot
11 anybody because she didn't see that happen because
12 if she'd seen that, that would put her, I don't
13 know, inside the trailer.

14 See, everybody does something to lessen their
15 involvement in this. That's a common thread.

16 And here's the one thing she didn't do: She
17 didn't go to see her daddy's -- child's father that
18 day like Cedric said happened. Remember Cedric came
19 over six hours later and had his two buddies with
20 him and supposedly Cedric took them to see the
21 child's father.

22 Oh, no, no, no, no. What Jasmine says is she
23 and Cedric, who you wonder what the relationship is,
24 well, you may suspect, they go to a motel room. And
25 then Jasmine, she says, well, you know, I bought

1 some marijuana with that money. Have you ever seen
2 anyone squirm about telling you -- she's testifying
3 in a murder case and she won't tell you who she
4 bought her drugs from. What's his involvement in
5 this? Why won't she tell you that? Some guy in
6 Columbia.

7 Tyrome Brennan. Tyrome Brennan got his cell
8 phone one to two weeks before. He sold -- he sold
9 it -- one time he says he sold it to Breon. The
10 next time he says he gave it to Breon three or four
11 days before the incident. The phone had to be in
12 his mom or his granddad's name.

13 Why is it you can't figure that out? How come
14 you can't go back and see the records and see who
15 actually had the cell phone? Well, we know it's
16 still on, don't we, because it kept ringing on the
17 stand yesterday.

18 Now, he's the guy who really fills in the
19 details. He goes to Irmo. He goes here. He gets
20 his brother. He smokes the marijuana. He goes over
21 here. He goes over there. You know, if I were
22 trying to prove that what he was saying was true, I
23 probably would have his brother come in here and
24 say, yeah, I gave him some marijuana, that's when it
25 happened. I mean, what's the worst that's going to

1 happen to the brother?

2 But then he goes on and he basically says that
3 when they went, they changed their clothes after it
4 was all over with and he took -- he took my client's
5 clothes. Remember, he took my client's clothes. So
6 my client's driving around, I don't know, Irmo and
7 Chapin with his boxers, if you believe that. And we
8 don't know where the clothes are. They're all
9 destroyed. Why is it every time we're going down
10 this path we think we're going to get an answer,
11 oop, I'm sorry, close the door, go back this way?

12 Well -- but he's got somebody who's going to
13 help him. He's got his cousin who's going to help
14 him, Chris. Remember the guy he sells drugs to,
15 marijuana to, upstanding guy, works for the Better
16 Business Bureau, Chris. And he comes in there, oh,
17 I got marijuana here. I got guns here.

18 Well, Chris tells you he sold his speakers. He
19 sold his -- they had to go out and buy some speaker
20 wire. You know, I'll bet that if you went and got
21 Breon's car, you could look in his car and see if he
22 had the speakers that were Chris' in it, if he had
23 the speakers. Why not do that? Why not do that?
24 Well, we'd rather speculate on cell phone records.

25 Daycare bill, how about a daycare bill showing

1 he paid it on such and such a date?

2 How about Jermaine took the .38 when he went to
3 meet his mentor? Remember him saying that? Not two
4 days later. Remember the story was, Linda Marsh
5 says, next day she was with him all that day, next
6 day for two to three hours, took him back, took
7 Jermaine back where he went -- went to work with his
8 uncle. Jermaine says, two days later, don't you
9 love this, she takes him to meet his uncle.

10 And, see, the key here is that we're trying to
11 track what's happening with the .38 caliber. Tyrome
12 says, well, he had it with him. And when he went to
13 meet his mentor, he had the gun with him. Well, I
14 think she probably would have seen that, wouldn't
15 she?

16 Well, that's the major characters, I guess.
17 Bill Freund, I guess, he just testified about the
18 camera. Chris Benjamin, why would my client meet
19 this guy he's never met before, run his mouth about
20 something he's done, get him to hold his gun for
21 him? This is somebody he doesn't even know.

22 Why would you have to have a magic number so
23 that Chris Benjamin can talk to the police, so that
24 the investigator will get the number from his cousin
25 so that he -- it's okay, you can tell him that.